Wexler v Marvin
2020 NY Slip Op 30788(U)
March 10, 2020
Peekskill City Court
Docket Number: SC-514-19
Judge: Reginald J. Johnson

SC-514-19

PEEKSKILL CITY COURT
COUNTY OF WESTCHESTER: STATE OF NEW YORK
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LINNEA WEXLER,

DECISION & ORDER

Plaintiff,

--against--

Index No. SC-514-19

JENNIFER MARVIN,

Small Claims Part

Defendant.
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Appearances:
Linnea Wexler, pro se
Jennifer Marvin
Adam Birbrower, Esq. for Defendant

Reginald J. Johnson, J.

This is a Small Claims action for breach of contract commenced pursuant to Uniform City Court Act (UCCA), Article 18-A. The plaintiff appeared pro se and the defendant was represented by Adam Birbrower, Esq. After unsuccessful settlement negotiations, this matter proceeded to a bench trial. Both parties testified but neither side called any witnesses.

In deciding this matter, the Court considered the testimony of the parties and the following exhibits: Coaching Session Agreement (Plt's "1"), copy of emails (Plt's "2"), copy of invoice (Plt's "3"), copy of text messages between the parties (Plt's "4"), and the Coaching Sessions file (Plt's "5").

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Procedural History

On October 17, 2019, the plaintiff commenced this Small Claim action against the defendant for breach of contract. On October 24, 2019, the Court sent notices to the parties to appear on December 18, 2019. At the December 18th court appearance, this matter was adjourned to January 29, 2020 for defendant to obtain legal representation. On January 29, 2020, this matter proceeded to a bench trial where both parties fully presented their cases and rested.

Facts

On December 12, 2017, the parties entered into a Coaching Sessions Agreement ("the Contract") wherein the plaintiff agreed to provide the defendant a minimum of 10 hours of life coaching techniques and counseling in exchange for 40 hours of pre- and post-natal yoga sessions.[1] The Contract stated that the plaintiff was not a licensed medical doctor, psychologist, Master's in Family Therapy (MFT) professional, or a Master's in Social Work professional (MSW) (Plt's "1" at ¶8). Plaintiff testified that she was a Master Certified NLP Coach, a Master Certified Practitioner of Neuro-Linguistic Programming, a Master Certified Practitioner of Time Line Therapy, and a Master Certified Practitioner of Hypnotherapy. The Contract stated that "the services you receive are not licensed in this state, nor are they regulated by a governmental body" (Id.). The plaintiff testified that she provided the defendant with 10 hours of coaching sessions pursuant to the Contract. Plaintiff claimed that the defendant failed to fulfill her contractual obligations by providing her with 40 hours of pre- and post-natal yoga sessions after repeated requests from the plaintiff to do so (Plt's Exhs. "2", "3", "4"

[1]According to the Contract, the parties agreed that the value of plaintiff's coaching sessions would be $500.00 per hour for a minimum of 10 hours for a total of $5,000.00 (Plt's "1" at ¶¶ 1 and 9), and that the equivalent value of defendant's yoga sessions would be $125.00 per hour for a minimum of 40 hours (Id. at ¶9 Addendum). The parties agreed that the aforementioned arrangement was fair.

and “5”). Specifically, the plaintiff alleged that the defendant only provided 6 hours of yoga sessions; the defendant claimed that she provided plaintiff with 7 hours of yoga sessions. The plaintiff claimed that the defendant has made advancements in her career as a result of her coaching sessions (Plt’s “4”) and that the defendant has attempted to use non-negotiated items, such as the cost of transportation, gas, tolls, and the amount of time in transit to the plaintiff’s home, to avoid paying under the Contract (Plt’s “2”).

Plaintiff stated that the defendant reviewed the Contract before signing it and that she is entitled to the monetary equivalent of her portion of the Contract since she prohibited defendant from traveling to her home due to lack of trust, based on defendant’s refusal and/or failure to meet her contractual obligations.

On cross examination, the plaintiff testified that she had only two clients prior to coaching the defendant. Although plaintiff stated that she had various certifications, she conceded that she was unable to provide proof of said certifications. Plaintiff admitted that she does not possess a license to practice any profession. Plaintiff said she was defendant’s sponsor in Alcoholics Anonymous (AA). Plaintiff conceded that defendant had to travel one hour from New York to plaintiff’s home in New Jersey to conduct her sessions, while she did not have to travel. Lastly, plaintiff testified that defendant’s psychologist did not recommend defendant to her, but only consented to defendant’s sessions with plaintiff.

Defendant testified that she met the plaintiff at an AA meeting. After discussions with the plaintiff, the defendant believed that the plaintiff’s NLP sessions would help her find her passion. Defendant informed the plaintiff that she was in Debtors Anonymous (DA). Defendant worked in radio media from New York to Los Angles, but post 911 she was not in a good place and she was not

making good decisions. In or about November, 2017, the defendant said she took an online course on Craig's list and got cleaned out financially, so she sought the services of the plaintiff to get back to a good place and to replenish what she lost. Defendant said she wanted to see results. Defendant conceded that the plaintiff provided her with 10 hours of sessions as per the Contract. The defendant's sessions consisted of the following: reviewing the mindset; tracking money with homework and tasking; submitting income and expenses to plaintiff for review; thinking sessions to find and clear out blocks; smart planning and goal setting; and teaching techniques to help remove pain from the body (defendant injured her cervical and lumbar spine in a car accident on January 9, 2017).

Defendant testified that she started working with the plaintiff when she was not in a good place and that she signed the Contract with the plaintiff when she knew that she did not have any money; defendant thought that things were simply going to work out. Defendant said that she used the affirmations supplied by the plaintiff, but her business did not improve. After working together for some time, defendant said that the parties took a seven-month hiatus due to plaintiff's maternity leave. Defendant said that her traveling expenses by train were $30.00 per session. Because the parties were working together on Monday, defendant said that she lost money because she was not able to work on that day. Defendant conceded that she did not invoke paragraph 10 of the Contract to cancel it.[2] Defendant said that on October 30, 2018, plaintiff told her to stay away from her family.

On cross examination, defendant said that the knew the plaintiff for years; that plaintiff was the defendant's sponsor; and that she could have simply walked

[2] Paragraph 10 of the Contract states, "This agreement starts on the 12th of December, 2017 and will continue until cancelled with 30 days written notice."

away from plaintiff but did not. Defendant conceded that it was she who approached the plaintiff for NLP services. Defendant stated that she reviewed the Contact before signing it, but that she did so under duress. Defendant said she is on Medicaid and that her attorney is representing her pro bono. She said that she has been in AA and DA for approximately 27 years and that the plaintiff was aware of defendant's bad payment history. Defendant said that the parties discussed the value of their respective services, and that she signed the Contract under stress, fear and duress.

During closing arguments, the defendant argued that plaintiff prevented her from performing her part of the Contract, when she told her not to come to her home or near her family anymore. Defendant argued that the plaintiff prayed on her vulnerabilities. Specifically, defendant argued that the plaintiff used their previous sponsor relationship to her advantage. Defendant also argued that plaintiff's contractual relationship with her was predatory and replete with conflicts of interests. Defendant argued that the huge difference in contract service hours between the parties was unconscionable and one sided —in addition, the Contract lacked a provision for damages.[3]

The plaintiff argued that the only reason why she helped the defendant is because the defendant reached out to her. The plaintiff said the sponsorship relationship ended months prior to the parties' contractual relationship. Further, plaintiff argued that she was totally transparent about the time commitments, training, money and the Contract. Specifically, the plaintiff stated that the parties discussed the hourly comparison and that both sides agreed to it. Plaintiff argued

[3] The parties agreed that the value of plaintiff's services was equivalent to $500.00 per hour while the value of defendant's services was equivalent to $125.00 per hour. Since the parties agreed to an equal exchange of services, which was $5000.00 based on plaintiff's $500.00 per hour valuation at a minimum of 10 hours, defendant had to provide 40 hours of service to equal $5000.00 of services.

that the defendant made it difficult to do the yoga training with her. Plaintiff said that the seven-month hiatus was involuntary.[4] Plaintiff said that the defendant never questioned the quality of the work she provided her, and that the defendant's argument about traveling expenses was merely a ploy to avoid payment under the Contract. Lastly, plaintiff argued that she never tried to take advantage of the defendant.

Discussion

In a small claims action, the trial court is tasked with conducting a hearing "in such a manner as to do substantial justice between the parties according to the rules of substantive law…" (*see* UCCA §1804; *Ross v Friedman*, 269 AD2d 584 [2000]; *Williams v Roper*, 269 AD2d 125, 126 [2000]). Further, credibility determinations made by the trial court are given great deference, as the trial court had the opportunity to observe and evaluate the testimony and demeanor of the witnesses (see, *Vizzari v. State of New York*, 184 A.D.2d 564 [1992]). This deference applies with greater force to judgments rendered in the Small Claims Part of the court (see, *Williams v. Roper, 269 A.D.2d at 126).* It has been held that even if the appellate court disagrees with the small claims court on an arguable point of fact or law, it should not reverse absent a showing that there is no support in the record for the trial court's conclusions or that they are otherwise so clearly erroneous as to deny substantial justice (*see, Payne v. Biglin*, 2 Misc. 3d 127[A], [App Term, 9th & 10th Jud Dists 2003]).

A cause of action for breach of contract requires the plaintiff to prove (1) the existence of a contract; (2) the plaintiff's performance pursuant to the contract; (3) the defendant's breach of his or her contractual obligations; and (4) damages resulting from the breach (*see, Elisa Dreier Reporting Corp. v. Global Naps*

[4] The plaintiff claimed that she was ordered by her doctor to rest due to potential health concerns regarding her baby.

Networks, Inc., 84 AD3d 122, 127, [2d Dept. 2011]; *Brualdi v. IBERIA, Lineas Aereas de Españа, S.A.*, 79 AD3d 959, 960 [2d Dept. 2010]; *JP Morgan Chase v. J.H. Elec. of N.Y., Inc*., 69 AD3d 802, 803 [2d Dept. 2010]; and *Furia v. Furia*, 116 AD2d 694, 695 [2d Dept. 1986]).

It is well settled that the signer of a written agreement is conclusively bound by its terms unless there is a showing, absent here, of fraud, duress or some other wrongful act. (see, *Columbus Trust Co. v. Campolo*, 170A.D.2d 275, 279 [1st Dept. 1991]). A person is presumed to have read what he or she signs and cannot rely on contrary oral representations (see, *Lejkowski v. Petrou,* 178 A.D.2d 465 [2d Dept. 1991]). The law presumes that one who is capable of reading something has read the document which she or he has executed, and is conclusively bound by the terms thereof (see, *Marine Midland Bank, N.A., v. Embassy East, Inc.,* 160 A.D.2d 420 [1st Dept. 1990]; see also, *Sofia v. Hughes,* 162A.D.2d 518 [2d Dept. 1990]). It is beyond cavil that a party to contract may not hinder, frustrate or prevent either the occurrence of a condition precedent favoring the other party, or prevent the other party's actual performance of its contractual obligations (see, *Water Street Dev. Corp. v City of New York*, 220 AD2d 289, 290 [1st Dept. 1995] ["it is undisputedly the rule that one who frustrates another's performance cannot hold that party in breach"]; *see Grad v Roberts*, 14 NY2d 70, 75, [1964] ["Persons invoking the aid of contracts are under implied obligation to exercise good faith not to frustrate the contract [and] there is an implied undertaking on the part of each party that he will not intentionally and purposely do anything to prevent the other party from carrying out the agreement on his part"]).

In the case at bar, there is no dispute that the plaintiff performed her obligations under the Contract and that the defendant was bound by the terms contained therein. However, the undisputed evidence also shows that the plaintiff

prevented the defendant from fulfilling her contractual obligations by prohibiting her from coming to the plaintiff's home to conduct yoga sessions. According to plaintiff, the defendant failed to appear at her home to conduct yoga session on several occasions and then thereafter made it difficult for the parties to coordinate yoga sessions (Plt's "2"). Plaintiff did not present credible evidence to support these claims. The plaintiff also said she no longer trusted defendant around her family. Although some or all of the aforementioned reasons cited by plaintiff for prohibiting the defendant from coming to her home to conduct yoga sessions may be true, none of these reasons constitute a legal justification for preventing the defendant from performing her contractual obligations. Further, the plaintiff did not present any credible evidence that the defendant had either abandoned her contractual obligations under the Contract or that she constituted a clear and present danger to plaintiff or her family if the defendant carried out her contractual obligations.

An implied condition in every contract is that one party will not prevent performance by the other party [see, *1-10 Indus. Assocs., LLC v. Trim Corp. of Am., 297 A.D.2d 630,* (2d Dept. 2002); *Rooney v. Slomowitz*, 11 A.D.3d 864 (3d Dept. 2004); *Syracuse Orthopedic Specialists, P.C. v. Hootnick*, 42 A.D.3d 890 (4th Dept. 2007)]. Where, as in the case at bar, one party's conduct frustrates and prevents performance by the other party, the frustrated party is excused from performance under the contract [see, *Conservancy Holdings, Ltd. v. Perma-Treat Corp.*, 126 A.D.2d 114 (3d Dept. 1987); *Brenner v. Schreck*, 17 Misc2d 945 (App. Term, 2d Dept. 1959)]. Hence, the Court finds that the actions of plaintiff frustrated and prevented the defendant's performance under the Contract, thereby excusing her from any further contractual obligation to perform.

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Based on the aforesaid and, in accordance with the substantial justice, the Court finds in favor of the defendant and dismisses the complaint

Ordered, the complaint is dismissed.

This constitutes the decision and order of the Court.

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Hon. Reginald J. Johnson
Peekskill City Court Judge

DATED: Peekskill, New York
March 10, 2020

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