NEW YORK COURT OF APPEALS

Morpheus Capital Advisors LLC v. UBS AG

23 N.Y.3d 528 (2014) · Decided June 10, 2014

SUMMARY

The New York Court of Appeals held that a financial brokerage agreement created an exclusive agency rather than an exclusive right to sell. Because the agreement did not expressly require UBS Real Estate Securities to pay a commission when it independently transferred distressed student loan assets to a Swiss National Bank fund, the transfer did not trigger a success fee. The court reversed the Appellate Division and directed dismissal of the complaint against UBS Real Estate Securities.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Chief Judge Lippman; Judge Abdus-Salaam; Judge Graffeo; Judge Pigott; Judge Read; Judge Rivera; Judge Smith
JURISDICTION	New York
DECIDED	June 10, 2014
DISPOSITION	reversed
PROCEDURAL POSTURE	Morpheus sued UBS Real Estate Securities, Inc. and its parent, UBS AG, for breach of contract and breach of the covenant of good faith and fair dealing after UBS transferred distressed student-loan assets to a Swiss National Bank stabilization fund without paying Morpheus a brokerage commission. Supreme Court dismissed the complaint under CPLR 3211(a)(1) and (7); the Appellate Division reinstated the claims against UBS Real Estate Securities, Inc.; the New York Court of Appeals granted leave to appeal and reversed.
STANDARD OF REVIEW	On a pre-answer motion to dismiss under CPLR 3211(a)(1) and (7), dismissal is appropriate where documentary evidence conclusively establishes a defense and the pleaded claims are conclusively contradicted by the contract.
PRECEDENTIAL VALUE	Published, precedential decision of the New York Court of Appeals.
PARTIES	UBS Real Estate Securities, Inc. v. Morpheus Capital Advisors LLC

TOPICS

contract interpretation · contracts · commercial litigation · commercial

PRACTICE AREAS

Contract law · Commercial litigation · Brokerage and agency law

QUESTIONS PRESENTED

1. Whether the brokerage agreement created an exclusive right to sell, requiring UBS to pay a commission when UBS itself transferred the assets without a buyer procured by Morpheus.
2. Whether the agreement's grant of an exclusive right to solicit counterparties imposed a duty on UBS to wait and give Morpheus an opportunity to solicit a buyer before transferring the assets.
3. Whether the transfer to the Swiss National Bank stabilization fund triggered UBS's contractual obligation to pay a success fee.
4. Whether the complaint was conclusively contradicted by the contract and therefore subject to dismissal under CPLR 3211.

HOLDINGS

1. The agreement created an exclusive agency, not an exclusive right to sell. A contract establishes an exclusive right to sell only when it clearly and expressly provides that a commission is due upon a sale by the owner or excludes the owner from independently negotiating a sale.
2. The provision granting Morpheus the exclusive right to solicit counterparties did not impose a corollary duty on UBS to wait before independently transferring the assets.
3. The transfer of the student-loan assets to the stabilization fund did not trigger UBS's obligation to pay Morpheus a success fee.
4. The complaint was properly dismissed because its causes of action were conclusively contradicted by the language of the parties' contract.

KEY QUOTATIONS

> *“We hold that the contract gave plaintiff a standard exclusive agency, not an exclusive right to sell the assets, and therefore no commission was due on the transaction at issue.”* (528)

> *“Without an unequivocal expression of intent by its own terms or by necessary implication from its terms, the . . . contract is at most considered to create an exclusive agency, not excluding the owner’s inherent right to sell his or her own property”* (535)

> *“Therefore, the bailout did not trigger defendant’s obligation to pay Morpheus a Success Fee.”* (537)

FACTUAL BACKGROUND

Morpheus entered into a financial-advisory and investment-banking agreement with UBS Real Estate Securities, Inc. concerning the proposed sale of distressed student-loan assets. The agreement gave Morpheus the exclusive right to solicit counterparties, but its fee provisions tied payment to an investor introduced by Morpheus or to substantially performed services leading to a transaction involving another broker. During the 2008 financial crisis, UBS transferred the assets to a stabilization fund created in connection with a Swiss National Bank bailout. Morpheus demanded a $2,887,500 success fee, but UBS refused to pay.

PROCEDURAL HISTORY

Supreme Court, New York County, dismissed the complaint, holding that the financial crisis and bailout frustrated the purpose of the brokerage agreement. The Appellate Division, First Department, reversed insofar as relevant and reinstated the complaint against UBS Real Estate Securities, Inc., concluding that the agreement required UBS to give Morpheus an opportunity to solicit a counterparty before transferring the assets. The Court of Appeals reversed and directed dismissal of the complaint against UBS Real Estate Securities, Inc.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The order of the Appellate Division was reversed, the motion of UBS Real Estate Securities, Inc. to dismiss the complaint against it was granted, and the certified question was answered in the negative.

CASES CITED

- Far Realty Assoc. Inc. v. RKO Del. Corp., 34 A.D.3d 261, 262 (1st Dep't 2006)
- Harvard Assoc. v. Hayt, Hayt & Landau, 264 A.D.2d 814, 815 (2d Dep't 1999)
- Solid Waste Inst. v. Sanitary Disposal, 120 A.D.2d 915, 916 (3d Dep't 1986)
- Hammond, Kennedy & Co. v. Servinational, Inc., 48 A.D.2d 394, 396-397 (1st Dep't 1975)
- Levy v. Isaacs, 285 App. Div. 1170, 1170-1171 (2d Dep't 1955), decision amended, 286 App. Div. 855 (2d Dep't 1955)
- Werner v. Eurich, 263 App. Div. 744, 744 (2d Dep't 1941)
- Slattery v. Cothran, 210 App. Div. 581, 583 (4th Dep't 1924)
- Ackman v. Toren, Inc., 6 N.Y.2d 720 (1959), aff'g 6 A.D.2d 427 (1st Dep't 1958)
- McClave v. Paine, 49 N.Y. 561, 561 (1872)
- Moses v. Bierling, 31 N.Y. 462, 462 (1865)
- Audrey Balog Realty Corp. v. East Coast Real Estate Devs., 202 A.D.2d 529, 530 (2d Dep't 1994)
- Morpheus Capital Advisors LLC v. UBS AG, 105 A.D.3d 145, 149-151, 154-155, 161 (1st Dep't 2013)