SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: COMMERCIAL DIVISION

PRESENT: HON. JENNIFER SCHECTER **PART** 54

Justice

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INDEX NO. 654793/2021

PETER AMATO, SITE SAFETY, LLC,

MOTION SEQ. NO. 001

Plaintiffs,

- v -

VIDASAGAR REDDY KANCHARLA, MADHAVI KANCHARLA,

DECISION + ORDER ON MOTION & X-MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 79, 80, 81, 82, 83, 84, 85

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

Upon the foregoing documents, it is ORDERED that the motion for summary judgment is granted in part and the cross-motion is denied as moot pursuant to NYSCEF Doc. No. (Dkt.) 85.

It is undisputed that in August 2011, Peter Amato (Plaintiff), owning 20% of Site Safety, LLC (the Company), entered into an agreement (the Agreement) to purchase the 80% membership interest in the Company owned by Vidasagar Reddy Kancharla (Defendant) for $2.775 million (Dkt. 29). Plaintiff urges that he made all the payments as required by the Agreement and moves for summary judgment based on Defendant's failure to release critical documents held in escrow, including all agreements, the Stock Power, the UCC-1 Financing Statement and the Stock Certificates. He seeks specific performance--a judgment compelling release of the transaction documents to him as promised.

Defendant contends that Plaintiff has not fully performed the Agreement because there remains a dispute with respect to his capital account. He asserts that at the closing, with his attorney present, Plaintiff represented that Defendant's capital account was $80,000. Defendant expressed that the amount was too low and alleges that Plaintiff assured him that "should the amount be higher after the Accountants finalized the books, [he] would be made whole . . . [and thereafter]. . . it was reported that [his] capital account was approximately $350,000" (Dkt. 51 ¶ 4). Defendant's transactional attorney corroborates his account (Dkt. 53 ¶ 2 ["The parties . . . agreed to reconcile (Defendant's) capital account after (the Company's) accountants went through the books and records and did the taxes after the close of the tax year"]). Defendant contends that over the years he had several discussions with Plaintiff about the issue and that, in April 2013, Defendant agreed to accept "the sum of $150,000 towards [his] capital account in three (3) installments of $50,000 each (the 'Oral Modification')" (Dkt. 51 ¶ 5). He urges that a $50,000 payment was made pursuant to the Oral Modification and that Plaintiff therefore still owes $50,000 on the Agreement and another $100,000 on the Oral Modification.

Analysis

Plaintiff met his heavy burden of showing entitlement to summary judgment. He established that he paid in full. Among other things, he supplied the Agreement and a payment log that was not challenged (Dkts. 29, 34). Significantly, on April 14, 2013, Plaintiff directed a $50,000 transfer to Defendant toward the "outstanding balance" (Dkt. 84 at 1). On April 17, 2013, the Company's payment log indicates that Plaintiff made a payment of $50,000 and that this payment went toward the agreement's balance (Dkt. 34).

In opposition, the only issue that Defendant meaningfully raises (*see* Dkt. 55)* is that the April 2013 $50,000 payment was in fact part performance of the Oral Modification and that Plaintiff has not fully performed his end of the bargain. According to Defendant, it was at the 2011 closing, with his attorney present, that a capital-account adjustment was discussed and, then only years later, in 2013, there was an oral agreement between the parties that there would be three payments of $50,000 from Plaintiff to Defendant at some unspecified point.

Plaintiffs are entitled to a judgment as a matter of law.

The parties' Agreement, which was executed at the closing, is clear and is devoid of any reference to an adjustment of Defendant's capital account. It plainly and explicitly provides that the "[a]mount due to Seller representing the Seller's Capital Account, as of August 1, 2011 (the date of the agreement) has been included in the purchase price and has been incorporated into the Notes" (Dkt. 29 § 1.4). The Agreement further provides that it is the entire agreement between the parties, supersedes all "prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written" and that it "may not be modified or amended except with the written consent of the parties" (*id.* § 8.6).

The $50,000 payment is insufficient to raise a triable issue because it is not "unequivocally referable" to the Oral Modification and is compatible with the Agreement

* Defendant does not respond to plaintiffs' arguments related to his affirmative defenses and counterclaims, which is a concession that they are not viable. To the extent that Defendant conclusorily asserts that Plaintiff breached the Security and Pledge Agreement by transferring a portion of his membership interests prior to satisfaction of the note, there would be no damages whatsoever because Plaintiff has satisfied the note in full.

as written (*see Rose v Spa Realty Assocs.*, 42 NY2d 338, 341 [1977]). In fact, when Plaintiff directed that the $50,000 payment be made, he stated in an email that "although there is a difference of opinion as to any monies owed . . . from the capital account, this $50,000.00 is not being paid as a payment for the previous capital account" (Dkt. 84 at 1 [emphasis added]). Both the email and payment log indicate, that although the amount was unusual, it was meant to be applied to the purchase price of Defendant's shares in the Company. Because it is possible that the $50,000 was paid in furtherance of the Agreement and not the Oral Modification, there has been no showing of any enforceable obligation with respect to adjustment of Defendant's capital account (*Nassau Beekman, LLC v Ann/Nassau Realty, LLC*, 105 AD3d 33, 39 [1st Dept 2013] ["Where the conduct is 'reasonably explained' by other possible reasons, it does not satisfy (the 'unequivocally referable') standard"]; *see Gootee v Global Credit Servs., LLC*, 139 AD3d 551, 558 [1st Dept 2016] ["In order to be unequivocally referable, conduct must be inconsistent with **any other explanation**. In other words, the actions alone must be unintelligible or at least extraordinary, explainable only with reference to the oral agreement"] [emphasis added]).

Plaintiffs have thus established entitlement to specific performance of the parties' written agreements and entitlement to release of the documents. Plaintiffs have not established entitlement to monetary damages and have either failed to state a cause of action on their remaining claims or they are deemed moot by this decision and are dismissed. In light of this decision, all of Defendant's counterclaims (seeking monetary, equitable and declaratory relief and sounding in breach of contract, fraudulent inducement, and unjust enrichment) are dismissed.

Accordingly, it is

ORDERED that, all of the buyer's payments under the parties' agreements having been made, plaintiffs' motion for summary judgment for Defendant's breach of contract is GRANTED and they are awarded specific performance (on the second cause of action, which is deemed as one for breach of contract seeking the remedy of specific performance) as against defendant Vidasagar Reddy Kancharla; and it is further

ORDERED and ADJUDGED that Vidasagar Reddy Kancharla and the Escrow Agent release and turn over to plaintiffs all of the transaction documents, including the agreements, the Stock Power, UCC-1 Financing Statement, Notes and the Stock Certificates; and it is further

ORDERED that the first, third and fourth causes of action are dismissed and no monetary damages are awarded; and it is further

ORDERED that Defendant's affirmative defenses and counterclaims are dismissed; and it is further

ORDERED that the action is discontinued against defendant Madhavi Kancharla with prejudice.

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7/5/2022
DATE

JENNIFER SCHECTER, J.S.C.

CHECK ONE: [X] CASE DISPOSED [ ] NON-FINAL DISPOSITION

[ ] GRANTED [ ] DENIED [ ] GRANTED IN PART [X] OTHER