Prete v Homestyle Hospitality, LLC
2022 NY Slip Op 35071(U)
September 13, 2022
Supreme Court, Queens County
Docket Number: Index No. 724612/20
Judge: Robert I. Caloras
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Short Form Order
NEW YORK SUPREME COURT - QUEENS COUNTY
PRESENT: HON. ROBERT I. CALORAS **PART 36**
Justice
--X
ALYSSA PRETE, **Index No. 724612/20**
Seq. 1
Plaintiff,
-against-
HOMESTYLE HOSPITALITY, LLC d/b/a
GLEN ISLAND HARBOUR CLUB,
Defendant.
--X

FILED
9/14/2022
COUNTY CLERK
QUEENS COUNTY

The following papers numbered E7-E20, E22-E23 read on this motion by Plaintiff for an order pursuant to CPLR 3212 granting her summary judgment.

	PAPERS NUMBERED
Notice of Motion-Affirmation-Affidavit-Exhibits-Memo of Law………	E7-E20
Affirmation in Opposition………………………………………………	E22-E23

Upon the foregoing papers, it is ordered that Plaintiff's motion is granted for the following reasons:

In the Complaint, Plaintiff asserted the following causes of action: breach of contract; quantum meruit; conversion; punitive damages; and attorney's fees. Plaintiff alleged that the parties entered into a written contract on July 11, 2019 for Defendant to host her wedding reception at Defendant's Venue on August 22, 2020. Pursuant to the terms of this contract, Plaintiff was to pay Defendant $38,592.00, inclusive of the following deposit schedule: $8,700.00 by August 15, 2019; $9,700.00 by October 1, 2019; and $9,700.00 by February 2, 2020. Plaintiff further alleged that after Defendant notified her that it could no longer provide the agreed upon services, Defendant failed to return her deposit in the amount of $28,100.00.

Plaintiff now moves for summary judgment pursuant to CPLR 3212. Plaintiff argues that she is entitled to summary judgment because pursuant to the terms of the contract Defendant is obligated to return her down payment. Plaintiff further argues that the contract is unconscionable, illusory, and gives Defendant no right to retain Plaintiff's down payment. In support thereof, Plaintiff submitted, among other things, the following: her affidavit; contract; proof of her deposit; and a letter from her attorney demanding the return of her deposit. Plaintiff claims the following: pursuant to the terms of the contract, she paid Defendants a down payment in the amount of $28,100.00. In July 2020, Defendant cancelled because of New York's prohibition on public gatherings due to the Covid-19 Pandemic. On August 4, 2020, her attorney sent Defendant a letter demanding her down payment be returned within ten (10) days. To date, Defendant has refused to return her down payment.

On August 4, 2020, Plaintiff's attorney sent a letter to Defendant stating, in pertinent part, the following: . . . "despite happily accepting $28,100.00 of Ms. Prete's money, you indicated that you were no longer willing to provide the agreed-upon services. You cited, among other things, the prohibition on public gatherings enacted by the State of New York in response to the spread of COVID-19, as well as certain related restrictions".

Paragraph 13 in the contract stated that

Caterer shall have no responsibility or liability for failure to supply any service or to otherwise comply with this contract when prevented from doing so by strike, fire, mechanical or electrical failure, accidents or any cause beyond Caterer's reasonable control or by orders or regulations of any governmental authority, or by failure caused by fuel supply, water, gas, electricity, air conditioning, or any other facility or energy shortage or malfunction.

Paragraph 16 provides that:

Failure to make any required payments shall in no way affect the validity of this contract. Patron agrees to make said payment or payments on account when due and shall be liable, regardless of whether or not he has cancelled this contract Notwithstanding the foregoing, Caterer shall have the right, at its election, in the event Patron fails to pay any part of the payment on account when due, to cancel this contract without further liability and retain any portion of the payment on account already paid as liquidating damages regardless of whether or not the room is rebooked.

Paragraph 17 of the contract provides that:

In the event Patron cancels or breaches this agreement for any reason whatsoever, or upon written cancellation by Patron, Caterer has the immediate right to book another affair for the date contracted for, without notice to the Patron and without any release from the Patron. The price, for which the Caterer books such affair, be such price more or less that the price under this contract, is entirely within sole and absolute discretion of the Caterer. The rebooking of another affair shall in no way affect Caterer's right to retain the payment on account and other payments, or any other right herein provided for. Any agreement wherein it is claimed that in consideration of Patron permitting Caterer to retain the payment on account, or re-book the affair, the Caterer has released Patron from the contract, shall be null and void and of no force or effect, unless the agreement be in writing and signed by Caterer.

Paragraph 18 of the contract provides:

Cancellation fee: if Patron cancels this contract and the Caterer does re-book the room on that date and time, at an equal or greater contract price, the Patron is liable for a cancellation fee of $1,000.00 plus actual expenses reasonably incurred.

Paragraph 19 of the contract provides that:

If Patron cancels this contract and the Caterer cannot re-book the date, the Patron is liable for the total contract price including banquet charge, less the direct food and direct labor expenses.

Paragraph 20 of the contract provides that:

If Patron cancels this contract and the Caterer does re-book the room at the same date and time at a lower contract price, than the original contract, then the patron is liable for the difference in contract amounts including banquet charges less the direct costs attributed to food and labor for that difference. (ex: original contract amount [including banquet charge] less rebooked contract amount [including banquet charge] less the direct food and the direct labor cost on that difference.)

Paragraph 23 provides that:

Caterer has the right to substitute another room in lieu of the room contracted for, if such room is unavailable due to fire, water damage, accident, catastrophe or due to any other circumstances including unintentional errors in booking a room previously contracted for. If no room is available, Caterer shall have the option of cancelling this contract without further liability, or transferring the affair to other premises with Patron's approval in which event contract shall remain in full force and effect.

In opposition, Defendant argues that Plaintiff failed to establish her prima facie entitlement to summary judgment. Pursuant to Paragraph 13 and 16 in the contract, Defendant argues that it is entitled to retain the Plaintiff's security deposit because the event was postponed due to the ongoing Covid-19 Pandemic which prevented it from providing the services agreed to in the contract. Defendant further argues that after Plaintiff cancelled the event through her attorney's letter, she did not wish to re-book the event. Defendant claims that Plaintiff breached the contract by rejecting its offer to re-schedule her wedding for a full 100% credit at no extra cost. Defendant further argues that summary judgment is premature because discovery is necessary to determine what amount of the deposit should be returned to Plaintiff and the amount it is entitled to for overhead retention it incurred.

The proponent of a summary judgment motion must tender evidentiary proof in admissible form eliminating any material issues of fact from the case (*see* Alvarez v Prospect Hosp., 68 NY2d 320 [1986]). Once this showing has been made, the burden shifts to the non-moving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution (*see* Alvarez v Prospect Hosp., supra; Zuckerman v City of New York, 49 NY2d 557 [1980]). Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*see* Winegrad v New York Univ. Med. Ctr., 64 NY2d 851, 853 [1985]).

"[A] contract is to be construed in accordance with the parties' intent, which is generally discerned from the four corners of the document itself" (Woodmere Rehabilitation & Health Care Ctr., Inc. v Zafrin, 197 AD3d 1263 [2d Dept. 2021]). As such, "a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms" (id.). Furthermore, "[i]mplicit in all contracts is a covenant of good faith and fair dealing in the course of contract performance" (id.). "Encompassed within the implied obligation of each promisor to exercise good faith are any promises which a reasonable person in the position of the promisee would be justified in understanding were included" (id.).

Here, the Court finds that Plaintiff established her prima facie entitlement to summary judgment through the submission of her papers. The Court further finds that Defendant failed to raise any triable issues of fact. In accordance with Paragraph 13 in the contract, Defendant declined to provide the agreed upon services due to the COVID-19 Pandemic. However, contrary to Defendant's claims, Paragraph 13 only addressed the circumstances concerning its responsibility or liability for failing to provide the agreed upon services, and did not address whether Plaintiff is entitled to return of her down payment. The Court further finds Defendant's reliance upon Paragraph 16 on the contract is misplaced. Paragraph 16 provides that if Plaintiff fails to pay any part of the payment when due, Defendant may cancel this contract without further liability and retain any portion of the payment on account already paid as liquidating damages regardless of whether or not the room is rebooked. However, Defendant did not claim that Plaintiff failed to remit any part of the payment due pursuant to the term so the contract. Consequently, Defendant failed to establish that it was entitled to cancel the contract and retain the down payment, because it did not allege that Plaintiff failed to make a payment pursuant to the terms of the contract. Moreover, Defendant failed to submit any evidence setting forth efforts it made to re-book the event and that Plaintiff rejected its offer beyond these claims in its attorney's affirmation.

Furthermore, it is well settled that parties to an agreement may provide for the payment of liquidated damages upon its breach, and such damages will be upheld if (1) the amount fixed is a reasonable measure of the probable actual loss in the event of breach, and (2) the actual loss suffered is difficult to determine precisely (see, Truck Rent-A-Center v Puritan Farms 2nd, 41 NY2d 420). However, if the liquidated damages do not bear a reasonable proportion to the loss actually sustained by a breach, they will constitute an unenforceable penalty (Consolidated Rail Corp. v MASP Equip. Corp., 67 NY2d 35; Wirth & Hamid Fair Booking v Wirth, 265 NY 214), as follows: "If the amount stipulated in the liquidated damage clause is manifestly disproportionate to the actual damage, then its purpose is not to 'provide fair compensation but to secure performance by the compulsion of the very disproportion.' Thus, the rule has evolved that when the damages flowing from the breach of a contract are easily ascertainable, or the damages fixed are plainly disproportionate to the injury, the stipulated sum will be treated as a penalty but, where they are uncertain, or difficult, if not incapable, of ascertainment, then a provision liquidating them in advance of loss will be enforced, if the amount liquidated bears a reasonable proportion to the probable loss. Whether the sum stipulated represents a liquidation of the anticipated damages or a penalty is a question of law, with due consideration for the nature of the contract and the attendant circumstances. Moreover, the agreement should be interpreted as of the date of its execution, not the date of its breach".

Liquidated damages clauses are suited to factual situations where there is uncertainty concerning the measure of damages (see, Morgan Servs. v Lavan Corp., 59 NY2d 796, 797 [the liquidated damages clause in a contract for the rental of uniforms held valid in an action for loss of future profits in that it "bore a reasonable relation to the amount of probable actual harm for breach of that contract, there being uncertainty concerning the re-rental or sale value of the uniforms"]). However, where there is doubt as to whether a provision constitutes an unenforceable penalty or a proper liquidated damage clause, it should be resolved in favor of a construction which holds the provision to be a penalty (City of New York v Brooklyn & Manhattan Ferry Co., 238 NY 52, 56; see also, Schiffman v Deluxe Caterers, 100 AD2d 846).

Here, defendant contends that it was entitled to keep the deposit by virtue of what it characterizes as a liquidated damages clause in the contract. However, defendant has neither claimed nor shown it had expended any money or labor in performing the contract, nor lost a potential customer for the date in question by holding it for the plaintiff. Without such proof, there is no proof that it sustained any damages. Accordingly, the Court views the contract's liquidated damages clause as an unenforceable penalty irrespective of its characterization by the defendant (Quaker Oats Co. v. Reilly, 274 A.D.2d 565).

The Court also finds that the terms in Paragraph 23 are unenforceable, because it lacks any mutual obligation to cancel the contract. An agreement is illusory, and therefore unenforceable, if it lacks mutuality of obligation (see Dorman v Cohen, 66 AD2d 411, 415 [1stDept. 1979). "There is no mutuality of obligation where one party can terminate his promise at will (id. ["the plaintiffs, but not defendants, ha[d] the option to break the agreement" thereby the agreement was "illusory for lack of mutual obligation," since "plaintiffs did not, in effect, bind themselves to do anything"]; see also Cari, LLC v 415 Greenwich Fee Owner, LLC, 91 AD3d 583 [1st Dept 2012]). Here, Paragraph 23 provides, in pertinent part, that Defendant can cancel the contract at any time by informing Plaintiff that the reserved room is "unavailable" due to, among other things, "circumstances including unintentional errors in booking a room previously contracted for". This permits Defendant to cancel the contract at any time unilaterally at any time at will, and as such, is illusory due to its lack of mutual obligation. Finally, the Court further finds that Defendant failed to satisfy its burden of demonstrating that Plaintiff's motion for summary judgment is premature, since "[t]he mere hope or speculation that evidence sufficient to defeat the motion might be uncovered during discovery is an insufficient basis for denying the motion" (Toltchelnikova v Cmty. Recycling, 197 AD3d 677 [2d Dept. 2021]; Skura v Wojtlowski, 165 AD3d 1196 [2d Dept. 2018]).

Based on the above, the motion is granted, and Plaintiff is granted judgment in its favor and against Defendant in the amount of sum of $28,100.00 plus interest from July 11, 2019, together with costs and disbursements.

DATED: September 13, 2022

ROBERT I. CALORAS, J.S.C.

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