United States Court of Appeals

For the Twelfth Circuit

No. **25-4471**

MERIDIAN CAPITAL PARTNERS, LLC,

Plaintiff-Appellant,

v.

NEXA FINANCIAL SERVICES, INC. and SYNAPSE BANCORP, NA,

Defendants-Appellees.

Brief of Appellant

On Appeal from the United States District Court
for the Eastern District of Lakemont, No. 24-CV-1183

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1. Jurisdictional Statement

The district court had subject-matter jurisdiction under **28 U.S.C. § 1331** because this action arises under the Securities Exchange Act of 1934, **15 U.S.C. §§ 78a**–*78pp*. Appellant Meridian Capital Partners, LLC ("Meridian") is a Delaware limited liability company with its principal place of business in Lakemont City, Lakemont.

Final judgment was entered on January 14, 2025. *See* J.A. 482. Meridian timely filed its notice of appeal on March 13, 2025, within the sixty-day period allowed under **Fed. R. App. P. 4(a)(1)(B)**. This Court has jurisdiction over the appeal pursuant to **28 U.S.C. § 1291**.

2. Questions Presented

I. Whether the district court erred in holding that Meridian's complaint failed to plead materiality with particularity, where the alleged misstatements concerned multi-million-dollar off-balance-sheet liabilities of Nexa Financial Services, Inc. that, when disclosed, caused a 34% decline in Nexa's market capitalisation.

II. Whether the district court erred in dismissing Meridian's claims against Synapse Bancorp, NA as a control-person defendant under **15 U.S.C. § 78t(a)**, where Synapse held a 60% voting-equity interest in Nexa and exercised day-to-day supervisory authority over Nexa's financial reporting functions.

III. Whether the district court applied the correct scienter standard in evaluating Meridian's allegations of reckless disregard, given the Twelfth Circuit's framework articulated in *Ellroy v. National Fiduciary Board*, 112 F.4th 502 (12th Cir. 2024).

3. Statement of the Case

3.1. The Parties

Appellant Meridian Capital Partners, LLC is an institutional investment fund that, between April 2022 and September 2023, purchased approximately 4.1 million shares of common stock in Nexa

Financial Services, Inc. ("Nexa"), at prices ranging from $38.20 to $54.75 per share, for a total investment of approximately $194.6 million.

Appellee Nexa Financial Services, Inc. is a diversified financial holding company incorporated in Delaware, whose shares were listed on the Lakemont National Exchange ("LNX") during the relevant period. Nexa operates consumer lending, mortgage origination, and institutional brokerage subsidiaries throughout the Lakemont region.

Appellee Synapse Bancorp, NA ("Synapse") is a nationally chartered bank and the majority shareholder of Nexa, holding a 60% voting-equity interest throughout the class period. Synapse designated three of Nexa's five board directors and its Chief Financial Officer, **Robert D. Calloway**, who served concurrently as Deputy Treasurer of Synapse.

3.2. Factual Background

> *"Nexa's consolidated financial statements, as filed with the Lakemont Securities Commission for fiscal years 2021 through 2023, omitted material information regarding $412 million in contingent off-balance-sheet exposures arising from a series of warehouse lending facilities extended to affiliated special-purpose entities." — Meridian Compl. ¶ 47, J.A. 62*

Between January 2021 and September 2023, Nexa's senior officers — including Chief Executive Officer **Patricia L. Voss** and CFO Calloway — made a series of affirmative public statements characterising Nexa's off-balance-sheet exposures as "nominal and fully hedged." J.A. 63–67. These statements appeared in: (a) quarterly earnings releases filed as Exhibits 99.1 to Nexa's Forms 8-K; (b) Nexa's Annual Reports on Forms 10-K for fiscal years 2021 and 2022; and (c) investor-relations presentations hosted by Synapse and made available on its corporate website.

On October 3, 2023, Nexa issued a restatement disclosing that its off-balance-sheet contingent liabilities totalled $412 million — a figure omitted from all prior filings. J.A. 104. Nexa's stock price fell from $51.40 to $33.90 per share in the two trading sessions following the disclosure, a decline of approximately 34%. J.A. 106. Meridian suffered aggregate losses of approximately $68.3 million.

3.3. Proceedings Below

Meridian filed its complaint on November 18, 2023, asserting claims under **§ 10(b)** of the Securities Exchange Act and **Rule 10b-5** promulgated thereunder, as well as control-person liability against Synapse under **§ 20(a)**. J.A. 1–128.

On January 14, 2025, the district court (Honorable George M. Fenton, J.) granted Appellees' motion to dismiss pursuant to **Fed. R. Civ. P. 12(b)(6)**. J.A. 480–502. The court held: (1) Meridian failed to plead materiality with requisite particularity; (2) Meridian's scienter allegations were insufficient under the applicable "strong inference" standard; and (3) the control-person claim against Synapse must be dismissed because the primary claim was not adequately pleaded. J.A. 482–501. This appeal followed.

4. Summary of Argument

The district court committed three independent, reversible errors.

I

Materiality

A 34% price decline following restatement of a $412 million omitted liability establishes materiality as a matter of law under *Brennan* and *Ellroy*. The district court applied an impermissibly heightened standard.

II

Scienter

CFO Calloway's dual role at Synapse and Nexa, combined with internal emails referencing the $412 million exposure, supports a strong inference of scienter under the Twelfth Circuit's *Ellroy* framework.

III

Control-Person Liability

Because the § 10(b) primary claim is adequately pleaded, Synapse's 60% equity stake and board-appointment authority render it a "controlling person" under *Alderman* and **15 U.S.C. § 78t(a)**.

5. Argument

5.1. Standard of Review

This Court reviews de novo a district court's grant of a motion to dismiss under **Rule 12(b)(6)**. *Caldwell v. Meridian Capital Partners*, 658 F.3d 312, 316 (12th Cir. 2011). The Court "must accept all well-pleaded facts as true and view them in the light most favorable to the plaintiff." *Id.* at 317.

5.2. Meridian Adequately Pleaded Materiality

I. The Omitted Liabilities Were Objectively Material

A misstatement or omission is material if "there is a substantial likelihood that a reasonable shareholder would consider it important." *Brennan v. Nimbus Trust Co.*, 523 U.S. 224, 231 (1998). The Court considers the "total mix" of information available to the market. *Id.* at 232.

Here, the omitted contingent liabilities represented $412 million — approximately 37% of Nexa's total reported assets for fiscal year 2022. J.A. 78. Courts in this Circuit and others have consistently found that omissions constituting 20% or more of reported assets are material as a matter of law. *See Ellroy*, 112 F.4th at 519 (holding that omitted exposure equalling 25% of total assets was material); *Donovan v. Synapse Bancorp, NA*, 940 F.3d 88, 97 (1st Cir. 2020) (collecting cases).

> The 34% stock-price decline following the October 2023 restatement is among the most probative evidence of materiality available: it reflects the market's own assessment of the economic significance of the previously omitted information. *Holloway v. Nexa Financial Services*, 48 F. Supp. 3d 799, 808 (E.D. LM 2022) ("Market reaction, while not conclusive, provides strong circumstantial evidence of materiality.").

II. The District Court Applied an Impermissibly Heightened Standard

The district court required Meridian to plead materiality with "near-certainty," holding that Meridian must "exclude every plausible non-material interpretation of the omission." J.A. 487. That standard is not the law of this Circuit.

Ellroy is unambiguous: a plaintiff need only plead facts that, "taken as a whole, give rise to a plausible inference" that the omitted information would have been significant to a reasonable investor. 112 F.4th at 516. Meridian's complaint — which cites specific dollar figures, analyst commentary noting the undisclosed warehouse-lending program, and an internal Nexa memorandum in which CFO Calloway characterised the off-balance-sheet program as a "significant contingent exposure," J.A. 93 — plainly meets that standard.

5.3. Meridian Adequately Pleaded Scienter

To survive a motion to dismiss, a plaintiff must allege facts giving rise to a "strong inference" of scienter, i.e., that the defendant acted with either intent to defraud or reckless disregard for the truth. *Ellroy*, 112 F.4th at 521. The inference of scienter must be "cogent and at least as compelling as any opposing inference." *Id.*

CFO Calloway's February 2022 internal memorandum, obtained through whistleblower disclosures, expressly identifies the $412 million warehouse-lending contingency and describes it as a "material undisclosed risk." J.A. 93. Calloway signed each of Nexa's misleading public filings and investor presentations. J.A. 95–98. The inference that Calloway—and, by extension, Nexa—acted with at minimum reckless disregard for the truth is far stronger than any competing benign inference.

5.4. Synapse Is Liable as a Controlling Person

Section 20(a) of the Securities Exchange Act imposes liability on any person who, directly or indirectly, *controls* a person liable under § 10(b). *Alderman v. Vertex Savings Bank*, 891 F.3d 441, 450 (12th Cir. 2019). "Control" is established by showing "the power to direct or cause the direction of the management and policies of a person." *Id.*

Synapse held 60% of Nexa's voting equity, appointed three of five board members (including the audit committee chair), and designated Nexa's CFO — the very individual responsible for the misleading filings. J.A. 22–24. These facts more than adequately plead control-person liability under *Alderman*.

6. Conclusion

For the foregoing reasons, Appellant Meridian Capital Partners, LLC respectfully requests that this Court **reverse** the district court's order of dismissal and **remand** this action for further proceedings, including discovery and trial on the merits. Alternatively, should the Court identify deficiencies in any individual claim, Meridian requests leave to amend its complaint.

Respectfully submitted,

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Certificate of Service

I hereby certify that on **March 13, 2025**, I caused a true copy of the foregoing Brief of Appellant to be served upon counsel for Appellees via the Court's CM/ECF electronic filing system.

Victoria A. Hartwell

Certificate of Compliance with Fed. R. App. P. 32(a)(7)(B)

This brief complies with the type-volume limitation of **Fed. R. App. P. 32(a)(7)(B)** because it contains **6,847 words**, excluding the parts exempted by **Rule 32(f)**. This brief has been prepared in a proportionally spaced typeface using Times New Roman, 12-point font, in compliance with **Rule 32(a)(5)–(6)**.