

NEW YORK COURTS REAFFIRM THAT THEY WILL NOT CONSIDER EXTRINSIC EVIDENCE WHEN INTERPRETING UNAMBIGUOUS CONTRACTS

In a pair of recent decisions, New York's appellate courts have reaffirmed that New York courts will not consider extrinsic evidence – i.e., evidence outside the language in the contract – to determine the parties' intended meaning when interpreting an unambiguous contract. These recent decisions underscore the importance of accurately stating the parties' intent in the contract.

CONTRACT INTERPRETATION

When interpreting a contract, a court's role is to determine and effectuate the parties' intent. The longstanding rule in New York is that the best indicator of the parties' intent is the language used in the agreement, since this language was accepted after negotiating the contract's terms. Accordingly, New York courts generally enforce the language of an agreement as written, unless there is an ambiguity that requires additional evidence of the parties' intent.

In legal parlance, an ambiguity in a contract occurs when language in the contract is reasonably susceptible to more than one interpretation. If a court finds that there is an ambiguity in the contract, it may allow the parties to present extrinsic evidence to help the court determine the parties' intent. Such extrinsic evidence can include, but is not limited to, evidence of what was said during the parties' negotiation of the contract and evidence of the parties' practices after the execution of the contract. If the court finds that there is no ambiguity

THE BOTTOM LINE

While parties to a contract may develop an understanding of their agreement based on discussions during contract negotiations, under New York law, a court should not consider evidence of that understanding if the ultimate agreement is unambiguous. As reaffirmed by the recent appellate court decisions, it is, therefore, critical that contracts accurately set forth the parties' agreement as courts are likely to limit their consideration to the "four corners" of the agreement and enforce the agreement according to its clear terms.

in the contract, however, it will not consider any extrinsic evidence in determining the parties' intent. Instead, it will rely solely on the language of the contract.

There are several limited exceptions to this rule. For example, courts may consider parol evidence in assessing a party's claim of mutual mistake in the contract or a unilateral mistake coupled with fraud. A mutual mistake is one in which the parties to a contract reached a conceptual agreement, but the written agreement has inaccuracies such that the agreement does not reflect what the parties intended. An example of this

type of mistake is a typo that changes the meaning of a provision.

A unilateral mistake coupled with fraud is a situation in which the parties to a contract have reached a conceptual agreement but, unknown to one party and known to the other, the written agreement does not properly express the parties' agreement. In both cases of mutual and unilateral mistake, the party introducing the extrinsic evidence is generally asking the court to reform the contract to comply with what the parties intended absent the mistake.

It is important to note, however, that courts in New York require a very

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high degree of evidence to support reformation of a contract. As a general matter, courts will not consider extrinsic evidence of the parties' intent absent an ambiguity in the contract.

Two recent New York appellate court decisions reaffirmed this rule.

RECENT NEW YORK CASES

In *World Ambulette Transp., Inc. v Lee*, the parties disagreed over whether a contract between them constituted a "shareholder agreement" or merely a "profit-sharing agreement." This distinction was relevant because the defendant claimed that he owned 49% of the company, but the plaintiff claimed that the defendant was merely entitled to share in 49% of the profits of the company with no accompanying rights of share ownership. The trial court had held that even though the language of the agreement clearly stated that it was a shareholder agreement, the evidence of what the parties discussed during contract negotiations proved that the parties intended the agreement to be a profit-sharing agreement. The New York Appellate Division, Second Department, reversed that decision, holding that the trial court should not have considered extrinsic evidence

in interpreting the agreement. The Appellate Court held that irrespective of what the parties said during contract negotiations, "a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms."

A week after the Second Department's decision, the New York Appellate Division, First Department, issued a similar decision. In *Modern Art Servs., LLC v Financial Guar. Ins. Co.*, the plaintiff claimed that it was entitled to an "additional fee" for meeting certain contractual conditions in connection with services it provided related to the City of Detroit bankruptcy. Although the plaintiff did not meet one of the conditions clearly set forth in the agreement, it argued that it was still entitled to an additional fee based on the extrinsic evidence. Specifically, the plaintiff provided evidence of the parties' discussions during contract negotiations that the plaintiff argued proved the parties intended the defendants to pay the additional fee even if the plaintiff did not meet every contractual condition for the fee. The plaintiff also argued that it would be unfair if it did not receive that additional fee. The appellate court rejected those arguments, holding that "a contract is

construed in accord with the parties' intent, and, as plaintiff itself admits, the best evidence of the parties' intent is what they say in their writing." The court further held that even "the possibility of unfairness to plaintiff does not warrant an interpretation [of the contract] that is not in accordance with its unambiguous language."

As demonstrated by these cases, absent ambiguity, courts will enforce the language of a contract without reference to extrinsic evidence, even if that may result in unfairness to one of the parties.

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