

**Chew v Chang**

2023 NY Slip Op 30091(U)

January 4, 2023

Supreme Court, Kings County

Docket Number: Index No. 527849/2022

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF KINGS : CIVIL TERM: COMM. PART 8  
 -----X

RAYLENE CHEW, STEPHEN SHAN, SIDDHANTA  
 DANGE and EVAN KATZ,

Plaintiffs, Decision and order

- against -

Index No. 527849/2022

JESSICA CHANG,

Defendant,

January 4, 2023

-----X  
 PRESENT: HON. LEON RUCHELSMAN

The defendant has moved pursuant to CPLR §3211 seeking to dismiss the cause of action for breach of contract on the grounds the contract in question was vague and in any event illegal. The plaintiffs oppose the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

#### Background

On September 29, 2016 the defendant entered into an employment agreement with non-party Samsara Networks Inc. Paragraph 4 of that agreement stated that the defendant had the option to purchase 7450 shares of the company's common stock and such purchase was required to be in compliance with the company's 2015 equity incentive plan (see, Agreement, ¶4 [NYSCEF Doc. No. 7]). The equity incentive plan stated that "although this Plan is intended to be a written compensatory benefit plan within the meaning of Rule 701, grants may be made pursuant to this Plan that do not qualify for exemption under Rule 701" (see, Equity Incentive Plan, ¶¶1, 9.2 [NYSCEF Doc.

No. 8)). Thus, the plan required compliance with Rule 701 of the Securities Act of 1933 (17 CFR §230.701) before any transfers of shares could be allowed. Rule 701 of the Securities Act generally prohibits the transfer of unregistered shares subject to exceptions not applicable here.

Thus, according to the Verified Complaint, on March 17, 2019 the parties entered into a contract for the purchase of stock options. The agreement allowed the defendant to exercise the right to purchase 4,502 options (see, Agreement, ¶2 [NYSCEF Doc. No. 3]). Paragraph 5 of the agreement stated that "each party member can decide when to sell their portion of the options" (id). Moreover, the agreement provided that upon the sale of such options the defendant was required to return money given to her for the purchase of such options including taxes owed and that any excess would be split evenly among the parties (see, Agreement, ¶¶6,7 [id]). The Verified Complaint alleges that on March 2, 2022 the plaintiffs demanded the defendant sell her stock and the defendant refused. The plaintiffs commenced this action alleging breach of contract and unjust enrichment. The defendant has now moved seeking to dismiss the breach of contract cause of action. Specifically, the defendant asserts that pursuant to Rule 701 of the Securities Act the defendant was not permitted to sell unregistered shares. Thus, any requirement she do so was illegal rendering the contract unenforceable in a court of law. Consequently, the defendant argues that cause of action must be

dismissed. The plaintiffs oppose the motion to dismiss.

#### Conclusions of Law

It is well settled that upon a motion to dismiss the court must determine, accepting the allegations of the complaint as true, whether the party can succeed upon any reasonable view of those facts (Ripa v. Petrosyants, 203 AD3d 768, 160 NYS3d 658 [2d Dept., 2022]). Further, all the allegations in the complaint are deemed true and all reasonable inferences may be drawn in favor of the plaintiff (BT Holdings, LLC v. Village of Chester, 189 AD3d 754, 137 NYS2d 458 [2d Dept., 2020]). Whether the complaint will later survive a motion for summary judgment, or whether the plaintiff will ultimately be able to prove its claims, of course, plays no part in the determination of a pre-discovery CPLR §3211 motion to dismiss (see, Redwood Property Holdings, LLC v. Christopher, \_AD3d\_, 177 NYS3d 895 [2d Dept., 2022]).

A careful review of the contract at issue demonstrates that it does not force the defendant to sell stock at the whim of the plaintiffs. Although Paragraph 19 of the Verified Complaint states that "on or about March 2, 2022, Plaintiffs demanded that Defendant sell the stock, thereby exercising their right under the Agreement" (id., [NYSCEF Doc. No. 2]) there is no such requirement under the contract. The purported language of the contract is contained in paragraph 5 which as noted stated that "each party member can

decide when to sell their portion of the options" (id). However, that clause did not grant the plaintiffs authority to compel the defendant to sell her shares in violation of Rule 701 of the Securities Act of 1933 and the equity incentive plan (see, Equity Incentive Plan, ¶9.1 [NYSCEF Doc. No. 8]). Rather, the agreement merely permitted each party to sell "their" portion of the options whenever they chose to do so. Clearly, that clause merely allows each party to sell their portion of the options and does not permit the plaintiffs to force the defendant to sell her options at plaintiff's discretion. There is nothing in that agreement which imposes upon the plaintiffs the right to force defendant to sell her options at plaintiff's choosing. Indeed, it is curious that in light of all the prohibitions against such sales, prohibitions imposed by law and by all the documents submitted the parties seek to force the existence of such a requirement and then argue whether or not that is illegal. To the extent this conclusion really is a determination the contract is vague and that key terms are absent rendering the contract unenforceable such arguments will be addressed presently. In any event, a simple reading of the agreement reveals no such compulsion and therefore there is no reason to address any illegality.

Considering no such requirement is imposed upon the plaintiffs ordering the defendant to so act at their whim any breach of contract must now be examined. Paragraph 20 of the

Verified Complaint states that after the demand to sell the options was forwarded and "despite due demand, Defendant has failed to fulfill her obligations under the Agreement and has refused to sell the stock at Plaintiffs' request in breach of Defendant's obligation under the Agreement" (id). As noted, there is no such possible breach since there is no language in the contract whereby the plaintiffs may compel the defendant to sell her options. The plaintiffs argue that upon the sale of such options, whenever they take place, the defendant would be required to share the proceeds of the sale with the plaintiffs. The plaintiffs assert that "the Agreement enabled Defendant to pay to Samsara the exercise price for her employee stock options and then repay Plaintiffs and split any profits" (see, Memorandum in Opposition, page 7 [NYSCEF Doc. No. 28]). To the extent the plaintiffs seek their share of any such profits based upon the sale of such options that allegation is not contained in the Verified Complaint at all. To be sure, the plaintiffs may have a claim for such profits upon the defendant's sale of her options, however, they cannot compel such sale and in any event have not alleged their right to such profits as a breach of the agreement. Since the breach of contract cause of action is based upon the allegation the defendant ignored the demand to sell her options, the breach of contract cause of action fails to state any claim.


Consequently, the motion seeking to dismiss the breach of

contract cause of action is granted.

So ordered.

ENTER:

DATED: January 4, 2023  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC