SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ROBERT R. REED **PART** IAS MOTION 43EFM

Justice

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THE ESTATE OF CONNIE COLLINS, MICHAEL LOUROS,

Petitioners,

- v -

TABS MOTORS OF VALLEY STREAM CORP., STEVEN LOUROS, ROSE LOUROS,

Respondents.

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INDEX NO. 160529/2019

MOTION DATE 03/17/2020

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

TABS MOTORS OF VALLEY STREAM CORP.

Third-Party Plaintiff,

-against-

STELLA COLLINS-GENOVA, AS CO-EXECUTORS OF THE ESTATE OF CONNIE COLLINS, NICHOLAS COLLINS, AS CO-EXECUTORS OF THE ESTATE OF CONNIE COLLINS

Third-Party Defendants.

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Third-Party
Index No. 595042/2020

The following e-filed documents, listed by NYSCEF document number (Motion 004) 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 112

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

Upon the foregoing documents, it is ordered that this motion for summary judgment is granted.

In this case, Tabs Motors of Valley Stream Corp., respondent and third-party plaintiff, seeks to enforce a shareholders agreement through specific performance. This decision addresses only the counterclaim of Tabs Motors of Valley Stream Corp. against petitioner Michael Louros and its third-party claim against Stella Collins-Genova and Nicholas Collins, co-executors of Connie Collins' estate.

BACKGROUND

Tabs Motors of Valley Stream Corp. ("Tabs" or "the Corporation") is a family-owned, automotive repair business. Michael Louros, Rose Louros, Bellerose Automatic Transmissions (owned by Steven Louros), and the Estate of Connie Collins ("the Estate") are each 25% shareholders in the Corporation. Each holds 50 shares in Tabs. In 2012, Steven Louros suggested that the Tabs shareholders enter a shareholders agreement. All the Tabs shareholders met in July 2012 to discuss the proposed shareholders agreement. The shareholders held off signing the shareholders agreement so that each shareholder would have time to discuss its terms with his, her, or its own counsel. In December 2013, the Tabs shareholders reconvened. Michael Louros told Steven Louros that he had received counsel on the proposed shareholders agreement and was prepared to sign it. At the December 2013 meeting, the Tabs shareholders signed the shareholders agreement ("Shareholders Agreement").

On October 29, 2019, the Estate and Michael Louros filed a petition for dissolution of the Corporation. Filing for dissolution triggers a buy-sell provision in the Shareholders Agreement. On December 16, 2019, the Corporation held a shareholders meeting to determine whether the Corporation would exercise its option to purchase shares held by Michael Louros and the Estate. The remaining shareholders voted for the Corporation to exercise its option to purchase the shares held by Michael Louros and the Estate. The closing date was set for February 11, 2020. Sometime before the closing date, Michael Louros and the Estate made it clear that they would not voluntarily give up their shares.

In the dissolution petition, Tabs brings a counterclaim against Michael Louros to enforce the sale. Tabs brings a third-party action against the Executors (the original petition was

commenced in the name of the Estate only, and not the Executors). Tabs now moves for summary judgment on its counterclaim and third-party claim.

Shareholder's Agreement Buy-Sell Provision

The Tabs Shareholder Agreement contains a buy-sell provision stating "if any shareholder files a petition to dissolve the Corporation; . . . the Corporation firstly, and then the other Shareholders shall have the option to purchase all, but not part of the shares owned by such Shareholder" (NYSCEF, Doc. No. 65, Exhibit C, Shareholders Agreement). Section 3.1 of the Shareholders Agreement provides that the Corporation's option to purchase is at a price equal to the "Stock Value" per share (*id.*). Schedule B, executed contemporaneously with the Shareholders Agreement, fixes Tabs' stock value per share at $5,250 (*id.*). The Shareholders Agreement also states that, if at any time it becomes necessary to determine the Stock Value of the stock of the Corporation, the Stock Value set forth in the last certificate of Stock Value shall be conclusive as to Stock Value and shall be accepted as the Stock Value as of the date on which Stock Value is to be determined.

All the shareholders signed Schedule B, which set the price at $5,250 per share, which was double the value set forth in a comprehensive appraisal prepared only two years prior. Additionally, Stella Collins-Genova later executed an affidavit of assets and liabilities in which she affirmed that the value of the Estate's 50 shares in Tabs was $262,500, or $5,250 per share (NYSCEF Doc. No. 66, Louros Aff. Ex. D).

Once the Shareholder Agreement's buy-sell provision is triggered, the Corporation may exercise its option by vote at a Shareholders meeting. Section 3.2 of the Shareholders Agreement concerns the Corporation's option to purchase. That section expressly excludes the selling

shareholders from voting. Section 7 of the agreement, the quorum provision, sets the quorum at 75 percent of the shareholders "entitled to vote."

DISCUSSION

This is a summary judgment motion on the counterclaim against petitioner Michael Louros and upon the claims against third-party defendants. Steven Louros, on behalf of Tabs, asks the court to award specific performance to enforce the Shareholders Agreement. Petitioner Michael Louros and third-party defendants argue that the Shareholders Agreement should not be enforced because of unconscionability, breach of fiduciary duty, and issues with quorum. The arguments advanced by petitioner Michael Louros and third-party defendants fail to raise any issue of fact or to present any viable affirmative defenses necessitating a trial. Tabs has demonstrated by admissible, documentary evidence that there is no genuine issue in dispute requiring a trial and that it is entitled to dismissal of the petition and an award of specific performance of the Shareholder Agreement.

Unconscionability

To establish procedural unconscionability, a party must show certain elements during the transaction such as deceptive or high-pressured tactics, the use of fine print in the contract, a lack of experience and education and a disparity in bargaining power (*see Gillman v Chase Manhattan Bank*, 73 NY2d 1, 10 [1988]). Petitioner Michael Louros and third-party defendants argue that the contract is procedurally unconscionable because respondent Steven Louros was allegedly deceptive by withholding or not fully disclosing relevant information, and that there is a difference in sophistication of the parties. Petitioner and third-party defendants' claim of deception, however, is not supported by fact. The fact that Steven Louros is the only lawyer in the family does not in itself render the contract procedurally unconscionable. Petitioner Michael

Louros and third-party defendants had 18 months to consult an attorney and to examine the terms of the Shareholders Agreement on their own. There is no issue of fact regarding procedural unconscionability.

For a contract to be found substantively unconscionable, the terms must be unreasonably favorable to one party (*see Mazursky Group, Inc. v 953 Realty Corp.*, 166 AD3d 432, 433 [1st Dept 2018] [affirming summary judgment where agreement was not unreasonably unfavorable to one party]; *Cash4Cases, Inc. v Brunetti*, 90 NYS3d 154, 155 [1st Dept 2018] [same]). Here, the Shareholders Agreement does not unreasonably favor Steven Louros. The Shareholders Agreement applies equally to any shareholder who petitions for dissolution. Also, the set share price is fair. It is not deeply discounted. In fact, the fixed value is nearly double the Corporation's appraised value two years before the shareholders signed the Shareholders Agreement. There is no procedural or substantive unconscionability.

Breach of Fiduciary Duty

Petitioner Michael Louros and third-party defendants allege breach of fiduciary duty by Steven Louros. The same petitioners have already brought claims in Nassau County Supreme Court in *Collins-Genova v Louros et al.* (Index No. 613920/2018 [Sup Ct, Nassau County, Nov 5, 2018]) based on the same allegations of looting, waste, and withheld distributions as in their petition here. Those claims have already been dismissed. Furthermore, even if the claims were true, they would not invalidate the buy-sell provision. The buy-sell provision is still enforceable.

Quorum

Under Section 3.2, the shareholders petitioning for dissolution are not entitled to vote in the decision whether the Corporation will exercise its option. Section 7 of the shareholders agreement requires 75% of shareholders "entitled to vote." The petitioning shareholders were not

entitled to vote because they petitioned for dissolution. Their presence or absence would not count toward the quorum requirement for a meeting called for the purpose of determining whether the Corporation will exercise its option.

The quorum requirement was satisfied. Both Rose Louros and Bellerose Automatic Transmissions—the shareholders collectively holding 100% of the shares entitled to vote—were present at the meeting. Both voted in favor of the Corporation buying the shares.

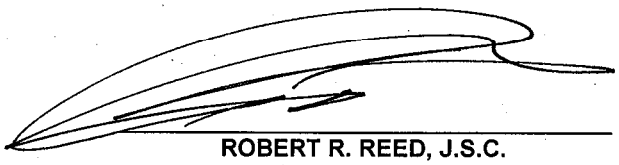
Awarding specific performance is left to the discretion of the trial court (*Sokoloff v Harriman Estates*, 96 NY2d 409, 416 [2001]). Where a contract concerns items that are unique such that monetary damages would be insufficient to compensate for the breach, specific performance is an appropriate remedy (*id.*). New York courts regularly grant specific performance to enforce the buy-sell provisions (*see, e.g.*, *Matter of Johnsen*, 31 AD3d 172, 180 [1st Dept 2006] ["(P)etitioner directed to sell Philip's shares to ACP or the other shareholders if either exercises the right of first refusal in accordance with the applicable terms of, and at the price provided in, the stockholders agreement]; *Matter of Doniger v Rye Psychiatric Hosp. Ctr.*, 122 AD2d 873, 878 [2d Dept 1986]["(T)he court correctly . . . granted the counterclaim of the individual respondents for specific performance of the shareholders' agreement such that the petitioners were directed to transfer their shares in the corporation to the individual respondents"]).

The Shareholders Agreement is enforceable and fundamentally fair. Monetary damages would be insufficient in this case and specific performance is appropriate.

Accordingly, it is

ORDERED that respondent and third-party plaintiff Tabs Motors of Valley Stream Corp.'s motion for summary judgment for specific performance is granted and the petition is dismissed; and it is

ORDERED that respondent submit a proposed order directing specific performance under the Shareholders Agreement consistent with its third-party complaint and consistent with the within decision of the Court.



11/23/2021
DATE

ROBERT R. REED, J.S.C.

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