

COR-IBS, Inc. v Valley Natl. Bank

2024 NY Slip Op 32493(U)

July 16, 2024

Supreme Court, New York County

Docket Number: Index No. 650350/2019

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES

PART 59

Justice

-----X

COR-IBS, INC.,

Plaintiff,

- v -

VALLEY NATIONAL BANK,

Defendant.

-----X

INDEX NO. 650350/2019

MOTION DATE 07/23/2021

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 47, 48, 49, 50, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67

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

ORDER

Upon the foregoing documents, it is

ORDERED that to the extent it seeks partial summary judgment as to liability on the first cause of action for breach of contract and specific performance, the motion for summary judgment of plaintiff COR-IBS, Inc. is granted; and it is further

ORDERED that to the extent that it seeks dismissal of the counterclaim for unjust enrichment interposed in defendant's answer, the motion for summary judgment of plaintiff is denied; and it is further

ORDERED that to the extent that it seeks partial summary judgment as to liability on its counterclaim for unjust enrichment,

the cross-motion of the defendant Valley National Bank is granted; and it is further

ORDERED that an immediate trial of the issues regarding damages shall be had before the court; and it is further

ORDERED that defendant shall, within twenty (20) days from entry of this order, serve a copy of this order with notice of entry upon counsel for all parties hereto and upon the Clerk of the General Clerk's Office and shall serve and file with such Clerk a note of issue and statement of readiness and shall pay the fee therefor, and such Clerk shall cause the matter to be placed upon the calendar for such trial before the undersigned; and it is further

ORDERED that such service upon the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website); and it is further

ORDERED that the defendant shall return by overnight courier the subject software to plaintiff Cor-IBS, Inc., within ninety (90) days after the receipt of instructions from the plaintiff.

DECISION

In its prior decision on defendant's pre-joinder motion to dismiss, this court held that the ALMeter License Agreements (the "ALM Agreements") and the Paragon Support Services Agreement (the

"Paragon Service Agreement", collectively, the "Agreements") at issue in the instant action are within the purview of General Obligations Law ("GOL") § 5-903 and thus, the plaintiff COR-IBS, INC. ("COR-IBS") was obligated to provide the defendant Bank Leumi USA (now and hereinafter "Valley National Bank") notice of the automatic renewals of the Agreements "at least fifteen days and not more than thirty days" prior to the renewal. (NYSCEF Doc. No. 42).

COR-IBS concedes that it did not do so for either of the Agreements in its reply to Valley National Bank's counterclaim for unjust enrichment. (NYSCEF Document No. 53, ¶ 55 [COR-IBS "admits that Plaintiff did not serve any notices under New York General Obligations Law § 5-903. . ."]).

"The purpose of the notice provision is to protect service recipients from the harm of unintended automatic renewals of contracts for consecutive periods." Healthcare I.Q., LLC v Tsai Chung Chao, 118 AD3d 98, 104 (1st Dept 2014). As a result of the failure to comply with the notice requirement of GOL § 5-903, the Agreements were never renewed. Therefore, defendant Valley National Bank is entitled to terminate the Agreements at any time.

However, while the Agreements were not renewed, defendant National Valley Bank must compensate COR-IBS to the extent such defendant knowingly accepted the benefits of the services after it

terminated the Agreements. See Concourse Nursing Home v Axiom Funding Group, Inc., 279 AD2d 271 (1st Dept 2001).

Additionally, while the court in Concourse found that the plaintiff service recipient therein was not entitled to a refund because it continued to use the equipment after terminating the lease (id.), here, National Vally Bank's unrefuted testimony establishes that such defendant ceased using the services provided under the Paragon Service Agreement and ALMeter License Agreements on November 27, 2018 and February 8, 2019, respectively. (NYSCEF Document Number 57, 5-6, 11). COR_IBS submits no evidence that tends to show that Valley National Bank continued to use the software past these dates. Nor does COR_IBS dispute that National Vally Bank paid for services under the Paragon Service Agreement and ALMeter Agreements through March 14, 2019 and February 2, 2019, respectively.

Thus, an assessment of damages trial to determine the pro-rata refund to which National Valley Bank is entitled for the unused services under the Paragon Service Agreement for the period of November 28, 2018 to March 14, 2019, and any offsets of the cost of services for the additional days that National Valley Bank continued to use the ALMeter License services for the period of February 3, 2019 to February 8, 2019 must be held. There is no dispute that Valley National Bank did not compensate COR-IBS for a period of six days of usage of the ALMeter services software.

With respect to Valley Bank National's failure to return the software associated with the Agreements, there is no evidence that COR-IBS ever demanded the return or collection of the software. Nor does the record contain any notice by COR-IBS to defendant of defendant's purported breach; nor did plaintiff provide National Valley Bank with an opportunity to cure as provided for in the Agreements. Nevertheless, the court shall direct that defendant return the software upon receipt of instructions from COR-IBS on how to initiate that process.

Debra A. James

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7/16/2024

DATE

DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: