

Dominguez v Reisner
2014 NY Slip Op 31309(U)
May 16, 2014
Supreme Court, New York County
Docket Number: 651924/2013
Judge: Shirley Werner Kornreich
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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PAUL DOMINGUEZ,

Index No.: 651924/2013

Plaintiff,

DECISION & ORDER

-against-

IAN REISNER,

Defendants.

-----X
SHIRLEY WERNER KORNREICH, J.:

Plaintiff Paul Dominguez moves for summary judgment against defendant Ian Reisner pursuant to CPLR 3212. Reisner cross-moves for summary judgment against Dominguez. Plaintiff's motion is denied and defendant's cross-motion is granted in part and denied in part for the reasons that follow.

I. Factual Background & Procedural History

On May 29, 2013, Dominguez commenced this action to enforce a settlement agreement with Reisner (the Agreement). The Complaint seeks to enforce the Agreement via three causes of action: (1) breach of contract; (2) unjust enrichment; and (3) promissory estoppel. This is the entire Agreement:

AGREEMENT

Dated: Feb 1, 2013.

Whereas, Paul Dominguez ("Paul") and Ian Reisner ("Ian") were engaged in various business dealings during the period 1995-2010, which resulted in Ian's holding funds belonging to Paul for safekeeping and possible further investment, and

Whereas, Paul and Ian now wish to reconcile those accounts,
Therefore:

1. Ian agrees (**if legal**) to deliver to Paul two and one-half (2.5) units of Class A Membership Units of 42nd Street Holdings LLC (“Holdings”) in the aggregate (the “Assigned Units”) and shall record the transfer on the books of Holdings. If dividends or other distributions are made to unit holders after the date of this Agreement but before recorded transfer of the shares, Ian shall make Paul whole for such amounts.

2. In return therefor, Paul forever releases Ian from any and all claims or obligations whatsoever, from the beginning of time until the date of this Agreement, with the exception only of any [] obligations arising with respect to (a) Paul’s design work on the OUT NYC (**i.e. 3.5 options**) and (b) Apartment 1D, 201 E 21st St., New York.

Dkt. 2 at 8. The bolded language was handwritten on the document before the parties signed.

On June 7, 2013, Dominguez filed an RJI, requesting a preliminary conference. A preliminary conference was scheduled for July 30, 2013. One day before the conference, on July 29, 2013, Dominguez filed the instant summary judgment motion. Reisner cross-moved on October 25, 2013. As of the date of oral argument, March 4, 2014, discovery had only partially been completed.

At issue in this case is the meaning of the words “if legal”. The parties acknowledged they have an extensive personal and professional relationship. The Agreement was meant to resolve the majority of their disputes. Dominguez agreed to release most of his claims against Reisner in exchange for shares in a company, whose complex ownership structure is irrelevant to this motion. The only relevant fact is that, for Reisner to transfer the agree-to shares, he apparently needs the consent of non-party Mati Weiderpass, who apparently dislikes Dominguez and is not inclined to consent to the share transfer, which would put Dominguez in business with Weiderpass. Reisner claims that he cannot legally transfer the shares without Weiderpass’ consent. Reisner further argues that the transfer would violate federal securities laws.

Dominguez disputes both points. He argues the transfer would not violate securities laws and that Reisner is actually capable of purchasing shares from another investor. In any event, Dominguez avers, if Reisner cannot legally transfer the shares, he must pay Dominguez their value, which he maintains is \$625,000. The court will not address the merits of the parties' arguments because, as explained below, the Agreement is ambiguous. The parties' intentions and the facts supporting their interpretations of the legality of the share transfer are questions that cannot be resolved without further discovery.

II. Discussion

Summary judgment may be granted only when it is clear that no triable issue of fact exists. *Alvarez v Prospect Hosp.*, 68 NY2d 320, 325 (1986). The burden is upon the moving party to make a *prima facie* showing of entitlement to summary judgment as a matter of law. *Zuckerman v City of New York*, 49 NY2d 557, 562 (1980); *Friends of Animals, Inc. v Associated Fur Mfrs., Inc.*, 46 NY2d 1065, 1067 (1979). A failure to make such a *prima facie* showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. *Ayotte v Gervasio*, 81 NY2d 1062, 1063 (1993). If a *prima facie* showing has been made, the burden shifts to the opposing party to produce evidence sufficient to establish the existence of material issues of fact. *Alvarez*, 68 NY2d at 324; *Zuckerman*, 49 NY2d at 562. The papers submitted in support of and in opposition to a summary judgment motion are examined in the light most favorable to the party opposing the motion. *Martin v Briggs*, 235 AD2d 192, 196 (1st Dept 1997). Mere conclusions, unsubstantiated allegations, or expressions of hope are insufficient to defeat a summary judgment motion. *Zuckerman*, 49 NY2d at 562. Upon the completion of the court's examination of all the documents submitted in connection with a summary judgment

motion, the motion must be denied if there is any doubt as to the existence of a triable issue of fact. *Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 (1978).

It is well established that contracts “are construed in accord with the parties’ intent.” *Greenfield v Philles Records, Inc.*, 98 NY2d 562, 569 (2002). “The best evidence of what parties to a written agreement intend is what they say in their writing. Therefore, a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms.” *Id.* (citations omitted). “A contract is unambiguous if the language it uses has ‘a definite and precise meaning, unattended by danger of misconception in the purport of the [agreement] itself, and concerning which there is no reasonable basis for a difference of opinion.” *Id.*, quoting *Breed v Ins. Co. of N. Am.*, 46 NY2d 351, 355 (1978). “Thus, if the agreement on its face is reasonably susceptible of only one meaning, a court is not free to alter the contract to reflect its personal notions of fairness and equity.” *Greenfield*, 98 NY2d at 569-70. The issue of whether a contract is ambiguous “is a question of law to be resolved by the courts.” *W.W.W. Assocs., Inc. v Giancontieri*, 77 NY2d 157, 162 (1990). “Parol evidence – evidence outside the four corners of the document – is admissible only if a court finds an ambiguity in the contract.” *Schron v Troutman Sanders LLP*, 20 NY3d 430, 436 (2013).

The words “if legal” are superfluous because illegal contracts are unenforceable. *FCI Group, Inc. v City of New York*, 54 AD3d 171, 177 (1st Dept 2008). Hence, Reisner cannot be compelled to transfer the shares if doing so would violate securities laws or operating agreements. There is, nonetheless, an ambiguity about what the parties intended to be done if the share transfer is illegal. Courts must interpret contracts “to realize the parties’ ‘reasonable expectations’ through a practical interpretation of the contract language.” *Gessin Elec. Contrs.*,

Inc. v 95 Wall Assocs., LLC, 74 AD3d 516, 518 (1st Dept 2010), quoting *Sutton v E. River Savings Bank*, 55 NY2d 550, 555 (1982). If no legal share transfer is possible, the trier of fact must determine whether the parties intended for the Agreement to be a nullity or if Dominguez is entitled to the value of the shares. In either event, Dominguez cannot receive nothing but also be held to his release obligations. This renders the contract without consideration and is commercially unreasonable.

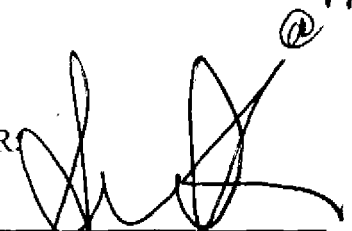
Since, economically, there is no difference to Reisner between transferring the shares to Dominguez or paying him their fair market value (as of February 2013), there is intuitive appeal in allowing Dominguez to recover monetary damages. But, the words “if legal” being handwritten before signing raises a question of fact about whether the parties intended to allow anything other than the transfer of shares. To be sure, the court is making no determination on this motion about the legality of the share transfer since a complete factual record is needed. But, even if the transfer is illegal, Dominguez’s entitlement to monetary damages would be an issue for trial, not summary judgment, if the rest of discovery fails to produce a clear indication of the parties’ intentions.

That being said, since the parties’ rights are governed by a written agreement, the quasi contract claims of unjust enrichment and promissory estoppel are dismissed. *Goldman v Metropolitan Life Ins. Co.*, 5 NY3d 561, 572 (2005); *Hoeffner v Orrick, Herrington & Sutcliffe LLP*, 61 AD3d 614, 615 (1st Dept 2009) (“Plaintiff’s promissory estoppel and unjust enrichment claims are duplicative of his breach of contract claim, since he alleges no duty owed him by defendants independent of the contract”). Accordingly, it is

ORDERED that the parties' summary judgment motions are decided as follows: (1) the second and third causes of action (unjust enrichment and promissory estoppel) are dismissed; and (2) summary judgment is denied on the meaning of the contract; and it is further

ORDERED that the parties are to appear in Part 54, Supreme Court, New York County, 60 Centre Street, Room 228, New York, NY, for a status conference on June 19, 2014 at 10:30 in the forenoon.

Dated: May 16, 2014

ENTER 

J.S.C