



The Second Department recently held that the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, which bars enforcement of arbitration clauses in actions related to sexual assault disputes, also applies to claims against third parties sounding in negligence. In that case, the plaintiff sued her sorority alleging that it negligently failed to supervise and protect her from a sexual assault at a fraternity party, and the court held that the EFAA applied to bar enforcement of an arbitration clause in her membership agreement. Let's take a look at that opinion and what else has been going on in the New York appellate courts over the last week.

FIRST DEPARTMENT

CONTRACTS, INTERPRETATION

Aurelius Capital Master Ltd. v Hertz Intl. Ltd., 2026 NY Slip Op 05369 (1st Dept Sept. 22, 2026)

Issue: What does it mean to “raise, or commit to raise” new debt in the context of a commercial contract?

Facts: “Plaintiffs, holders of unsecured notes issued by defendant Hertz Holdings Netherlands B.V., commenced this breach of contract action seeking payment of an Alternative Financing Premium (AFP) under a Backstop Agreement executed during Hertz’s COVID-19-era financial distress.” According to the language of the Backstop Agreement, the AFP would be due if “on or prior to the Restructuring Effective Date [March 31, 2021], HIL and/or [HHN] (or any of their . . . affiliates) . . . raises, or commits to raise, any new debt or equity financing from any Alternative Financing Provider in lieu of issuing all or any portion of the New HIL Notes,” which plaintiffs had proposed.

“On March 24, 2021, the U.S. debtors circulated to prospective lenders a term sheet for new financing that they represented would be less costly than plaintiffs’ proposal. The next day, one lender agreed to provide such financing. Shortly thereafter, the U.S. debtors filed a disclosure statement and a motion seeking authorization to enter into an Equity Purchase and Commitment Agreement, attaching the March 25 term sheets and stating that HIL would obtain a €250 million facility from new lenders. On the morning of March 30, those lenders transmitted executed equity commitment letters for the HIL financing to the U.S. Debtors’ counsel.” The transactions did not close until after the March 31, 2021 deadline.

“After a nonjury trial, Supreme Court found that defendants triggered the AFP (which became due upon the procuring of the alternative financing) when, before the Backstop Agreement expired, they took affirmative steps toward securing alternative financing, even though the final commitment for the financing occurred after the deadline. The court rejected defendants’ argument that a binding financing commitment was required.”

Holding: The First Department, with two Justices dissenting, affirmed. The court noted, although the phrase “commits to raise” was not defined in the Backstop Agreement, the court could find its plain meaning by looking not only at dictionary definitions, but also its context in the sentence, section, and agreement as a whole. The court explained, “[t]hat there are various definitions of the word ‘commit’ does not mean that its use is inherently ambiguous. Even if dictionary definitions conflict, a court can still determine the plain meaning of a word. When considered in isolation and without reference to the context, almost any word can be ambiguous, which is why courts must review the context in which a term appears, both at the sentence level and the level of the contract as a whole, to determine whether it is ambiguous. Thus, the construction of the sentence in which a word is used, the subject of the sentence or section of the contract, and the purpose of the contract as a whole all provide important context that can narrow the definitions that might apply and can render a word or phrase unambiguous.”

Applying those principles here, the court rejected the defendant’s interpretation that the phrase “commit to raise” required a binding agreement to raise the financing from a third party. “The phrase ‘raises or commits to raise’ is disjunctive. If ‘commit’ required a binding agreement, ‘raise’ would become surplusage. Reading the contract in this way violates the principle that contracts must be interpreted to give effect to all terms. The more coherent interpretation is that ‘commit to raise’ encompasses significant affirmative steps toward securing alternative financing—even if not yet reduced to a binding agreement—so long as those steps reflect a defined intent to pursue the financing in lieu of the HIL notes. This interpretation aligns with the Backstop Agreement’s purpose: defendants could pursue cheaper financing but had to pay plaintiffs the AFP for assuming substantial risk in facilitating that restructuring path. The financing ultimately obtained was indeed cheaper even after accounting for the AFP. Since a contract is a voluntary undertaking, it should be interpreted to give effect to the parties’ reasonable expectations.”

Indeed, the court held, “[t]hat the parties chose the term ‘raises or commits to raise,’ rather than a binding promise, is a clear manifestation of an intent to trigger a duty to pay an AFP once defendants took affirmative steps to procure alternative financing prior to the expiration

of the Backstop Agreement. Any other reading would impermissibly disregard the clear and unequivocal meaning given to the terms by the parties.” Here, defendants took those required affirmative steps, even though the binding commitment did not come until after the deadline had passed. Therefore, the court concluded, Supreme Court properly held that plaintiffs were entitled to the AFP.

SECOND DEPARTMENT

TORTS, ARBITRATION

C.N. v Sigma Delta Tau Socy., 2026 NY Slip Op 05405 (2d Dept Sept. 23, 2026)

Issue: Can the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (9 U.S.C. §§ 401, 402) serve to prevent arbitration, notwithstanding an arbitration clause in a contract between the parties, of an action sounding in negligence against a party that did not commit the alleged sexual assault?

Facts: “The plaintiff attended SUNY Cortland and was a member of the [defendant] sorority . . . On September 14, 2023, a fraternity chapter, Pi Kappa Phi, allegedly held a mixer event off campus in Cortland. According to the complaint, the plaintiff, as a member of the sorority, was ‘expected and obligated by [the] sorority to attend the mandatory mixer event to be hosted by the fraternity.’ The fraternity purportedly provided alcohol and other intoxicating substances to the attendees at the mixer event, which caused the plaintiff to become impaired. Allegedly, while attending the mixer event, the plaintiff met a member of the fraternity (hereinafter the alleged abuser) who took the plaintiff to a nearby premises where he sexually assaulted her.

In April 2025, the plaintiff commenced this action against the sorority to recover damages for personal injuries. The complaint alleged that the sorority was ‘negligent, wanton, reckless and careless in requiring all members including [the] plaintiff, to attend [the] fraternity mixer.’ The complaint further alleged that the fraternity had been removed from the SUNY Cortland campus and was unaffiliated with the fraternity’s national organization due to ‘previous inappropriate and dangerous conduct,’ of which the sorority knew or should have known. The complaint alleged that the sorority failed to provide and maintain adequate supervision over its members while they attended the mixer event and came into contact with members of the fraternity.”

The sorority moved, pursuant to CPLR 7503(a), to compel arbitration, relying on “an arbitration provision in a membership contract the plaintiff purportedly had entered into with the sorority in February 2023.” The plaintiff opposed, arguing that the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFAA) barred arbitration because it “renders arbitration agreements invalid and unenforceable, at the election of the complainant, in sexual assault and sexual harassment cases.” In particular, the EFAA provides:

Notwithstanding any other provision of this title, at the election of the person alleging conduct constituting a sexual harassment dispute or sexual assault dispute, . . . no predispute arbitration agreement or predispute joint-action waiver shall be valid or enforceable with respect to a case which is filed under Federal, Tribal, or State law and relates to the sexual assault dispute or the sexual harassment dispute.

9 U.S.C. § 402(a).

“According to its legislative history, the EFAA serves to ‘restore access to justice for millions of victims of sexual assault or harassment who are currently locked out of the court system and are forced to settle their disputes against companies in a private system of arbitration that often favors the company over the individual.’

Supreme Court granted the defendant sorority’s motion to compel arbitration, holding that the EFAA did not apply to plaintiff’s personal injury action alleging that the sorority was negligent in failing to provide supervision.

Holding: The Second Department reversed. The court explained that the issue before it—whether the EFAA applies to actions sounding in negligence brought against parties that did not commit the alleged sexual assault—was one of first impression. Rejecting the defendant’s argument that it does not, the court held that the statutory language only requires the dispute to “relate” to sexual assault or harassment for the EFAA ban on arbitration to apply. “The term ‘relate,’ as used in the statute, is defined as ‘to have relationship or connection.’ When used as a transitive verb, the term means ‘to show or establish logical or causal connection between.’ The term tends to be interpreted expansively.” So too does the phrase “sexual assault dispute” tend to be interpreted broadly, the court noted.

“Taken together, these definitions suggest that the United States Congress intended for the EFAA to broadly prevent the enforcement of predispute arbitration agreements in legal proceedings that have a logical connection or nexus to an expansive category of sexual assault or sexual harassment disputes, as defined in the EFAA. The statutory language does not contain limiting language that would require a direct claim of sexual assault or sexual harassment against the alleged tortfeasor in order for the EFAA to apply. Rather, when an action has a logical connection to conduct by a defendant in the action that in some way concerns sexual assault or sexual harassment, the EFAA will apply and arbitration will be prevented.”

Moreover, the court reasoned, courts across the nation “are widely consistent in holding that the EFAA is to be broadly construed and that it applies to claims not explicitly alleging a violation of a law prohibiting sexual assault, such as negligence or discrimination, provided that the case or action ‘relates’ to the sexual assault dispute.”

Here, the court held, the plaintiff's action against the sorority did: "although the sorority contends that the plaintiff's cause of action sounds in negligence as opposed to sexual assault, that distinction is immaterial here. The negligence cause of action is 'related' to the sexual assault dispute alleged in the complaint, which is all that is required under the EFAA (*see* 9 USC § 402[a]). While the sorority is a third party that was not directly involved in the sexual assault, the negligence claim is nonetheless 'related' to the sexual assault dispute inasmuch as the plaintiff contends that the sorority placed her in a dangerous circumstance that led to the sexual assault. There is a clear logical nexus between the cause of action alleged in the complaint and the alleged sexual assault, which places this matter squarely within the ambit of the EFAA."

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