SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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ADVENT SOFTWARE, INC.,

Plaintiff,

- v -

SEI GLOBAL SERVICES, INC.,SS&C TECHNOLOGIES HOLDINGS, INC.

Defendant.

INDEX NO. 655631/2020

MOTION DATE 12/01/2021

MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 006) 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 201

were read on this motion to/for JUDGMENT - SUMMARY.

SEI is entitled to partial summary judgment for breach of contract (first and second causes of action) of their counterclaims and summary judgment and dismissal of Advent's declaratory judgment (first cause of action) because SEI has met its burden in coming forward with sufficient evidence demonstrating its entitlement to judgment as a matter of law and there are no material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

Simply put, it is undisputed that SEI was never given notice of any alleged breach under the SLSA and opportunity to cure. This Court has already held that the December 2019 "notice" of termination based on the alleged conversations with Nick Nolan was dated and pretextual and did not provide SEI with the required cure rights required (the **Prior Decision;** NYSCEF Doc. No. 126; *Advent Software, Inc. v. SEI Glob. Servs., Inc.*, 150 N.Y.S.3d 256, 257 [1st Dep't 2021]).

Additionally, Advent breached the SLSA and the Black Diamond Agreement when it failed to renew them. The parties agreed that pursuant to Section 10.2 of the SLSA, SEI has the right to terminate the SLSA at any time and that Advent could only terminate the SLSA when SEI failed to perform a material obligation and **failed to cure** its non-performance within 30 days **following written notice of such failure**. The parties' agreement that termination by Advent was only permissible based upon a material default by SEI and following 30-day notice and cure is also reflected in Section 11.2 of the Black Diamond Agreement. SEI's licenses to Geneva and Moxy software products are memorialized in Order January 20, 2009 and the license to APX is memorialized in OS 21 December 15, 2010 (collectively, the **Order Schedules**). Section B of the Order Schedules provide that the license term automatically renews unless SEI gives 60 days written notice to Advent of its intent not to renew. If SEI caused a renewal, Advent would receive an annual license fee increase of 3% for Geneva and Moxy and 5% for APX. This is the business deal and does not reflect any non-renewal rights by Advent. It reflects an increase in compensation for the renewal period to Advent by SEI. OS 21 December 15, 2010, on the other hand, provides that Advent can not renew the APX license if it stops offering maintenance services to the marketplace provided that Advent provides SEI with notice of its non-renewal at least 6 months prior to the end of the then current term. This indisputably has not occurred. Put another way, the parties expressly set forth a right for Advent not to renew and it is not implicated in this dispute.

Section 5 of Amendment Two of the SLSA reflects that the parties did not intend to change any preconditions to termination or to otherwise effect any renewal rights. It is simply a false narrative that because the 2010 Amendment includes language that says that "nothing" in the 2010 Amendment limited either party's right to not renew the license, therefore Advent must

have had the right to not renew. As discussed above, given the potential harm to SEI and the alleged reliance on the software products, Advent did not have the right not to renew. The parties negotiated for increases to compensate Advent for the renewals. SEI, on the other hand, did have the right not to renew. The point is as reflected in the 2010 Amendment that the 2010 Amendment did not effect the right not to renew. In other words, the fact that the 2010 Amendment provides that it did not change the parties' rights did not create a right that Advent did not have already. The argument to the contrary fails.

The Black Diamond Agreement also reflects the parties' agreement that SEI and not Advent has the right of non-renewal on appropriate. Notwithstanding that Advent did not have the right to elect not to renew these agreements, on October 31, 2019, Advent sent a letter advising SEI that unless SEI agreed to new pricing terms that it was not entitled to under the agreements, Advent was electing "not to renew" the SLSA and the Black Diamond Agreement. However, as discussed above, they had no such right. Thus, the sending of this letter under the circumstances was a breach of both the SLSA and the Black Diamond Agreement. Subsequently, on December 5, 2019, Advent sent a second letter claiming that SEI breached the SLSA which gave Advent the right to terminate because it had tried to hire Advent employees in breach of the SLSA. Both this Court and the First Department has already addressed this pretextual termination without the appropriate cure rights extended to SEI in its Prior Decision. This also breached the agreements. Thus, SEI is entitled to partial summary judgment as to Advent's breach of the SLSA and the Black Diamond Agreement and dismissal of Advent's cause of action for declaratory judgment that it owes no obligation to SEI under the SLSA or the Black Diamond Agreement. The cross-motion seeking dismissal of the covenant of good faith and fair dealing (fifth cause of action) must be denied. As discussed above, the court has already decided that this cause of action is not

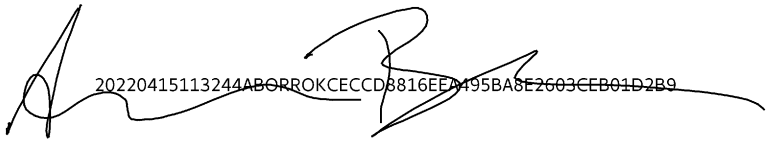
duplicative because it has a different factual predicate and seeks a different remedy from its breach of contract counterclaims. Thus, Advent's cross-motion must be denied. The court has considered Advent's remaining arguments and finds them unavailing.

Accordingly, it is

ORDERED that SEI's motion for partial summary judgment on its first and second counterclaims and dismissing Advent's first cause of action for a declaratory judgment (Motion 006) is granted; and it is further

ORDERED that Advent's first cause of action seeking a declaratory judgment is dismissed; and it is further

ORDERED that Advent's cross motion for partial summary judgment is denied.



4/15/2022
DATE

ANDREW BORROK, J.S.C.

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