FILED: NEW YORK COUNTY CLERK 04/28/2023 02:58 PM INDEX NO. 654334/2019
NYSCEF DOC. NO. 305 RECEIVED NYSCEF: 04/28/2023

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 14

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LAW OFFICE OF J BACHER, PLLC,

Plaintiff,

- v -

LAWRENCE B. SAFTLER, D/B/A LAW OFFICE OF LAWRENCE B. SAFTLER,

Defendant.

INDEX NO. 654334/2019

MOTION DATE N/A

MOTION SEQ. NO. 006

DECISION + ORDER ON MOTION

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LAWRENCE B. SAFTLER, D/B/A LAW OFFICE OF LAWRENCE B. SAFTLER

Plaintiff,

-against-

JAMES BACHER

Defendant.

Third-Party
Index No. 565713/2019

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HON. ARLENE P. BLUTH:

The following e-filed documents, listed by NYSCEF document number (Motion 006) 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300

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

Defendant's motion for declaratory judgment is denied and plaintiff's cross-motion for declaratory judgment and partial summary judgment is also denied.

Background

This dispute involves the break-up of a law firm. At issue is the interpretation of the dissolution clause in the Operating Agreement. Saftler, who brought in most of the cases,

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contends that pursuant to the dissolution clause, *all* cases should revert to the originating partner. On the contrary, Bacher, who worked on cases brought in by Saftler, argues that only the list of cases referred to as Schedule A, which was to be updated annually, revert to the original partner; Bachner claims that if it isn't on Schedule A, then the case belongs to the firm. Of course, because no one ever updated the original Schedule A, this litigation ensued.

An arbitrator has already decided the origination of 47 cases, finding that Bacher originated 3, Saftler originated 37, and 7 belonged to the firm (i.e., originated with neither party).[1] However, the arbitrator only ruled about the origination of the cases; the decision did not opine about the obligation to keep an updated and ongoing list of cases (the Schedule A list). The arbitration decision was not confirmed.

Saftler now moves for declaratory judgment that the plain reading of the dissolution clause holds that *all* unfinished cases revert to the partner that originated them unless the client requests otherwise. Saftler contends a plain reading of section 3.04 requires that all cases revert to the originating attorney and are not assets of the law firm. Further, Saftler seeks a declaration that all legal fees flow to the originating attorney and that if the case is distributed to the non-originating attorney, the non-originating attorney owes the originating attorney 1/3 of all legal fees. Additionally, Saftler requests an order directing the withdrawal of all charging liens asserted by Bacher on all cases that were originated and subsequently distributed to Saftler. Finally, Saftler requests a protective order not allowing discovery on the cases that were originated by Saftler.

In response, Bacher contends section 3.04 should be construed according to the entire Operating Agreement. Bacher argues section 3.04 states that Schedule A identifies who receives

[1] Originally, 54 cases were submitted to the arbitrator but the arbitrator could only rule on those for which evidence of origination was submitted, thus only 47 cases were decided.

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what file from the firm upon dissolution. Although Schedule A was purportedly supposed to be updated annually, the fact that it was not updated deprived Bacher of official notice to cease working on the files that would potentially revert to Saftler. In other words, Bacher questions how Saftler can get both the fees for cases and the benefit of Bacher's work on them where they were never listed as Saftler's cases on Schedule A. Bacher further asserts, when considering section 3.04 in light of the Operating Agreement and Schedule A, the fees earned by the partnership with relation to unfinished cases on Schedule A should revert back to the originating attorney listed on Schedule A. Bacher contends the application of section 3.04 should only be applied to the nine unfinished cases that appear on the only, and original, Schedule A. Bacher further argues that the charging liens are valid because he and Saftler had an equal interest in all the unfinished cases (except those on Schedule A).

Additionally, Bacher cross-moves for partial summary judgment and declaratory judgment on the meaning section 3.04 and the Operating Agreement as whole, arguing Bacher's interpretation is the correct understanding of the agreement. Bacher also seeks an appointment of a special referee to supervise an accounting of the partnership interests and directing Saftler to produce all books and records concerning the partnership's accounts. To date, Bacher asserts such accounting has not taken place.

In opposition, Saftler maintains that the plain reading of the language in the Operating Agreement demonstrates that all unfinished cases must be distributed to the partner who originated them. Saftler further argues that the arbitrator declined to consider Bacher's time and equity put into each case, as the Operating Agreement was clear in its terms. In opposition to Bacher's cross-motion, Saftler contends Bacher has failed to demonstrate that he sustained a forfeiture that was not already contemplated in the Operating Agreement. Moreover, Saftler

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asserts there is no evidence of unconscionability in enforcing the plain meaning of section 3.04 and Bacher has offered no evidence to the contrary. Saftler opposes an appointment of a special referee to conduct an accounting on the cases in question as Bacher is not entitled to any of the legal fees in question because the cases should revert back to Saftler.

In reply to Saftler's opposition, Bacher maintains that Saftler's opinion as to the meaning of section 3.04 is irrelevant and Saftler has failed to establish that the plain meaning of the Agreement establishes a forfeiture of the fees to Saftler. Moreover, according to Bacher, Saftler has failed to disprove any unconscionability and did not successfully rebut the necessity of accounting on the unfinished cases as he did not deny that he failed to make distributions to Bacher.

Discussion

"[A] contract is to be construed in accordance with the parties' intent, which is generally discerned from the four corners of the document itself. Consequently, 'a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms'" (*MHR Capital Partners LP v Presstek, Inc.*, 12 NY3d 640, 645, 912 NE2d 43, 884 NYS2d 211, 215 [2009]).

"Extrinsic evidence of the parties' intent may be considered only if the agreement is ambiguous, which is an issue of law for the courts to decide. A contract is unambiguous if the language it uses has a definite and precise meaning, unattended by danger of misconception in the purport of the agreement itself, and concerning which there is no reasonable basis for a difference of opinion. Thus, if the agreement on its face is reasonably susceptible of only one meaning, a court is not free to alter the contract to reflect its personal notions of fairness

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and equity" (*Greenfield v Philles Records*, 98 NY2d 562, 569-570, 780 NE2d 166, 750 NYS2d 565, 570 [2002] [internal quotations and citations omitted).

The contested portion of Section 3.04 of the Operating Agreement is

> "All cases revert to the partner who brought said case into the partnership upon dissolution. Those cases brought into the partnership where origination is unknown or in dispute will be resolved by agreement between the partners and where agreement cannot be reached, resolved by arbitration, to be decided by the partners . . . At the time of execution of this agreement, Schedule A attached hereto identifies those files in the firm at the inception of the partnership, to be revised yearly, and who would retain said file if the firm dissolves. Any bank loan outstanding must be reconciled by the partnership prior to dissolution to the extent of said partner percentage at the time of dissolution."

Based on the text provided, section 3.04 is susceptible to two different meanings concerning the division of cases in the even the law firm dissolved. On one hand, it clearly says that all cases revert to the originating partner. On the other hand, it clearly says that Schedule A, to be revised yearly, lists the cases that would revert to the originating partner.

What the agreement does not say is what happens when Schedule A is not revised. Saftler would like this Court to give no meaning to Schedule A or the provision that it was to be revised yearly and only consider that the originating partner gets the case; this Court will not ignore a key provision of the parties' agreement. Bacher urges this Court to find that unless the case is listed in Schedule A, then it does not revert to the originating partner; this Court will not change an agreement by applying a consequence to which the parties did not agree.

Because section 3.04 plainly states that all the cases revert back to the originating partner *and* only the cases on Schedule A go back to the originating partner, there is an issue of ambiguity that cannot be resolved by the Operating Agreement. This ambiguity in section 3.04 compels this Court to deny both parties' motions.

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The intent of the parties upon entering the contract must be considered here and the finder of fact must make the relevant determinations. Evidence beyond the four corners of the Agreement should be allowed to further discern the parties' obligations upon dissolution of the partnership. Why did they agree to a Schedule A and why did they agree to update it yearly? Only when a factfinder hears why each party agreed to those provisions will the factfinder determine who and what to believe. It is not up to this Court to make those determinations on these papers.

The Court declines to appoint a special referee until the issue of which cases revert to which partner (or to the firm) is resolved.

Summary

Discovery is required to explore how the parties treated Schedule A and the intent of including this list in the operating agreement and a trial is necessary to make the findings of fact. On motion papers, the Court is unable to read the contract under Saftler's interpretation as it would render the entire reference to Schedule A as superfluous. Nor can the Court credit Bacher's preferred interpretation as it would require the Court to add an enforcement provision for the failure to keep an updated Schedule A. It is not this Court's place to rewrite the parties' agreement.

Accordingly, it is hereby

ORDERED that defendant's motion for declaratory judgment is denied; and it is further

ORDERED that plaintiff's cross-motion for declaratory judgment and summary judgment is denied.

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Next conference: June 5, 2023 at 10:30 a.m.

By May 29, 2023, the parties shall upload 1) a stipulation about discovery signed by all parties, 2) a stipulation of partial agreement that identifies the areas in dispute or 3) letters explaining why no agreement about discovery could be reached. The Court will then assess whether a conference is necessary (i.e., if the parties agree, then an in-person conference may not be required).

If nothing is uploaded by May 29, 2023, the Court will adjourn the conference.

4/18/2023
DATE

ARLENE P. BLUTH, J.S.C.

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