

**Southwestern Invs. Group, LLC v JH Portfolio Debt
Equities, LLC**

2018 NY Slip Op 33660(U)

June 5, 2018

Supreme Court, Erie County

Docket Number: 805990/2017

Judge: Deborah Chimes

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At a Civil Special Term of the
Supreme Court, held in and for the
County of Erie, State of New York,
on the 23rd day of April, 2018.

PRESIDING: HON. DEBORAH A. CHIMES

SUPREME COURT: STATE OF NEW YORK
COUNTY OF ERIE

SOUTHWESTERN INVESTORS GROUP, LLC,

Plaintiff,

DECISION
INDEX NO.: 805990/2017

-vs-

JH PORTFOLIO DEBT EQUITIES, LLC,
DAREN TURCO, and
JACOB ADAMO,

Defendants.

DECISION

Defendant, JH Portfolio Debt Equities, LLC (JHPDE), moved for partial summary judgment, dismissing plaintiff's fifth cause of action for declaratory judgment and sixth cause of action for injunctive relief, and for declaratory judgment on JHPDE's twelfth counter-claim. judgement.

Plaintiff, Southwestern Investors Group, LLC (SWI), cross-moved for declaratory judgement, requesting that the Court rule that the Assignment and Assumption Agreements between the plaintiff and JHPDE are ambiguous and that extrinsic evidence be allowed to assist in the interpretation of the contracts.

Briefly, the relevant facts are as follows: Beginning in June of 2015, SWI entered into a series of agreements with Comenity Bank to purchase credit card debt. Between December 2015 and July 2016, SWI, Comenity and JHPDE entered into a series of three-way Assignment and Assumption Agreements. Each Assignment was accompanied by a Bill of Sale. At issue is whether the Assignment and Assumption Agreements transferred ownership of the disputed accounts to JHPDE as defendant contends, or whether, as plaintiff argues, the transaction between JHPDE and SWI was a loan and that the Assignment and Assumption Agreements were not a transfer of the disputed accounts to JHPDE.

The proper inquiry in determining whether a contract is ambiguous is whether the agreement on its face is reasonably susceptible of more than one interpretation. A party seeking summary judgment has the burden of establishing that the construction it favors is the only construction which can fairly be placed thereon. Arrow Communication Lab. v. Pico Prods., 206 A.D.2d 922, 922-923 (4th Dep't 1994) (internal citations omitted).

Pursuant to paragraph 1 of the Assignment and Assumption Agreements, SWI conveyed its "rights, title and interest" in the disputed accounts to JHPDE. SWI argues that paragraph 6 of those same Agreements, which refer to release of JHPDE's "security interest," creates an ambiguity in support of SWI's argument that the transaction between SWI and JHPDE was not an assignment, but a loan. In reply, JHPDE argues that the language of the Assignment and Assumption Agreements is not ambiguous and that reference to a security interest does not transform the Assignments into a loan agreement, but rather, under the UCC, a security interest includes any interest of a buyer of accounts in the accounts which it purchases. UCC § 1-201.35.

When interpreting a contract, the court “should construe the agreements so as to give full meaning and effect to the material provisions. A reading of the contract should not render any portion meaningless. Further, a contract should be read as a whole, and every part will be interpreted with reference to the whole; and if possible, it will be so interpreted as to give effect to its general purpose.” Beal Savings Bank v Sommer, 8 N.Y. 3d 318, 324-325 (2007) (internal citations omitted).

Here, the Assignment and Assumption Agreements unambiguously reflect the intention of the parties. The third whereas clause states that “SWI wishes to assign to JHP2 all of Assignor’s respective rights, title and interest in to and under the Original Purchase Agreement for purchase of the Charged-off accounts...and JHP2 is willing to accept such assignments”. Further, under paragraph 1 of the Assignments, SWI agreed to assign its “rights, title and interest in, to and under the Original Purchase Agreement including without limitation, (i) all the Accounts under the terms and conditions set forth in each of the Original Purchase Agreements, and (ii) any and all respective rights of the Assignor to compel performance of the respective terms of the Original Purchase Agreement regarding the Accounts.” Paragraph 6 of the Assignment merely permits JHPDE to request that Comenity consider assignment back to SWI at the time of the release of the JHPDE’s security interest in the accounts. Nowhere in the body of the Assignment is there reference to a “loan” or the “repayment of money”. Hence, to give full meaning and effect to the material provisions of the assignments, the Court concludes that the only rational interpretation is that the reference in paragraph 6 to security interest is to JHPDE’s security interest in the accounts themselves.

Accordingly, JHPDE's motion is granted in its entirety and SWI's cross-motion denied.

Counsel for JHPDE is to prepare and submit an Order on both motions in 30 days, attaching the Court's Decision.

DATED: Buffalo, New York
June 5, 2018


DEBORAH A. CHIMES, J.S.C.