

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

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OSCAR JONES,

Plaintiff,

- v -

STEVEN B. JACOBS,

Defendant.

-----X

INDEX NO. 152766/2023
MOTION DATE 02/03/2024
MOTION SEQ. NO. 2

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 2) 12, 15, 16, 17, 18, 19, 25, 26, 27, 28, 29, 48

were read on this motion to/for DISMISS

Upon the foregoing documents, Defendant Steven Jacob's ("Defendant") motion (NYSCEF Doc. 15) for an Order dismissing Plaintiff Oscar Jones' ("Plaintiff") Complaint and awarding Defendant a money judgment, is granted.

I. Background

This breach of contract action arises out of a claimed business partnership pursuant to which the parties allegedly agreed that Plaintiff would provide funds to Defendant to place wagers on DraftKings Sportsbook ("DraftKings"), an online sports betting company, and split the profits. Plaintiff claims he made payments to Defendant totaling \$82,375, that Defendant placed wagers on the site, realized profits, and that the winnings either remain in Defendant's DraftKings account, or were collected and diverted by Defendant (NSYCEF Doc. 12).

On April 24, 2023, Defendant brought the instant motion, pursuant to CPLR §§ 3211(a)(5) and (7), for an Order dismissing Plaintiff's complaint and awarding Defendant a money judgment of \$250,000.00, plus reasonable attorneys' fees (NYSCEF Doc. 15). In support of his motion,

Defendant claims that the parties signed a mutual Release Agreement (the "Release"), dated February 22, 2023 (NYSCEF Doc. 18), which bars Plaintiff's claims (NYSCEF Doc. 16 at 7).

II. Discussion

a. Defendant's Motion to Dismiss Plaintiff's Complaint Pursuant to CPLR 3211(a)(5) is Granted

CPLR 3211(a)(5) states that a party may move for judgment dismissing one or more causes of action asserted against it on the ground that the cause of action may not be maintained because of an applicable release. The First Department has held that "a valid release constitutes a complete bar to an action on a claim which is the subject of the release" (*Global Mins. & Metals Corp. v Holme*, 35 AD3d 93, 98 [1st Dept 2006]). Further, if the language of a release is clear and unambiguous, the signing of a release is a "jural act" binding on the parties (*Booth v 3669 Delaware, Inc.* 92 NY2d 934, 935 [1998], quoting *Mangini v McClurg*, 24 NY2d 556, 563 [1969]) and may only be invalidated for any of "the traditional bases for setting aside written agreements, namely, duress, illegality, fraud, or mutual mistake" (*Mangini*, at 563). Moreover, "a release may encompass unknown claims, including unknown fraud claims, if the parties so intend and the agreement is "fairly and knowingly made" (*Centro Empresarial Cempresa S.A. v America Movil, S.A.B. de C.V.*, 17 NY3d 269, 276 [2011] quoting *Mangini* at 566-567). Notably, the Court of Appeals has further held that "a party that releases a fraud claim may later challenge that release as fraudulently induced only if it can identify a separate fraud from the subject of the release" (*Id.*).

In resolving a motion for dismissal pursuant to CPLR §§ 3211(a)(5), the pleading is to be afforded a liberal construction, and the court must accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]; (See, CPLR § 3026).

Here, Paragraph 1 of the Release provides:

[E]ach Party...hereby **releases**, waives, and forever discharges **the other Party**...of and from any and all actions, causes of action, suits, losses, liabilities, rights, debts, dues, sums of money...contracts, controversies, agreements, promises...damages, judgments...claims, and demands, of every kind and nature whatsoever, **whether now known or unknown**, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, in law, admiralty, or equity, which any of such Releasors ever had, now have, or hereafter can shall or may have against any of such Releasees...from the beginning of time through the date of this Agreement [emphasis added] (NYSCEF Doc. 18 at 1-2).

The Court finds that the Release is clear, broad and unambiguous, encompassing all claims, including those based on facts that may not be known at the time. Further, the Release expressly states that Plaintiff did not rely on any representation made by Defendant outside of the Release. Therefore, Plaintiff is precluded from claiming reliance on Defendant's "artful and false communications" (NYSCEF Doc. 27 at 17).

This case turns on whether Plaintiff's claim for fraudulent inducement falls outside the scope of the Release. The Court concludes that it does not. Plaintiff's claim that Defendant conspired to deprive him of a share of gambling winnings by inducing him to sign the Release does not identify a separate and distinct fraud from that contemplated by the Release. Further, the allegedly deceptive representations and conduct of Defendant concerning the complaint to the New York State Gaming Commission (NYSCEF Doc. 27 at 6-7) involve acts that pre-date the Release. The Release thus constitutes a complete bar to all of Plaintiff's causes of action.

In light of the foregoing, Defendant's motion to dismiss Plaintiff's Complaint pursuant to CPLR 3211(a)(5) is granted.

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b. Defendant's Motion for a Money Judgment is Granted

Paragraph three of the Release contains a "Mutual Covenant Not to Sue," stating *inter alia* that:

the parties covenant and agree not to sue or bring any action in law, or in equity, including but not limited to an action in any court...against any other Party...that is related in any way to the Venture or the parties' dealings with each other. The Parties agree that the damages that would be suffered by the injured Party as a result of any breach of this provision may be difficult to prove and therefore they agree that, in the event of any breach of this provision by the other Party, the breaching party will pay the other party \$250,000.000 in the form of liquidated damages for each such violation, plus any additional amount of damages proved by the injured Party to have resulted from the breach (NYSCEF Doc. 18 at ¶ 3).

It is well established that "[t]he burden is on the party seeking to avoid liquidated damages to show 'either that damages flowing from a prospective [breach] were readily ascertainable at the time [the parties] entered into their...agreement, or that the [liquidated damages clause] is conspicuously disproportionate to these foreseeable losses" (*VII MP Miami Hotel Owner, LLC v Hycroft, LLC*, 206 AD3d 507 [1st Dept 2022] quoting *JMD Holding Corp. v Congress Fin. Corp.*, 4 NY3d 373, 380 [2005]). Further, the First Department has held that a liquidated damages clause is enforceable where a party fails to submit "any evidence to establish either that actual damages were readily ascertainable at the time the ...agreement was entered into, or that the liquidated damages were conspicuously disproportionate to foreseeable or probable losses," and "acknowledged in the agreement that it was difficult to quantify damages" (*VII MP Miami Hotel Owner, LLC v Hycroft, LLC*, 206 AD3d 507 [1st Dept 2022]).

Here, Plaintiff has failed to provide any evidence that actual damages were readily ascertainable at the time the Covenant Not to Sue was entered into, or that the liquidated damages

agreed to were conspicuously disproportionate to foreseeable or probable losses. Accordingly, Defendant's motion for a money judgment in the sum of \$250,000.00 is granted.

Further, Section 9 of the Release, entitled "Actions for Breach," states that "[i]n any litigation for a material breach by either Party of any part of parts of this Agreement, the injured Party shall be entitled to reimbursement of his reasonable costs and expenses, including attorney's fees and costs, incurred in such litigation" (NYSCEF Doc. 18 at ¶ 9). As such, finding that Plaintiff has breached the Covenant Not to Sue, Defendant is entitled to reasonable attorneys' fees incurred in this litigation.

Accordingly, it is hereby,

ORDERED, that Defendant Steven B. Jacobs' motion to dismiss Plaintiff Oscar Jones' Complaint is granted; and it is further

ORDERED that Defendant Steven B. Jacobs' motion for a money judgment against Plaintiff Oscar Jones is granted in the amount of \$250,000.00; and it is further

ORDERED that Defendant Steven B. Jacobs is entitled to reasonable attorneys' fees and Defendant's counsel is directed to provide a supplemental affirmation for attorneys' fees, requesting a specific sum, and detailing the justification for the sum, attaching proof (invoices or billing statements, etc.) as necessary, by e-filing such supplemental documentation on or before May 13, 2024. Plaintiff shall submit opposition to the reasonableness of said attorneys' fees on or before May 20, 2024. Defendant may file a reply to any opposition by May 24, 2024. Defendant's failure to timely comply with this Order will be deemed a waiver of its entitlement to attorneys' fees; and it is further

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ORDERED, that within ten (10) days of entry, Defendant Steven B. Jacobs shall serve a copy of this Decision and Order, with notice of entry, on Plaintiff and the Clerk of the Court; and it is further

ORDERED, that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

4/12/2024
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE