SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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SF CAPITAL INVESTMENTS, LP,

Plaintiff,

- v -

LOANSTREET, INC.,

Defendant.

**INDEX NO.** 651375/2023

**MOTION DATE** _____

**MOTION SEQ. NO.** 002

**DECISION + ORDER ON MOTION**

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 29, 30, 32, 33

were read on this motion to/for DISMISS.

Defendant LoanStreet, Inc.'s motion to dismiss is denied. This is an action for breach of contract. Plaintiff SF Capital investments, LP contends that defendant is obligated to purchase 50,000 shares of LoanStreet Series Seed preferred stock pursuant to a March 7, 2022 letter agreement. (NYSCEF Doc. No. [NYSCEF] 12, Am. Compl. ¶ 8; NYSCEF 25, Letter Agreement.) Defendant contends there is no contract because the letter agreement is an unenforceable agreement to agree.

In motion 002, defendant moves to dismiss based solely on the letter agreement. To prevail on a CPLR 3211 (a) (1) motion to dismiss, the movant has the "burden of showing that the relied-upon documentary evidence resolves all factual issues as a matter of law, and conclusively disposes of the plaintiff's claim." (*Fortis Fin. Servs. v Fimat Futures USA*, 290 AD2d 383, 383 [1st Dept 2002] [internal quotation marks and citation omitted].) "A cause of action may be dismissed under CPLR 3211 (a) (1) only where the documentary evidence utterly refutes [the] plaintiff's factual allegations,

conclusively establishing a defense as a matter of law." (*Art and Fashion Group Corp. v Cyclops Prod., Inc.*, 120 AD3d 436, 438 [1st Dept 2014] [internal quotation marks and citation omitted].)

Defendant relies on paragraph 2 of the letter agreement which provides:

> "Buyer's counsel shall prepare the initial draft of the definitive stock purchase agreement ('Purchase Agreement') for the Seed Shares pursuant to which the Buyer will agree to purchase, and the Seller will agree to sell, the Seed Shares at a purchase price of $49.20 per share, representing a ten percent (10%) discount to the purchase price per share to the price per share of the Company's Series B Preferred Stock. The Purchase Agreement shall also include customary representations and warranties for secondary sales of equity securities in venture backed companies, covenants, conditions to closing, and indemnities mutually acceptable to the Buyer and Seller. The Buyer and Seller will negotiate in good faith and seek to execute the Purchase Agreement and close the Secondary Transaction within 30 days of the Purchase Notice. Failure to negotiate and execute a mutually acceptable Purchase Agreement will not be deemed a breach of any provision of this Letter Agreement." (NYSCEF 25, Letter Agreement ¶ 2 [emphasis added].)

It certainly appears that the purchase is contingent on the Purchase Agreement, not the letter agreement if paragraph 2 is read in isolation. However, the letter agreement also provides:

> "1. Within nine (9) months of the date hereof (the 'Final Purchase Date'), the Buyer shall provide written notice (the 'Purchase Notice') to the Seller its initiation of the purchase of the Seed Shares (the 'Secondary Transaction'), subject to the terms hereof. . . .
>
> 4. . . . This Agreement, when executed and delivered by the Company, shall constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies. . . .
>
> 6. This Letter Agreement constitutes the full and entire understanding and agreement between the parties with respect to the subject matter hereof, and any

> other written or oral agreement relating to the subject matter hereof existing between the parties are expressly canceled." (*Id*. ¶¶ 1, 4, 6 [emphasis added].)

Defendant's reading of the contract is problematic because it renders clauses 1, 4, and 6 meaningless. Further, paragraph 7 of the letter agreement contains a choice of law provision, forum selection provisions and consent to New York jurisdiction which is also rendered meaningless by defendant's interpretation. "[A] contract should not be interpreted so as to render any clause meaningless." (*Warner v Kaplan*, 71 AD3d 1, 5 [1st Dept 2009] [internal quotation marks and citation omitted].)

Defendant's reliance on summary judgment decisions is also telling. The only case that was not a decision on a summary judgment motion was *Amcan Holdings, Inc. v Canadian Bank of Commerce*, 70 AD3d 423, 424 (1st Dept 2010) wherein the agreements at issue were entitled "Draft Summary of Terms and Conditions" and "Summary of Terms and Conditions" and provided that "[t]he Credit Facilities will only be established upon completion of definitive loan documentation, including a credit agreement . . . which will contain the terms and conditions set out in this Summary in addition to such other representations . . . and other terms and conditions . . . as CIBC may reasonably require." In *Amcan Holdings, Inc.*, the agreements themselves utterly refuted plaintiffs' assertion of a binding contract. (*See also Atalaya Special Opportunities Fund IV LP v James Crystal, Inc.*, 112 AD3d 490, 491 [1st Dept 2013] ["proposal letter" held not binding]; *Eastern Consol. Props., Inc. v Morrie Golick Living Trust*, 83 AD3d 534, 534 [1st Dept 2011] ["deal memorandum entered into by the parties, which expressly stated, 'This memo shall memorialize the terms of the deal that have been accepted, subject to the signing of a mutually acceptable Contract of Sale,' is a classic example of an 'agreement to agree'"].)

Defendant objects that plaintiff's interpretation impermissibly renders the agreement a put option. However, paragraph 1 supports plaintiff's contention because it states that defendant "shall" provide written notice, not "may." (NYSCEF 25, Letter Agreement ¶ 1.)

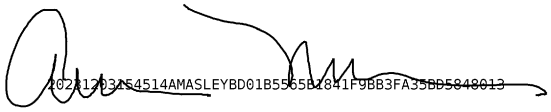
Likewise, the court denies defendant's motion to dismiss the first cause of action seeking specific performance. (*See In re Fontana D'Oro Foods*, 65 NY2d 886, 888 [1985] ["an agreement to convey stock in a close corporation may be enforced by specific performance"].) The complaint is sufficient because in paragraph 25, plaintiff alleges that "[t]he Shares are unique property in that they are of a closely held corporation, are not available for sale on the open market, and, as a result, are difficult to value" and has therefore sufficiently alleged facts demonstrating that specific performance is an appropriate remedy in this case. (NYSCEF 12, Am. Compl. ¶ 25.)

The parties are directed to engage in mediation and will receive a further order from the court.

Accordingly, it is

ORDERED that defendant's motion to dismiss is denied; and it is further

ORDERED that defendant shall file an answer by December 15, 2023, and the parties shall submit a proposed PC order by December 22, 2023, or competing orders if they cannot agree.




12/3/2023
DATE

ANDREA MASLEY, J.S.C.

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

651375/2023 SF CAPITAL PARTNERS, LP vs. LOANSTREET, INC.
Motion No. 002