SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MELISSA A. CRANE** **PART** 60M

Justice

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CONEY ISLAND AUTO HOLDINGS CORP. **INDEX NO.** 656816/2022

Plaintiff,

- v - Decision After Trial

PARTS AUTHORITY, LLC,

Defendant.

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Melissa A. Crane

This case turned on the narrow issue of whether or not the parties meant to include romanette (iii) in section 2.6(f) of their Asset Purchase Agreement dated July 8, 2021 (APA). Originally, the court believed that a mathematical example included in section 2.6(f) rendered that section ambiguous. After trial, however, and having analyzed the contract more closely, the court agrees with plaintiff that the provision is NOT ambiguous. Nor was (iii) left in the APA by mistake. However, plaintiff's interpretation ignores other provisions in the contract, such that it can only recover $3M, not the $8M+ it originally sought. Plaintiff is also entitled to its attorney's fees.

RELEVANT PROVISIONS

The principals from both sides agreed that they were aiming for 10x EBITDA of $3.5 million ($35M) as a purchase price. However, likely due to uncertainty about the amount of accounts receivable Coney Island would actually realize, the parties hedged the transaction with some complicated provisions.

OTHER ORDER – NON-MOTION

Accordingly, the deal started out with a transfer of all assets, including accounts receivable, with a flat payment. Section 2.1 of the APA entitled "Purchase and Sale of the Purchased Assets," covered that transfer. It states:

> In accordance with the provisions of this Agreement and except as set forth in Section 2.2, **at the Closing Sellers will sell, convey, assign, transfer and deliver to Purchaser, and Purchaser will purchase and acquire from Sellers**, free and clear of all Encumbrances, all of Sellers' right, title and interest in and to all of Sellers' properties and assets of every kind and description, whether real, personal or mixed, tangible or intangible, and wherever located (collectively, the "Purchased Assets"), including the following:
>
> (a) **all** notes and **accounts receivable**, and all open orders and open quotations placed by the Company in the Ordinary Course of Business prior to the Closing, including all notes, accounts receivable, open orders and open quotations described on Schedule 2.1(a), including all trade accounts receivable, credit card payments effective after the Closing Date, any other rights to payment from customers, and the full benefit of all security for such credit card payments or rights to payment;

(bold emphasis supplied)

Section 2.5, entitled "Consideration" detailed how PA was to pay Coney Island for the assets described in 2.1:

> "As **full consideration** for the Purchased Assets, Purchaser will: (i) pay to the Company **up to $35,000,000** (the "Earnings Component") structured as follows:
> (A) an **initial** cash payment payable to the Company at the Closing **in the amount of $24,000,000** (the "Base Purchase Price Cash Component"), **as adjusted pursuant to Section 2.6**; (B) **a subsequent cash payment in an amount of up to $6,000,000 (the "Hold Back Amount") payable to the Company in accordance with the provisions of Section 2.6**; and (C) the Earn-Out Payments, if any, payable to the Company in accordance with the provisions of Section 2.7; (ii) pay to the Company the Export Business Sales Payments, if any, in accordance with the provisions of Section 2.8 (together with the Earnings Component, the "Purchase Price").

(bold emphasis supplied)

Thus, as relevant here, the "full consideration" contemplated: (1) a "Purchase Price" capped at $35M; (2) an initial "Base Purchase Price Cash Component" of $24M and (3) a

potential subsequent payment via section 2.6, governing the "Hold Back Amount" that in no event would exceed $6M. The agreement also contemplated an additional upward adjustment under (C) quoted above, regarding Earn-Out Payments, but that section is not part of this dispute. The relevant takeaway from this language is the parties always anticipated further payments.

This dispute centers around the meaning and effect of section 2.6(f) governing the calculation of the second Hold Back amount. There were two components to the Hold Back. 2.6(a) governs the first Hold Back component. PA paid the full $3M.

> "Section 2.6 Payment of the Hold Back Amount.
> (a) As promptly as reasonably practicable following the Closing, but in any event **not more than 60 days after the Closing Date** or the date that is five Business Days after receipt by Purchaser of any Tax clearances issued by the States of New York and New Jersey in connection with the consummation of the Transactions, whichever is later, **Purchaser shall pay to Seller an amount equal to 50% of the Hold Back Amount ($3,000,000), subject to the adjustment** and any dispute resolution provisions as set forth in Sections 2.6(b)–(e).[1]
>
> 2.6(e) refers to a "Final Adjustment" and states:
>
> Upon a final determination of the Closing Date Net Working Capital Amount pursuant to this Section 2.6, the Base Purchase Price Cash Component shall be recalculated (the "Final Adjustment") using the amount of the Closing Date Net Working Capital Amount set forth in the Final Closing Statement.[2] For purposes of adjusting the Base Purchase Price Cash Component, if the Closing Date Net Working Capital Amount is greater than the Target Net Working Capital Amount by $200,000 or more, **the Base Purchase Price Cash Component shall be increased by an amount equal to such excess, and Purchaser shall pay to the Company the sum of such amount, plus the one-half of the Hold Back Amount ($3,000,000) payable under Section 2.6(a),** by wire transfer or delivery

[1] Provisions (b)- (e) described how PA was to calculate the Proposed Final Closing Statements and methods for Coney Island to challenge those calculations. There is also a discussion of how to figure out the value of the inventory.

[2] "Net Working Capital Amount" means (a) the accounts receivable of Sellers at the Effective Time, plus (b) the Inventory Value of the Inventories of Sellers at the Effective Time, minus (c) the accounts payable (but expressly excluding accounts payable that are past due) of Sellers at the Effective Time, in each case determined in accordance with GAAP and in a manner consistent with the sample calculation set forth on Exhibit B, without giving effect to any changes therein relating to or resulting from the closing of the Transactions; provided that notwithstanding anything to the contrary contained herein, in no event will the determination of "Net Working Capital Amount" include any (i) Excluded Assets, including any cash or cash equivalents, (ii) Excluded Liabilities, or (iii) Obsolete Inventory, including the Obsolete Inventory listed in Section 3.8(a) of the Sellers' Disclosure Schedule.

> of other immediately available US funds within five Business Days after the date on which the Proposed Final Closing Statement is finally determined pursuant to Section 2.6(d). . .
> For purposes of clarification it is agreed and understood that if the difference between the Target Net Working Capital Amount and the Closing Date Net Working Capital Amount is $200,000 or less, in either direction, then no amount shall be payable by either the Company, on the one hand, or Purchaser, on the other hand, to the other party **in respect of the Final Adjustment**. If the Company owes any amount to Purchaser hereunder in respect of the Final Adjustment, (i) the Shareholder hereby unconditionally guarantees payment of such amount, and (ii) **at the sole discretion of Purchaser, such amount may be offset against the one-half of the Hold Back Amount to be paid by Purchaser to the Company pursuant to Section 2.6(f).**
> (bold emphasis supplied)

PA contends that, pursuant to this section, it overpaid the first Hold Back by $1.6M.

Where the parties primarily disagree is with respect to the second Hold Back amount. Section 2.6(f) governs the second Hold Back. This section depends on the realized account receivables 270 days from the Closing Date. It states:

> **(f) Within five Business Days following the date that is 270 days following the Closing Date, Purchaser will pay to the Company (i) one-half of the Hold Back Amount ($3,000,000) minus (ii) the Uncollected Receivables, plus (iii) any accounts receivable that are collected by Purchaser during the 270-day period immediately following the Closing Date, minus (iv) any amount previously offset pursuant to the last sentence of Section 2.6(e) against the portion of the Hold Back Amount to be paid by Purchaser to the Company pursuant to this Section 2.6(f)**; provided, however, that if the amount so-calculated in accordance with this sentence is a negative number, then the Company will promptly pay to Purchaser, by wire transfer of immediately available funds to the account(s) specified in writing by Purchaser, the absolute value of such amount, and the Shareholder hereby unconditionally guarantees such payment. Any portion of the Hold Back Amount not paid by Purchaser to the Company in accordance with the foregoing sentence will be retained by Purchaser. **By way of example, and not limitation, if the Company has $3,000,000 of Closing Date Accounts Receivable and Purchaser collects $2,500,000 of such Closing Date Accounts Receivable within 270 days following the Closing Date, then Purchaser will pay to the Company an additional $3,000,000 minus $500,000 of uncollected Closing Date Accounts Receivable**.
> (bold and underlined emphasis supplied)

It is undisputed that the amount of account receivables collected during the 270-day period following the Closing Date was $7,164,486. It is also undisputed that uncollected account receivables was $1,719,395M. The difference is $5,445.091.

ANALYSIS

Both sides take rather outlandish interpretations of section 2.6(f). PA, for its part, claims that (iii) underlined above was mistakenly left in the agreement. Despite the language clearly indicating that the parties planned for an upward adjustment of the Base Purchase Price and additional Hold Back payments, PA argues that including (iii) means that PA pays for accounts receivables twice, once with the $24M Base Purchase Price and then again under (iii). PA points to the example, (bolded further down in paragraph 2.6(f) supra), that does not appear to add any account receivables back in.

PA is incorrect. The example does not render the agreement ambiguous, it merely is a poor fit for what actually occurred. This is because the example uses an amount of $2,500,000 in collected account receivables. This is an amount that is under the $3M cap on the Hold Back amount. There would be nothing to add back in if $2.5M were the number. The $3M would cover the entire $2.5M. However, here, the actual collections were over $7M, while uncollected account receivables were $1.2, leaving a net of $5.445,091. This is an amount far in excess of the $3M cap. Accordingly, by the plain terms of section 2.6(f), PA owes Coney Island $3M under the second Hold Back amount. This sum remains even after subtracting out the $1.6 that PA claims it overpaid on the first Hold Back because $5.4 M -$1.6 M = $3.8M, an amount that remains in excess of $3M.

PA reads section 2.6(f) to minus the $1.7 M in uncollected receivables from $3M leaving merely $1.3M owed to Coney Island under section 2.6(f). Then, PA argues, it owes nothing,

because PA overpaid by $1.6M on the first holdback. To accomplish this, however, PA must read (iii) completely out of the agreement.

To rid itself of the inconvenience of (iii), PA makes a convoluted argument about the net working capital provision and that that its own attorneys accidentally left (iii) in from prior drafts. However, to reform a contract, a mistake cannot be unilateral (see *Angel v Bank of Tokyo*, 39 AD3d 368,369][1st Dep't 2007]). Moreover, PA's proof is far from the clear and convincing evidence necessary to prove a mutual mistake (*ACP Hous. Assocs., L.P. v. ABJ Milano, LLC*, 231 A.D.3d 609, 610, [1st Dep't 2024]["A claim for reformation based on mutual mistake must be supported by clear and convincing evidence that the agreement did not accurately express the parties' intention"]).

This is especially so in light of the plain language in the rest of the APA that clearly contemplated adjusting the Base Purchase Price and two future Hold Back payments up to $6M depending on receivables collected. For example, section 2.5 describes "full consideration" as "up to $35,000,000." The "Base Purchase Price Component" was a "initial" amount of $24M and was aways subject to adjustment pursuant to section 2.6. Because of this same language, PA's argument that it would pay twice for the accounts receivables does not hold up. The APA always contemplated an increase to what PA initially paid for account receivables should the recovery of those account receivables be high enough. This is not paying twice. It is just paying more because of greater returns. Had the parties meant for the $24M to represent the full payment for the account receivables, they could just have agreed to that flat price. There would have been no need for more complicated provisions concerning purchase price adjustments and Hold Back amounts.

PA claims in its post-trial reply brief in fn. 1 that "[t]he only mechanism to achieve an upward adjustment to the Purchase Price under the APA is under Section 2.6(e), which is not applicable to Coney Island's claim against Parts Authority under Section 2.6(f)." First, section 2.6(f) does not say it is restricted by any net working capital provision or by section 2.6(e). Rather, the last sentence of 2.6 (e) specifically contemplates a separate payment of the second half of the Hold Back amount "pursuant to 2.6(f)" with a possible offset.

Alternatively, if as PA claims, 2.6(e) is "not applicable to Coney Island's claim against Parts Authority under Section 2.6(f), then 2.6(f) stands on its own. Accordingly then, PA would still owe the full Hold Back amount of $3M because collection of accounts receivables exceeded $7M.

Nevertheless, Coney Island's greedy interpretation fares no better. It claims it is owed the full amount of collected account receivables to the tune of $7.1M. However, Coney Island's interpretation reads the $3M cap on the second Hold Back amount completely out of the Agreement.

Because the court can glean the intentions of the parties from reading the APA itself, there is no need to access credibility or consider parole evidence. As for lack of performance on the part of Coney Island, none of the alleged failures are material. For example, it is undisputed that Mr. Beyda eventually paid the $712,323 from its legacy accounts. Any other alleged breaches do not affect the enforcement of the clear and unambiguous terms of section 2.6(f).

In addition to the $3M, PA also owes Coney Island its attorney's fees under section 6.2 of the APA. That section applies only to PA as Purchaser and states:

> Section 6.2 Indemnity by Purchaser. Subject to the overall limitations, minimum amounts and time limitations set forth in Section 6.5, Purchaser agrees to indemnify and hold each Seller harmless from and with respect to any and all **Losses** related to or arising directly or indirectly out of any of the following: (a)

> any breach of, or inaccuracy in, any of the representations and warranties of Purchaser contained in this Agreement (including the Schedules and Exhibits hereto), any Ancillary Agreement, or any other statement, certificate or other instrument delivered by Purchaser pursuant hereto; (b) **any breach by Purchaser of, or failure of Purchaser to perform, any** of such Purchaser's covenants, **obligations**, or undertakings contained in this Agreement or any other Ancillary Agreement (other than the Employment Agreements); (c) the Assumed Liabilities and any claim, Liability, obligation or damage with respect thereto; and (d) the fraud of Purchaser.

The Agreement defines "Loss" to include attorney's fees:

> "Loss" means any loss, damage, fine, penalty, expense (**including reasonable attorneys' or other professional fees and expenses and court costs**), injury, diminution of value, Liability, Tax, Encumbrance or other cost or expense, whether or not involving the claim of another Person.

Accordingly, having breached its obligation to pay Coney Island the $3M it owed under the second Hold Back, PA now also owes Coney Island its reasonable attorney's fees.

The court has considered the remaining contentions of the parties and finds them unavailing.

Accordingly, it is

ORDERED THAT the clerk enter judgment in the amount of $3,000,000.00 with pre judgment interest from June 7, 2022, the date of Coney Island's demand letter, in favor of Coney Island Auto Holdings Corp. and against Parts Authority, LLC; and it is further

ORDERED THAT Coney Island may make a motion for REASONABLE attorney's fees within 30 days of the e-filed date of this trial decision; and it is further

ORDERED THAT the parties are to email the court within 5 days of the e-filed date of this decision to arrange to pick up their exhibits. Otherwise, the court will shred them.

7/8/2025
DATE

MELISSA A. CRANE, J.S.C.

CHECK ONE:	[x]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[ ] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE