

PIRS Capital LLC v Wilkins

2020 NY Slip Op 31771(U)

June 4, 2020

Supreme Court, New York County

Docket Number: 655764/2019

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

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PIRS CAPITAL LLC,

Plaintiff,

- v -

PHILLIP WILKINS aka PHILLIP K. WILKINS, PHYLLIS WILKINS aka PHLLIS G. WILKINS,

Defendants.

-----X

INDEX NO. 655764/2019
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, 22

were read on this motion to/for JUDGMENT - SUMMARY.

The motion by plaintiff for summary judgment and to strike defendants' affirmative defenses is granted. The cross-motion by defendants to dismiss based on lack of personal jurisdiction and on forum non conveniens is denied.

Background

Defendants are owners of an entity called Dream Big Restaurants, LLC ("Dream Big"), which operates numerous McDonald's restaurants in South Carolina. Defendants live in Georgia. They acknowledge that Dream Big borrowed money from plaintiff and secured these sums by receivables from Dream Big. Defendants signed guarantees in connection with these loans.

Plaintiff claims that defendants breached the two written personal guarantees relating to the loans executed between plaintiff and Dream Big. It contends that Dream Big breached the two contracts between the parties on April 24, 2019 by entering into an agreement with third

parties concerning the sale of Dream Big's receivables (the collateral securing the loans). Plaintiff attaches an agreement between Dream Big and Quicksilver Capital that identified Dream Big's receivables as collateral. Plaintiff contends the amount due on the first contract is \$74,616.10 plus interest from April 24, 2019 as well as "all expenses incurred" to enforce "its rights and remedies" pursuant to the agreement.

Plaintiff also claims that it entered into a second agreement with Dream Big on March 15, 2019 and that Dream Big breached this agreement as well. In this contract, plaintiff loaned Dream Big \$200,000 in consideration for receivables. Plaintiff contends this agreement was breached due to the same contract between Dream Big and Quicksilver. It argues that \$117,209 is due from this contract.

In opposition and in support of the cross-motion to dismiss, defendants claim that they have no connection with New York and the underlying transactions have nothing to do with this jurisdiction. They point out that Dream Big is a South Carolina company and is currently in bankruptcy court in South Carolina. Defendants admit that the merchant agreements (the loans between Dream Big and plaintiff) contained a forum selection clause that permitted plaintiff to start a case in New York. They claim that the guarantees are not part of the agreements with the sections governing jurisdiction and that the guarantees contain no forum selection clause. Defendants argue that the Court cannot exercise personal jurisdiction over them because neither they nor Dream Big has anything to do with New York.

Discussion

"[T]he "very point" of forum selection clauses, which render the designated forum convenient as a matter of law, is to avoid litigation over personal jurisdiction, as well as disputes

arising over the application of the long-arm statute and it is the well-settled policy of the courts of this State to enforce contractual provisions for choice of law and selection of a forum for litigation. Forum selection clauses, which are prima facie valid are enforced because they provide certainty and predictability in the resolution of disputes and are not to be set aside unless a party demonstrates that the enforcement of such would be unreasonable and unjust or that the clause is invalid because of fraud or overreaching, such that a trial in the contractual forum would be so gravely difficult and inconvenient that the challenging party would, for all practical purposes, be deprived of his or her day in court” (*Sterling Nat. Bank as Assignee of NorVergence, Inc. v E. Shipping Worldwide, Inc.*, 35 AD3d 222, 222, 826 NYS2d 235 [1st Dept 2006] [internal quotations and citations omitted]).

Here, defendants have offered no valid reason to set aside the forum selection clause. Each agreement contains a forum selection clause that permits plaintiff to bring a case in New York (NYSCEF Doc. No. 10, ¶ 4.5; NYSCEF Doc. No. 11, ¶ 4.5). The guarantees signed by each defendant expressly (in bold and in ALL CAPS) state that the “terms definitions, conditions and information set forth in the merchant agreement are hereby incorporated in and made a part of this security agreement and guaranty” (NYSCEF Doc. Nos. 10, 11, Appendix A).

Simply put, defendants signed agreements that specifically noted that they were subject to the merchant agreements, which contained clear and unequivocal forum selection clauses. Defendants are sophisticated businesspeople who entered into multiple loan agreements which stated that plaintiff could bring a lawsuit (if there were a breach) in New York. That defendants are located in Georgia and operate restaurants in South Carolina is of no moment. If this case goes to trial, it would not be a drastic inconvenience that would deprive defendants of their day

in court. The Court cannot ignore an unambiguous contractual provision because defendants later regret signing it.

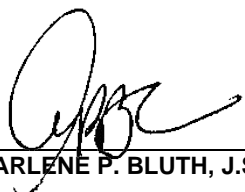
In fact, defendants do not deny that they breached the contract, they do not dispute the amount claimed due by plaintiff, and they do not defend their remaining affirmative defenses. And plaintiff submitted spreadsheets supporting the basis for the amount it claims is due under each contract (NYSCEF Doc. Nos. 13, 14). Therefore, the Court grants the motion and denies defendants' cross-motion. The Court also grants plaintiff's request for \$3,500 in attorneys' fees. Plaintiff's counsel observes it is handling this case on a contingency fee basis and the amount sought is less than two percent of the total judgment sought by plaintiff; the amount of legal fees sought is inherently reasonable.

Accordingly, it is hereby

ORDERED that the motion by plaintiff for summary judgment and to strike defendants' affirmative defenses is granted and the clerk shall enter a judgment when practicable in the amount of \$74,616.10 for the first agreement plus \$117,209 for the second agreement with interest from April 24, 2019, plus \$3,500 in attorneys' fees as well as costs and disbursements upon presentation of the proper papers therefor; and it is further

ORDERED that the cross-motion to dismiss by defendants is denied.

06/04/2020
DATE


ARLENE P. BLUTH, J.S.C.

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