

## Money Talks

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### Right of First Refusal Narrowly Construed



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In *Prairie Street Capital, Inc. v. Afek et al.*, Prairie Street Capital, Inc. (“Plaintiff”) alleged that defendants breached Plaintiff’s contractual rights to exercise a right of first refusal option (the “ROFR Option”) upon the occurrence of a trigger event. The United States District Court of the Southern District of New York (the “Court”) held that Plaintiff’s broad interpretation of the ROFR Option triggers did not provide a sufficient factual basis to establish a breach of contract, upholding that rights of first refusal are to be narrowly construed under New York law.

Plaintiff filed suit against several defendants and each defendant moved separately to dismiss the relevant claims for failure to state a claim.

The dispute arose from two agreements related to a \$5 million loan that Webster Business Credit Corporation (“Webster”) issued to Richardson Foods, Inc. (“RFI”), a corporation founded to acquire Richardson Brands Company (“RBC”, with RFI, collectively, “Richardson”), in December 2014. The loan agreement between Richardson and Webster (the “Loan Agreement”) granted Webster a continuing security interest in and to all of Richardson’s assets (the “Collateral”) and to certain rights and remedies under the New York Uniform Commercial Code (“UCC”), including the right to foreclose on and sell any or all of the Collateral with or without judicial process (“UCC Sale Option”).

Richardson defaulted under the Loan Agreement. Richardson then requested a \$280,000 cash deposit from Plaintiff to serve as additional collateral for the loan, which Plaintiff provided. In August 2019, the Loan Agreement was amended (the “Amendment”), granting Plaintiff the ROFR Option to purchase 100% of the Collateral if Webster sold 100% of the Collateral to a third-party (a “Qualified Loan Sale”).

On or about February 25, 2020, a potential purchaser sent Webster a letter of intent to purchase substantially all of RFI’s assets from Webster and Richardson through a UCC sale under Section 9-611 of the UCC. Plaintiff believed this offer qualified as a Qualified Loan Sale. On March 4, 2020, Plaintiff notified Webster of its intent to purchase the Collateral. Days later, Richardson executed a surrender agreement acknowledging default and consenting to Webster’s sale of Richardson’s interest in RFI to Roses under the UCC Sale Option (the “Sale”). After the Sale, Plaintiff alleged that Webster breached the Amendment by disregarding Plaintiff’s acceptance of the ROFR Option.

The Court found that Plaintiff did not plausibly allege a breach of the Amendment’s ROFR Option. The Court explained that the ROFR Option is triggered only if Webster offers to sell 100% of the Collateral, which includes Richardson’s interests in both RBC and RFI. Here, Webster sold only Richardson’s interest in RFI’s assets under the UCC Sale Option. The Court reaffirmed that “[r]ights of first refusal are construed narrowly”<sup>[1]</sup> under New York law. Roses’ offer and the resulting transaction did not constitute a Qualified Loan Sale. Therefore, while Plaintiff could prevent Webster from selling all of the Collateral to Roses, it could not prevent Webster from selling only a portion under the UCC Sale Option.

Accordingly, the Court granted Webster's motion and dismissed the complaint.

[1] *Lewis v. Rahman*, 147 F. Supp. 2d 225, 236 (S.D.N.Y. 2001)