

New Chapter Capital, Inc. v Karambelas
2020 NY Slip Op 31429(U)
January 14, 2020
Supreme Court, New York County
Docket Number: Index No. 653965/2019
Judge: Andrew Borrok
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

-----X

NEW CHAPTER CAPITAL, INC.,
Plaintiff,

- v -

ANDREA KARAMBELAS, WILDON KAPLAN,
Defendant.

-----X

INDEX NO. 653965/2019
MOTION DATE N/A
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, 19
were read on this motion to/for DISMISS

Upon the foregoing documents and for reasons set forth on the record at oral argument (1/15/2020), defendant Wildon R. Kaplan's motion to dismiss the complaint pursuant to CPLR 3211(a)(1) and (a)(7) is granted.

This is an action for breach of contract based upon a certain Purchase and Sale Agreement (the Original Agreement) dated November 19, 2015 by and between Novitas. Inc. (Novitas), its representatives, successors and assigns and Peter Kaplan, as amended by a certain Addendum dated June 7, 2016 (the Addendum) (the Original Agreement and Addendum, together, the Agreement) (Complaint, Ex. A, NYSCEF Doc. No. 1). Novitas is now known as plaintiff New Chapter Capital, Inc. (New Chapter) (Compl., ¶ 2). To avoid confusion the court will refer to Novitas's obligations under the Agreement as New Chapter's obligations.

Under the Agreement, New Chapter purchased from Peter Kaplan “the right to receive certain proceeds which may arise from settlement or verdict” in Mr. Kaplan’s divorce action (Compl., Ex. A, p. 2). The Original Agreement made clear that:

Seller understands that by entering into this Agreement, Seller is selling to Purchaser a portion of the potential Proceeds of the Claim. This is non-recourse sale. **THIS IS NOT A LOAN.** In the event that Seller does not receive any award or settlement from the Claim, Seller will not owe any amounts to Purchaser, and Purchaser shall receive nothing.

(Original Agreement, ¶ 4).

Paragraph 12 of the Original Agreement provided:

Death of Seller. If Seller should die before receiving a recovery under his/her Claim and before Purchaser is paid the amounts due under this Agreement, then the right of Purchaser to receive the amounts due under this Agreement shall remain an obligation secured by any Proceeds and this Agreement shall be binding upon Seller’s estate.

(*id.*, ¶ 12).

“Proceeds” is defined under the Original Agreement as the “total recovery from the Claim,” and “Claim” is, in turn, defined as “divorce proceedings against [Peter Kaplan’s] spouse (“Spouse”) on or about 11/19/2015 in the State of Yes [sic] (the “Claim” as further described on Exhibit “A” to this Agreement)” (*id.*, p. 1).

Peter Kaplan died on August 1, 2018 while the divorce action was still pending (NYSCEF Doc. No. 8). Following his death, the court (Katz, J.) entered an Order of Abatement dated September 28, 2018, which stated:

The instant matrimonial action having abated upon the death of plaintiff Peter M. Kaplan, it is hereby

ORDERED that all claims for ancillary financial relief shall be brought in the Surrogate's Court; and it is further

ORDERED that the Automatic Orders (*see*, Domestic Relations Law § 236, Part B, Section 2; 22 NYCRR § 202.16[a]) previously issued in this case shall remain in full force and effect pending further order of the Surrogate's Court.

(NYSCEF Doc. No. 7).

On January 23, 2019, the Surrogate's Court issued Letters of Temporary Administration to Wildon R. Kaplan and Andrea Karambelas (NYSCEF Doc. No. 6). Ms. Karambelas was married to Peter Kaplan at the time of his death. Wildon R. Kaplan, together with Andrea Karambelas, is, thus, the co-administrator of the Estate of Peter M. Kaplan (Compl., ¶ 4).

On the instant motion to dismiss based for failure to state a claim and on documentary evidence, Wildon Kaplan argues that any right that New Chapter had to recover under the Agreement was extinguished upon Peter Kaplan's death because under the Agreement if Peter Kaplan did not receive any recovery in his divorce, he "would not owe any amounts to [New Chapter], and [New Chapter] shall receive nothing" (*citing* Original Agreement, ¶ 4). In opposition, New Chapter argues that it is entitled to pursue its claim against the Estate of Peter M. Kaplan because to find otherwise would render paragraph 12 of the Original Agreement, "Death of Seller,"

meaningless. New Chapter also maintains that a reading of the Agreement, as a whole, “reveals that the parties’ intent was that New Chapter would receive the return of its funds with the fees set forth therein unless [Peter] Kaplan’s recovery after the completion of the divorce proceeding was in a lesser amount, which would limit New Chapter’s recovery” (Ptf. Opp. Memo, p. 6, NYSCEF Doc. No. 18).

A written agreement that is complete, clear and unambiguous on its face must be construed according to the plain meaning of its terms (*Greenfield v Philles Records, Inc.*, 98 NY2d 562, 569 [2002]). “A contract is unambiguous if the language it uses has a definite and precise meaning, unattended by a danger of misconception in the purport of the agreement itself, and concerning which there is no reasonable basis for a difference of opinion” (*id.* [internal quotation marks and citation omitted]). A contract is ambiguous if, on its face, it is reasonably susceptible to more than one interpretation (*Telerep, LLC v US Intl. Media, LLC*, 74 AD3d 401, 402 [1st Dept 2010]). Whether a contract is ambiguous is a question of law for the court in the first instance (*US Oncology, Inc. v Wilmington Trust FSB*, 102 AD3d 401, 402 [1st Dept 2013]).

Here, despite New Chapter’s best efforts to the contrary, the court finds the terms of the Agreement are unambiguous. The Agreement clearly provides for New Chapter to recover only ***if Peter Kaplan recovers in the divorce action.*** If Peter Kaplan does not recover, then the Agreement provides that New Chapter also does not recover (Original Agreement, ¶ 4). This makes sense as, after all, the Agreement is styled as an investment contract, and expressly not as a loan. To the extent that New Chapter argues that the Agreement provides for other instances of recovery by New Chapter in the absence of a favorable judgment of divorce, these instances are

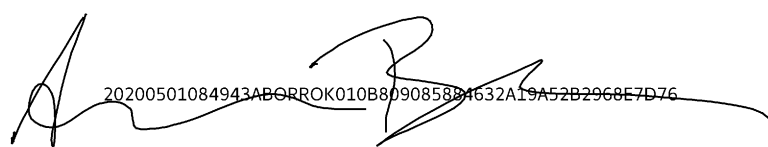
all distinguishable. The Sweetheart Guaranty, executed by Peter Kaplan contemporaneously with the Original Agreement, provides that, as a condition of the investment, Peter Kaplan would personally guaranty repayment of said investment if he and his spouse decided to reconcile and abandon the divorce. Paragraph 9 of the Original Agreement, entitled “Settlement of Claim by Mediation or Reconciliation,” likewise provides that if Peter Kaplan and his spouse reconciled or chose to pursue alternative dispute resolution methods, any settlement of “the divorce Claim” by such alternative means “constitutes a settlement of the Claim requiring repayment to purchaser of the amounts advanced hereunder” (*id.*, ¶ 9).

Paragraph 12 does not similarly address a situation where Peter Klein voluntarily abandons his divorce action. Nor would it be rendered meaningless if the court found it to be inapplicable to this dispute. By its terms, paragraph 12 contemplates a situation where Peter Klein dies before he “receiv[es]” the amount due to him under his “Claim” and, thus, before New Chapter can be “paid” such funds and that obligation is then “secured” by the “Proceeds,” i.e., his “total recovery from the Claim.” In other words, paragraph 12 contemplates a situation where a judgment or settlement of divorce *has been made* but where Peter Kaplan has not received his award and dies before New Chapter can be paid therefrom. In that instance, the Original Agreement provides that Peter Kaplan’s obligation would be binding on his estate. Paragraph 12 does not, however, address what happens if Peter Klein dies while his divorce is yet ongoing. Since the law provides that in such instance the divorce proceeding abates, there can be no “award or settlement from the Claim” and the plain terms of Paragraph 4 must apply: “In the event that Seller does not receive any award or settlement from the Claim, Seller will not owe any amounts to Purchaser, and Purchaser shall receive nothing.” To the extent that there is any

doubt on this issue, under well-settled principles of contract construction, such doubts must be resolved against the drafter, that is, New Chapter.

Accordingly, it is

ORDERED that the motion to dismiss is granted and the complaint is dismissed in its entirety, and the Clerk is directed to enter judgment accordingly.



20200501084943ABORROK010B809085884632A19A52B2968E7D76

1/14/2020
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE