

FILED
United States Court of Appeals
Tenth Circuit

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UNITED STATES COURT OF APPEALS August 21, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

MEITAV DASH PROVIDENT
FUNDS AND PENSION LTD.;
GARY SMITH, individually and on
behalf of all others similarly
situated; CITY OF MIAMI FIRE
FIGHTERS' AND POLICE
OFFICERS' RETIREMENT TRUST,

Plaintiffs - Appellants,

and

JACOB GOLDMAN, individually
and on behalf of all others similarly
situated; EMPLOYEES'
RETIREMENT SYSTEM OF THE
CITY OF PROVIDENCE,

Plaintiffs,

v.

No. 22-5013

SPIRIT AEROSYSTEMS
HOLDINGS, INC.; THOMAS C.
GENTILE, III; JOSE GARCIA;
JOHN GILSON; SHAWN
CAMPBELL,

Defendants - Appellees.

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA
(D.C. No. 4:20-CV-00054-SPF-JFJ)**

Irina Vasilchenko, Labaton Sucharow LLP, New York, New York (Brian Calandra, and Jeremy A. Lieberman, Pomerantz LLP, New York, New York; Patrick V. Dahlstrom, Pomerantz LLP, Chicago, Illinois; James W. Johnson, David J. Schwartz, Geoffrey C. Jarvis, Kessler Topaz Meltzer & Check, LLP, Radnor, Pennsylvania; John W. Dowdell and James M. Reed, Hall Estill Law Firm, Tulsa, Oklahoma; Peretz Bronstein, Bronstein, Gewirtz & Grossman, New York, New York, with her on the briefs), for Plaintiffs-Appellants.

John Wander, Vinson & Elkins, LLP, Dallas, Texas (C. Austin Birnie and R. Richard Love, III, Conner & Winters, LLP, Tulsa, Oklahoma; Michael Holmes and Robert Ritchie, Vinson & Elkins, LLP, Dallas, Texas; Mary Quinn Cooper, Jessica L. Dickerson and Spencer F. Smith, McAfee & Taft P.C., Tulsa, Oklahoma; Patrick Smith and Andrew Rodgers, Smith Villazor LLP, New York, New York; John Christopher Davis, Johnson & Jones, Tulsa, Oklahoma; Daniel Gold, Shearman & Sterling LLP, Dallas, Texas, with him on the brief), for Defendants-Appellees.

Before **BACHARACH, PHILLIPS**, and **MORITZ**, Circuit Judges.

BACHARACH, Circuit Judge.

This appeal involves claims for securities fraud against Spirit AeroSystems, Inc., and four of its executives. Spirit produced shipsets of components for jetliners, including Boeing's 737 MAX. But Boeing stopped producing the 737 MAX, and Spirit's sales tumbled. At about the same time, Spirit acknowledged an unexpected loss from inadequate accounting controls.

After learning about Spirit's downturn in sales and the inadequacies in accounting controls, some investors sued Spirit and four executives for

securities fraud. *See* 17 C.F.R. § 240.10b–5. The district court dismissed the suit, and the investors appealed.

For claims involving securities fraud, pleaders bear a stiff burden when alleging scienter. In our view, the investors have not satisfied that burden. So we affirm the dismissal.

1. Spirit reassures investors, but Boeing then halts production of the 737 MAX.

When two jetliners crashed, the Federal Aviation Administration grounded flights for the 737 MAX. After the grounding, Boeing reduced production of the 737 MAX from 52 jetliners per month to 42. But Boeing kept purchasing the same monthly number of shipsets (52) from Spirit.

These purchases proved critical to Spirit, which obtained roughly half of its yearly revenue from sales of the shipsets to Boeing. So investors nervously monitored Boeing’s continued purchases from Spirit.

Spirit’s chief executive officer (Thomas Gentile, III) allegedly reassured investors in a call on October 31, 2019, stating that Spirit would “be at 52 [shipsets of components produced per month] for an extended period of time.”¹ Appellants’ App’x vol. 2, at 244. On the same day, Mr. Gentile, Spirit’s chief financial officer (Jose Garcia), and Spirit’s corporate controller (John Gilson) filed documents with the Securities and

¹ The allegedly fraudulent statements are listed in the appendix. *See* pp. 41–45, below.

Exchange Commission, stating that Spirit expected to continue selling Boeing 52 shipsets every month.

On November 24, 2019, a market observer reported on “takeaways” from a meeting with Spirit executives. This report suggested that Spirit would continue monthly sales of 52 shipsets until at least May 2020. On December 16, 2019, Boeing announced that it would soon temporarily stop producing the 737 MAX.



Three days later, Boeing told Spirit to stop delivering shipsets for the 737 MAX. The next day, Spirit disclosed that it would stop producing the shipsets.²

² The complaint sometimes frames Spirit's economic hardship as a decline in Spirit's production rather than in its sales. *See, e.g.*, Appellants' App'x vol. 1, at 29 (alleging that "Boeing told Spirit to cut production of the 737 MAX in half"). But a decline in Spirit's production led to a decline in sales. We thus refer to the decline in Spirit's production as a decline in Spirit's sales.

More bad news followed, this time about Spirit’s method of accounting for contingent liabilities. Spirit had filed documents on October 31, 2019, certifying the adequacy of its accounting controls. Months later, Spirit disclosed that

- material weaknesses had existed in the accounting controls and
- two executives (Jose Garcia and John Gilson) had quit.

At about the same time, Spirit fired another executive (Shawn Campbell).

When investors learned of Boeing’s halt in production and the inadequacy of Spirit’s accounting controls, Spirit’s stock price plummeted.

2. The plaintiffs must plead facts giving rise to a strong inference of scienter.

When considering the district court’s grant of the defendants’ motion to dismiss, we conduct de novo review. *Nakkhumpun v. Taylor*, 782 F.3d 1142, 1146 (10th Cir. 2015). When conducting that review, we credit the allegations in the complaint and view them in the light most favorable to the plaintiffs. *Moore v. Guthrie*, 438 F.3d 1036, 1039 (10th Cir. 2006).

Though we view the allegations favorably to the plaintiffs, federal law creates a heavy burden on claimants alleging securities fraud. *See In re Level 3 Commc’ns, Inc. Sec. Litig.*, 667 F.3d 1331, 1333 (10th Cir. 2012) (“A plaintiff suing under Section 10(b) [of the Exchange Act] bears a heavy burden at the pleading stage.”). This burden requires the plaintiffs to “state with particularity facts giving rise to a *strong* inference that the

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