Seaport Global Sec. LLC v SB Group Holdco, LLC
2021 NY Slip Op 30704(U)
March 3, 2021
Supreme Court, New York County
Docket Number: 655723/2017
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ANDREW BORROK** **PART** **IAS MOTION 53EFM**

Justice

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INDEX NO. 655723/2017

SEAPORT GLOBAL SECURITIES LLC,

Plaintiff,

MOTION DATE 01/16/2020, 01/16/2020, 01/16/2020, 01/16/2020

\- v -

MOTION SEQ. NO. 006 007 008 009

SB GROUP HOLDCO, LLC,DG CAPITAL MANAGEMENT, LLC,DG VALUE PARTNERS, LP, DG VALUE PARTNERS II MASTER FUND, LP

Defendant.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 380

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER .

The following e-filed documents, listed by NYSCEF document number (Motion 007) 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 293, 378

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER .

The following e-filed documents, listed by NYSCEF document number (Motion 008) 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 379

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER .

The following e-filed documents, listed by NYSCEF document number (Motion 009) 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 294, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 381, 382, 383

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

Upon the foregoing papers, for the reasons set forth on the record (3/1/2021) and as otherwise set forth below, Seaport Global Securities LLC (**Seaport**), a FINRA registered broker/dealer, is not now liable to the DG Defendants (hereinafter defined) because Seaport's obligation to sell the EmployBridge (hereinafter defined) common stock was subject to the condition precedent that it receive the stock from SB Group (hereinafter defined). It is undisputed that this has not yet occurred. Therefore, Seaport's motion (Mtn Seq. No. 006) must be granted to the extent of declaring that Seaport is not now liable to the DG Defendants and dismissing the DG Defendants' counterclaims against Seaport.

The branch of Seaport's motion for summary judgment against SB Group for breach of contract must also be granted. SB Group entered into a binding agreement to sell the EmployBridge stock to Seaport subject to terms of the EmployBridge's stockholder agreement. The EmployBridge stock was restricted stock. D. Stephen Sorenson, SB Group's principal, was the former CEO of EmployBridge who had a dispute with EmployBridge. EmployBridge was willing to consent to an assignment of the stock between SB Group and Seaport provided that the proceeds of the stock sale to SB Group were kept in escrow – i.e., restricted pending the resolution of the dispute with Mr. Sorenson. Pursuant to the escrow, the stock would be released but not the proceeds of the sale until the unrelated dispute between Mr. Sorenson and EmployBridge was resolved. SB Group breached the contract with Seaport by failing to use commercially reasonable efforts to arrange for the transfer of the EmployBridge stock it was obligated to sell to Seaport. Simply put, it refused to enter into the escrow agreement (i.e., and without offering any evidence as to what about the terms of the proposed escrow agreement was commercially unreasonable). It did not sue EmployBridge to compel EmployBridge to consent to the transfer of the stock without the escrow if, in fact, EmployBridge acted in violation of its

agreement with Mr. Sorenson. It did not propose any other structure to Seaport and EmployBridge that would have effected a transfer of the shares that SB Group was obligated to deliver to Seaport. Put another way, SB Group breached because either it failed to settle the trade by virtue of the proposed escrow or to otherwise use commercially reasonable efforts to effectuate the transfer of the stock to Seaport or to deliver the economic equivalent of the same. It is of no moment that the proposed escrow agreement with its principal's former employer was not expressly set forth in the agreement with Seaport. The language in the agreement that an alternative structure had to be mutually agreeable to the parties did not include SB Group's right to object to the alternative structure in "its sole and absolute discretion" whether such objection was commercially reasonable or not. SB Group was still obligated to act in a commercially reasonable manner in facilitating the trade. Even if the escrow agreement was not agreeable to SB Group and the escrow agreement was not commercially reasonable (although the record is bereft of any evidence suggesting it was unreasonable) or it could have objected to the escrow arrangement in its sole and absolute discretion as SB Group suggests and which the agreement does not so provide, SB Group still was obligated to use commercially reasonable efforts to settle the trade and this it failed to do. Finally, because the parties agreed that they were not relying on any representation by either party, SB Group cannot otherwise avoid its obligation to use commercially reasonable efforts to cause the trade to settle by claiming that it did not understand that the proceeds of its stock would be held in escrow when it entered the binding trade confirmation. Thus, Seaport's motion for summary judgment against SB Group is granted and SB Group's motions (Mtn. Seq. Nos. 007 and 008) seeking summary judgment dismissal of the claims against SB Group for breach of contract must be denied.

Finally, the DG Defendants' motion for summary judgment (Mtn. Seq. No. 009) is granted solely to the extent of granting it summary judgment on its breach of contract claim against SB Group and dismissing the crossclaims against the DG Defendants.

THE RELEVANT FACTS

This dispute arises out of the failed attempted trade of 500,000 shares of common stock in a closely held, non-publicly traded company known as EmployBridge Holding Company (**EmployBridge**). SB Group Holdco, LLC (**SB Group**) was to be the seller. Seaport was the broker-dealer. DG Value Partners, LP and DG Value Partners II Master Fund LP (the **DG Defendants**) were to be the ultimate purchasers.

The material terms of the transaction between SB Group and Seaport were set forth in the SB Group Trade Confirmation (hereinafter defined) – i.e., SB Group agreed to sell to Seaport 500,000 shares of common stock of EmployBridge at $4.17/share for a total purchase price of $2,085,000.00 pursuant to a trade confirmation dated February 9, 2017 (the **SB Group Trade Confirmation;** [NYSCEF Doc. No. 132]).

The material terms of the transaction between Seaport and the DG Defendants were set forth in two trade confirmations of even date (the **DG Trade Confirmations** [NYSCEF Doc. No. 133-134]; the SB Group Trade Confirmation and the DG Trade Confirmations, collectively, the **Trade Confirmations**), pursuant to which the DG Defendants agreed to respectively purchase and Seaport agreed to sell (i) 86,356 shares and (ii) 413,644 shares at $4.375/share for a total purchase price of $2,187,500.00. Seaport's obligation to sell the shares to the DG Defendants was subject to the successful settlement of their acquisition of the shares.

Pursuant to the SB Group Trade Confirmation, SB Group and Seaport each agreed to use commercially reasonable efforts to settle the Transaction:

> Seller and Buyer ***each agree to use commercially reasonable efforts to settle the Transaction*** as soon as practicable after the Trade Date, provided, however, that the settlement of the Transaction is subject to the successful settlement of the sale of the Shares by Buyer to its ultimate buyer

(NYSCEF Doc. No. 132 at 2 [emphasis added]).

The DG Trade Confirmation contained a similar provision except that it was subject to the "successful settlement of the purchase of the Shares by Seller from its ultimate seller" (NYSCEF Doc. No. 133-4 at 2).

For the avoidance of doubt, it is undisputed that all of the parties involved in the transactions knew that Seaport was acting as an intermediary and not buying or selling the stock for its own account. This is made clear from the references to "ultimate buyer" and "ultimate seller" in the Trade Confirmations.

Each party further agreed that the effectiveness of the transfer was subject to the satisfaction of all requirements for transfer of the shares under applicable law and the Stockholders Agreement, including "***the execution and delivery of all documentation required by*** the Stockholders Agreement, ***the Issuer***, its counsel or transfer agent, as the case may be" (*id*. [emphasis added]).

Section 4 of the Stockholders Agreement titled "Transfers of Shares," sets forth a number of restrictions to which any transfer of EmployBridge stock is subject, including that any transferee

provide written confirmation that it takes the stock subject to and bound by all the terms and conditions of the Stockholders Agreement (NYSCEF Doc. No. 167, ¶¶ 7-8; NYSCEF Doc. No. 325). All of the parties, including the DG Defendants were aware of the restrictions in the Stockholders Agreement as the DG Defendants already owned some stock in EmployBridge and Seaport had previously sought to sell SB Group's shares and was informed that any transfer of shares was subject to EmployBridge approval.

All three Trade Confirmations also state that:

> [i]n the event that this trade cannot settle as an assignment, this trade shall settle by a mutually agreeable alternative structure or other arrangement that affords Buyer and Seller the economic equivalent of the agreed upon trade

(NYSCEF Doc. No. 132-134 at 1).

In addition, the Trade Confirmations each provided:

> Non-Reliance: Each party acknowledges to the other party that it (a) is a sophisticated seller or buyer (as the case may be) with respect to the transaction descried in this Trade Confirmation, (b) has adequate information concerning the business and financial condition of the Issuer to make an informed decision regarding the sale and purchase of the Shares, and (c) has independently made its own analysis and decision to enter into this Trade Confirmation

(*id.* at 2).

After the Trade Confirmations were executed, SB signed a document labeled "REQUEST TO TRANSFER," which directed the transfer of 500,000 shares of EmployBridge stock to Seaport. However, when Seaport tried to settle the trade with EmployBridge, EmployBridge would not

approve the transfer of shares because of an ongoing dispute with SB Group's manager and CEO, Mr. Sorenson, who was a former CEO of EmployBridge.

When this occurred, Seaport proposed that the trade settle by escrow pending resolution of the dispute between EmployBridge and Mr. Sorenson. This would have enabled Seaport to pay for the shares and transfer the shares to the DG Defendants. EmployBridge agreed to this proposal and its counsel at Milbank, Tweed, Hadley & McCloy LLP drafted and circulated an escrow agreement providing that SB Group would transfer the 500,000 shares of stock to Seaport in exchange for payment, which payment would be held in escrow pending resolution of the dispute. In other words, EmployBridge was prepared to consent to the settlement of the shares by assignment provided that the proceeds from the sale would be restricted and reserved pending resolution of its dispute with Mr. Sorenson. However, SB Group refused because it demanded that the releases from the escrow be simultaneous. Under the circumstances (i.e., that the stock was restricted and given the ongoing dispute with Mr. Sorenson), this was not commercially reasonable. SB does not offer any evidence to the contrary, instead incorrectly arguing that the requirement that the alternative structure be "mutually agreeable" meant that this was merely an agreement to agree and they could in their sole and absolute discretion reject the escrow and claim that notwithstanding Mr. Sorenson's dispute with EmployBridge and the fact that the stock was then restricted, release of the proceeds from the escrow should be simultaneous with release of the stock to Seaport who was obligated to sell the stock to the DG Defendants. No evidence is adduced by SB Group as to what if anything about the escrow agreement was commercially unreasonable under the circumstances.

That said, even if the escrow arrangement was not commercially reasonable (and, again under the circumstances, there is nothing to suggest that it was not), SB Group still had an obligation to use commercially reasonable efforts to try to settle the trade. On the record before the court, SB Group did not make any material commercially reasonable counterproposal or take any other step to meet its contractual obligation to use commercially reasonable efforts to settle the trade.

By letter dated April 9, 2017 to Seaport and counsel for SB Group, the DG Defendants demanded delivery of the stock or its economic equivalent, which they claimed amounted to $1.6 million, i.e., the difference between the then-current value of the EmployBridge stock and the trade price of the stock on February 9, 2017, plus costs.

The DG Defendants allege that Seaport was or should have been aware of potential issues with the stock transfer because Seaport had worked with Mr. Sorensen since at least 2015 and was repeatedly informed that Mr. Sorensen's shares (including those sold through SB Group) could not be traded because they were subject to a perfected lien held by EmployBridge, and that there was ongoing litigation between Mr. Sorensen and EmployBridge arising out of his non-compete agreement. At his deposition (Sorensen Tr. at 56:13-58:18; 69:7-70:8), Mr. Sorensen stated that (i) he told Michael Corbett, a Seaport trader, that his shares were restricted by his non-compete agreement with EmployBridge and (ii) Messrs. Sorensen and Corbett discussed the EmployBridge Shareholder Agreement, which provided that the shares were subject to a lien by the issuer in the form of a security agreement, and that Mr. Sorensen was clear that his shares could not be sold up until early 2017 when he suddenly and without explanation offered them for sale in February of that year.

Seaport's amended complaint asserts claims for (i) breach of contract against SB Group seeking an order of specific performance against SB Group directing SB Group to deliver to Seaport the 500,000 shares of common stock in EmployBridge, or, alternatively, to enter into an escrow agreement, or (ii) a declaration that Seaport is not liable as to DG Capital in the event that SB Group does not transfer the shares of stock to Seaport or is not ordered to do so.

The DG Defendants assert counterclaims against Seaport for (1) breach of the implied covenant of good faith and fair dealing, (2) promissory estoppel, (3) securities fraud, (4) fraud, (5) negligence, and (6) deceptive practices in violation of GBL § 349, as well as crossclaims against SB Group for (1) breach of contract, (2) promissory estoppel, (3) securities fraud, (4) fraud, (5) negligence, and (6) deceptive practices in violation of GBL § 349.

SB Group also asserts two counterclaims against Seaport for (1) gross negligence and (2) indemnification.

At a prior argument on the record, the court (Ramos, J.) dismissed the promissory estoppel claims, the negligence claims and the GBL § 349 claims with respect to SB Group, without addressing those claims asserted against Seaport (*March 22, 2018 Tr.*, NYSCEF Doc. No. 53 at 19)

DISCUSSION

1. Seaport's Motion for Summary Judgment (Seq. No. 006) Must Be Granted

It is well established that summary judgment should be granted where the movant tenders evidence, in admissible form, to establish entitlement to judgment as a matter of law (CPLR § 3212; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Once such burden is met, to defeat a motion for summary judgment, the opposing party must produce evidence "in admissible form sufficient to require a trial of material questions of fact" (*id.*). The court's function on a motion for summary judgment is issue finding, not issue determination (*Rowan v Brady*, 98 AD2d 638, 638 [1st Dept 1983]).

Seaport has established that it is not currently liable to the DG Defendants with respect to the DG Trade Confirmations. The DG Trade Confirmations make clear that they are "subject to the successful settlement of the purchase of the Shares by Seller from its ultimate seller" and that the DG Trade Confirmations were subject to the satisfaction and compliance with Section 4 of the Stockholders Agreement and the execution and delivery of all documentation required by the Issuer (i.e., EmployBridge), its counsel or transfer agent as the case may be (NYSCEF Doc. No. 133-34 at 1-2).

Seaport acted in good faith effort to facilitate the stock transfer and sale to the fullest extent possible. Upon receipt of SB Group's "REQUEST TO TRANSFER," it immediately tried to settle the shares with EmployBridge, and when EmployBridge refused the settlement, Seaport immediately tried to negotiate an alternative way to do so with EmployBridge and its counsel via the escrow agreement. When SB Group refused to enter the escrow agreement, Seaport commenced the instant action to try to, among other things, settle the parties' obligations and compel specific performance by SB Group. It is not required to do more. Inasmuch as it is

undisputed that Seaport never received any shares and is not in possession of them, the condition precedent to its obligations to the DG Defendants has not yet occurred, and it is therefore not currently liable to the DG Defendants. Stated differently, the DG Defendants' claims are not yet ripe. Thus, Seaport is also entitled to dismissal of the DG Defendants' breach of contract counterclaim.

Seaport is also entitled to dismissal of the DG Defendants' negligence counterclaim. Seaport did not owe a duty to the DG Defendants independent of that contained in the parties' agreement (*Pasternack v Laboratory Corp. of Am. Holdings*, 27 NY3d 817, 825 [1992]). Without a duty running to the DG Defendants from Seaport there can be no liability for negligence as a matter of law, "however careless the conduct or foreseeable the harm" (*Lauer v City of NY*, 95 NY2d 95, 100 [2000]). In other words, what Seaport knew or believed in connection with the restrictions placed on the shares prior to February 2017 is immaterial because the duty owed to the DG Defendants flowed directly from the obligations imposed by the contract (*id.*).

At oral argument (3/1/2021), the DG Defendants consented to the dismissal of their fraud, promissory estoppel and GBL § 349 counterclaims. In any event, these claims must be dismissed for the same reasons these claims were previously dismissed with respect to SB Group (*March 22, 2018 Tr.*, NYSCEF Doc. No. 53 at 19).

2. SB Group's Motions for Summary Judgment Against Seaport (Mtn. Seq. Nos. 007) Must Be Denied in Part

SB Group's summary judgment motion seeking dismissal of Seaport's breach of contract claim must be denied. The Trade Confirmations were not merely agreements to agree. This argument has already been rejected by this court (Ramos, J.; NYSCEF Doc. No. 53) and affirmed by the Appellate Division, First Department (*Seaport Global Sec. LLC v SB Group Holdco LLC,* 162 AD3d 466 [1st Dept 2018]). Even if the argument had not been previously rejected, the argument fails. The SB Group Trade Confirmation contained all of the material terms of the trade between SB Group and Seaport – including among other things, price, number of shares and closing date. Similar trade confirmations are routinely held to be enforceable agreements and there is nothing in these Trade Confirmations that dictates a different result (e.g., *Deephaven Distressed Opportunities Tradings, Ltd. v 3V Capital Master Fund Ltd.*, 100 AD3d 505 [1st Dept 2012]).

As discussed above, SB Group cannot avoid its obligation to deliver the shares to Seaport based on its misunderstanding that EmployBridge would consent to an assignment of the shares that included the simultaneous release of the proceeds of the sale and stock from the proposed escrow given that the stock was restricted stock and there was a dispute with Mr. Sorensen and there was no dispute with Seaport. Nor can it claim that it relied on certain statements from Mr. Corbett as the SB Group Trade Confirmation expressly disavows any such reliance and because Mr. Sorenson, SB Group's principal, was aware of the ongoing dispute that ***he*** had with EmployBridge and the restrictions in place with respect to ***his*** EmployBridge stock. But more to the point, the SB Group Trade Confirmation provides that "Seller and Buyer each agree to use ***commercially reasonable efforts*** to settle the Transaction as soon as practicable after the Trade Date" (NYSCEF Doc. No. 132 [emphasis added]). By refusing to enter into the escrow agreement or to propose any alternative way to move forward, SB Group has failed to use "commercially reasonable efforts to settle the Transaction." SB Group cannot conflate Mr.

Sorenson's unrelated dispute with EmployBridge to its obligation to use commercially reasonable efforts to cause the trade to settle claiming that the escrow agreement and its terms were not specifically mentioned in the SB Trade Confirmation, were otherwise flatly unacceptable without adducing any evidence as to what about the escrow under the circumstances were commercially unreasonable, and to otherwise fail to make any commercially reasonable meaningful effort to facilitate the settlement of the trade that did not involve the escrow (if, in fact, the escrow was commercially unreasonable). Simply put, SB Group held restricted stock. It can have restricted proceeds. However, it cannot frustrate the sale that it voluntarily undertook in the face of its unrelated dispute with EmployBridge by not entering into the escrow agreement. This, without offering a commercially reasonable alternative or the economic equivalent to Seaport or otherwise suing to compel EmployBridge (if appropriate to do so), was commercially unreasonable under the circumstances. Accordingly, Seaport has established its breach of contract claim against SB Group.

Seaport has also established that specific performance is the appropriate remedy for this type of breach of contract (*see Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 415 [2001] [specific performance appropriate where subject matter of particular contract is unique and has no easily established market value]). Specifically, "an agreement to convey stock in a close corporation may be enforced by specific performance" (*In re Fontana D'Oro Foods*, 65 NY2d 886, 888 [1985] [collecting cases]). No adequate remedy at law exists given Seaport's sandwich position with respect to these shares in the close corporation where its purchase price and its sale price were fixed in time such that the damages suffered by Seaport and the DG Defendants are different and would otherwise be hard to calculate. For completeness, the court notes that previously, the Appellate Division, in fact, indicated that specific performance may be an

adequate remedy in this case in its prior decision: "[t]he amended complaint adequately pleads specific performance, which is applicable to stock that is thinly traded or privately held, such as here" (*Seaport Global Securities LLC, supra,* 162 AD3d at 467-68, citing *Haymarket LLC v D.G. Jewellery of Canada,* 290 AD2d 318, 319 [1st Dept 2002] [directing defendant to specifically perform stock purchase agreement by issuing and delivering plaintiff 316,933 shares of common stock], *lv denied* 98 NY2d 602 [2002]). As such, Seaport is entitled to specific performance on its breach of contract claim here. Inasmuch as SB Group has failed to adduce any evidence that the proposed escrow agreement is commercially unreasonable and EmployBridge has otherwise indicated that it is prepared to consent to an assignment of the shares, SB Group is directed to assign the EmployBridge shares to Seaport, and, if necessary, to enter into the escrow agreement with EmployBridge placing the proceeds in escrow pending resolution of the dispute with Mr. Sorenson.

3. SB Group's Motion for Summary Judgment Dismissal of the DG Defendants' Breach of Contract Crossclaim is Denied and the DG Defendants' Motion for Summary Judgment (Mtn. Seq. Nos. 008 and 009) is Granted in Part

SB Group's motion for dismissal of the DG Defendants' breach of contract crossclaim (Mtn. Seq. No. 008) because they are not third-party beneficiaries to the SB Group Trade Confirmation fails. The SB Group Trade Confirmation makes clear that it contemplates an "ultimate buyer" other than Seaport (*CB v Howard Sec.*, 158 AD3d 157, 166 [1st Dept 2018] [contract obligations may impose duty in favor of intended third-party beneficiaries]). The DG Defendants are thus also entitled to summary judgment on their crossclaim for breach of contract against SB Group (Mtn. Seq. No. 009) because the DG Defendants have established all the elements of breach of contract, i.e., a contract, breach, and damages, for the same reasons as Seaport, *supra*, by

establishing the existence of obligations under the Trade Confirmations, a failure by SB Group to act in a commercially reasonable manner to facilitate the transfer of stock, and damages (*id.*; *253 E. 62nd St., LLC v Moluka Enters. LLC,* 151 AD3d 489, 490 [1st Dept 2017]).

SB Group's claim for violations of the California Invasion of Privacy Act against the DG Defendants, must also be dismissed. Among other things, the SB Group does not dispute that the conversations between the DG Defendants and SB Group were not recorded.

Finally, SB Group's claims against Seaport for gross negligence and indemnification also fail. SB does not allege any conduct by Seaport to evince "a reckless disregard for others" or which "'smacks' of intentional wrongdoing" as required to make out a claim of gross negligence (*Pasternack, supra*) and any claim for indemnification necessarily fails as it relies on the claim for gross negligence.

The court has considered the remaining arguments raised on these motions and finds them unavailing.

Accordingly, it is

ORDERED that Seaport Global Securities' motion is granted and it is

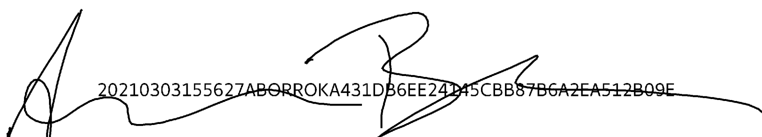
ADJUDGED and DECLARED that Seaport Global Securities is not currently liable to DG Value Partners, LP and DG Value Partners II Master Fund LP; and it is further

ORDERED that DG Value Partners, LP and DG Value Partners II Master Fund LP's motion for summary judgment is granted with respect to the breach of contract crossclaim against SB Group Holdco, LLC, only, and is otherwise denied and it is further

ORDERED that SB Group Holdco, LLC's motions for summary judgment are denied with respect to the breach of contract claim and crossclaims and otherwise granted and, all the remaining claims, counterclaims and crossclaims in this action are dismissed; and it is further

ORDERED that the parties are directed to order the transcript of the argument and upload to NYSCEF and it is further

ORDERED that the parties are directed to settle judgment on notice and submit to Part 53 within 10 days of this decision and order.



3/3/2021						
DATE				ANDREW BORROK, J.S.C.		
CHECK ONE:	X	CASE DISPOSED		NON-FINAL DISPOSITION		
		GRANTED	DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT	REFERENCE