

Todd English Enters., LLC v Hudson Home Group, LLC
2018 NY Slip Op 33085(U)
November 29, 2018
Supreme Court, New York County
Docket Number: 652373/2018
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTYPRESENT: HON. JOEL M. COHEN

PART

IAS MOTION 45

Justice

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INDEX NO. 652373/2018

TODD ENGLISH ENTERPRISES, LLC F/S/O TODD ENGLISH

MOTION DATE 07/30/2018

Plaintiff,

MOTION SEQ. NO. 001

- v -

HUDSON HOME GROUP, LLC,

Defendant.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for

DISMISS

Upon the foregoing documents:

This is a contract case. Plaintiff Todd English Enterprises LLC f/s/o Todd English (“English”) alleges that Defendant Hudson Home Group, LLC (“Hudson”) improperly terminated the parties’ contract and failed to make payments to English that were required under the contract. Hudson moves to dismiss the Complaint on the grounds that documentary evidence establishes conclusively that English engaged in conduct that breached the contract and that Hudson had a right to terminate the contract.

For the reasons set forth below, the motion is denied.

Factual Background

In April 2014, English and Hudson entered into a Marketing and Promotion Agreement (“Agreement”) under which English was to provide marketing, promotion, and professional services in connection with a line of “English-inspired and English and Hudson branded” cookware and related products. Under the Agreement, English was to be paid royalties, including

certain minimum guaranteed annual amounts. English alleges that he fulfilled his contractual commitments, but Hudson improperly terminated the agreement in February 2018 and refused to pay English the agreed upon guaranteed royalties.

In response, Hudson submits several documents that it asserts establish conclusively that it had a right to terminate the Agreement. First, Hudson submits a copy of the Agreement, which provides Hudson with a right to “immediately terminate” the Agreement if, *inter alia*, “any Company personnel or English is involved in any activity or conduct during the Term, or which occurred prior to the Term, but comes to light during the Term, which, in Hudson’s reasonable opinion: (a) is damaging to English or his reputation; (b) is perceived to be offensive by the general public ... or (iv) [sic] any Company personnel or English is arrested for, commits an act, or is charged with an act considered under any state or federal law to be a felony or a crime of moral turpitude, or if any Company personnel or English makes any favorable public display for a competing product.” (NYSCEF 20, § 5.2.2.).

In support of its contention that it has established a complete defense to English’s claims, Hudson submits: (i) a New York Department of Motor Vehicle driving record abstract showing that English was convicted in August 2014 of driving while impaired, along with a few “news” articles providing lurid details of the alleged incident (and denials by English’s counsel); (ii) various emails from September 2016 that it contends show sales of a competing product bearing the “Todd English” name that were not made by Hudson; and (iii) additional articles from October and November 2017 describing allegations of sexual harassment that had been made against English. (NYSCEF 21-23)

On February 19, 2018, Hudson’s counsel sent English a letter terminating the Agreement, citing: “Widespread, public reports of your inappropriate and unprofessional behavior, including

multiple claims of sexual harassment; Other lawsuits filed against you, including one by your prior attorneys for unpaid legal bills; Your arrest for driving while intoxicated; and Your appearance on Evine in August 2016, during which you publicly promoted competing products...” Hudson asserted that English’s conduct “inexorably damaged your reputation, rendered you an inappropriate spokesperson for Hudson and its products, and resulted in lost sales....” In the letter, Hudson’s counsel stated that Hudson would sell off the remaining inventory and pay royalties on sales made prior to the effective date of the termination. Hudson refused, however, to pay the minimum guaranteed royalties for year 3 and 4 of the contract, which is what English seeks in this case. (NYSCEF 24.)

Legal Analysis

In assessing a motion to dismiss, the Court must give the complaint a liberal construction, accept its factual allegations as true, and provide the plaintiff with the benefit of every favorable inference. *Nomura Home Equity Loan, Inc. v. Nomura Credit & Capital, Inc.*, 30 N.Y.3d 572, 582 (2017); *Myers v. Schneiderman*, 30 N.Y.3d 1, 11 (2017). If the motion is brought under CPLR §3211(a)(1), as is the case here, “a dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” *Leon v. Martinez*, 84 N.Y.2d 83, 88 (1994); *Goshen v Mut. Life Ins. Co. of New York*, 98 N.Y.2d 314, 326 (2002) (“such motion may be appropriately granted only where the documentary evidence utterly refutes plaintiff’s factual allegations, conclusively establishing a defense as a matter of law”). “To qualify as documentary, the paper’s content must be ‘essentially undeniable and ..., assuming the verity of [the paper] and the validity of its execution, will itself support the ground on which the motion is based.” *Amsterdam Hospitality Group, LLC v Marshall-Alan Assocs., Inc.*, 120 A.D.3d 431, 432 (1st Dep’t 2014) (citation omitted); see *Granada Condo. III*

Ass'n v Palomino, 78 A.D.3d 996, 996-97 (2nd Dep't 2010) ("In order for evidence to qualify as 'documentary,' it must be unambiguous, authentic, and undeniable"). Such evidence can include emails, to the extent they "utterly refute plaintiff's allegations." *Kolchins v. Evolution Markets, Inc.*, 128 A.D.3d 47, 59 (1st Dep't 2015), *aff'd*, 31 N.Y.3d 100 (2018).

The materials submitted by Hudson do not conclusively establish a defense to English's claim for breach of contract. The only documents submitted by Hudson that are "essentially undeniable" are the Agreement and (arguably) the public record indicating that English was convicted of driving while impaired in August 2014.¹ In response, English notes that the alleged conduct occurred more than three years before Hudson terminated the Agreement, and that the real reason for termination was Hudson's desire to avoid making payments to English. On the whole, although Hudson ultimately may be able establish that English behaved in a way that triggers a right to terminate the Agreement, the Court cannot say that the documentary evidence is sufficient as a matter of law to "utterly refute plaintiff's factual allegations" or establish a complete defense to English's claim at the pleading stage.

The fact that the Agreement defers to Hudson's "reasonable opinion" in determining the existence of certain types of breaches by English does not mean that Hudson has *unfettered* discretion to declare a breach. The inclusion of a reasonableness qualifier is a substantive limitation. For example, a contract providing that consent to certain actions may not be "unreasonably withheld" places constraints on the ability to withhold such consent. *Silver v. Murray House Owners Corp.*, 126 A.D.3d 655, 655 (1st Dep't 2015) (affirming denial of summary judgment where contract provided that consent could not be unreasonably withheld as

¹ The emails submitted by Hudson may ultimately prove to be persuasive, but they are not determinative, and English can dispute whether they establish that he in fact made "any favorable public display for a competing product." The press reports and printouts of web pages submitted by Hudson are not "of undisputed authenticity." *Springer v Almontaser*, 75 A.D.3d 539, 540 (2nd Dep't 2010).

“defendant’s actions must be reasonable and, accordingly, are not sheltered from review by the business judgment rule”); *Rosenberg v. 926 Park Ave. Corp.*, 254 A.D.2d 224, 225 (1st Dep’t 1998) (“The court properly found, as a matter of law, that consent to assignment of the subject lease had been unreasonably withheld, since defendant landlord did not prove a reasonable ground for its refusal of consent.”).

If the parties had intended to give Hudson unlimited discretion to determine whether future conduct by English would be sufficient to warrant termination, they could have done so. They did not. *See, e.g., Gracey v. Campbell*, 260 N.Y. 592 (1932) (affirming judgment that stock brokerage agreement authorizing broker to make trades “in their sole discretion and judgment” shows that “plaintiff acquiesced in the transaction as a matter of law”); *Newmark & Co. Real Estate, Inc. v. Frischer*, 145 A.D.3d 421, 411 (1st Dep’t 2016) (affirming dismissal of claim that employee was entitled to bonus where employee handbook stated that bonuses were paid at the “sole discretion” of employer); *UBS Securities LLC v. RAE Systems Inc.*, 101 A.D.3d 510 (1st Dep’t 2012) (clause providing that defendant “‘may’ in its ‘sole discretion’ pay plaintiff a bonus based on an assessment of performance, was not a conditional promise, but an entirely discretionary clause that imposed no obligation on defendant to pay”); *cf. Collard v. Incorporated Village of Flower Hill*, 52 N.Y.2d 594, 596 (1981) (absent language indicating that municipality’s consent to construction project must not be “unreasonably withheld,” municipality was not compelled to issue consent or give an acceptable reason for failing to do so).

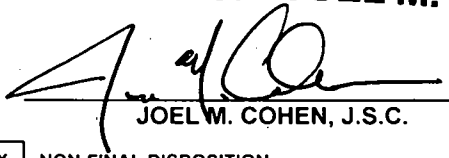
Of course, that does not mean English will ultimately prevail. The fact that the Agreement gives deference to Hudson’s “reasonable opinion” is significant. But whether Hudson’s opinion is “reasonable” in this particular context, whether it is (as English suggests) a

pretext to avoid making required payments under the Agreement, and whether other facts exist that may impact the issue, cannot be decided as a matter of law at the pleading stage.²

Therefore, it is:

ORDERED that Defendant Hudson Home Group, LLC's motion to dismiss is **DENIED**.

This constitutes the Decision and Order of the Court.

<u>11/29/2018</u>		HON. JOEL M. COHEN	
DATE		J.S.C.	
		 JOEL M. COHEN, J.S.C.	
CHECK ONE:	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION	
	☐ GRANTED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE
	☒ DENIED		

² The Court notes that the Agreement contains a termination trigger based specifically on English's involvement in a "felony or crime of moral turpitude," which Hudson does not cite as being applicable in the present circumstances. (NYSCEF 20, § 5.2.2(iv).) Whether that has any bearing on the application of the more general trigger of reputational damage (upon which Hudson relies in connection with English's DWI conviction) can be addressed later in the litigation.