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# The *Commercial Division*

of The State of New York

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Law Report - March 2002

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## COMMERCIAL DIVISION LAW REPORT

*A report on leading decisions recently issued by the Justices of the Commercial Division, Supreme Court of the State of New York*

HON. JACQUELINE W.  
SILBERMANN  
ADMINISTRATIVE JUDGE  
SUPREME COURT, CIVIL  
BRANCH,  
NEW YORK COUNTY

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JUSTICE CHARLES E. RAMOS (N.Y.)	JUSTICE KENNETH W. RUDOLPH (WEST.)

JUSTICE THOMAS A. STANDER (Mon)

VOL. V, NO. 1

MARCH 2002 (COVERING DECISIONS ISSUED JANUARY-FEBRUARY 2002)

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**Arbitration; application of FAA; time-bar.** The court held that the FAA applied to the agreement at issue as the underlying transaction involved interstate commerce, there being parties from different states and the insured being in nationwide oil and gas production. Neither the agreement nor the arbitration clause here contained a New York choice of law provision. Thus, the FAA governed the question whether the claims sought to be arbitrated were time-barred, with that issue to be decided by the arbitrator. The court rejected the argument that references to CPLR 7503(c) in the arbitration demand amounted to implied consent to apply NY law. [In re Welltech, Inc., Index No. 116923/2001, 2/7/02 \(Cahn, J.\)](#).

**Arbitration; public policy; lack of professional license.** Plaintiff retained defendant corporation to provide design services. After a dispute arose, it was to be submitted to arbitration pursuant to agreement. Plaintiff then commenced this action seeking a declaratory judgment that the agreement was void because defendant had been engaged in the

unlicensed practice of architecture. The court held that the claim arose out of the agreement and fell within the reach of a broad arbitration provision. A court should intervene in the arbitral process only where public policy considerations prohibit certain matters from being decided or certain relief being granted in the arbitration. The court found that plaintiff's claim did not constitute a policy concern of the necessary magnitude. Motion to compel arbitration granted, including as to the claim against the individual defendant. [John v. Alternative Design, Inc., Index No. 8346/2001 1/29/02 \(Austin, J.\)](#)

**Assignment; enforcement of obligation and guarantee. Evidence; best evidence rule. Procedure; summary judgment; semblance of an issue; lack of personal knowledge of affiant.** Plaintiff loaned money to a corporation, which executed a collateral assignment and security agreement whereby it assigned all promissory notes executed by its obligors in favor of it. Plaintiff sued defendants pursuant to this assignment to collect on a promissory note and guarantee given in favor of the corporation. The court rejected defendants' argument that the agreement failed to define the corporation's obligors and that a schedule annexed was blank. The court concluded that defendants were obligors. A party entitled to enforce a principal obligation may enforce the guarantee since the guarantee is accessory to the main obligation. The court also ruled that the assignment included the note and the guarantee. The court rejected an argument by a guarantor that the copies submitted were not admissible under the best evidence rule. That rule requires production of an original where its contents are in dispute. The court found that the rule did not apply since there was no genuine dispute about the validity of defendant's signature; although he denied that the copy was of the guarantee he had signed absent review of the original, he conceded that the guarantee appeared to bear his signature. Defendant did not dispute his signature on the note, which appeared identical to that on the guarantee. The court ruled that plaintiff was entitled to summary judgment, but on liability only since the witness who submitted a calculation of the debt had no personal knowledge. [HSBC Bank USA v. Val Apparel Group, Index No. 600202/2001, 1/31/02 \(Ramos, J.\)](#).

**Brokers; conditional commission; unexecuted agreement; estoppel.** Action to recover brokerage commission. Defendants negotiated with plaintiff's purchaser, but after a time, rescinded an offer and sold to someone else. Broker and owner may agree that a commission would be due on passing of title. If an agreement conditioning the commission on passage of title is delivered to the broker but never executed, and the broker is silent about the terms, estoppel can be invoked against the broker. That was the case here. The fact that plaintiff informed defendants that he would sign the agreement only at the closing did not alter this result. The letter did not object to the payment term. Plaintiff was held to be estopped. Plaintiff could not recover on quantum meruit since defendants were not unjustly enriched. Summary judgment dismissing case. [Krauss v. 129 Lafayette Street Associates, Index No. 605626/2000, 1/3/02 \(Ramos, J.\)](#).

**Collateral estoppel; choice of law; determination of negligence in conversion action.** Action seeking declaratory judgment that plaintiff had no obligation to indemnify defendant for losses under an agreement covering a custody account maintained by defendant for plaintiff. The losses occurred as a result of a conversion scheme engaged in by a third party. In a Federal court action, defendant was found liable to the company whose shares were converted. Plaintiff in this case argued that defendant was collaterally estopped from asserting that it had not acted negligently in regard to the shares in the account. The agreement provided for indemnification of defendant unless it acted negligently. The court ruled that under New York law, the law of the jurisdiction in which a judgment was rendered governs the issue of whether or not collateral estoppel bars a claim. In the Fifth Circuit, where the judgment was rendered, collateral estoppel applies only to such matters as were distinctly put in issue, litigated and determined. The issue in the case was whether defendant was liable for conversion under Texas law. Under that law, a party is liable for conversion for unauthorized retention of property, even if acting in good faith and without negligence. Neither at the trial level nor before the Fifth Circuit was it held, the court found, that defendant had acted negligently. The Fifth Circuit had held that punitive damages could not be recovered, but that was not an implicit determination that defendant had been negligent. Negligence was not actually litigated. Therefore, plaintiff was not entitled to summary judgment. [BNP Paribas \(Suisse\) S.A. v. Chase Manhattan Bank, Index No. 603778/2000, 2/1/02 \(Ramos, J.\)](#).

**Construction contracts; implied and quasi-contractual remedies. Mechanic's liens; misrepresentation. State Finance Law 137. Mechanic's Lien Law Art. 3-A.** Breach of contract action by contractor. The court ruled that claims against banks had to be dismissed as the project was not a public improvement project, State Finance Law 137 did not apply and third-party beneficiary rights would lie only against the party obligated to obtain the bond, not the banks. Implied and quasi-contract claims, including as to a non-signatory, failed because of the existence of an express contract. The court dismissed claims to foreclose on mechanic's liens in view of the court's ruling in [In re BPC Site 25 Associates](#), Index No. 104003/2001. However, that dismissal strengthened fraudulent misrepresentation claims since the contracts contained reference to the availability of mechanic's liens as a recourse. The court also ruled that the improvement here having been constructed by a private entity, Section 137 did not apply; it was not enough that the land was government-owned. However, plaintiffs were still protected by Lien Law Art. 3-A (trust funds) and the related claims were sustained, having been brought as class claims, as required. [Fred Geller Electrical, Inc. v. Battery Park City Authority](#), Index No. 104816/2001, 1/3/02 (Ramos, J.).

**Contracts; damages; lost profits; international securities trading.** Plaintiff engaged in leveraged trading in emerging market government bonds and Brazilian securities. Plaintiff borrowed \$42 million from defendants. Defendants made a margin call and then liquidated plaintiff's Russian debt obligations without written notice. Plaintiff contended that defendants had breached an agreement and should be liable for lost profits. Defendants argued that lost profits would be too speculative and could not be recovered. The court rejected this argument. If defendants had given plaintiff prior notice, and if the obligations sold at a higher price during a grace period, then the damages could be

measured by the difference between the liquidation price and the market price during the grace period. Whether the market was so volatile that a trader could not determine whether the obligations would hold their value was, the court ruled, an issue for the trier of fact. Damages from a lost opportunity to trade in Brazilian bonds due to the loan termination would be impermissibly speculative and there was evidence that plaintiff would not have engaged in the transaction. Partial summary judgment granted. [DFA Ltd. v. DLJ Emerging Markets LDC](#), Index No. 604736/1998, 1/7/02 (Ramos, J.).

**Contracts; interpretation; ambiguity.** Action arising out of agreement providing for early retirement for plaintiff. The agreement stated that plaintiff would be paid the "savings to" defendant from cancellation of plaintiff's medical malpractice policy. Defendant paid plaintiff the savings on the premium less deductions for a bulk rate discount provided by the insurer and an amount contributed by a hospital to defendant's premium expense. Plaintiff claimed that the deductions should not have been made. The court ruled that the clause in issue was ambiguous. The clause was not defined and nothing in the contract, drafted by defendant, indicated that the parties had agreed to the deductions. Summary judgment denied except as to that part of a cross-motion that sought the balance after the disputed deductions. [Sutaria v. Winthrop Cardiovascular Thoracic Surgery, P.C.](#), Index No. 11617/2000, 2/21/02 (Austin, J.)

**Contracts; statute of frauds; estoppel. Tortious interference with prospective economic relations. Unjust enrichment; voluntary furnishing of information. Fiduciary duty; confidential relationship. Misappropriation of trade secrets. Account stated.** After discovery, plaintiffs could not produce a writing setting forth an exclusive distribution agreement as alleged. The court held that a contract claim was barred (GOL 5-701(a)(1)), and that the result was not unconscionable so as to give rise to an estoppel. Plaintiffs had adequate remedies in other causes of action. The court declined to grant summary judgment for defendant on plaintiffs' claim of interference with prospective economic relations since plaintiffs offered an affidavit from a former employee of defendant asserting that defendant had used plaintiffs' customer account information to interfere with plaintiffs' actual and prospective relations with their customers. The court rejected defendant's argument that as plaintiffs had voluntarily furnished customer information to defendant, an unjust enrichment claim failed. The court held that having used plaintiffs to get

its product to plaintiffs' customers, defendant then ceased to do business with plaintiffs and that this would constitute unjust enrichment. The court ruled that since the statute of frauds rendered the alleged agreement unenforceable, a confidential relationship could not have arisen from the alleged agreement. A breach of fiduciary duty claim was dismissed. The absence of the relationship did not, however, bar a claim for misappropriation of trade secrets. The court held that there were issues of fact on defendant's account stated counterclaim as to backdating of invoices, disputing of invoices, etc. [American Classic Specialties Corp. v. Friendly's Ice Cream Corp., Index No. 894/1997, 1/30/02 \(Austin, J.\)](#).

**Contracts; statute of frauds. Notice of pendency; relation of claim to real property. Procedure; summary judgment; attachment; supporting papers.** Action by bank alleging oral agreement of defendants to execute documents evidencing an indebtedness and undertaking to repay same, a guarantee of payment and a mortgage. The court held that, insofar as plaintiff's claims concerned an oral agreement to give a mortgage, they were unenforceable under the statute of frauds (GOL 5-703(1)). Further, defendants were entitled to cancellation of a notice of pendency since the action did not affect title to, or the use, possession or enjoyment of, real property. Rather, plaintiff's claims were premised on a mistaken deposit of funds into defendant's account and wrongful appropriation. Plaintiff failed adequately to support its motion for summary judgment, including by offering an affidavit of an employee without first-hand knowledge. Also, plaintiff's lack of substantiation of its version of the facts precluded the court from granting an order of attachment. [PNC Bank v. B. Sessler Co., Index No. 7197/2001, 2/5/02 \(Austin, J.\)](#).

**Corporations; shareholder derivative action; illegal contract.** Shareholder derivative action by radiologists alleging that defendant hospital had received payments in violation of federal law and demanding the return of those funds. A prior decision had concluded that plaintiffs had not conclusively demonstrated that the agreement was illegal. The court now found a point that had not been clear on the prior motion - - that plaintiffs had signed the agreement and benefitted from it for years. Further, plaintiffs' claim was that their agreement was illegal, in which event their corporation would have violated the statute; yet plaintiffs demanded the return of the funds to the corporation. The court noted that a party to an illegal contract cannot ask a court to help carry out its object, nor can such a person plead or prove a case in which the illegal purpose must be shown as a basis for a claim. The claim to recover past payment was dismissed. The court upheld a claim for an injunction against the hospital. [Donovan v. Rothman, Index No. 105335/1996, 1/9/02 \(Cahn, J.\)](#).

**Discovery; conditional order; motion to vacate dismissal; sanctions.** Court issued an order requiring dismissal of the complaint for plaintiff's nonappearance at conferences unless plaintiff paid \$500 to defendant. When plaintiff failed to comply with that order, the case was dismissed. On plaintiff's motion to vacate, the court found that plaintiff's conduct had been consistent with previous dilatory tactics and noncompliance with discovery demands. But, the court found that plaintiff had adequately demonstrated, as required, the meritorious nature of plaintiff's claims by affidavit of merit and defendants had not shown prejudice. There is a strong public policy that matters be decided on their merits, especially where law office failure occurs. The court granted the motion, but conditioned on payment of \$500 plus \$2,500 for the cost of the motion, and cautioned that future failures would result in dismissal. [H & D Group v. Indowear Corp. Index No. 107049/2000, 1/11/02 \(Ramos, J.\)](#).

**Discovery; out-of-state action; role of foreign trial court.** Respondents moved to quash subpoenas with regard to an out-of-state action. Plaintiffs' counsel obtained an ex parte order requiring respondents to produce witnesses. The court found that plaintiffs had failed to reveal to the court that California commissions had been issued ex parte and that the California court had not ruled on the need for the requested discovery. The court found that plaintiffs sought a great deal of information and concluded that this court was not the right place to decide issues regarding the California case. The subpoenas were quashed with leave to renew after the California court had ruled on the propriety of the requests. [Walsh v. Rolling Stone Magazine, Index No. 118283/2001, 2/19/02 \(Ramos, J.\)](#).

**Fraudulent conveyances (Debtor & Creditor Law); summary judgment.** Action to void a transfer (Debtor & Creditor Law 273, 273-a). Assignment of apartment was made weeks after plaintiff obtained a judgment against defendant and was for consideration less than amount at which defendant had previously valued the apartment. Defendant argued that the assignment had been made in consideration of debt. Defendant offered no proof other than his own deposition testimony to substantiate the assertion that the co-defendant had loaned defendant money. Further, the court held that defendant was insolvent (Sec. 271(1)). Only assets with a present salable value can be considered and defendant's undocumented right to receive reimbursement from his corporation (in Chapter 11) was not such an asset. Also, defendant's guarantee was unconditional. In addition, the court ruled that the conveyance was fraudulent (Sec. 276). The court considered "badges of fraud" in the record and ruled that defendant's submission failed to raise triable issues. Attorney's fees were held appropriate (Sec. 276-a). Summary judgment for plaintiff. [European American Bank v. Orlando, Index No. 9972/2001, 2/7/02 \(Austin, J.\)](#).

**Insurance; disability; legal disability; consequential and punitive damages.** Action regarding disability insurance policy. The court dismissed plaintiff's claim for two years since plaintiff had worked during that period. As to the initial year, the court sustained a claim, finding that it was not certain as a matter of law that legal disability (loss of a broker's license) co-extensive with medical disability precluded coverage. The court rejected a claim for consequential damages since bad faith by the insurer was required but there had been none here. Punitive damages were not recoverable. [Tabor v. American Bankers Inc. Group, Index No. 603578/1996, 1/11/02 \(Freedman, J.\)](#).

**Insurance; interpretation; business interruption coverage; exclusion for government action.** Action by theater to recover on business interruption aspect of all risk policy for losses caused by closure directed by government officials after collapse of construction tower nearby. The insurer argued that physical damage to the insured's property was required. The court ruled that the phrase "as a direct and sole result of loss of...property or facilities" included loss of use and that this was not ambiguous. Even if there were ambiguity, the court ruled, the issue would be resolved in favor of the insured. The court also rejected the insurer's contention that the claim fell within the terms of an exclusion for actions of governments since the exclusion was aimed at war and similar commotions and was not a general civil authority exclusion. [Roundabout Theatre Co. v. Continental Casualty Co., Index No. 114703/1999, 1/14/02 \(Freedman, J.\)](#).

**Insurance; interpretation; fidelity policy; consequential losses.** Action regarding fidelity bonding. Defendant paid plaintiff over \$4 million due to theft of money belonging to clients by an employee of plaintiff. Plaintiff argued that an endorsement broadened traditional fidelity coverage to include other losses sustained by plaintiff's clients (e.g., tax penalties, attorney's fees, lost interest). Plaintiff argued that the endorsement provided coverage for "loss sustained by such client" rather than "loss of assets", as used in the policies. The court found that though the endorsement provided additional coverage, it was not as broad as plaintiff argued. The "loss" was limited to "client property" and the loss would occur when property was stolen; otherwise, the policy would be transformed into one making defendant responsible for all consequential damages. The use of the words "legally liable" covered situations where the insured or client is a bailee or trustee. Further, the claimed losses were not "direct", as required. Exclusions also included lost interest and attorney's fees. [Ernst & Young LLP v. National Union Fire Ins. Co., Index No. 605422/2000, 2/6/02 \(Ramos, J.\)](#).

**Insurance; life policy; incontestability; fraud; conspiracy. Procedure; pleading. RICO.** Action alleging false procurement of an insurance policy and complicity therein by all defendants. The court found the pleading inadequately specific (CPLR 3016). Further, since the action had been commenced after the two-year incontestability

period, the action could not proceed as to moving defendants. This was so even though the policy had allegedly been obtained through fraud, the matter apparently involved a viatical settlement, and the additional defendants were allegedly aware of the fraud. The court found nothing in the papers to suggest that plaintiff had been prevented from investigating the insured's statements during the two-year period. The court ruled that plaintiff had not pled injury adequately since the individual defendant was alive. A RICO claim was merely an ordinary fraud claim in another guise. Claims against movants dismissed. [Reliastar Life Ins. Co. v. Leopold, Index No. 12245/2000, 2/5/02 \(Austin, J.\)](#).

**Mechanic's liens; public benefit corporations; waiver.** Petition for an order discharging mechanic's liens on property owned by the State through a public benefit corporation. It was argued that the ban on liens against publicly owned property did not apply because Public Authorities Law 1972(8) made authority property susceptible to liens, and, further, the lien was on a leasehold interest. The court ruled that a lien cannot be asserted on the leasehold interest of the tenant of public land and that Lien Law 2(7) provides a remedy only where title is held by an industrial development agency, not by all public benefit corporations. A broader version of the 1992 amendments to Lien Law 2(7) had been vetoed. The court rejected the argument that liens were authorized in the definition of "real property" in Section 1972(8). Mechanic's liens are not mentioned in Title 12 thereof, which did authorize two other types of liens. A waiver argument was rejected in view of legislative failure to authorize such waiver. [In re BPC Site 25 Associates, Index No. 104003/2001, 1/3/02 \(Ramos, J.\)](#).

**Procedure; choice of law; insurance contracts. Insurance; declaratory judgment; partner or independent contractor exclusion.** Action seeking declaratory judgment regarding coverage for underlying copyright infringement case. The court applied NY choice of law rules (center of gravity/grouping of contacts), which provide as to insurance policies that the court consider the place understood to be the principal location of the insured. Where nationwide coverage is involved, the court stated, that is the place of incorporation and principal place of the insured's business, here Florida as to one defendant and Virginia as to another. Plaintiff insurer argued that an exclusion covering prospective partners or prospective independent contractors barred coverage. Defendant argued that "present, former or prospective" modified only the first succeeding word, "employee", and not those that followed, including "partner" and "independent contractor". The court ruled that this was an unreasonable interpretation, the punctuation being clear. The plain meaning of the exclusion meant that there was no coverage. [National Casualty Co. v. Paxson Communication Corp., Index No. 123436/2000, 2/4/02 \(Ramos, J.\)](#).

**Procedure; personal jurisdiction.** Declaratory judgment action. Plaintiff predicated personal jurisdiction on actions performed for defendant corporation by plaintiff as agent (e.g., permitting participants of defendant to seek medical services in New York). The court held that defendant was not doing business in New York. The reciprocal relationship between plaintiff and defendant was due to the fact that neither provided medical services (the main business) in the other's state. The situation was more like that of mere solicitation. The conduct of pension meetings did not suffice since it was not a substantial physical presence promoting defendant's interests. Nor had defendant transacted business here since, although the execution of the agreement had occurred in N.Y., plaintiff, not defendant, had signed it. Mere participation in some meetings did not suffice. Case dismissed. [Health Insurance Plan of Greater New York v. Suter, Index No. 601101/1999, 1/16/02 \(Cahn, J.\)](#).

**Procedure; personal jurisdiction; Hague Convention; waiver of objection.** Action involving purported service pursuant to the Hague Convention, the use of which, when available, is mandatory if documents must be sent abroad to effect service. The court found that plaintiffs had failed to support their assertion that the person who had served the summons and complaint was a judicial officer competent to serve process under the Convention Art. 10. Further, because service was not made through the Directorate of the Courts, as required by Israel, it was improper. Defendants, the court held, had not waived their jurisdictional objection by interposing a counterclaim which was, the

court determined, related to plaintiffs' claims, nor by bringing a third-party action. Marcus v. "Five J" Jewelers Precious Metals Industry Ltd., Index No. 604354/2000, 2/19/02 (Ramos, J.).

**Procedure; personal jurisdiction; promissory notes.** CPLR 3213 motion and cross-motion to dismiss. Action by non-New York residents and one New York resident on notes executed in Florida by defendant Florida corporation headquartered there. The court ruled that it lacked jurisdiction over defendant. The fact that one note was payable in New York was not sufficient nexus. The solicitation of one plaintiff by another was not a sufficient basis for jurisdiction, nor were telephone contacts. The notes provided for enforcement under Florida law, which requires actions to be brought where the maker resides, here Florida. Case dismissed. Kahn v. First Bankers Mortgage Services, Inc., Index No. 15879/2001, 2/27/02 (Austin, J.)

**Procedure; private right of action under statute (ABC Law).** Purported class action alleging price discrimination in violation of the Alcoholic Beverage Control Law. The court stated that the Law provides expressly no private right of action. The court found that the statute, legislative history and case law did not indicate that the legislature enacted the Law to benefit retail licensees or intended that they have a private right of action for price discrimination. The court held that the legislature intended that a dispute over pricing between retailers and wholesalers be adjudicated by the State Liquor Authority and that a private right of action would be inconsistent with the regulatory scheme. Complaint dismissed. Diane Serra Inc. v. Charmer Industries, Inc., Index No. 602336/2001, 1/28/02 (Cahn, J.).

**Procedure; statute of limitations; revival of debt; acknowledgment.** Plaintiff sued for repayment of a loan. The statute of limitations had expired (CPLR 213), but plaintiff argued that the claim was revived (GOL 17-101) by defendant's sworn statements at a deposition in another case. At the deposition, defendant had acknowledged that plaintiff had lent him the money. Defendant had signed the transcript. The court held that the statements concerned defendant's intent to repay at the time of the loan, not as of the date of the deposition. Further, that intent had been conditional. Plaintiff did not allege that the condition had been met. Complaint dismissed. Mehta v. Zaveri, Index No. 102735/2001, 1/11/02 (Ramos, J.).

**Quantum meruit; unjust enrichment; recruiting services; preparatory services; acceptance of services by defendant.** Plaintiff firm arranged a meeting between a partner at defendant firm and a partner at another firm. The parties disputed the nature of the meeting, with defendant contending that its purpose had been to discuss a merger between the firms. Later, the second partner and other attorneys joined defendant and plaintiff demanded a recruiting fee. The court held that plaintiff could not recover in quantum meruit because plaintiff's activities had been merely preparatory as plaintiff had only arranged one preparatory meeting and had not followed it up. Further, the court found that plaintiff had failed to establish that services had been performed for defendant, resulting in its enrichment, as opposed to the second partner or his then firm. Plaintiff had also failed to establish that defendant accepted her services (she should have known that the attorney with whom she had dealt did not have authority to bind defendant). Plaintiff had never discussed fees with defendant. Summary judgment dismissing complaint. Lois R. Weiner Consultants, Inc. v. Gibson, Dunn & Crutcher, LLP, Index No. 605331/2000, 2/19/02 (Ramos, J.).

**Software licensing. Misrepresentation; merger clause; reliance; relationship to contract. Contracts; limited express warranty; exclusion of implied warranties. GBL 349; consumer-oriented activities.** Action arising out of plaintiff's licensing of defendant's software. Defendant moved to dismiss. Defendant argued that plaintiff's fraudulent inducement claim was barred by a merger clause. The court ruled that the claim was expressly disclaimed in the agreement. The court also determined that plaintiff could not establish reliance on the alleged misrepresentations regarding the capability of the software to serve plaintiff's needs without additional programming. The court found that plaintiff had contracted for many hours of defendant's programming services. The plaintiff could not assert that

defendant had misrepresented the completion date since that date was conditioned on a particular date for plaintiff's execution of an assignment of work that was missed. The court held that the alleged misrepresentations concerned the subject matter of the contract. On a breach of contract claim, the court held that the contract incorporated an end user license agreement, that the two were to be construed as a single instrument, that plaintiff was bound thereby even though it had not read the license agreement, and that plaintiff was bound by a warranty limitation provision. The court found valid the agreement's exclusion of implied warranties. The court held that a GBL 349 claim failed because plaintiff failed to establish that defendant's acts were consumer-oriented; the court held that defendant's conduct was directed toward businesses only. Case dismissed; leave to replead denied as plaintiff had failed to show that it had any valid causes of action. Yo Network LLC v. Vignette Corp., Index No. 600841/2001, 1/14/02 (Ramos, J.).

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