

318 Rest. Workers Union v Golden Bridge Rest. LLC
2010 NY Slip Op 30992(U)
April 16, 2010
Supreme Court, New York County
Docket Number: 601656/09
Judge: Richard F. Braun
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **HON. RICHARD F. BRAUN**
J.S.C. Justice

PART 23

318 Restaurant WKS et al.

INDEX NO. 601656/09

MOTION DATE 12/17/09

MOTION SEQ. NO. 2

MOTION CAL. NO. _____

Golden Bridge et al.

The following papers, numbered 1 to 2 were read on this motion to/for stay enforcement of Judgment & vacate sheriff's levy

Notice of Motion/Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1
2

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is denied, and it is further ordered that defendants shall pay plaintiffs a total of \$100.

This constitutes the decision and order of this Court. See separate opinion.

FILED
APR 26 2010
NEW YORK
COUNTY CLERKS OFFICE

Dated: New York, New York, April 15, 2010 ENTER. KB
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 23**

----- X
318 Restaurant Workers Union, Kai On Chan, Bao R. Yu,
Bo Yip Chin, Wing G. Zheng, Kow C. Lau, Pak S. Wong,
Hsing L. Chou, Fung Y. Chen, Jian W. Feng, Kok C. Yuen,
Sing S. Tse, Guo Q. Yan, Zhen Jiang,
Chiu Tong Ng a.k.a. Siu T. Ng, and Keen C. Chu,

Index No. 601656/09

OPINION

Plaintiffs,

- against -

Golden Bridge Restaurant LLC, Phillip Wu, and
Si Qi Zheng,

Defendants.
-----X

RICHARD F. BRAUN, J.:

This is an action for damages for breach of contract; interest accrued on an unpaid obligation under a stipulation, costs, and legal fees; and for fraudulent conveyance declaring that a transfer of property is void, and to set it aside and annul it. Defendants Golden Bridge Restaurant LLC (Golden Bridge), Phillip Wu (Wu), and Si Qi Zheng (defendants) move on behalf of Golden Bridge for a stay of proceedings to enforce plaintiffs' March 30, 2009 judgment; and to vacate the October 6, 2009 Sheriff's levy on Golden Bridge's bank accounts at HSBC bank.

The Court in *Gillman v Chase Manhattan Bank* (73 NY2d 1, 10-11, 12 [1988]) defines an unconscionable agreement as well as states further:

An unconscionable contract has been defined as one which is so grossly unreasonable or unconscionable in the light of the mores and business practices of the time and place as to be unenforceable according to its literal terms. (Citation omitted.) (Citation omitted.) The doctrine, which is rooted in equitable principles, is a flexible one and the concept of unconscionability is intended to be sensitive to the realities and nuances of the bargaining process (*Matter of State of New York v Avco Fin. Serv.*, 50 NY2d 383, 389-390 [1980]). A

determination of unconscionability generally requires a showing that the contract was both procedurally and substantively unconscionable when made--i.e., some showing of an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party (citation omitted). (Citations omitted.)

The procedural element of unconscionability requires an examination of the contract formation process and the alleged lack of meaningful choice.

....

[The] question [of substantive unconscionability] entails an analysis of the substance of the bargain to determine whether the terms were unreasonably favorable to the party against whom unconscionability is urged (citation omitted). (Internal quotation marks omitted.)

With respect to a claim of unconscionability of a contract provision, it is stated in *Matter of State of New York v Avco Fin. Serv. of N.Y.* (50 NY2d 383, 390 [1980]) that it includes “deception ... as to the clause's content or existence (citations omitted), or the presence of language difficulties or illiteracy affecting its execution, or any other reasons that would have made it unlikely that consent was freely and knowingly given (citation omitted)...” (*see Life Receivables Trust v Goshawk Syndicate 102 at Lloyd's*, 66 AD3d 495, 502 [1st Dept 2009].) Inequality of bargaining power alone is insufficient to create unconscionability (*see Ranieri v Bell Atl. Mobile*, 304 AD2d 353, 354 [1st Dept 2003]).

Wu asserts that documents were signed without the advice of counsel and without obtaining a translation. “[A] party who signs a document is conclusively bound by its terms absent a valid excuse for having failed to read it [citations omitted].” (*Arnav Indus., Inc. Retirement Trust v Brown, Raysman, Millstein, Felder & Steiner*, 96 NY2d 300, 304 [2001].)

There is no evidence Steven Wong (Wong), with whom Wu consulted, was plaintiffs’

agent. To the contrary, Mr. Wong testified otherwise at his deposition.

The parties' agreement was not the product of disparate bargaining power or deceptive language in the contract. There is no evidence that Wu lacked meaningful choice or was otherwise pressured into executing the agreement. There was no fine print in the agreement or showing of high pressure tactics (*Gillman v Chase Manhattan Bank*, 73 NY2d at 11).

Substantive unconscionability (*see Gillman v Chase Manhattan Bank*, 73 NY2d at 12) may be determined by looking at whether the unconscionable term is grossly unreasonable in light of prevailing mores and business practices. In *Christian v Christian* (42 NY2d 63, 71 [1977]), the Court explains:

... over the years, an unconscionable bargain has been regarded as one such as no [person] in his [or her] senses and not under delusion would make on the one hand, and as no honest and fair [person] would accept on the other (citation omitted), the inequality being so strong and manifest as to shock the conscience and confound the judgment of any [person] of common sense (citation omitted). Unconscionable conduct is something of which equity takes cognizance, when warranted (citations omitted). (Internal quotation marks omitted.)

An agreement is not unconscionable if, when read as a whole, it is not unreasonably favorable to the party seeking to rely upon the agreement (*see E. Lee Martin, Inc. v Saks & Co.*, 30 AD3d 1139, 1140 [1st Dept 2006]). If there is no inequality in bargaining, price alone will not support substantive unconscionability where the party opposing the enforcement of the agreement agreed to the amount (*see Scotts Co., LLC v Ace Indem. Ins. Co.*, 51 AD3d 445, 446 [1st Dept 2008]).

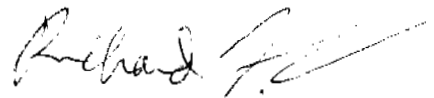
Fraud is premised on one party making a misrepresentation that causes the other party to enter into a contract. A party seeking to avoid contractual obligations on the basis of fraudulent misrepresentation must show "a material misrepresentation of a fact, knowledge of its falsity, an

intent to induce reliance, justifiable reliance by the plaintiff and damages (citations omitted).” (*see Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559 [2009].) To maintain an action for fraud, a party must show the fraud was “the direct and proximate cause” of the damages (*Friedman v Anderson*, 23 AD3d 163, 167 [1st Dept 2005]). A “party seeking to repudiate a contract procured by duress must act promptly lest he or she be deemed to have elected to affirm it (citations omitted).” (*Stacom v Wunsch*, 162 AD2d 170, 171 [1st Dept 1990].)

Wu, a sophisticated businessman, was not forced into the agreement. There is no support for defendants’ view that Wu was induced to sign the papers, without review, and without the opportunity to either consult an attorney or obtain a translation.

Thus, the motion has been denied, by this court’s separate decision and order, dated April 15, 2010. Pursuant to CPLR 8106 and 8202, plaintiffs have been awarded against defendants a total of \$ 100 motion costs, to abide the event.

Dated: New York, New York
April 16, 2010



RICHARD F. BRAUN, J.S.C.

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NEW YORK
COUNTY CLERK'S OFFICE