

Navatar Group, Inc. v Spayne Lindsay & Co. LLP

2020 NY Slip Op 30769(U)

March 12, 2020

Supreme Court, New York County

Docket Number: 653751/2019

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14

Justice

NAVATAR GROUP, INC.

Plaintiff,

- v -

SPAYNE LINDSAY & CO. LLP,

Defendant.

INDEX NO. 653751/2019
MOTION DATE N/A
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35 were read on this motion to/for DISMISSAL

The motion by defendant to dismiss the amended complaint and for costs and sanctions is denied.

Background

Plaintiff provides cloud-based customer relationship management services to investment banking firms. Defendant is a corporate finance advisory firm based in London. In September 2017, Defendant entered into a subscription with plaintiff for technology management services. The subscription was for a year, commencing on September 21, 2017 and ending on September 20, 2018. Defendant was charged \$3,200 per month (for an annual total of \$38,400).

The subscription agreement provided that "Either party may terminate this Agreement or reduce the number of User licenses, effective only upon the expiration of the then current License Term, by notifying the other party in writing at least thirty (30) days prior to the date of the invoice for the following term" (NYSCEF Doc. No. 9, ¶ 10). It also directed that "Upon the expiration of the initial License Term, this Agreement will automatically renew for successive

renewal terms equal in duration to the initial License Term (or one year if the initial License is greater than one year)” (*id.*).

Defendant attaches an email dated August 10, 2018 in which Defendant was offered three renewal options (for one, two or three years) (NYSCEF Doc. No. 10). These renewal options reflected an increased price for the subscription services—for instance, the annual price for a one-year renewal was \$51,360 (*id.*). On September 6, 2018, Defendant sent an email in which it terminated the relationship (NYSCEF Doc. No. 11). Defendant argues that it properly ended its relationship with plaintiff and that plaintiff is not entitled to any further fees.

Plaintiff disagrees—it claims that Defendant had to terminate the subscription more than thirty days prior to the renewal date (September 20, 2018). Plaintiff argues that ending the subscription on September 6, 2018 was not timely and, therefore, defendant must pay plaintiff the renewal price for one year (\$51,360). Plaintiff also cross-moves for leave to file a second amended complaint in the event that the Court “may find the pleading deficient.”

Discussion

A “motion to dismiss on the ground that the action is barred by documentary evidence . . . may be appropriately granted only where the documentary evidence utterly refutes plaintiff’s factual allegations, conclusively establishing a defense as a matter of law” (*Goshen v Mut. Life Ins. Co. of New York*, 98 NY2d 314, 326, 746 NYS2d 858 [2002]).

“When assessing a CPLR 3211(a)(7) motion to dismiss, the pleading is to be afforded a liberal construction, the facts as alleged in the complaint are accepted as true, the plaintiff is accorded the benefit of every possible favorable inference, and the court determines only whether the facts as alleged fit within any cognizable legal theory” (*Grassi & Co v. Honka*, 2020 WL 825833, 2020 NY Slip Op 01262 [1st Dept 2020][citation omitted]).

Here, the Court must start with the parties' subscription agreement. "The fundamental rule of contract interpretation is that agreements are construed in accord with the parties' intent and the best evidence of what parties to a written agreement intend is what they say in their writing. Thus, a written agreement that is clear and unambiguous on its face must be enforced according to the plain meaning of its terms, and extrinsic evidence of the parties' intent may be considered only if the agreement is ambiguous" (*Riverside S. Planning Corp. v CRP/Extell Riverside, L.P.*, 60 AD3d 61, 66, 869 NYS2d 511 [1st Dept 2008] [internal quotations and citations omitted]).

The agreement at issue here is clear—it provided that subscriptions would automatically renew and that any party could cancel it "by notifying the other party in writing at least thirty (30) days prior to the date of the invoice for the following term" (NYSCEF Doc. No. 9, ¶ 10). There is no dispute that Defendant cancelled the subscription 14 days prior to the expiration of the initial one-year term. Contrary to plaintiff's arguments, that was sufficient to properly terminate the subscription because it was more than 30 days prior the *date of the invoice for the following term*. In fact, plaintiff failed to produce an invoice for the following term.

Plaintiff appears to be arguing that defendant was required to cancel the subscription thirty days prior to the expiration of the first term. But that is not what the agreement says. It unambiguously permits cancelling before the date of an invoice. The Court cannot assume that it was the parties' understanding that this provision meant something else. Plaintiff could have easily drafted the agreement to direct a subscriber to cancel a subscription thirty days prior to the renewal date—plaintiff did not do so. Simply put, there is no basis to read the termination provision as requiring defendant to give notice of termination thirty days before the end of the

term. And because there is no evidence that an invoice was ever sent, the Court dismisses this case.

The cross-motion by plaintiff for leave to file a second amended complaint is denied because plaintiff failed to attach a copy of its proposed pleading (CPLR 3025[b]).

The Court denies the branch of defendant's motion that seeks costs and sanctions. There is no basis to find that plaintiff's case was completely without merit or was done simply to harass defendant (*Curtis v Tabak is Tribeca, LLC*, 144 AD3d 509, 509, 41 NYS3d 41 [1st Dept 2016]). The fact that the Court agrees with defendant's reading of the subscription agreement is not a basis for costs or sanctions.

Accordingly, it is hereby

ORDERED that the motion by defendant to dismiss is granted only to the extent that the Court dismisses this case and denied to the extent it sought costs and sanctions pursuant to 22 NYCRR 130-1.1 and the cross-motion by plaintiff for leave to amend is denied; and it is further

ORDERED that the clerk is directed to enter judgment in favor of defendant and against plaintiff upon presentation of proper papers therefor.

3/12/2020

DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
			<input type="checkbox"/>	DENIED	OTHER
					REFERENCE