UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 21st day of April, two thousand twenty-three.

PRESENT:

BARRINGTON D. PARKER,
DENNY CHIN,
RICHARD J. SULLIVAN,
Circuit Judges.

YOOKEL, INC.,

Plaintiff-Appellant,

v. No. 22-655

UNITED STATES STEEL CORPORATION,

Defendant-Appellee.[*]

---

[*] The Clerk of Court is respectfully directed to amend the official case caption as set forth above.

For Plaintiff-Appellant: NICHOLAS VELIKY (Avery S. Mehlman, Shivani Poddar, *on the brief*), Herrick, Feinstein LLP, New York, NY.

For Defendant-Appellee: CHRISTOPHER J. POTTMEYER, Jones Day, Pittsburgh, PA (Roy A. Powell, Jones Day, Dallas, TX, *on the brief*).

Appeal from a judgment of the United States District Court for the Eastern District of New York (Kiyo A. Matsumoto, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Yookel, Inc. ("Yookel") appeals from the district court's grant of a motion for judgment on the pleadings after finding that Yookel did not plausibly allege claims for breach of contract, declaratory judgment, unjust enrichment, and fraudulent inducement against United States Steel Corporation ("U.S. Steel"). Yookel alleges that U.S. Steel fraudulently induced Yookel to enter into two agreements (the "Real Estate Agreement" and "Rail Easement"), which give Yookel access to a railroad system that services industrial warehouses at the Keystone Industrial Port Complex ("KIPC"), by failing to disclose that Yookel and its lessee could be subject to demurrage fees charged by railyard operator

Consolidated Rail Corporation ("Conrail") and its parent company, CSX Transportation, Inc. ("CSX"). On appeal, Yookel principally argues that its allegations were sufficiently plausible to survive U.S. Steel's motion and that the court's issuance of a judgment on the pleadings *with prejudice* improperly deprived Yookel of its right to amend its complaint. We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal.

"We review de novo a district court's decision to grant a motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c)." *Lively v. WAFRA Inv. Advisory Grp., Inc.*, 6 F.4th 293, 301 (2d Cir. 2021) (internal quotation marks omitted). On a Rule 12(c) motion, "we draw all reasonable inferences in the plaintiff's favor" to determine whether the plaintiff's complaint "contain[s] sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Id.* (internal quotation marks omitted).

We agree with the district court that Yookel's claims cannot withstand U.S. Steel's Rule 12(c) challenge.[1] Starting with the breach-of-contract claim, we note that Pennsylvania law is clear that when a contract is unambiguous – meaning "it

[1] For the reasons discussed in the district court's thorough and well-reasoned opinion, we are governed by New York's choice-of-law rules, and therefore apply Pennsylvania substantive law to Yookel's breach-of-contract and declaratory-judgment claims and New York substantive law to Yookel's fraudulent-inducement and unjust-enrichment claims. Sp. App'x at 7–11.

is [not] reasonably susceptible of different constructions and capable of being understood in more than one sense," *Hutchison v. Sunbeam Coal Corp.*, 519 A.2d 385, 390 (Pa. 1986) – "the intent of the parties is to be ascertained from the document itself," *Kripp v. Kripp*, 849 A.2d 1159, 1163 (Pa. 2004).

Here, the Real Estate Agreement and Rail Easement are unambiguous and lend themselves to only one reasonable interpretation. Under the express terms of the agreements, U.S. Steel granted Yookel "irrevocable, non-exclusive rights for rail access[] and railroad staging," App'x at 481 (Real Estate Agreement § 1.01), "subject to [the] rights of other owners, tenants[,] and occupants at the KIPC, and to [U.S. Steel's] rights and [those of U.S. Steel's] agents, assignees, carriers, contractors[,] and all other persons lawfully using the Ancillary Rights," *id.* at 482 (Real Estate Agreement § 1.01(A)). As part of this arrangement, Yookel agreed to pay an annual maintenance fee. *Id.* at 482 (Real Estate Agreement § 1.01(B)). In return, U.S. Steel agreed to "maintain the Common Area Rail Lines that service the Premises," *id.*, and to keep the rails in "good working condition," *id.* at 239 (Rail Easement § 1(D)(c)). In other words, the quid pro quo was straightforward: Yookel agreed to pay an annual maintenance fee and U.S. Steel promised to maintain the Common Area Rails.

Yookel alleges that U.S. Steel breached the maintenance-fee provision of the Real Estate Agreement because CSX assessed demurrage fees against Yookel's lessee. According to Yookel, it is entitled to reimbursement of the demurrage fees because "Yookel . . . understood that it was only required to pay [U.S.] Steel the Maintenance Fee in connection with its use of the Common Area Rails[] and was not responsible for any other fees." *Id.* at 55 ¶ 45. We disagree.

It is undisputed that section 1.01 of the Real Estate Agreement covers fees for maintenance services only, and makes no reference to the myriad fees that Yookel and its lessee might otherwise incur. Yookel would have us transform the maintenance-fee provision into an insurance policy for any and all fees that Yookel and its lessee might be charged, or a representation or warranty from U.S. Steel that no other fees would apply to Yookel's use of the Common Area Rails. But Yookel never bargained for these contractual protections. Pennsylvania courts have repeatedly and consistently held that when – as here – "a contract fails to provide for a specific contingency, it is silent, not ambiguous[,] [and] [i]n such circumstances, we will not read into the contract a term, . . . which clearly it does not contain." *Seven Springs Farm, Inc. v. Croker*, 748 A.2d 740, 744 (Pa. Super. Ct. 2000) (citation omitted), *aff'd*, 801 A.2d 1212 (Pa. 2002); *see also Steuart v. McChesney*,

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.