Prospect Funding Holdings, LLC v Heady
2017 NY Slip Op 31269(U)
June 12, 2017
Supreme Court, New York County
Docket Number: 652946/2016
Judge: Peter H. Moulton
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SUPREME COURT OF THE STATE OF NEW YORK: Part 50
ALL COUNTIES WITHIN THE CITY OF NEW YORK

Index 652946/2016
Motion Seq. 002

---X
PROSPECT FUNDING HOLDINGS, LLC,

Plaintiff,

-against-

EDITH HEADY

Defendant
---X

PETER H. MOULTON, J.S.C:

Plaintiff, Prospect Funding Holdings, LLC., ("Prospect") moves for a default judgment on damages in lieu of an inquest. The relevant background of this case is summarized below.

On April 4, 2013 Defendant Edith Heady ("Heady") entered into a Purchase Agreement with Defendant Heady in which she assigned a portion of the potential proceeds she could ultimately receive from a personal injury action in exchange for a monetary advance from Prospect. Subsequently, Prospect tendered Heady a monetary advance of $5,000 to Heady via a wire transfer. Under the terms of the Purchase Agreement, Heady could remit payment for the advance back to Prospect in one of two ways. First, Heady could re-purchase her assigned interest from Prospect for a re-purchase rate that was set forth in the Purchase Agreement's Payment Schedule. In this event, Heady would not owe Prospect any monies at the time of settlement or judgment of the action. As an alternative, Heady was given the option of paying Prospect its ownership amount within 10 days of receipt of any proceeds received from the satisfaction of her personal injury lawsuit. Further, Prospect's ownership amount would be limited to the amount Heady recovered in her action. This was incorporated into the terms of the Purchase Agreement in a Payment Limitation Clause. If Heady failed to utilize either of these two methods to comply with the Purchase Agreement, then the Purchase Agreement stated that a liquidated damages clause would be triggered. Notably, the liquidated damages clause contemplated that if Heady failed to comply with the Purchase Agreement and remit payment to Prospect within 10 days of receiving her settlement funds, then she would owe Plaintiff Prospect's 40-month ownership amount regardless of the amount she recovered in the action. Similarly, the Purchase Agreement stated, in relevant part, "Seller's Obligation to make payments to this Purchase Agreement is limited to amounts recovered by Seller in the Legal Claim unless Seller defaults under this Purchase Agreement." Prospect avers that it notified Heady twice that if she did not timely remit payment, Prospect's Payment Limitation would be nullified and she would owe Prospect monies that were in excess of the amount of her recovery in the action. Due to the representations of Heady's Counsel, Bradley Frick, Esq., captured in the Settlement Agreement, Prospect submits that Heady's personal injury lawsuit reached a successful resolution in 2014. To date, Prospect states that Heady has not remitted full payment.[1] Accordingly, Prospect argues that Heady has failed to comply with the terms of the Purchase Agreement and therefore her inaction has triggered the liquidated damages provision. Accordingly, Prospect submits that it is entitled to Prospect's 40-month ownership amount, which totals $37,370, as well as interest on that amount.

Additionally, the agreement between Heady and Prospect contemplated that Heady is responsible for Prospect's attorney's fees and costs. To date, Prospect states that it has incurred $4,372.19 in legal fees to enforce the terms of the agreement.

On September 9, 2016 Justice Arlene Bluth issued a decision in which she granted Prospect's motion for a default judgment as to liability. In her decision, Justice Bluth opined on the improvident way the Purchase Agreement was constructed. Indeed, she remarked: "[i]t seems off to this court that a loan of $5,000 turns into more than $50,000 claimed due in less than two years, especially since all

[1] Heady has tendered $6,425.00 to Prospect, representing the original advance amount ($5,000.00) plus costs by way of her attorney, Bradley Frick.

money actually lent was repaid by Ms. Heady's attorney." The issue of damages, which was not decided by Justice Bluth, is the subject of the instant motion.

DISCUSSION

In deciding the appropriate damages to be awarded in this matter, the court's focus is drawn to the enforceability of the liquidated damages provision contained in the Purchase Agreement. The issue of whether such a contractual provision is enforceable is a legal question for the court to decide (*Leroy v. Sayers*, 217 AD2d 63, 67-69 [1st Dept. 1995]). A liquidated damages provision will not be enforced if it is against public policy to do so and public policy is firmly set against the imposition of penalties or forfeitures for which there is no statutory authority (*id.*). Additionally, a court may invalidate a liquidated damages clause where the sum contemplated is unreasonably disproportionate to the loss anticipated (*id.*). Where a damages amount contemplated in a contract is clearly disproportionate to any loss that a party may incur, a court may deem it unenforceable as a penalty (*see JMD Holdings Corp. v. Congress Fin. Comp*, 4 NY3d 373 [2005]; *see also Sandra's Jewel Box v. 401 Hotel*, 273 AD2d 1 [2000]). Finally, in general, the enforcement of a liquidated damages provision is only reasonable where the amount of actual loss would be difficult, if not impossible, to calculate (*JMD Holdings Corp.*, 4 NY3d 373, *supra*).

Here, the damages sought by Prospect are grossly disproportionate to the advance of $5,000 that Heady received. Indeed, Prospect stated in its complaint that "the current amount due to Prospect is in excess of $50,000." That amount is ten times the original amount advanced to Heady. The unreasonable nature of the amount is exacerbated by the fact that Prospect concedes that Heady's advance was occasioned by her lack of cash during the pendency of her personal injury lawsuit. At the time that Prospect advanced Heady $5,000, the company was aware of her cash-strapped status. As such, the imposition of a clause within the Purchase Agreement contemplating that she would owe an amount well beyond the original amount that she was advanced is tantamount to a penalty. Additionally, the liquidated damages clause contained in the Purchase Agreement is particularly inappropriate here where a definite amount was given to Heady, thereby making the damages flowing from a breach of the contract readily ascertainable. As liquidated damages are appropriate where a loss is difficult if not impossible to calculate, it follows that such damages are inappropriate where one's loss is straightforwardly computable. Moreover, the invalidation of the liquidated damages clause here does not leave Prospect without a remedy. Notably, Prospect has already received the sum of $6,425.00 encompassing the purchase price ($5,000) and fees. That said, because the $6,425.00 amount was not tendered immediately after the settlement of Heady's personal injury lawsuit for $10,896, Prospect is entitled to attorney's fees and costs associated with the collection of the monies owed to it.

Accordingly, it is hereby

ORDERED that the liquidated damages clause contained in the Purchase Agreement between Prospect and Heady, and embodied as the "Prospect Ownership Amount" is deemed invalid; and it is further

ORDERED that the tender of the aforementioned $6,425.00 sum is deemed as an amount in full satisfaction of the payment of the Prospect Ownership Amount; and it is further

ORDERED that while the liquidated damages provision is invalid, it is enforceable only to the extent that Prospect is entitled to $4,372.19 in legal fees and costs associated with the collection of monies owed to it.

This Constitutes the Decision, Order, and Judgment of the Court.

Dated: June 12, 2017

HON. PETER H. MOULTON
J.S.C.