O'Brien v Sagbolt, LLC
2024 NY Slip Op 34986(U)
March 25, 2024
Supreme Court, Warren County
Docket Number: Index No. EF-2018-65232
Judge: Martin D. Auffredou
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
SUPREME COURT COUNTY OF WARREN

EVELYN O'BRIEN, JAMIE LYNN PATCHETT, CHRIS FORTNER, MICHAEL PETTA, JESSICA TAYLOR-MACKRODT, and HEATHER MARTIN on Behalf of Themselves and Others Similarly Situated,

Plaintiffs,

-against-

SAGBOLT, LLC; OCEAN PROPERTIES, LTD; PORTSMOUTH CORPORATE FINANCIAL SERVICES, INC.; PATRICK WALSH; and THOMAS GUAY,

Defendants.

DECISION AND ORDER

Index No. EF-2018-65232
RJI No. 56-1-2018-0183

Appearances:

Chaudhuri Law, PLLC, New York City (*Ananda N. Chaudhuri* of counsel); *Law Office of Joseph T. Moen*, Saratoga Springs (*Joseph T. Moen* of counsel); and *Fleischman, Bonner & Rocco, LLP*, White Plains (*Keith M. Fleischman* and *Tyler E. Van Put* of counsel), for plaintiffs.

Greenberg Traurig, LLP, New York City and Tampa, Florida (*Michael J. Slocum*, and *Catherine H. Molloy* of the Florida bar, admitted pro hac vice, of counsel), for Sagbolt, LLC; Ocean Properties, Ltd.; Patrick Walsh; and Thomas Guay, defendants.

AUFFREDOU, J.

Motion by plaintiffs to enforce a class-action settlement agreement.

The facts of this case are more fully set forth in this court's prior decisions and orders herein, in particular, the decision and order dated August 19, 2021, in which the court certified the proposed class, appointed the named plaintiffs as class representatives, and appointed class counsel. In brief, the class members are "[a]ll hourly waitstaff employees who worked a catered event at The Sagamore Resort [(hereinafter Sagamore)] at any time from April 13, 2012 to December 31, 2019," and defendants were the joint employers of the class members during the said time period. Defendants are alleged to have misappropriated the class members' tips and failed

to pay them mandatory overtime compensation for the foregoing work.[1] This litigation was resolved by a settlement agreement, which the parties fully executed as of about July 28, 2022, the court preliminarily approved on August 30, 2022, and the court finally approved on January 20, 2023 after a fairness hearing.

The settlement agreement required defendants to fund a qualified settlement fund (QSF) with a gross settlement sum (GSS) of $1.2 million, from which a claims administrator would pay class counsels' fees and costs, service payments to the named plaintiffs, and the fees and expenses of the claims administrator, with the remainder—or net settlement sum (NSS)—being distributed to the class members on a pro rata basis, based upon the number of hours they worked during the period of time at issue. The settlement agreement defines the QSF as "the account established and controlled by the Claims Administrator for the purposes of retaining and distributing" the settlement to the class members. The definition further recites that the claims administrator "shall control the [QSF]."

Notwithstanding these provisions, after the court's final approval of the settlement, defendants began cutting checks to the individual class members from an account they controlled, with the intention of providing the cut checks to the claims administrator for distribution. They never funded the QSF. A dispute naturally arose amongst the parties about whether defendants' conduct was a breach of the settlement agreement. As the parties' discussions on the issue continued, the time to distribute checks to the class drew closer, so they agreed to allow the claims administrator to distribute the checks cut by defendant, with plaintiffs reserving the right to seek enforcement of the settlement agreement.

Plaintiffs have now so moved. At issue is what to do with that portion of the $1.2 million

[1] The settlement agreement provides that defendants have admitted no wrongdoing but have agreed to fund the settlement in order to terminate this litigation.

that remains unclaimed due to returned or uncashed checks (hereinafter "the residual"). Plaintiffs assert that defendants' failure to fund the QSF and thereby give control of the settlement funds to the claims administrator is a material breach of the agreement and frustrates the intent of the agreement to distribute the NSS to the class members pro rata by preventing them from taking additional steps to contact class members whose checks were returned or uncashed and from then redistributing any remaining residual to the participating class members pro rata. Defendants assert that a clause in the settlement agreement that provides that payment to a class member "will cause . . . Sagamore to issue" an IRS form W-2 to the class member (hereinafter "the tax form provision") requires them to retain control of the settlement funds and cut the checks to the class members; and that their control of the settlement funds leaves the residual to their discretion such that they may either seek to redistribute it or simply keep it. Both sets of parties assert that the agreement unequivocally supports their position.

Upon consideration of plaintiffs' memorandum of law in support of the motion, dated September 20, 2023; the affirmation of Ananda N., Chaudhuri, Esq., dated September 20, 2023, with exhibits; defendants' memorandum of law in opposition to the motion, dated November 3, 2023; the affirmation of Michael J. Slocum, Esq., dated November 3, 2023, with exhibit; plaintiffs' memorandum of law in reply, dated December 3, 2023; and the affirmation of Ananda Chaudhuri, Esq., dated December 3, 2023, with exhibits, decision is hereby rendered as follows.

Defendants' position cannot be squared with the plain language of the settlement agreement. Its conduct frustrated the core purpose and intent of the agreement and amounts to a unilateral revision of material terms thereof. Enforcement of the settlement agreement by this court is therefore warranted.

"A settlement agreement is a legally binding and enforceable contract subject to

enforcement in the same manner as any other contract" (*Majid v Hasson*, 213 AD3d 1175, 1176 [3d Dept 2023]). "'The fundamental, neutral precept of contract interpretation is that agreements are to be construed in accord with the parties' intent, and the best evidence of what parties to a written agreement intend is what they say in their writing'" (*Piccirilli v Yonaty*, 204 AD3d 1322, 1323 [3d Dept 2022], quoting *Catlyn & Derzee, Inc. v Amedore Land Developers, LLC*, 132 AD3d 1202, 1204 [3d Dept 2015] [internal quotation marks, brackets and citations omitted]). "'Unless a contract is ambiguous, a court must look to the plain language of the instrument itself to give effect to the parties' intentions'" (*Piccirilli*, 204 AD3d at 1323, quoting *Karol v Polsinello*, 127 AD3d 1401, 1403 [3d Dept 2015] [internal quotation marks and citations omitted]. "All parts of a contract must be read in harmony to determine its meaning" and undue emphasis should not be placed on particular words or phrases (*Bombay Realty Corp. v Magna Carta, Inc.*, 100 NY2d 124 [2003]; *see Bailey v Fish & Neave*, 8 NY3d 523, 528 [2007]; *Piccirilli*, 204 AD3d at 1323).

The settlement agreement evinces an unmistakable intent to have defendants fund the QSF, giving control of the settlement funds to the claims administrator. The very definition of the QSF in the settlement agreement is sufficient for the court to reach this conclusion. The court also takes note, however, of paragraph 68 (a) of the agreement, which states: "Defendants shall not be obligated to create or maintain any type of settlement fund, and shall not be obligated to make any Settlement Payments to any Settlement Class Member, to Class Counsel, or to Named Plaintiffs." While not plainly preclusive of defendant's maintaining a settlement fund and making payments to class members from it, when read in harmony with the remainder of the document, it certainly suggests an intent that defendants not do so. But that is, of course, exactly what they have done. Defendants' conduct withheld the control over the funds that the claims administrator was unequivocally granted in the agreement and frustrated the evident intent of the agreement to have

the claims administrator pay each participating class member their pro rata share of the settlement funds, after paying counsel fees and costs, service fees and administration fees from the GSS.

Defendants' construction of the settlement agreement is based upon the tax form provision and proceeds upon the premise that, if they merely funded the QSF and allowed the claims administrator to issue the checks, they would not issue W-2 forms to class members but a 1099-R form to the claims administrator. Thus, they syllogize, the intent reflected in the agreement must be that they were to cut the checks from their own account, a process with which they went forward without informing anyone else of their intent until it was too late to change course. They conveniently extend this line of reasoning to justify their assuming control over the settlement funds in direct contravention of the plain terms of the settlement agreement already noticed and, from the conclusion that they have such control, further reason that they must then have the discretion to allow the residual to revert to them, ultimately reducing the amount paid in damages upon plaintiffs' claims. This reasoning is problematic, to say the least. Defendants fail to support the foundational premise that Sagamore could not issue W-2 forms unless defendants issued the checks with any legal authority in their papers. Their position belies any attempt to harmonize the tax form provision with the unequivocal provisions requiring them to fund a QSF that is controlled by the claims administrator. As plaintiffs suggest, Sagamore, which is notably not a defendant herein, could simply rely upon the claims administrator to satisfy its tax form obligation. Moreover, defendants' construction of the agreement places undue weight upon the tax form provision, preferring it to the irrational exclusion of terms that are far more material to the central purpose of the settlement agreement and address defendants' obligation to fund a QSF that is under the claims administrator's control far more directly. Based upon the foregoing, the court finds it appropriate to order defendants to remit the residual funds in their possession to the QSF

established by the claims administrator.

Turning, then, to what should be done with the residual, the settlement agreement plainly does not contemplate reversion of the funds to defendants. On the other hand, defendants claim that plaintiffs' plan to have the claims administrator make an additional effort to contact class members who have not claimed their funds then redistribute the remaining residual to participating class members pro rata also is not supported in the language of the agreement. The settlement agreement lacks specific provisions about what is to be done if checks are returned or uncashed. However, the court agrees with plaintiffs that the provisions requiring pro rata distribution of the NSS require the claims administrator to redistribute the residual to participating class members. The agreement also neither specifically authorizes nor specifically precludes the claims administrator from making a second effort to provide class members with their share of the settlement, but this, too, seems to the court to be a logical extension of the claims administrator's obligation to distribute the NSS pro rata to all those waitstaff who worked a catered event at Sagamore during the period at issue and who were therefore amongst the class of people allegedly harmed by defendants' conduct.

At best, and only if the tax form provision is read unharmonistically with the remainder of the settlement agreement, an ambiguity as to the fate of the residual exists, justifying the court's resort to extrinsic evidence of the parties' intent (*see Greene v Fast East Clifton Park, LLC*, 183 AD3d 1215, 1216-1217 [3d Dept 2020]). The settlement agreement provides that defendants shall not oppose plaintiffs' motion for preliminary approval so long as the "motion and supporting papers are consistent with the terms" of the agreement and, if defendants "disagree with any of the factual statements included . . . in the motion and supporting papers," they may so advise the court without opposing the motion. The affirmation of plaintiffs' counsel in support of the motion for preliminary

approval set forth that, if any checks were not cashed, "the remaining balance of the [NSS] that has not been paid out . . . shall be redistributed to participating Class members on a pro rata basis." Defendants neither opposed the motion nor advised the court that they disagreed with this statement, which therefore conclusively clarifies the parties' intent with respect to the residual.

Indeed, defendants' silence in response to the motion for preliminary approval is particularly concerning under the circumstances presented herein. When plaintiffs' interpretation of the settlement agreement's terms was presented to them, they did not speak up about their contrary interpretation. Rather, they harbored it throughout the approval process and acted upon it with no notice that they disagreed with the process envisioned by plaintiffs and the claims administrator until after they had begun cutting their own checks from an account other than the QSF that the claims administrator had established, occasioning a great deal of confusion and this otherwise unnecessary post-settlement litigation. For this reason, the court further finds, as plaintiffs argue, that defendants have breached the covenant of good faith and fair dealing that attaches to all contracts, and takes this opportunity to express its dissatisfaction with what appears to have been defendants' unilateral, self-serving and largely baseless revision of the settlement agreement (*see Michaels v MVP Health Care, Inc.*, 167 AD3d 1368, 1373 [3d Dept 2018]).

Any of defendants' arguments that are not specifically addressed herein have been examined and determined to be without merit. Based upon the foregoing it is hereby

ORDERED that plaintiffs' motion is granted in its entirety; and it is further

ORDERED that defendants shall account for the remainder of the $1.2 million settlement fund that remains in their possession and remit same to the claims administrator forthwith and in no event later than April 15, 2024; and it is further

ORDERED that the claims administrator shall, upon receipt of said funds, administer such funds and distribute them in a manner not inconsistent with this opinion and the terms of the settlement agreement.

The within constitutes the decision and order of this court.

Signed this 22nd day of March 2024, at Lake George, New York.

ENTER.

03/25/2024

HON. MARTIN D. AUFFREDOU
JUSTICE OF THE SUPREME COURT

Carri L. Black

The court is uploading the decision and order to the New York State Courts Electronic Filing System (NYSCEF). Such uploading does not constitute service with notice of entry (*see* 22 NYCRR 202.5-b [h] [2]).

Distribution:
Ananda N. Chaudhuri, Esq.
Joseph T. Moen, Esq.
Kieth M. Fleischman, Esq.
Tyler E. Van Put, Esq.
Michael J. Slocum, Esq.
Catherine H. Molloy, Esq.
Michael D. Billok, Esq.

O'Brien et al. v Sagbolt, LLC et al.
Warren County
Index No. EF2018-65232