Spin Capital LLC v Katalyst Tech., Inc.
2023 NY Slip Op 33772(U)
October 24, 2023
Supreme Court, Kings County
Docket Number: Index No. 502098/2022
Judge: Leon Ruchelsman

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

SPIN CAPITAL LLC,

Plaintiff, Decision and order

- against - Index No. 502098/2022

KATALYST TECHNOLOGIES, INC., CODESOFT INTERNATIONAL INC. and RAHUL D. SHAH,

Defendants, October 24, 2023

PRESENT: HON. LEON RUCHELSMAN Motion Seq. #2, #3

The plaintiff has moved seeking summary judgement pursuant to CPLR §3212 arguing there are no questions of fact the defendants owe the money sought. The defendants have moved seeking discovery. The motions have been opposed respectively. Papers were submitted by the parties and after reviewing all the arguments this court now makes the following determination.

On October 6, 2021, the plaintiff a merchant cash advance funding provider entered into a contract with defendants who reside in Illinois. Pursuant to the agreement the plaintiff purchased $ 2,798,000 of defendant's future receivable for $2,000,000. The defendant Rahul Shah guaranteed the agreement. The plaintiff asserts the defendants stopped remittances in February 2022 and now owe $2,273,000. This action was commenced and now the plaintiff seeks summary judgement arguing there can be no questions of fact the defendants owe the amount outstanding and judgement should be granted in their favor. The defendants oppose the motion and have cross-moved seeking discovery.

Conclusions of Law

Where the material facts at issue in a case are in dispute summary judgment cannot be granted (Zuckerman v. City of New York, 49 NYS2d 557, 427 NYS2d 595 [1980]). Generally, it is for the jury, the trier of fact to determine the legal cause of any injury, however, where only one conclusion may be drawn from the facts then the question of legal cause may be decided by the trial court as a matter of law (Marino v. Jamison, 189 AD3d 1021, 136 NYS3d 324 [2d Dept., 2021).

The only issue raised in opposition to the motion is that there are questions of fact whether the guaranty executed by defendant Shah is proper. Specifically, the defendant argues that a representative of the plaintiff assured Shah the plaintiff would not seek to enforce the guaranty until other guaranty's were satisfied. The defendant argues he only signed the guaranty based upon that representation. Consequently, there are questions whether he was fraudulently induced into signing the guaranty. Thus, the motion seeking summary judgement must be denied. Further, the defendant seeks discovery in efforts to prove such communications took place.

It is well settled that a merger clause which states the agreement represents the entire understanding between the parties is "to require full application of the parole evidence rule in order to bar the introduction of extrinsic evidence to vary or

contradict the terms of the writing" (Primex International Corp., v. Wal-Mart Stores Inc., 89 NY2d 594, 657 NYS2d 385 [1997]). In this case the agreement states that "this Agreement and the Security Agreement and Guaranty hereto embody the entire agreement between Merchant Guarantor(s)and Corporate Guarantor(s)s and SPC and supersede all prior agreements and understandings relating to the subject matter hereof" (see, Revenue Purchase Agreement, ¶4.9 [NYSCEF Doc. No. 26]).

The defendant asserts that the plaintiff promised not to enforce the guaranty unless certain conditions, not contained within the agreement, were satisfied. However, if true, that promise is not contained within the agreement itself and cannot, therefore, be considered. Thus, parole evidence cannot be used to modify or vary the terms of a written agreement that contains a merger clause (HSBC Bank USA N.A. v. Strong Steel Door, 36 Misc3d 1207(A), 954 NYS2d 759 [Supreme Court Kings County 2012]). Moreover, there is no ambiguity regarding the agreement that might permit oral modifications (Goetz v. Trinidad, 168 AD3d 688, 91 NYS3d 513 [2d Dept., 2019]).

Furthermore, Section 4.1 of the agreement states that "no modification, amendment, waiver or consent of any provision of this Agreement shall be effective unless the same shall be in writing and signed by SPC" (see, Revenue Purchase Agreement, ¶4.1 [NYSCEF Doc. No. 26]). Thus, there can be no reasonable reliance

upon any oral communications allegedly made by the plaintiff's representative (Aris Industries Inc., v. 1411 Trizechahn-Swig LLC, 294 AD2d 107, 744 NYS3d 362 [1st Dept., 2002]). Therefore, the defendant could not possibly establish any fraudulent inducement since the defendant cannot demonstrate he reasonably relied upon any statements made by the plaintiff's representative.

Consequently, the motion seeking summary judgement is granted. The cross-motion seeking any discovery is denied as moot.

So ordered.

ENTER:

DATED: October 24, 2023
Brooklyn N.Y.

Hon. Leon Ruchelsman
JSC