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Notwithstanding to the contrary

As Xanne has pointed out in the comments, this a set phrase regularly used in the documents of the U.S. Congress. Its intended meaning is: objections of the president[, which present arguments] to the contrary[,] notwithstanding. What makes the phrase objections to the contrary confusing is that objection to X, normally means that the objection consists of some arguments against X. Consequently, objection to the contrary of X, taken at face value, would mean something consisting of arguments against a position that is contrary to X, which would amount to supporting X (the two negations cancelling out). This is clearly not what was intended here (if it had been, then the presence of notwithstanding would be puzzling). Print ArticleIt is not uncommon for drafters of contracts and statutes to use the word “notwithstanding” to establish precedence over other provisions in the document. Cisneros v. Alpine Ridge Group, 508 U.S. 10, 18 (1993) (The “use of . . . a ‘notwithstanding’ clause ... signals the drafter’s intention that the provisions of the ‘notwithstanding’ section override conflicting provisions of any other section.”). As such, the word “notwithstanding” is considered to be a trumping word that “controls over any contrary language.” *Handlebar, Inc. v. Utica First Ins. Co.*, 290 A.D.2d 633, 635 (3d Dept. 2002), *iv. denied*, 98 N.Y.2d 601 (2002); see also *Bank of N.Y. v. First Millennium, Inc.*, 607 F.3d 905, 917 (2d Cir 2010) (“This Court has recognized many times that under New York law, clauses similar to the phrase ‘[n]otwithstanding any other provision’ trump conflicting contract terms”); *In re Gulf Oil/Cities Serv. Tender Offer Litig.*, 725 F. Supp. 712, 729-30 (S.D.N.Y. 1989) (contract provision containing language “notwithstanding any other provision” explicitly overrides contrary provision). The effect of a “notwithstanding” clause will prevail “even if other provisions of the contract[] might seem to require . . . a [conflicting] result.” *Cisneros*, 508 U.S. at 18-19.On April 5, 2018, the Appellate Division, First Department, issued a decision in *Veneto Hotel & Casino, S.A. v. German American Capital Corp.*, 2018 NY Slip Op. 02414 (here), holding that a “notwithstanding” clause trumped a conflicting provision in the contract under review.Veneto Hotel & Casino, S.A. v. German American Capital Corp.BackgroundThe case arose from a 2007 loan and security agreement (the “Loan Agreement”) between the Plaintiff, Veneto Hotel & Casino, S.A. (“Veneto”), a Panamanian corporation that owns the Veneto Hotel & Casino in Panama City (the “Hotel”), and the Defendant, German American Capital Corp. (“GACC”), pursuant to which GACC loaned money to Veneto (the “Loan”).In June 2009, March 2010 and August 2012, the parties modified the Loan Agreement (the “First Amendment,” the “Second Amendment” and the “Third Amendment”) (collectively, the “Amendments”). Pursuant to the Loan Agreement and the Amendments, Veneto established an account into which the revenues from the Hotel’s operations were deposited each day (the “Holding Account”) by the account trustee, HSBC Bank (the “Account Trustee”). As long as no event of default had occurred or was continuing, the funds were to be distributed in a pre-determined order to certain other accounts. (Loan Agreement at § 3.1.7[a][i]-[ix].) After the first four accounts were funded — i.e., for any taxes, insurance, interest payments on the Loan, and franchise fees — funds sufficient to meet the Hotel’s operating expenses for the next month were to be deposited in Veneto’s account and any funds remaining were to go to Veneto. (Loan Agreement at § 3.1.7[a][i]-[ix].) In the event of a default, additional accounts were to be funded before any remaining money would reach Veneto. (Id. at 3.1.7[a][vi]-[vii].) In the Second Amendment, Section 3.1.7(a)(v) was modified such that Veneto’s operating expenses were to be included in the accounts funded from the Holding Account only after an event of default.By letter dated January 14, 2015, GACC notified Veneto that the latter had defaulted on its obligations (the “Default Notice”). Subsequently, by letter dated January 30, 2015, GACC notified Veneto that it had accelerated the Loan, and, as such, the full outstanding balance on the Loan was immediately due and payable (the “Acceleration Notice”).On January 30, 2015, GACC instructed the Account Trustee to stop providing Veneto with funds from the Holding Account. Veneto claimed that, as a result, it has been unable to pay its operating expenses, including wages and taxes, which led to the suspension of its gambling license.Motion Court Proceedings Plaintiffs commenced the action on June 1, 2015, asserting claims for: (1) a declaratory judgment that GACC was obligated to fund the Hotel’s post-default operations; (2) breach of the Loan Agreement and the Amendments; (3) rescission of the Second and Third Amendments due to mutual mistake; (4) fraud as to Veneto; (5) breach of the covenant of good faith and fair dealing implied in the Loan Agreement and Amendments; (6) breach of GACC’s fiduciary duty to Veneto; (7) permanent equitable relief ordering GACC to withdraw the Default Notice and Acceleration Notice and to perform its obligations under the Loan Agreement; (8) breach of the subordination of management agreement between Veneto and co-plaintiff, SE Leisure Management LLC; and (9) breach of the covenant of good faith and fair dealing implied in the subordination of management agreement.GACC moved to dismiss the complaint.GACC contended that Section 3.1.11(a) of the Loan Agreement gave it the discretion to direct the Account Trustee not to transfer funds to Veneto. GACC also argued that the “notwithstanding” clause in Section 3.1.11(a) trumped the obligations in Section 3.1.7(a) – i.e., because the Loan Agreement defined “Obligations” as “all indebtedness, obligations and liabilities” Veneto owed GACC under the Loan Agreement, Section 3.1.11 allowed it to, upon an event of default, override the standard flow of funds prescribed in Section 3.1.7(a) and instead retain these funds for itself.Veneto claimed that, under Section 3.1.7(a)(v) of the Loan Agreement, GACC was obligated, post-default, to fund the Hotel’s operating expenses. Veneto also argued that Section 3.1.11(a)’s “notwithstanding” language did not apply to Section 3.1.7(a)(v) because that provision was modified in the Second Amendment, and the “notwithstanding” language did not apply to modifications by subsequent Amendments.The motion court found “Veneto’s arguments [to be] unavailing.” (Here.) The court noted that the Second Amendment specifically recognized that “[e]xcept as amended by this Second Amendment, the Loan Agreement and each of the other Loan Documents shall continue to remain in full force and effect.” Since “the Loan Agreement contemplated that GACC could alter or ignore the pre-determined waterfall distribution post-default if there were unpaid obligations, the amendment of Section 3.1.7(a)(v) to move it from one category to another [did] not change Section 3.1.11’s dominance.” Thus, found the court, “GACC’s refusal to fund Veneto’s operating expenses post-default was an appropriate exercise of its authority under the Loan Agreement.”Veneto appealed the dismissal of two claims: the breach of Loan Agreement and the Amendments, and breach of the covenant of good faith and fair dealing implied in the Loan Agreement and Amendments.The First Department “unanimously affirmed” the dismissal.The Court found that the breach of contract claim, which was “based on defendant’s alleged breach of section 3.1.7(a)(v) of the parties’ loan agreement[,] was properly dismissed.” According to the Court, “[a] fair reading of the loan agreement and amendments reveal[ed] that [GACC] was not obligated to apply its security to fund ... Veneto’s expenses following an ‘Event of Default.’” The Court observed that Section 3.1.7 of the Loan Agreement only required the Account Trustee to follow the directions provided by GACC to it, “both when Veneto was in default and when it was not.” When read together with Section 3.1.11(a), said the Court, “it is clear that defendant had ‘sole and absolute’ discretion regarding whether it would pay for Veneto’s operating expenses from the Holding Account following an Event of Default.” The Court concluded that “Section 3.1.7(a)(v) does not supersede section 3.1.11(a), either expressly or impliedly, as it is clear that sections 3.1.7 and 3.1.11(a) work together and do not conflict.” As to the “notwithstanding” clause, the Court found that “even if section 3.1.7(v) could be interpreted to be inconsistent with section 3.1.11(a), section 3.1.11(a) would still prevail” because of the “trumping” language found within that section. Citing *Warberg Opportunistic Trading Fund, L.P. v. GeoResources, Inc.*, 112 A.D.3d 78, 83 (1st Dept. 2013), Section 3.1.11 provided “that it would apply ‘notwithstanding anything to the contrary’ in the Loan Agreement.” Thus, held the Court, “Defendant acted within the authority and discretion provided to it under section 3.1.11(a).”TakeawayThe principles governing contract interpretation are familiar. When parties to a contract “set down their agreement in a clear, complete document,” their intention will be determined “from the four corners of the instrument and will be enforced according to its terms.” See *Vermont Teddy Bear Co. v. 538 Madison Realty Co.*, 1 N.Y.3d 470, 475 (2004); *W.W.W. Assoc. v. Giancontieri*, 77 N.Y.2d 157, 162 (1990).Importantly, when interpreting a contract, courts should not render any portion of the agreement meaningless. *Beal Sav. Bank v. Sommer*, 8 N.Y.3d 318, 324 (2007); *God’s Battalion of Prayer Pentecostal Church, Inc. v. Miele Assoc., LLP*, 6 N.Y.3d 371, 374 (2006); *Excess Ins. Co.*, 3 N.Y.3d at 582. For this reason, courts will read a contract “as a whole,” interpreting “every part ... with reference to the whole.” *Matter of Westmoreland Coal Co. v. Entech, Inc.*, 100 N.Y.2d 352, 358 (2003). As such, courts will enforce a trumping clause according to its terms when it comports with the intention of the parties. See *Bank of N.Y. Mellon Trust Co., N.A. v. Merrill Lynch Capital Servs. Inc.*, 99 A.D.3d 626, 628 (1st Dept. 2012).Veneto teaches that these fundamental principles remain well entrenched in New York law. In Veneto, the contract language was clear. And, to the extent there was a dispute over the effect of the trumping language in Section 3.1.11(a), the Court left no doubt that such language should be enforced pursuant to its terms, even where the effect of the “notwithstanding” clause contradicts other provisions of the contract and would “require ... a [conflicting] result.” *Cisneros*, 508 U.S. at 18. The entire sentence is : “IN ACCEPTING THIS BILL OF LADING, Merchant agrees to be bound by all the stipulations, terms, and conditions on the face and back hereof, and the terms and conditions contained in Carrier’s applicable Tariff, whether written, typed, stamped, or printed, as fully as if signed by Merchant, any local custom or privilege to the contrary notwithstanding, and agrees that all representations, agreements or freight engagements for and in connection with Carriage of Goods are superseded by this Bill of lading. “ It’s from a Bill of Lading issued by KAWASAKI KISEN KAISHA, LTD.. I know what the rest of the sentece means, but can’t figure out “to the contrary notwithstanding”. Can someone please tell me what the phrase exactly means? Thanks a lot for your explanation! “x notwithstanding” means “in spite of x” or “regardless of x”. “To the contrary” means “which goes against what has just been said”. It modifies “any local custom or privilege”. The full clause means “regardless of any local customs or privileges that go against what has just been said”. Hope that helps! -I Notwithstanding = in spite of/regardless of. It can be placed at the end of the clause or at the front (notwithstanding any local custom or privilege to the contrary). The conditions of the contract take precedence over any local customs. From The Jolly Contrarian Jump to navigation Jump to search One of a number of querulous variations — such as “notwithstanding anything to the contrary in the foregoing”; “notwithstanding anything contained herein to the contrary”; notwithstanding anything to the contrary hereinbefore contained — you get the picture — which would be the legal eagle’s response to the challenge “I bet you can’t come up with a more convoluted way of saying however”, right after he said “HOLD MY BEER”. As of 2020, the best spotted-in-the-wild, real-life rendition of “however” was this one, courtesy of a punctilious antipodean asset manager: “Notwithstanding anything to the contrary contained in the Agreement or any Schedule, addendum, Confirmation, or other document issued or delivered in connection with any Transaction entered into under this Agreement...” You can just imagine the type of party — all resplendent in flannel shirts, supping Coors lite, comparing tomahawks — in which that passed for entertainment, can’t you. Sounds rather like the Jolly Contrarian’s office Christmas party, come to think of it. See also Notwithstanding anything to the contrary in the foregoing language, the “Applicable Countries” does not include any country to or on which the United States has embargoed goods or imposed targeted sanctions. Another gem: “Notwithstanding anything to the contrary contained herein”. 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