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New York Court of Appeals Finds The Phrase "Other Good And Valuable Consideration" In A Contract To Be A Clear And Unambiguous Statement

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In Schron v. Troutman Saunders LLP, 2013 NY Slip Op 00952 (N.Y. Feb 24, 2013), the New York Court of Appeals held that the phrase “other good and valuable consideration” within a contract was not ambiguous, and therefore extrinsic evidence (evidence other than the contract itself) could not be introduced to explain the meaning of the phrase and demonstrate whether such consideration was actually provided. In so doing, the Court of Appeals illustrated that the common recital that consideration includes “other good and valuable consideration” does not free a court to look beyond the four corners of a contract, because there is a presumption that such consideration is supplied by the mutual promises contained within that contract.

In 2004, Leonard Grunstein and Murray Forman, managers and indirect owners of SVCare Holdings LLC (SVCare), a company that operates nursing homes through a subsidiary, sought the participation of Rubin Schron, a real estate investor, in the acquisition of Marine Health Care, Inc., a publicly held company engaged in the nursing home business. Schron’s company was to hold title to the properties and Grunstein’s and Forman’s companies were to manage the nursing homes.

The transaction closed in December 2004 and involved two written agreements: (1) an option contract (the “Option Contract”) that gave the Schron entity an option to acquire 99.999% of the membership units of SVCare (the “Option”); and (2) a loan agreement whereby another of Schron’s entities agreed to lend $100 million to SVCare (the “Loan”) for the purposes of capitalizing its subsidiary. The Option Contract contained two relevant provisions: (a) that consideration for the option was “the mutual covenants and agreements hereinafter set forth, ***and other good and valuable consideration*** (the receipt of and adequacy of which is hereby acknowledged by the Parties)” (emphasis added); and (b) a merger clause.

In March 2010, after the relationship between the parties deteriorated, Grunstein, Forman and their related companies commenced an action, Mich II Holdings LLC v. Schron, No. 600736/10, in anticipation that the Schron entity would exercise the Option (the lawsuit was one of several involving Schron, Grunstein, Forman and their related companies). Plaintiffs alleged, among other things, that the Option was unenforceable because the consideration underlying its agreement to offer the option was contingent on the $100 million Loan, which SVCare claimed was never paid. Subsequently, the

Schron entity sought to exercise the Option, and, when SVCare refused to honor the Option, Schron and his affiliated companies brought a separate lawsuit, Schron v. Troutman Sanders LLP, No. 650702/10, 600736/10, 2011, N.Y. Misc. LEXIS 6611 (N.Y. Sup. Ct., Jan. 20, 2011), seeking specific performance of the Option Contract. In both lawsuits, the Schron entity moved for exclusion of any parol evidence that SVCare sought to introduce to show that the $100 million Loan was the "other good and valuable consideration" referenced in the Option Contract.

The New York Supreme Court in *Schron v. Troutman Sanders* LLP (Yates, J.) consolidated and granted the motions in both lawsuits in favor of the Schron entity, concluding that the Option and Loan were created by entirely separate agreements, that the Option was supported by its own independent consideration, and that SVCare could not offer extrinsic evidence regarding the $100 million Loan obligation. The Appellate Division affirmed, as did the Court of Appeals.

In so affirming, the Court of Appeals held that SVCare could not introduce extrinsic evidence because "the [Option Contract] unambiguously provided that the mutually beneficial covenants constituted the consideration." Specifically, the inclusion of the phrase "other good and valuable consideration" did not render the Option Contract ambiguous or incomplete. To that end, "the importation of another obligation, such as the separate loan obligation, would impermissibly alter the writing in violation of the parol evidence rule" and negate the merger clause. If these sophisticated business entities intended to make the $100 million Loan payment a condition of the enforceability of the option, they easily could have included a provision to that effect. Instead, the $100 million Loan payment was nowhere mentioned in the Option Contract.

The Court of Appeals explained that option contracts, like all written agreements, are to be construed in accordance with the parties' intent, which is best evidenced by the written agreement itself — and parol evidence is only admissible if a court finds an ambiguity in the contract. In particular, where a contract contains a merger clause, courts are obligated to "require full application of the parol evidence rule," and evidence will not be permitted outside the four corners of the contract at issue absent ambiguity in the contract itself. The commonplace contractual recital "other good and valuable consideration" does not create such an ambiguity.

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