

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JOHN ROST,
Appellant,

v.

JOHN C. TEXTOR, individually, and
FACEBANK, INC., a Delaware corporation,
Appellees.

No. 4D2025-0779

[September 16, 2026]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Luis Delgado, Jr., Judge; L.T. Case No. 502024CA003171XXXAMB.

Nichole J. Segal of Burlington & Rockenbach, P.A., West Palm Beach, Louis M. Silber and Allison J. Davis of Silber & Davis, West Palm Beach, and Jay R. Jacknin of Jacknin & Jagolinzer, West Palm Beach, for appellant.

Alaina B. Karsten and Alan M. Burger of McDonald Hopkins, LLC, West Palm Beach, for appellees.

SHEPHERD, J.

John Rost appeals the trial court's order dismissing with prejudice Counts I, II, IV, and V of his amended complaint against John C. Textor and Facebank, Inc. ("Facebank"). We reverse because Rost sufficiently alleged Textor and Facebank were responsible for material misrepresentations and omissions connected to Rost's purchase of Facebank stock, and the cautionary language in the offering materials was insufficient to render those alleged misrepresentations immaterial as a matter of law.

Background

Facebank was a Delaware corporation with its principal place of business in Palm Beach Gardens. Textor served as Facebank's sole incorporator, chief executive officer, and controlling shareholder.

In 2021, Rost's investment advisor recommended that Rost invest in Facebank after advising Rost that Textor was seeking to acquire an interest in Crystal Palace Football Club ("Crystal Palace"), an English Premier League soccer club. Facebank would serve as the investment vehicle through which Textor would acquire that interest.

Notably, after Rost expressed interest, he communicated directly with Textor. Textor confirmed that he intended to acquire an ownership interest in Crystal Palace through Facebank, and discussed plans to combine other football-related assets into Facebank. Textor then provided Rost with offering materials relating to a Facebank common stock offering, including a term sheet and subscription agreement.

The term sheet stated that Facebank had received \$70 million from Textor as an advance or loan intended to support the company's acquisition efforts, which funds had been provided in connection with the prospective acquisition of Crystal Palace. The term sheet further disclosed "it is also possible that the prospective acquisition might not be consummated by the Company and the funds would be returned to Mr. Textor."

Rost executed the subscription agreement and invested \$2 million in Facebank.

Approximately two months later, Crystal Palace announced that Textor had acquired a substantial ownership interest in the club. Facebank never acquired any ownership interest in Crystal Palace. Textor instead acquired the interest personally.

Rost later demanded the return of his investment. In response, Textor acknowledged that accepting retail investment in Facebank had been a mistake, and discussed the possibility of exchanging Rost's Facebank shares into Eagle Football Holdings, an entity later formed to hold interests in Crystal Palace and other football clubs.

Rost then sued Textor and Facebank. Rost's amended complaint asserted claims for violations of the Florida Securities and Investor Protection Act, breach of fiduciary duty, rescission, fraud in the inducement, unjust enrichment, and accounting. Counts I and II alleged violations of sections 517.301 and 517.211, Florida Statutes (2021). Count IV sought rescission under section 517.211. Count V asserted fraudulent inducement.

Rost's amended complaint alleged that Facebank had obtained Rost's investment through material misrepresentations and omissions concerning the proposed acquisition of Crystal Palace. Specifically, the amended complaint alleged Textor had represented Facebank intended to acquire Crystal Palace, and that Facebank was holding funds in connection with that acquisition, while failing to disclose that Textor intended to acquire Crystal Palace personally and later transfer the club to a separate entity in which Rost held no ownership interest. The amended complaint alleged Rost had relied on those representations and omissions in purchasing Facebank stock.

Textor and Facebank moved to dismiss the amended complaint with prejudice. They argued that the offering documents had disclosed the Crystal Palace acquisition was merely prospective, the transaction might never occur, and funds being held in connection with the proposed acquisition were subject to return.

The trial court agreed with Textor and Facebank and dismissed Counts I, II, IV, and V, with prejudice. The trial court concluded the offering materials had disclosed that the Crystal Palace transaction "might not happen" and, therefore, Rost had not alleged any actionable misrepresentation had occurred.

Analysis

We review an order dismissing a complaint with prejudice de novo. *Stein v. BBX Cap. Corp.*, 241 So. 3d 874, 876 (Fla. 4th DCA 2018).

The Florida Securities and Investor Protection Act ("FSIPA") prohibits obtaining money or property in connection with the offer, sale, or purchase of a security by means of an untrue statement of material fact, or by omitting a material fact necessary to make the statements made not misleading. § 517.301(1)(a)2., Fla. Stat. (2021). The FSIPA likewise prohibits employing any device, scheme, or artifice to defraud and engaging in any practice that operates as a fraud or deceit upon another. § 517.301(1)(a)1., 3., Fla. Stat. (2021). Section 517.211(2) of the FSIPA provides the civil remedy for violations of section 517.301:

Any person purchasing or selling a security in violation of s. 517.301, and every director, officer, partner, or agent of or for the purchaser or seller, if the director, officer, partner, or agent has personally participated or aided in making the sale or purchase, is jointly and severally liable to the person selling the security to or purchasing the security from such person

in an action for rescission, if the plaintiff still owns the security, or for damages, if the plaintiff has sold the security.

§ 517.211(2), Fla. Stat. (2021).

“Section 517.211(2) limits liability to persons involved directly in the sale of the security and damages are limited to the consideration paid.” *J.P. Morgan Sec., LLC v. Geveran Invs. Ltd.*, 224 So. 3d 316, 324 (Fla. 5th DCA 2017) (citing *E. F. Hutton & Co. v. Rousseff*, 537 So. 2d 978, 981 (Fla. 1989)). Rost’s complaint alleged that Textor and FaceBank were directly involved in the negotiations that led to Rost investing with Facebank.

Section 517.211(3)(a) further states:

In an action for rescission. . . [a] purchaser may recover the consideration paid for the . . . investment, plus interest thereon at the legal rate from the date of purchase, less the amount of any income received by the purchaser on the . . . investment upon tender of the . . . investment.

§ 517.211(3)(a), Fla. Stat. (2021); *see also Rousseff*, 537 So. 2d at 981 (“Section 517.211 says that if a seller . . . is untruthful in a sale, the buyer . . . can rescind the transaction and get his money back.”). “A claim for rescission under section 517.211 includes: 1) a misrepresentation or omission, 2) of a material fact, 3) on which the buyer relied.” *Geveran Invs. Ltd.*, 224 So. 3d at 324; *see also Rousseff*, 537 So. 2d at 981; *Kashner Davidson Sec. Corp. v. Desrosiers*, 689 So. 2d 1106, 1107 (Fla. 2d DCA 1997) (reversing because the record contained no evidence that KDS or its employees made a misrepresentation in violation of section 517.301).

Here, Rost sufficiently alleged material misrepresentations or omissions. Rost alleged Textor had represented that Facebank intended to acquire Crystal Palace and that Facebank held funds in connection with that acquisition, and in reliance on those representations, Rost invested in Facebank.¹ Rost further alleged that Textor knew Facebank would not acquire Crystal Palace, because Textor intended to acquire the club

¹ “Considering the anomaly which would be created by determining that an individual would be liable but the legal entity would not, we agree with appellee that the context dictates that any agent of the purchaser or seller which has personally participated in the sale would be liable for violations of section 517.301, Florida Statutes, whether that agent is a corporation, partnership or natural person.” *Arthur Young & Co. v. Mariner Corp.*, 630 So. 2d 1199, 1204–05 (Fla. 4th DCA 1994).

personally and later transfer it to a separate entity in which Rost held no ownership interest. Accepting those allegations as true, the omitted information concerned the very transaction that allegedly induced Rost's investment.

Florida courts have held that allegations of concealed material facts known to defendants are sufficient to survive dismissal under section 517.301. *See Gemini Invs. III, L.P. v. Nunez*, 78 So. 3d 94, 97–98 (Fla. 3d DCA 2012); *Raymond, James & Assocs., Inc. v. Zumstorchen Inv., Ltd.*, 488 So. 2d 843, 845 (Fla. 2d DCA 1986). The fraudulent statement must generally relate to a past or existing fact. *Mejia v. Jurich*, 781 So. 2d 1175, 1177 (Fla. 3d DCA 2001). However, “if the person making the representation has superior knowledge of the subject matter, or makes a future promise to perform with no intent of doing so, the requirement of a past or present fact does not apply.” *Nunez*, 78 So. 3d at 97 (quoting *Jurich*, 781 So. 2d at 1177); *see also Telesphere Int’l, Inc. v. Scollin*, 489 So. 2d 1152, 1154 (Fla. 3d DCA 1986) (reversing a judgment in employee’s favor under breach of employment contract claim and remanding for a new trial on whether employee was fraudulently induced to enter the contract as employer allegedly withheld information about adversities facing employer that would result in termination of employee).

Based on the facts alleged in the amended complaint, if a reasonable investor was considering investment in Facebank specifically to acquire an interest in Crystal Palace, that investor would think twice if the investor knew that Facebank was not going to acquire Crystal Palace itself and, instead, Facebank’s principal intended from the outset to acquire the club personally. At a minimum, reasonable minds could differ on the that information’s significance. Thus, Rost adequately alleged materiality.

Textor and Facebank, however, argue that the cautionary language in the offering materials rendered any alleged misrepresentation immaterial as a matter of law pursuant to the “bespeaks-caution doctrine.” Specifically, Textor and Facebank rely on the disclosure that the Crystal Palace acquisition “might not be consummated by the Company,” and contend this language warned Rost of the very risk that later occurred.

We disagree.

Rost’s theory is not merely that a future acquisition failed to materialize. Rather, Rost alleges that Textor had represented Facebank intended to acquire Crystal Palace, while knowing that Facebank would not acquire the club because Textor intended to acquire it personally. Thus, Rost’s claim concerns Textor’s alleged present intent at the time of

the investment, not simply the future failure of a contemplated transaction. At a minimum, Rost sufficiently pled these allegations, creating a question of fact that required further proceedings. *See Nunez*, 78 So. 3d at 98 (reversing dismissal where the plaintiffs sufficiently alleged that the defendants concealed material facts within their superior knowledge); *Raymond James & Assocs., Inc.*, 488 So. 2d at 845 (reversing dismissal of a section 517.301 claim where the complaint, taken as a whole, sufficiently alleged facts supporting a securities-law violation); *Mejia*, 781 So. 2d at 1177–78 (reversing dismissal of fraud claims based on alleged misrepresentations concerning future events where the defendant possessed superior knowledge and allegedly knew the representations were false).

Because Rost adequately alleged a material misrepresentation or omission upon which he relied under section 517.301, the trial court erred in dismissing Counts I and II. For the same reason, the trial court also erred in dismissing Rost’s related rescission claim under section 517.211 and his fraudulent-inducement claim. We therefore reverse the order dismissing Counts I, II, IV, and V and remand for further proceedings.

Reversed and remanded.

LEVINE and LOTT, JJ., concur.

* * *

Not final until disposition of timely-filed motion for rehearing.