A Guide to Contract Interpretation

February 2013

by

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[1] Query whether "harmonize" means (1) to interpret a provision so as to reduce or eliminate surplusage or (2) to let other provisions (which might or might not be superfluous) guide the selection of one alternative interpretation over another. Meaning #2 is slightly broader.

[2] In addition to the principles listed below, there are various additional principles (which are not addressed in this guide) that a court might employ to determine whether or not a provision is ambiguous.

[3] Listed below are principles of contract interpretation that are specific to certain substantive areas of contracts. These principles are based solely upon the limited case law that was reviewed in connection with compiling this guide and this guide does not purport to include a complete set of all such types of contract-interpretation principles.

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INTRODUCTION

Transactional attorneys and litigators often take a very different approach toward contracts. Transactional attorneys focus on the *ex ante*—the relationship between the parties before there is a dispute. Sometimes their sole concern is making sure that the contract "works" sufficiently so that the deal gets done. More-conscientious transactional attorneys weigh the various risks associated with contract drafting by regularly thinking about the "what-ifs."

But transactional attorneys would do well to put on their "litigator's hat" more often. Litigators think about what happens when things go south. When called upon to analyze a contract in the context of a burgeoning litigation, many litigators turn immediately to the "boilerplate" or "miscellaneous provisions." That's where the contract-interpretation and contract-construction "rules" hide, which, in addition to statutes, case law, and doctrine, will inform the contract reader how to interpret the provision at issue.

But if principles of contract interpretation and contract construction are so important for assessing who "wins" (or who at least has the better argument in the context of) a dispute, then why do transactional attorneys too often neglect to consider them?

One possibility is that formal training among transactional attorneys is lacking. Perhaps transactional attorneys bump up against the occasional contract-interpretation principle when analyzing a given contract. But we are rarely taught those principles in a *systematic* fashion.

Another possibility is that transactional attorneys are focused on "getting the deal done." They are viewing the contract as a manual for telling the parties what they can and can't do, what they are or are not asserting as true. To be sure, contracts serve that function. But contracts—and quality contract drafting—also serve to protect the parties from disputes down the road if things don't go as planned. For sophisticated transactional attorneys, it's not enough that the parties "get the idea" of what a contract is "supposed to do"; a contract must also guard against the "1% case." Of course, no contract can be completely air-tight and drafting compromises must often be made (sometimes from the onset of the drafting process). However, at a minimum, the drafter should—with respect to each provision in a contract—strive to *consciously* be making a decision as to whether or not that provision is subject to risk, misinterpretation, or ambiguity and then, in connection with the drafter's client, assess whether or not to address that issue.

To effectively accomplish this, a contract drafter needs to seek to understand principles of contract interpretation and contract construction. An understanding of these principles will serve to not only improve the quality of an attorney's drafting; it will also serve to sharpen his or her ability to analyze contracts and provisions that have been entered into.

PURPOSE OF THIS GUIDE

This guide is meant to serve several purposes. First, it is meant to educate transactional attorneys (like the authors) regarding principles of contract interpretation so that they can draft contracts with these principles in mind. Second, it is meant to serve as a resource for analyzing contracts that have already been drafted or that are already effective, whether that analysis precedes or is in response to a specific dispute. Finally, and in the same vein, the case law cited in this guide is meant to serve as a helpful starting point to those conducting research on the interpretation of a given contract or provision (from a positive or normative standpoint).

SCOPE OF THIS GUIDE

Most of the principles in this guide were compiled based upon a Westlaw search aimed to identify court opinions rendered by New York and Delaware courts addressing ambiguities in contracts. The search is performed daily and the contract-interpretation principles were obtained from opinions published between January 2012 and July 2012. Certain of the canons of interpretation are based upon specific case-law searches for those principles.

The case law portion of the guide is organized in an outline according contract-interpretation principle and enables the reader to get a sense of how widely adopted a given principle is by the consistency of that principle's use and articulation in the cases cited. Some principles are foundational, cited very often and articulated consistently in court opinions; others are more idiosyncratic.

Finally, because of the limited range of court opinions surveyed and because the opinions consulted span a limited time period, this guide is certainly not meant to be a comprehensive treatise on contract-interpretation principles. Rather, we plan to update this guide from time to time with additional principles and nuances.

And we of course welcome any questions and comments. Please feel free to send your thoughts to us: Vincent R. Martorana (vmartorana@reedsmith.com; (212) 549-0418) and Michael K. Zitelli (mzitelli@reedsmith.com; (212) 521-5408).

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Vincent has extensive experience providing advice on contract drafting, analysis, and interpretation relating to disputes, settlements, and negotiated transactions. He has presented his continuing legal education contract-drafting courses for in-house legal departments and at various other venues, including Practising Law Institute, Strafford Webinars, The Business Development Academy, the National Academy of Continuing Legal Education, the American Bar Association, the New York State Bar Association, the New York City Bar Association, the New York County Lawyers Association, the Brooklyn Bar Association, the Suffolk County Bar Association, and the Westchester County Bar Association.

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Michael received a J.D., *cum laude*, from St. John's University School of Law where he served as a Senior Articles Editor for the *St. John's Law Review*. Michael received a B.S. in Sport Management and Economics, *summa cum laude*, from the State University of New York College at Cortland.

Michael has also published a variety of law review articles in the areas of labor law, employment law, and sports law.

CONTRACT-INTERPRETATION FLOW CHART

Over-arching Principle: Determine the intent of the parties with respect to the provision at issue at the time the contract was made

- Ask: Is the provision ambiguous?

What is Ambiguity?

Principle: A contract or provision is ambiguous if it is reasonably susceptible to more than one interpretation

- **Potential Refinements of Principle:**
  - Some courts look at whether the provision is reasonably susceptible to more than one interpretation when read by an *objective reader in the position of the parties*
  - Some courts factor in a reading of the provision "by one who is cognizant of the customs, practices, and terminology as generally understood by particular trade or business"
    - Potential Exception: When the plain meaning of a word lends itself to only one reasonable interpretation, that interpretation controls
  - The contract should be viewed in light of circumstances under which it was made
  - As between two interpretations, the court will not adopt an interpretation that produces an absurd result
  - A provision is not ambiguous simply because the parties disagree as to its construction or urge alternative interpretations

Assessing Whether a Provision is Ambiguous

Note: Whether a contract or provision is ambiguous is a determination of law for the court to make

Note: Parol evidence cannot be used to create an ambiguity

Principles for Determining Whether a Provision is Ambiguous

- *Holistic Principles*
  - Read the contract as a whole; do not read provisions in a vacuum
  - Provisions and terms should not be interpreted so as to render any provision or term superfluous or meaningless
  - Terms should be "harmonized" and read in context[1]
  - Contracts entered into contemporaneously and for the same purpose should be read and interpreted together
- *Canons of Construction*
  - *Ejusdem generis* (when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same type as those listed)
  - *Expresio unius est exclusio alterus* (to express or include one thing implies the exclusion of another)
  - The specific governs over the general
- *Other Principles*[2]
  - Preference for construing text as an obligation rather than a condition
  - When dealing with sophisticated parties, the court gives deference to the language used

Provision is unambiguous

Court Interprets Contract as a Matter of Law

- **Principle: If the provision is unambiguous, then the court should look ONLY to the text of the contract to determine the parties' intent ("four-corners rule")**
  - Best evidence of intent is the text of the contract
  - Use "manifested intent," not "actual intent"
  - Parol evidence cannot be used
  - Notions of equity and fairness cannot be used to alter the contract
  - Exception: Doctrine of scrivener's error (very high burden on party seeking to invoke the exception)

Provision is ambiguous

Parties' Intent Becomes a Question of Fact

- **Principle: Parol evidence can be used to determine the intent of the parties**
- Summary judgment is inappropriate
  - Possible Exception: Summary judgment might be appropriate if parol evidence is uncontroverted or so one-sided that no reasonable person could decide otherwise
- An ambiguity is generally construed against the drafter (*contra proferentum*)

[1] Query whether "harmonize" means (1) to interpret a provision so as to reduce or eliminate surplusage or (2) to let other provisions (which might or might not be superfluous) guide the selection of one alternative interpretation over another. Meaning #2 is slightly broader.

[2] In addition to the principles listed below, there are various additional principles (which are not addressed in this guide) that a court might employ to determine whether or not a provision is ambiguous.

A. Determine the intent of the parties with respect to the provision at issue at the time the contract was made

Case	Principle
Maser Consulting, P.A. v. Viola Park Realty, LLC --- N.Y.S.2d ----, 2012 WL 234081 N.Y.A.D. 2 Dept., January 24, 2012	Fundamental, neutral precept of contract interpretation is that agreements are construed in accord with the parties' intent.
In re Motors Liquidation Co. 460 B.R. 603 Bkrtcy.S.D.N.Y., November 28, 2011	The cardinal rule of contract interpretation is to ascertain and "give effect to the expressed intentions of the parties."
Wiser v. Enervest Operating, L.L.C. 803 F.Supp.2d 109 N.D.N.Y., March 22, 2011	Under the cardinal principle for construction and interpretation of contracts in New York, the intention of the parties controls.
XL Specialty Ins. Co. v. Level Global Investors, L.P. 2012 WL 2138044 S.D.N.Y.,2012, June 13, 2012	Under New York law, "an insurance contract is interpreted to give effect to the intent of the parties as expressed in the clear language of the contract." *Parks Real Estate Purchasing Grp. v. St. Paul Fire & Marine Ins. Co.*, 472 F.3d 33, 42 (2d Cir.2006).
In re Lehman Brothers Inc. --- B.R. ----, 2012 WL 1995089 S.D.N.Y.,2012, June 05, 2012	As a threshold matter, a contract must be interpreted according to the parties' intent. *Crane Co.*, 171 F.3d at 737.
Cordis Corp. v. Boston Scientific Corp. --- F.Supp.2d ----, 2012 WL 2320799 D.Del.,2012, June 19, 2012	The primary consideration in interpreting a contract is to "attempt to fulfill, to the extent possible, the reasonable shared expectations of the parties at the time they contracted." *See Comrie v. Enterasys Networks, Inc.*, 837 A.2d 1, 13 (Del. Ch.2003).
Point Mgmt., LLC v. MacLaren, LLC 2012 WL 2522074 Del.Ch.,2012, June 29, 2012	Intent, not knowledge, is the governing inquiry when interpreting an ambiguous deed. While knowledge may support an *inference* of intent, here, the evidence to the contrary is insurmountable.
Syncora Guar. Inc. v. EMC Mortg. Corp. --- F.Supp.2d ----, 2012 WL 2326068 S.D.N.Y.,2012, June 19, 2012	When interpreting a written contract, the Court seeks "to give effect to the intention of the parties as expressed in the unequivocal language they have employed." *British Int'l. Ins. Co. Ltd. v. Seguros La Republica, S.A.*, 342 F.3d 78, 82 (2d Cir.2003) (citation omitted).
Hillside Metro Associates, LLC v. JPMorgan Chase Bank, Nat. Ass'n 2012 WL 1617157 E.D.N.Y.,2012, May 09, 2012	*Greenfield v. Philles Records, Inc.*, 98 N.Y.2d 562, 569 (2002) ("The fundamental, neutral precept of contract interpretation is that agreements are construed in accord with the parties' intent.").

B. Defining ambiguity

1. A contract or provision is ambiguous if it is reasonably susceptible to more than one interpretation

Case	Principle
Syncora Guar. Inc. v. EMC Mortg. Corp. Slip Copy, 2012 WL 2326068 S.D.N.Y.,2012, June 19, 2012	"As with contracts generally, a provision in an insurance policy is ambiguous when it is reasonably susceptible to more than one reading." *United Air Lines, Inc. v. Ins. Co. of State of* Pa., 439 F.3d 128, 134 (2d Cir.2006) (citation omitted).
In re Motors Liquidation Co. 460 B.R. 603 Bkrtcy.S.D.N.Y., November 28, 2011	In determining "whether the language of the contract *and* the inferences to be drawn from it are susceptible to more than one reasonable interpretation"— *i.e.*, ambiguous—the court looks to see whether it is: capable of more than one meaning . . .
GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P. --- A.3d ----, 2012 WL 10916 Del.Supr., January 03, 2012	[A]n ambiguity exists when the provisions in controversy are fairly susceptible of different interpretations or may have two or more different meanings.
Convergent Wealth Advisors LLC v. Lydian Holding Co. 2012 WL 2148221 S.D.N.Y.,2012, June 13, 2012	Contract terms are only ambiguous "[w]hen the provisions in controversy are fairly susceptible [to] different interpretations or may have two or more different meanings ."
Cordis Corp. v. Boston Scientific Corp. --- F.Supp.2d ----, 2012 WL 2320799 D.Del.,2012. June 19, 2012	Ambiguity exists only when a contractual provision is "reasonably or fairly susceptible of different interpretations or may have two or more different meanings." *Rhone–Poulenc*, 616 A .2d at 1196; *accord SI Mgmt. LP. v. Wininger*, 707 A.2d 37, 42 (Del.1998). However, inconsistent contractual provisions may create ambiguity in a contract. *Fraternal Order of Police v. City of Fairmont*, 468 S.E.2d 712, 717 (W.Va.1996) ("Contract language usually is considered ambiguous where an agreement's terms are inconsistent on their face...."); *Weber v. Tillman*, 913 P.2d 84, 96 (Kan.1996) ("To be ambiguous, a contract must contain provisions or language of doubtful or conflicting meaning, as gleaned from a natural and reasonable interpretation of its language."); *Franklin v. White Egret Condo., Inc.*, 358 So.2d 1084 (Fla.Dist.Ct.App.1977), *aff'd*, 379 So.2d 346 (Fla.1979) (finding "two sections [of a disputed contract] are inconsistent, and inherently ambiguous.").
Gen. Teamsters Local Union 326 v. City of Rehoboth Beach 2012 WL 2337296 Del.Super.,2012, April 24, 2012	[T]here is an ambiguity in the contract . . . where a contract's provisions are reasonably susceptible to two or more meanings.
Reyes v. Metromedia Software, Inc. --- F.Supp.2d ----, 2012 WL 13935 S.D.N.Y., January 04, 2012	A contractual provision is ambiguous only "when it is reasonably susceptible to more than one reading."

China Privatization Fund (Del), L.P. v. Galaxy Entertainment Group Ltd. 95 A.D.3d 769, --- N.Y.S.2d ----, 2012 N.Y.A.D. 1 Dept.,2012, May 31, 2012	An agreement is unambiguous if the language used "has a definite and precise meaning, unattended by danger of misconception in the purport of the [agreement] itself, and concerning which there is no reasonable basis for a difference of opinion" . . . On the other hand, a contract is ambiguous if "on its face [it] is reasonably susceptible of more than one interpretation"
Fehlhaber v. Board of Educ. of Utica City School Dist. WL 2571302 N.D.N.Y.,2012, July 03, 2012	The contract's language is ambiguous "if it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement." *Sayers v. Rochester Tel. Corp. Supplemental Mgmt. Pension Plan*, 7 F.3d 1091, 1095 (2d Cir.1993) (internal quotation marks omitted).
In re Lehman Brothers Inc. --- B.R. ----, 2012 WL 1995089 S.D.N.Y.,2012. June 05, 2012	A contract is unambiguous where the contract's terms have "a definite and precise meaning, as to which there is no reasonable basis for a difference of opinion."
Natt v. White Sands Condo., 95 A.D.3d 848, 943 N.Y.S.2d 231 N.Y.A.D. 2 Dept.,2012, May 01, 2012	Contract language is ambiguous when it is "reasonably susceptible of more than one interpretation" . . . "and there is nothing to indicate which meaning is intended, or where there is contradictory or necessarily inconsistent language in different portions of the instrument"
Matthew v. Laudamiel 2012 WL 2580572 Del.Ch.,2012, June 29, 2012	Ambiguity exists "when the provisions in controversy are reasonably or fairly susceptible [to] different interpretations or may have two or more different meanings."
Hamilton Partners, L.P. v. Highland Capital Mgmt., L.P. 2012 WL 2053329 Del.Ch.,2012, May 25, 2012	"[A] contract is ambiguous only when the provisions in controversy are reasonably or fairly susceptible of different interpretations or may have two or more different meanings."
Alta Berkeley VI C.V. v. Omneon, Inc. 41 A.3d 381 Del.Supr., 2012, March 05, 2012	Contract language is not ambiguous merely because the parties dispute what it means. To be ambiguous, a disputed contract term must be fairly or reasonably susceptible to more than one meaning.
GRT, Inc. v. Marathon GTF Tech., Ltd. 2012 WL 2356489 Del. Ch., 2012. June 21, 2012	A contract is unambiguous if, by its plain terms, the provisions in controversy are reasonably susceptible to only one meaning.

a. Some courts look at whether the provision is reasonably susceptible to more than one interpretation when read by an *objective reader in the position of the parties*

Case	**Principle**
GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P. --- A.3d ----, 2012 WL 10916 Del.Supr., January 03, 2012	Contract terms themselves will be controlling when they establish the parties' common meaning so that a reasonable person in the position of either party would have no expectations inconsistent with the contract language.

In re Motors Liquidation Co. 460 B.R. 603 Bkrtcy.S.D.N.Y., November 28, 2011	In determining "whether the language of the contract *and* the inferences to be drawn from it are susceptible to more than one reasonable interpretation"— *i.e.,* ambiguous—the court looks to see whether it is: capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business.
Convergent Wealth Advisors LLC v. Lydian Holding Co. 2012 WL 2148221 S.D.N.Y.,2012, June 13, 2012	"A trial judge must review a contract for ambiguity through the lens of 'what a reasonable person in the position of the parties would have thought the contract meant.'"
Wiser v. Enervest Operating, L.L.C. 803 F.Supp.2d 109 N.D.N.Y., March 22, 2011	An ambiguity exists where the contract could suggest more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business.
In re Lehman Brothers Inc. --- B.R. ----, 2012 WL 1995089 S.D.N.Y.,2012. June 05, 2012	If reasonable minds could differ about the meaning of contractual language, such language is ambiguous, *see* *Lockheed Martin Corp.*, 639 F.3d at 69 (contractual language is ambiguous when it "is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement").
Shiftan v. Morgan Joseph Holdings, Inc. 2012 WL 120196 Del.Ch., January 13, 2012	In the first instance, the court therefore must attempt to discern the meaning of a contract and the intent of the parties from the language that they used, as read from the perspective of a reasonable third party.
Cordis Corp. v. Boston Scientific Corp. --- F.Supp.2d ----, 2012 WL 2320799 D.Del.,2012. June 19, 2012	In ascertaining intent, Delaware courts adhere to the "objective" theory of contracts. Under this approach, a contract's "construction should be that which would be understood by an objective reasonable third party." Thus, > [w]here parties have entered into an unambiguous integrated written contract, the contract's construction should be that which would be understood by an objective reasonable third party. An inquiry into the subjective unexpressed intent or understanding of the individual parties [to the contract] is neither necessary nor appropriate where the words of the contract are sufficiently clear to prevent reasonable persons from disagreeing as to their meaning. *Demetree*, 1996 WL 494910, at *4 (citations omitted); *accord* *Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232 (Del.1997) ("Contract terms themselves will be controlling when they establish the parties' common meaning so that a reasonable person in the position of either party would have no expectations inconsistent with the contract language."). The court, therefore, must determine whether the contractual language in dispute, when read in the context of the entire contract, is ambiguous.
Matthew v. Laudamiel 2012 WL 2580572 Del.Ch.,2012, June 29, 2012	Delaware adheres to the "objective" theory of contracts under which a contract is construed as it would be understood by an objective, reasonable third-party.

In re World Trade Center Disaster Site Litigation --- F.Supp.2d ----, 2011 WL 6425111 S.D.N.Y., December 20, 2011	Although contractual silence does not always make a contract unclear, *Evans v. Famous Music Corp.*, 1 N.Y.3d 452, 458, 775 N.Y.S.2d 757, 807 N.E.2d 869 (N.Y.2004), silence is capable of creating a gap that requires the court to construe the terms in light of the parties' intentions. This is an expression of the broader rule that "the understanding of each promisor in a contract must include any promises which a reasonable person in the position of the promisee would be justified in understanding were included." *Rowe v. Great Atlantic & Pac. Tea Co., Inc.*, 46 N.Y.2d 62, 69, 412 N.Y.S.2d 827, 385 N.E.2d 566 (N.Y.1978) (quoting 5 Williston on Contracts § 1293 (rev. ed.1937)).
Fehlhaber v. Board of Educ. of Utica City School Dist. Slip Copy, 2012 WL 2571302 N.D.N.Y.,2012, July 03, 2012	The contract's language is ambiguous "if it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement." *Sayers v. Rochester Tel. Corp. Supplemental Mgmt. Pension Plan*, 7 F.3d 1091, 1095 (2d Cir.1993) (internal quotation marks omitted).

b. Some courts factor in a reading of the provision "by one who is cognizant of the customs, practices, and terminology as generally understood by a particular trade or business"

Wiser v. Enervest Operating, L.L.C. 803 F.Supp.2d 109 N.D.N.Y., March 22, 2011	An ambiguity exists where the contract could suggest more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business.
Corral v. Outer Marker LLC 2012 WL 243318 E.D.N.Y., January 24, 2012	Ambiguous language is "that which is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business."

i. When the plain meaning of a word lends itself to only one reasonable interpretation, that interpretation controls

Case	**Principle**
GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P. --- A.3d ----, 2012 WL 10916 Del.Supr., January 03, 2012	Court will interpret clear and unambiguous contract terms according to their ordinary meaning.
Syncora Guar. Inc. v. EMC Mortg. Corp. 2012 WL 2326068 S.D.N.Y., 2012, June 19, 2012	Where a contract is unambiguous, however, the Court looks to the language of the agreement and gives the words and phrases their plain meaning, as "the instrument alone is taken to express the intent of the parties." *Klos v. Lotnicze*, 133 F.3d 164, 168 (2d Cir.1997). *Fed. Ins. Co. v. Am. Home Assurance Co.*, 639 F.3d 557, 568 (2d Cir.2011) (stating that when interpreting a contract, the "court should not find the language ambiguous on the basis of the interpretation urged by one party, where that interpretation would strain the contract language beyond its reasonable and ordinary meaning").

XL Specialty Ins. Co. v. Level Global Investors, L.P. 2012 WL 2138044 S.D.N.Y.,2012, June 13, 2012	*Essex Ins. Co. v. Laruccia Constr., Inc.*, 71 A.D.3d 818, 819 (2d Dep't 2010) (under New York law, courts must give "unambiguous provisions of an insurance contract... their plain and ordinary meaning").
Convergent Wealth Advisors LLC v. Lydian Holding Co. 2012 WL 2148221 S.D.N.Y.,2012, June 13, 2012	"When the plain, common, and ordinary meaning of the words lends itself to only one reasonable interpretation, that interpretation controls the litigation."
In re Lehman Brothers Inc. --- B.R. ----, 2012 WL 1995089 S.D.N.Y.,2012. June 05, 2012	[I]n the absence of ambiguity, a court is required to give the words of the contract their plain meaning, *see* *Crane Co.*, 171 F.3d at 737. That intent is derived "from the plain meaning of the language employed in the agreements," . . . when the agreements are "read as a whole." When the parties' intent is clear— *i.e.*, unambiguous—the contract "must be enforced according to the plain meaning of its terms."
China Privatization Fund (Del), L.P. v. Galaxy Entm't Group Ltd. 95 A.D.3d 769, --- N.Y.S.2d ---- N.Y.A.D. 1 Dept.,2012, May 31, 2012	"[A] written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms" (*Greenfield v. Philles Records*, 98 N.Y.2d 562, 569 [2002]).
Martin Marietta Materials, Inc. v. Vulcan Materials Co. 2012 WL 1605146 Del.Ch.,2012, May 04, 2012	In focusing on the words, I apply the well-settled principles of contract interpretation that require this court to enforce the plain and unambiguous terms of a contract as the binding expression of the parties' intent.
Hillside Metro Associates, LLC v. JPMorgan Chase Bank, Nat. Ass'n Slip Copy, 2012 WL 1617157 E.D.N.Y.,2012. May 09, 2012	Thus, where the language of the PAA is unambiguous on its face, it must be enforced according to the plain meaning of its terms. *Greenfield*, 98 N.Y.2d at 569; *W.W.W. Assocs. v. Giancontieri*, 77 N.Y.2d 157, 162 (1990) ("[C]lear, complete writings should generally be enforced according to their terms ....").
Matthew v. Laudamiel 2012 WL 2580572 Del.Ch.,2012, June 29, 2012	"Where contract language is 'clear and unambiguous,' the ordinary and usual meaning of the chosen words will generally establish the parties' intent."
Glencore Ltd. v. Degussa Eng'r Carbons L.P., 2012 WL 223240 S.D.N.Y., January 24, 2012	It is black-letter law, in both New York and Texas, that courts are to construe contract terms so as, where possible, to give rational meaning to all provisions in the document.
Ross v. Thomas Slip Copy, 2012 WL 335768 C.A.2 (N.Y.), February 03, 2012	Under Delaware law . . . we look at the "objective" meaning of a contract, i.e., the "words found in the written instrument." *Sassano v. CIBC World Mkts. Corp.*, 948 A.2d 453, 462 (Del. Ch.2008). "When the plain, common, and ordinary meaning of the words lends itself to only one reasonable interpretation, that interpretation controls the litigation."

c. The contract should be viewed in light of the circumstances under which it was made

Case	Principle
Wiser v. Enervest Operating, L.L.C. 803 F.Supp.2d 109 N.D.N.Y., March 22, 2011	Under New York law, when construing contractual provisions, a court must be mindful that contracts should be viewed in the light in which they were made.

d. As between two interpretations, the court will not adopt an interpretation that produces an absurd result

Case	Principle
Convergent Wealth Advisors LLC v. Lydian Holding Co. Slip Copy, 2012 WL 2148221 S.D.N.Y.,2012. June 13, 2012	Where a contract provision lends itself to two interpretations, a court will not adopt an interpretation that leads to unreasonable results, but instead will adopt the construction that is reasonable and that harmonizes the affected contract provisions. An unreasonable interpretation produces an absurd result or one that no reasonable person would have accepted when entering the contract.

e. A provision is not ambiguous simply because the parties disagree as to its construction or urge alternative interpretations

Case	Principle
GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P. --- A.3d ----, 2012 WL 10916 Del.Supr., January 03, 2012	A contract is not rendered ambiguous simply because the parties do not agree upon its proper construction.
Convergent Wealth Advisors LLC v. Lydian Holding Co. 2012 WL 2148221 S.D.N.Y.,2012, June 13, 2012	Contract terms are not rendered ambiguous simply because the parties disagree as to their construction.
Cordis Corp. v. Boston Scientific Corp. --- F.Supp.2d ----, 2012 WL 2320799 D.Del.,2012, June 19, 2012	Contractual language "is not rendered ambiguous simply because the parties do not agree upon its proper construction." *Id.; see also* City Investing Co. Liquidating Trust v. Conti Cas. Co., 624 A.2d 1191, 1198 (Del.1993) (finding contract language is not ambiguous "simply because the parties in litigation differ concerning its meaning.").
Reyes v. Metromedia Software, Inc. --- F.Supp.2d ----, 2012 WL 13935 S.D.N.Y., January 04, 2012	A contract is not ambiguous simply because the parties have urged conflicting interpretations.
Corral v. Outer Marker LLC 2012 WL 243318 E.D.N.Y., January 24, 2012	"Language whose meaning is otherwise plain does not become ambiguous merely because the parties urge different interpretations in the litigation." Hunt Ltd. v. Lifschultz Fast Freight, Inc., 889 F.2d 1274, 1277 (2d Cir.1989).

In re New York Skyline, Inc. --- B.R. ----, 2012 WL 1658355 Bkrtcy. S.D.N.Y., 2012. May 11, 2012	Furthermore, a contract is not ambiguous where the interpretation urged by one party would "strain[ ] the contract language beyond its reasonable and ordinary meaning."
United Rentals, Inc. v. Ram Holdings, Inc., 937 A.2d 810 Del. Ch., Dec. 21, 2007	Ambiguity does not exist simply because the parties disagree about what the contract means.
Reyes v. Metromedia Software, Inc. --- F.Supp.2d ----, 2012 WL 13935 S.D.N.Y., January 04, 2012	A contract is not ambiguous simply because the parties have urged conflicting interpretations.
In re New York Skyline, Inc. --- B.R. ----, 2012 WL 1658355 Bkrtcy. S.D.N.Y., 2012. May 11, 2012	"Language whose meaning is otherwise plain does not become ambiguous merely because the parties urge different interpretations in the litigation," unless each is a "reasonable" interpretation. *see* Readco, Inc. v. Marine Midland Bank, 81 F.3d 295, 299 (2d Cir.1996) ("no ambiguity exists where the alternative construction would be unreasonable").

C. Assessing whether a provision is ambiguous

1. Whether a contract or provision is ambiguous is a determination of law for the court to make

Case	Principle
Reyes v. Metromedia Software, Inc. --- F.Supp.2d ----, 2012 WL 13935 S.D.N.Y., January 04, 2012	Whether a contractual provision is ambiguous or not is a "threshold question of law to be determined by the court."
ADP Dealer Serv., Inc. v. Planet Automall, Inc. 2012 WL 95211 E.D.N.Y., January 12, 2012	Whether the language of a contract is ambiguous is a matter of law for determination by the Court, Nye, 783 F.Supp.2d at 759; *accord* Garden City, 852 A.2d at 541, and the Court concludes that none of the agreements at issue in this case is ambiguous or requires the consideration of extrinsic evidence by the jury.
Wiser v. Enervest Operating, L.L.C. 803 F.Supp.2d 109 N.D.N.Y., March 22, 2011	In the construction and interpretation of a contract in New York, the threshold question of law for the court is whether the contract it issue is ambiguous.
XL Specialty Ins. Co. v. Level Global Investors, L.P. Slip Copy, 2012 WL 2138044 S.D.N.Y.,2012. June 13, 2012	"The initial interpretation of a contract 'is a matter of law for the court to decide.' " *10 Ellicott Square Court Corp. v. Mt. Valley Indem. Co.*, 634 F.3d 112, 119 n. 8 (2d Cir.2010) (quoting *Morgan Stanley Grp. Inc. v. New England Ins. Co.*, 225 F.3d 270, 275 (2d Cir.2000)). "Part of this threshold interpretation is the question of whether the terms of the insurance contract are ambiguous." *Parks Real Estate Purchasing Grp.*, 472 F.3d at 42 (citing *Alexander & Alexander Servs., Inc. v. These Certain Underwriters at Lloyd's*, 136 F.3d 82, 86 (2d Cir.1998)).

Syncora Guar. Inc. v. EMC Mortg. Corp. --- F.Supp.2d ----, 2012 WL 2326068 S.D.N.Y.,2012, June 19, 2012	Under New York law, "the initial interpretation of a contract is a matter of law for the court to decide." *K. Bell & Assocs., Inc. v. Lloyd's Underwriters*, 97 F.3d 632, 637 (2d Cir.1996).
Fehlhaber v. Bd. of Ed. of Utica City Sch. Dist. 2012 WL 2571302 N.D.N.Y.,2012, July 03, 2012	Whether a contract provision is ambiguous is a question of law to be decided by a court. *Mellon Bank, N.A. v. United Bank Corp. of N.Y.*, 31 F.3d 113, 115 (2d Cir.1994).
Convergent Wealth Advisors LLC v. Lydian Holding Co. 2012 WL 2148221 S.D.N.Y.,2012, June 13, 2012	"[T]he proper interpretation of language in a contract is a question of law."
Cordis Corp. v. Boston Scientific Corp. --- F.Supp.2d ----, 2012 WL 2320799 D.Del., 2012, June 19, 2012	Construction of contract language is a question of law. *See Rhone–Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1195 (Del.1992).

2. Parol evidence cannot be used to create an ambiguity

Case	Principle
In re Lehman Brothers Inc. --- B.R. ----, 2012 WL 1995089 S.D.N.Y.,2012, June 05, 2012	Ambiguity, like intent, is determined by looking at the integrated agreement(s) "as a whole." *Kass v. Kass*, 91 N.Y.2d 554, 673 N.Y.S.2d 350, 696 N.E.2d 174, 180 (N.Y.1998) ("Ambiguity is determined by looking within the four corners of the document, not to outside sources."). As the New York Court of Appeals admonished, extrinsic evidence should never "be considered in order to *create* an ambiguity in the agreement." *WWW Assocs., Inc.*, 565 N.Y.S.2d 440, 566 N.E.2d at 642.
GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P. --- A.3d ----, 2012 WL 10916 Del.Supr., January 03, 2012	The "parol evidence rule" bars the admission of evidence from outside the contract's four corners to vary or contradict that unambiguous language; but, where reasonable minds could differ as to the contract's meaning, a factual dispute results and the fact-finder must consider admissible extrinsic evidence.
United Rentals, Inc. v. Ram Holdings, Inc., 937 A.2d 810 Del. Ch., Dec. 21, 2007	Moreover, extrinsic, parol evidence cannot be used to manufacture an ambiguity in a contract that facially has only one reasonable meaning.

3. Principles for determining whether a provision is ambiguous

a. Holistic Principles

i. Read the contract as a whole; do not read provisions in a vacuum

Case	Principle
Benihana of Tokoyo, Inc. v. Benihana, Inc. 828 F.Supp.2d 720 D.Del.,2011, December 13, 2011	Under New York law, contract interpretation requires that "the entire contract must be considered." That the amended complaint focuses on the interpretation of a specific word is of no consequence. The dispute remains the same, and the entire contract must be considered to construe even a single word.
Wiser v. Enervest Operating, L.L.C. 803 F.Supp.2d 109 N.D.N.Y., March 22, 2011	Under New York law, contracts must be read as a whole, and if possible, courts must interpret them to effect the general purpose of the contract.
GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P. --- A.3d ----, 2012 WL 10916 Del.Supr., January 03, 2012	The meaning inferred from a particular contract provision cannot control the meaning of the entire agreement if such an inference conflicts with the agreement's overall scheme or plan. [I]n upholding the intentions of the parties, a court must construe the agreement as a whole, giving effect to all provisions therein.
Severstal U.S. Holdings, LLC v. RG Steel, LLC --- F.Supp.2d ----, 2012 WL 1901195 S.D.N.Y.,2012, May 25, 2012	Galli v. Metz, 973 F.2d 145, 149 (2d Cir.1992) ("when interpreting this contract we must consider the entire contract and choose the interpretation ... which best accords with the sense of the remainder of the contract.").
Syncora Guar. Inc. v. EMC Mortg. Corp. Slip Copy, 2012 WL 2326068 S.D.N.Y.,2012.	When interpreting an unambiguous contract, "the court is to consider its '[p]articular words' not in isolation 'but in light of the obligation as a whole and the intention of the parties manifested thereby.' " JA Apparel Corp. v. Abboud, 568 F.3d 390, 397 (2d Cir.2009) (quoting Kass v. Kass, 91 N.Y.2d 554, 566 (1998)).
In re Lehman Brothers Inc. --- B.R. ----, 2012 WL 1995089 S.D.N.Y.,2012, June 05, 2012	That intent is derived "from the plain meaning of the language employed in the agreements," . . . when the agreements are "read as a whole," WWW Assocs., Inc., 565 N.Y.S.2d 440, 566 N.E.2d at 642.
General Teamsters Local Union 326 v. City of Rehoboth Beach 2012 WL 2337296 Del.Super.,2012, April 24, 2012	In interpreting a contract, the Court must first examine the entire agreement to determine whether the parties' intent can be discerned from the express words used or, alternatively, whether its terms are ambiguous.
XL Specialty Ins. Co. v. Level Global Investors, L.P. Slip Copy, 2012 WL 2138044 S.D.N.Y.,2012. June 13, 2012	"Part of this threshold interpretation is the question of whether the terms of the insurance contract are ambiguous." Parks Real Estate Purchasing Grp., 472 F.3d at 42 (citing Alexander & Alexander Servs., Inc. v. These Certain Underwriters at Lloyd's, 136 F.3d 82, 86 (2d Cir.1998)). In resolving that question, a court may not view the particular terms at issue in a vacuum. Rather, it must view these terms from the perspective of one "who has examined the context of the entire integrated agreement." Bank of N.Y. v. First Millennium, Inc., 607 F.3d 905, 914 (2d Cir.2010); *see also* Int'l Multifoods Corp. v. Commercial Union Ins. Co., 309 F.3d 76, 83 (2d Cir.2002).

Himmelberger v 40-50 Brighton First Rd. Apts. Corp. 94 A.D.3d 817, 943 N.Y.S.2d 118 N.Y.A.D. 2 Dept.,2012. April 10, 2012	As a general rule, "'[a] lease is to be interpreted as a whole and construed to carry out the parties' intent, gathered, if possible, from the language of the lease' " (*Cobalt Blue Corp. v. 184 W. 10th St. Corp.*, 227 A.D.2d 50, 53, 650 N.Y.S.2d 720 quoting *Papa Gino's of Am. V. Plaza at Latham Assoc.*, 135 A.D.2d 74, 76, 524 N.Y.S.2d 536; *see International Chefs v. Corporate Prop. Invs.*, 240 A.D.2d 369, 370, 658 N.Y.S.2d 108).
Alta Berkeley VI C.V. v. Omneon, Inc. 41 A.3d 381 Del.Supr., 2012, March 05, 2012	Further, "[i]t is well established that a court interpreting any contractual provision, including preferred stock provisions, must give effect to all terms of the instrument, must read the instrument as a whole, and, if possible, reconcile all the provisions of the instrument."
Westminster Securities Corp. v. Petrocom Energy Ltd. 2012 WL 147917 C.A.2 (N.Y.), January 19, 2012	"The rules of contract construction require us to adopt an interpretation which gives meaning to every provision of the contract."

ii. Provisions and terms should not be interpreted so as to render any provision or term superfluous or meaningless

Case	Principle
Wiser v. Enervest Operating, L.L.C. 803 F.Supp.2d 109 N.D.N.Y., March 22, 2011	[I]nterpretations that render contract provisions meaningless or superfluous are disfavored.
Reyes v. Metromedia Software, Inc. --- F.Supp.2d ----, 2012 WL 13935 S.D.N.Y., January 04, 2012	Importantly, a court must evaluate the disputed language "in the context of the entire agreement to safeguard against adopting an interpretation that would render any individual provision superfluous." It is a cardinal rule that a contract should not be read to render any provision superfluous.
In re Motors Liquidation Co. 460 B.R. 603 Bkrtcy.S.D.N.Y., November 28, 2011	A contract should be interpreted so as to give full meaning and effect to all of its provisions. In other words, contracts should be interpreted "in such a way that no language is rendered superfluous." A contract should not be interpreted to "render any portion meaningless."
MBIA Ins. Corp. v. Patriarch Partners VIII, LLC Slip Copy, 2012 WL 382921 S.D.N.Y., February 06, 2012	A contract interpretation "that has the effect of rendering at least one clause superfluous or meaningless is not preferred and will be avoided if possible." *LaSalle Bank Nat. Ass'n v. Nomura Asset Capital Corp.*, 424 F.3d 195, 206 (2d Cir.2005).
Severstal U.S. Holdings, LLC v. RG Steel, LLC --- F.Supp.2d ----, 2012 WL 1901195 S.D.N.Y.,2012. May 25, 2012	An interpretation of the exclusive-remedy provision . . . would render the "exceptions" . . . superfluous. Such an interpretation must be rejected according to rules of contract construction. *Galli v. Metz*, 973 F.2d 145, 149 (2d Cir.1992) ("when interpreting this contract we must consider the entire contract and choose the interpretation ... which best accords with the sense of the remainder of the contract.").

In re South Side House, LLC --- B.R. ----, 2012 WL 907758 Bkrtcy.E.D.N.Y.,2012. March 16, 2012	"General canons of contract construction require that where two seemingly conflicting contract provisions reasonably can be reconciled, a court is required to do so and to give both effect." *Seabury Constr. Corp. v. Jeffrey Chain Corp.*, 289 F.3d 63, 69 (2d Cir.2002) (internal quotation marks omitted). *See In re Vanderveer Estates Holdings, Inc.*, 283 B.R. 122, 130–31 (Bankr.E.D.N.Y.2002) (observing that "[a]greements should not be interpreted in a way that renders any of the provisions superfluous or meaningless"). "It is an elementary rule of contract construction that clauses of a contract should be read together contextually in order to give them meaning...." *HSBC Bank USA v. Nat'l Equity Corp.*, 279 A.D.2d 251, 253, 719 N.Y.S.2d 20, 22 (N.Y.App. Div. 1st Dep't 2001). *See Sayers*, 7 F.3d at 1095 (stating that "[b]y examining the entire contract, we safeguard against adopting an interpretation that would render any individual provision superfluous").
Syncora Guar. Inc. v. EMC Mortg. Corp. 2012 WL 2326068 S.D.N.Y.,2012, June 19, 2012	A contract should not be interpreted so as to render a clause superfluous or meaningless. *Galli v. Metz*, 973 F.2d 145, 149 (2d Cir.1992). "[I]t is the general rule that written contracts executed simultaneously and for the same purpose must be read and interpreted together." *Liberty USA Corp. v. Buyer's Choice Ins. Agency*, 386 F.Supp.2d 421, 425 (S.D.N.Y.2005).
Dan Dong Dong Jin Garment Co. Ltd. v. KIK Fashions Inc. Slip Copy, 2012 WL 2433530 S.D.N.Y.,2012, June 27, 2012	It is a general rule of contract interpretation that "a contract should not be interpreted so as to render a clause superfluous or meaningless." *Galli v. Metz*, 973 F.2d 145, 149 (2d Cir.1992).
In re Lehman Brothers Inc. --- B.R. ----, 2012 WL 1995089 S.D.N.Y.,2012. June 05, 2012	Divining the parties' intent requires a court to "give full meaning and effect to all of [the contract's] provisions." *Katel Ltd. Liab. Co. v. AT & T Corp.*, 607 F.3d 60, 64 (2d Cir.2010) (quotation marks omitted). Courts must avoid "interpretations that render contract provisions meaningless or superfluous." *Manley v. AmBase Corp.*, 337 F.3d 237, 250 (2d Cir.2003).
United Rentals, Inc. v. RAM Holdings, Inc., 937 A.2d 810 Del. Ch., Dec. 21, 2007	*Delta & Pipe Land Co. v. Mansanto Co.*, 2006 WL 1510417, at *4 (Del Ch. May 24, 2006) ("It is, of course, a familiar principle that contracts must be interpreted in a manner that does not render any provision 'illusory or meaningless.'"). W. Willow-Bay Court, LLC v. Robino-Bay Court Plaza, LLC., 2007 WL 3317551, at *11 (Del. Ch. Nov. 2, 2007) ("Delaware courts do prefer to interpret contracts to give effect to each term rather than to construe them in a way that renders some terms repetitive or mere surplusage.").

iii. The terms of the contract should be "harmonized" and read in context[4]

Case	Principle
Benihana of Tokoyo, Inc. v. Benihana, Inc. 828 F.Supp.2d 720 D.Del.,2011, December 13, 2011	[A]s between possible interpretations of an ambiguous term, that will be chosen which best accords with the sense of the remainder of the contract. *Rein v. Socialist People's Libyan Arab Jamahiriya*, 232 Fed.Appx. 61, 63 (2d Cir.2007) (*citing Rentways, Inc. v. O'Neill Milk & Cream Co.*, 308 N.Y. 342, 126 N.E.2d 271, 273 (1955)).
GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P. --- A.3d ----, 2012 WL 10916 Del.Supr., January 03, 2012	The meaning inferred from a particular contract provision cannot control the meaning of the entire agreement if such an inference conflicts with the agreement's overall scheme or plan.
Severstal U.S. Holdings, LLC v. RG Steel, LLC --- F.Supp.2d ----, 2012 WL 1901195 S.D.N.Y.,2012, May 25, 2012	An interpretation of the exclusive-remedy provision . . . would render the "exceptions" . . . superfluous. Such an interpretation must be rejected according to rules of contract construction. *Galli v. Metz*, 973 F.2d 145, 149 (2d Cir.1992) ("when interpreting this contract we must consider the entire contract and choose the interpretation ... which best accords with the sense of the remainder of the contract.").
In re South Side House, LLC --- B.R. ----, 2012 WL 907758 Bkrtcy.E.D.N.Y.,2012. March 16, 2012	The court's role is neither more nor less than to "determine whether [specific] clauses are ambiguous when read in the context of the entire agreement." *Id.* (internal quotation marks omitted). "General canons of contract construction require that where two seemingly conflicting contract provisions reasonably can be reconciled, a court is required to do so and to give both effect."
GRT, Inc. v. Marathon GTF Tech., Ltd. 2012 WL 2356489 Del.Ch.,2012, June 21, 2012	When interpreting a contract, a court must give effect to all of the terms of the instrument and read it in a way that, if possible, reconciles all of its provisions. That is, a court will prefer an interpretation that harmonizes the provisions in a contract as opposed to one that creates an inconsistency or surplusage.
United Rentals, Inc. v. RAM Holdings, Inc., 937 A.2d 810 Del. Ch., Dec. 21, 2007	*See*, e.g., *Counsel of the Dorset Condo. Apartments v. Gordon*, 801 A.2d 1, 7 (Del. 2002) ("A court must interpret contractual provisions in a way that gives effect to every term of the instrument, and that, if possible, reconciles all of the provisions of the instrument when read as a whole.")

[4] Query whether "harmonize" means (1) to interpret a provision so as to reduce or eliminate surplusage or (2) to let other provisions (which might or might not be superfluous) guide the selection of one alternative interpretation over another. Meaning #2 is slightly broader.

iv. Contracts entered into contemporaneously and for the same purpose should be read and interpreted together

Case	Principle
Edelman Arts, Inc. v. Art Intern. (UK) Ltd. --- F.Supp.2d ----, 2012 WL 183641 S.D.N.Y., January 24, 2012	Under New York law, "all writings which form part of a single transaction and are designed to effectuate the same purpose must be read together." New York courts applying this standard have held cover letters transmitted with and commenting upon a proposed contract to constitute part of the contract as a matter of law.
MBIA Ins. Corp. v. Patriarch Partners VIII, LLC Slip Copy, 2012 WL 382921 S.D.N.Y., February 06, 2012	"The mere fact that a contract refers to another contract does not mean that it has 'incorporated' the other contract." *Rosen v. Mega Bloks Inc.*, No. 06 Civ. 3474(LTS)(GWG), 2007 WL 1958968, at *10 (S.D.N.Y. July 6, 2007).
Syncora Guar. Inc. v. EMC Mortg. Corp. --- F.Supp.2d ----, 2012 WL 2326068 S.D.N.Y.,2012. June 19, 2012	"[I]t is the general rule that written contracts executed simultaneously and for the same purpose must be read and interpreted together." *Liberty USA Corp. v. Buyer's Choice Ins. Agency*, 386 F.Supp.2d 421, 425 (S.D.N.Y.2005).
In re Autobacs Strauss, Inc. --- B.R. ----, 2012 WL 1836263 Bkrtcy.D.Del.,2012. May 21, 2012	*Crystal Palace Gambling Hall, Inc. v. Mark Twain Indus., Inc.* for the "hornbook principle of contract interpretation" that "contracts should be construed together with other documents executed by the same parties, for the same purpose, and in the course of the same transaction." *Crystal Palace* found "strong support" of intent by comparing multiple documents against each other and searching for consistency. Although the analysis is not purely numerical, three of the four relevant documents in this case explicitly require a capital contribution.

b. Canons of Construction

i. *Ejusdem generis* (when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same type as those listed)

Case	Principle
Stewart v. Barber 182 Misc. 91, 43 N.Y.S.2d 560 July 19, 1943	The prohibitive words under construction are 'manufacture', 'business', 'trade' or 'occupation'. The rule of ejusdem generis is, merely, when words having a specific meaning are followed by word or phrase of general meaning, the latter is to be construed to refer to things of the same general kind or nature as referred to by the words of specific meaning. The elementary purpose of the doctrine of ejusdem generis is to aid the Court in determining the true meaning and intent of the language employed. If the meaning be clear and unambiguous from the language used, there is no need for or purpose of invoking the doctrine. The canon of construction embodied in the doctrine of ejusdem generis is used by the Court only to ascertain the intention of the parties, and it may be resorted to only where there is an ambiguity in the instrument which obscures the true intention. There is nothing ambiguous about the words 'manufacture', 'business', 'trade' or 'occupation'.

Interim Healthcare, Inc. v. Spherion Corp. 884 A.2d 513, Superior Court of Del. February 04, 2005	It is a maxim of contract interpretation that, where no contrary intention is apparent, "general words used after specific terms are to be confined to things 'ejusdem generis'-of the same kind or class as the things previously specified." Ejusdem generis captures the general notion that if parties intended a contractual term to be interpreted in accordance with its general definition, they would not have employed term in the first instance in context of a specific usage or term of art.
Aspen Advisors LLC v. United Artists Theatre Co. 861 A.2d 1251, Supreme Court of Del. November 23, 2004	The well-established rule of construction, ejusdem generis, is that " 'where general language follows an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned.' "

ii. *Expresio unius est exclusio alterus* (to express or include one thing implies the exclusion of another)

Case	**Principle**
Shintom Co., Ltd. V. Audiovox Corp. 888 A.2d 225, Supreme Court of Del. October 31, 2005	We find the ratio decidendi in Gaskill to be persuasive. Section 151(c) provides that the holders of preferred shares "shall be entitled to receive dividends at such rates, on such conditions and at such times as shall be stated in the certificate of incorporation" or applicable resolution(s). That is equivalent to stating that such shares shall have no other preferences. We reach that conclusion by applying the same general principle of statutory construction that was invoked in Gaskill: the expression of one thing is the exclusion of another (expression unius est exclusio alteruis). The unambiguous language makes the mandatory "shall" nature of a preferred stockholder's entitlement to receive dividends expressly contingent upon those rights, "if any," being set forth in the certificate of incorporation or applicable resolution(s).
Concord Real Estate CDO 2006-1, Ltd. V. Bank of America N.A. 996 A.2d 324, Del Chancery Court May 14, 2010	Under New York law, doctrine of inclusio unius est exclusio alterius is not a rule of law and is not always dispositive, and need not be mechanically applied.

iii. The specific governs over the general

Case	**Principle**
Huen New York, Inc. v. Board of Educ. Clinton Cent. School Dist. 67 A.D.3d 1337 November 13, 2009	We agree with plaintiff that the notice provisions upon which defendant relies do not apply to the causes of action asserted by plaintiff. Rather, the contracts contain an express provision governing claims for damages arising out of delay in the commencement or progress of the work, and it is a well-established principle of contract interpretation that specific provisions concerning an issue are controlling over general provisions (DeWitt v. DeWitt, 62 A.D.3d 744, 745, 879 N.Y.S.2d 516).
MBIA Ins. Corp. v. Patriarch Partners VIII, LLC Slip Copy, 2012 WL 382921 S.D.N.Y., February 06, 2012	Well-settled rules of contract construction require that a contract be construed as a whole, giving effect to the parties' intentions. Specific language in a contract controls over general language, and where specific and general provisions conflict, the specific provision ordinarily qualifies the meaning of the general one.

c. Other Principles[5]

i. Preference for construing text as an obligation rather than a condition

Case	Principle
Edelman Arts, Inc. v. Art Intern. Ltd. --- F.Supp.2d ----, 2012 WL 183641 S.D.N.Y., January 24, 2012	"Conditions are not favored under New York law, and in the absence of unambiguous language, a condition will not be read into the agreement." *Ginett v. Computer Task Group, Inc.*, 962 F.2d 1085, 1099–1100 (2d Cir.1992). [C]ourts typically "interpret doubtful language as embodying a promise or constructive condition rather than an express condition." Thus, New York courts have repeatedly stated that if contract "language is in any way ambiguous, the law does not favor a construction which creates a condition precedent." And "a contractual duty ordinarily will not be construed as a condition precedent absent clear language showing that the parties intended to make it a condition."

ii. When dealing with sophisticated parties, the court gives deference to the language used

Case	Principle
Camperlino v. Bargabos --- N.Y.S.2d ----, 2012 WL 2164461 N.Y.A.D. 4 Dept.,2012. June 15, 2012	Particularly "in the context of real property transactions, where commercial certainty is a paramount concern, and where ... the instrument was negotiated between sophisticated, counseled business people negotiating at arm's length ... courts should be extremely reluctant to interpret an agreement as impliedly stating something which the parties have neglected to specifically include" (*Vermont Teddy Bear Co.*, 1 NY3d at 475 [internal quotation marks omitted]).
China Privatization Fund (Del), L.P. v. Galaxy Entertainment Group Ltd. 95 A.D.3d 769, --- N.Y.S.2d --- N.Y.A.D. 1 Dept.,2012, May 31, 2012	"While it is not this Court's preference to find a triable issue of fact concerning the terms of a written agreement between two sophisticated contracting parties, our options are limited where the contractual provisions at issue are drafted in a manner that fails to eliminate significant ambiguities" (*NFL Enters. LLC v. Comcast Cable Communications, LLC*, 51 A.D.3d 52, 61 [2008]).

[5] In addition to the principles listed below, there are various additional principles (which are not addressed in this guide) that a court might employ to determine whether or not a provision is ambiguous.

D. When a provision is unambiguous

1. If the provision is unambiguous, then the court interprets the contract as a matter of law

Case	Principle
Reyes v. Metromedia Software, Inc. --- F.Supp.2d ----, 2012 WL 13935 S.D.N.Y., January 04, 2012	"The proper interpretation of an unambiguous contract is a question of law for the court," and "courts are to enforce them as written."
Wiser v. Enervest Operating, L.L.C. 803 F.Supp.2d 109 N.D.N.Y., March 22, 2011	Under New York law, where consideration of a disputed clause in the context of the entire agreement resolves any ambiguity, the contract is unambiguous and its meaning can be determined as a matter of law.
Maser Consulting, P.A. v. Viola Park Realty, LLC --- N.Y.S.2d ----, 2012 WL 234081 N.Y.A.D. 2 Dept., January 24, 2012	Construction and interpretation of an unambiguous written contract is an issue of law within the province of the court.
Himmelberger v 40-50 Brighton First Rd. Apts. Corp. 94 A.D.3d 817, 943 N.Y.S.2d 118 N.Y.A.D. 2 Dept., 2012, April 10, 2012	In those instances where the intent of the parties is clear and unambiguous from the language employed on the face of the agreement, the interpretation of the document is a matter of law solely for the court.

2. If the provision is unambiguous, then the court should look only to the text of the contract to determine the parties' intent and parol evidence should not be used ("four-corners rule")

Case	Principle
Reyes v. Metromedia Software, Inc. --- F.Supp.2d ----, 2012 WL 13935 S.D.N.Y., January 04, 2012	Under New York law, a court interpreting a contract must "give effect to the intent of the parties as revealed by the language they chose to use."
Maser Consulting, P.A. v. Viola Park Realty, LLC --- N.Y.S.2d ----, 2012 WL 234081 N.Y.A.D. 2 Dept., January 24, 2012	Where a contract is clear and unambiguous on its face, the intent of the parties must be gleaned from within the four corners of the instrument, and not from extrinsic evidence.
Corral v. Outer Marker LLC 2012 WL 243318 E.D.N.Y., January 24, 2012	"Where a 'contract is clear and unambiguous on its face, the intent of the parties must be gleaned from within the four corners of the instrument, and not from extrinsic evidence.' " *RJE Corp. v. Northville Indus. Corp.*, 329 F.3d 310, 314 (2d Cir.2003) "If the language unambiguously conveys the parties' intent, extrinsic evidence may not properly be received, nor may a judicial preference be interjected since these extraneous factors would vary the effect of the contract's terms." The Court need not consider extrinsic evidence in the face of clear and unambiguous contractual language.

In re World Trade Center Disaster Site Litigation --- F.Supp.2d ----, 2011 WL 6425111 S.D.N.Y., December 20, 2011	It is a familiar proposition of contract law that courts enforce the intentions of the parties to a contract, and that the best expression of the parties' intent is their writing. Thus, where a contract is clear on its face, the court's obligation is to enforce it according to its terms. A contract is to be understood in relation to the manifest intention of the parties. "This means that the manifestation of a party's intention rather than the actual or real intention is ordinarily controlling, for a contract is an obligation attached, by the mere force of law, to certain acts of the parties, usually words, which ordinarily accompany and represent a known intent."
Wiser v. Enervest Operating, L.L.C. 803 F.Supp.2d 109 N.D.N.Y., March 22, 2011	Under New York law, the contract itself is the best evidence of intent; if an agreement is complete, clear and unambiguous on its face, it must be enforced according to the plain meaning of its terms.
XL Specialty Ins. Co. v. Level Global Investors, L.P. 2012 WL 2138044 S.D.N.Y.,2012, June 13, 2012	"When the provisions are unambiguous and understandable, courts are to enforce them as written."
Convergent Wealth Advisors LLC v. Lydian Holding Co. 2012 WL 2148221 S.D.N.Y.,2012, June 13, 2012	"Delaware adheres to the objective theory of contract interpretation" under which "the court looks to the most objective indicia of [the parties'] intent: the words found in the written instrument." If the language in the contract "is clear and unambiguous on its face" courts may not "consider parol evidence to interpret it or search for the parties' intentions."
Hillside Metro Associates, LLC v. JPMorgan Chase Bank, Nat. Ass'n 2012 WL 1617157 E.D.N.Y.,2012, May 09, 2012	"The best evidence of what the parties to a written agreement intend is what they say in their writing." *Niagara Frontier Transp. Auth. v. Euro–United Corp.*, 757 N.Y.S.2d 174, 176 (4th Dep't 2003) ("When interpreting a written contract, the court should give effect to the intent of the parties as revealed by the language and structure of the contract
GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P. --- A.3d ----, 2012 WL 10916 Del.Supr., January 03, 2012	When interpreting a contract, the court will give priority to the parties' intentions as reflected in the four corners of the agreement . . .
Convergent Wealth Advisors LLC v. Lydian Holding Co. 2012 WL 2148221 S.D.N.Y.,2012, June 13, 2012	"Delaware adheres to the objective theory of contract interpretation" under which "the court looks to the most objective indicia of [the parties'] intent: the words found in the written instrument." If the language in the contract "is clear and unambiguous on its face" courts may not "consider parol evidence to interpret it or search for the parties' intentions."

a. If the provision is unambiguous, then the court cannot use notions of equity and fairness to alter the contract

Case	Principle
In re New York Skyline, Inc. --- B.R. ----, 2012 WL 1658355 Bkrtcy. S.D.N.Y., 2012. May 11, 2012	"[I]f the agreement on its face is reasonably susceptible of only one meaning, a court is not free to alter the contract to reflect its personal notions of fairness and equity."

E. When a provision is ambiguous

1. If the provision is ambiguous, then the parties' intent becomes a question of fact

Case	Principle
Reyes v. Metromedia Software, Inc. --- F.Supp.2d ----, 2012 WL 13935 S.D.N.Y., January 04, 2012	"However, when the meaning of the contract is ambiguous and the intent of the parties becomes a matter of inquiry, a question of fact is presented."
Syncora Guar. Inc. v. EMC Mortg. Corp. --- F.Supp.2d ----, 2012 WL 2326068 S.D.N.Y.,2012, June 19, 2012	Where a contract is ambiguous, the issue "should be submitted to the trier of fact." *Consarc Corp. v. Marine Midland Bank N.A.*, 996 F.2d 568, 573 (2d Cir.1993).

2. If the provision is ambiguous, then parol evidence can be used to determine the intent of the parties

Case	Principle
GMG Capital Investments, LLC v. Athenian Venture Partners I, L.P. --- A.3d ----, 2012 WL 10916 Del.Supr., January 03, 2012	Where a contract is ambiguous, the interpreting court must look beyond the language of the contract to ascertain the parties' intentions. The "parol evidence rule" bars the admission of evidence from outside the contract's four corners to vary or contradict that unambiguous language; but, where reasonable minds could differ as to the contract's meaning, a factual dispute results and the fact-finder must consider admissible extrinsic evidence.
Convergent Wealth Advisors LLC v. Lydian Holding Co. 2012 WL 2148221 S.D.N.Y.,2012, June 13, 2012	When faced with an ambiguous contract provision, "the interpreting court must look beyond the language of the contract to ascertain the parties' intentions" at time of drafting. In making such determination, the court may consider objective parol evidence, including the overt statements and acts of the parties, the business context, the parties' prior dealings, and industry custom.'"
General Teamsters Local Union 326 v. City of Rehoboth Beach 2012 WL 2337296 Del.Super.,2012, April 24, 2012	Where there is an ambiguity in the contract-that is, where a contract's provisions are reasonably susceptible to two or more meanings-the Court should consider extrinsic evidence to glean the reasonable shared expectation of the parties at the time of contracting.
Reyes v. Metromedia Software, Inc. --- F.Supp.2d ----, 2012 WL 13935 S.D.N.Y., January 04, 2012	If a court determines that a contractual provision is ambiguous, "the court may accept any available extrinsic evidence to ascertain the meaning intended by the parties during the formation of the contract."
Maser Consulting, P.A. v. Viola Park Realty, LLC --- N.Y.S.2d ----, 2012 WL 234081 N.Y.A.D. 2 Dept., January 24, 2012	Extrinsic evidence will be considered in interpreting a contract only if the contract is deemed ambiguous.
Martin Marietta Materials, Inc. v. Vulcan Materials Co. 2012 WL 1605146 Del.Ch., 2012, May 04, 2012	But, if words in the contract are ambiguous, then I must look to extrinsic evidence to determine the parties' intent. Most relevant here, I consider how the drafting history of the NDA, Martin Marietta's own conduct, and the interpretive gloss provided by the JDA bear on the interpretive question.

In re Lehman Brothers Inc. --- B.R. ----, 2012 WL 1995089 S.D.N.Y., 2012, June 05, 2012	The court first examines the language for ambiguity; in the absence of ambiguity, a court is required to give the words of the contract their plain meaning; only if a court *finds* ambiguity does the extrinsic evidence become relevant.
In re Autobacs Strauss, Inc. --- B.R. ----, 2012 WL 1836263 Bkrtcy.D.Del.,2012, May 21, 2012	[B]ecause the inconsistency gives rise to ambiguity, extrinsic evidence should be allowed to interpret the R & S APA.
GRT, Inc. v. Marathon GTF Tech., Ltd. 2012 WL 2356489, Del. Ch., 2012.	When a contract is ambiguous, a court must look to extrinsic evidence to determine the shared intent of both parties.
United Rentals, Inc. v. RAM Holdings, Inc., 937 A.2d 810 Del. Ch., Dec. 21, 2007	Having determined that the contract is ambiguous on account of its conflicting provisions, the Court permitted the parties to introduce extrinsic evidence of the negotiation process.
Convergent Wealth Advisors LLC v. Lydian Holding Co. Slip Copy, 2012 WL 2148221 S.D.N.Y.,2012, June 13, 2012	When faced with an ambiguous contract provision, "the interpreting court must look beyond the language of the contract to ascertain the parties' intentions" at the time of drafting. In making such a determination, "the court may consider objective [parol] evidence, 'including the overt statements and acts of the parties, the business context, the parties' prior dealings, and industry custom.'"
United Rentals, Inc. v. RAM Holdings, Inc., 937 A.2d 810 Del. Ch., Dec. 21, 2007	Such extrinsic evidence may include "overt statements of the parties, the business context, prior dealings between the parties [and] business custom and usage in industry.

3. If the provision is ambiguous, then summary judgment is not appropriate unless the parol evidence is uncontroverted or so one-sided that no reasonable person could decide otherwise

Case	Principle
Cordis Corp. v. Boston Scientific Corp. --- F.Supp.2d ----, 2012 WL 2320799 D.Del.,2012, June 19, 2012	If "the court finds that a contract is ambiguous and that extrinsic evidence is undisputed, then the interpretation of the contract remains a question of law for the court to decide." *In re Columbia Gas Sys .*, 50 F.3d 233 (3d Cir.1995).
Mexican Hass Avocado Importers Ass'n v. Preston/Tully Group Inc. Slip Copy, 2012 WL 194976 E.D.N.Y., January 23, 2012	"Although generally interpretation of ambiguous contract language is a question of fact to be resolved by the factfinder, the court may resolve ambiguity in contractual language as a matter of law if the evidence presented about the parties' intended meaning is so one-sided that no reasonable person could decide the contrary."
In re Motors Liquidation Co. 460 B.R. 603 Bkrtcy.S.D.N.Y., November 28, 2011	Even where language in a contract is ambiguous, a court may resolve ambiguity in contractual language as a matter of law if there is no extrinsic evidence to support one party's interpretation of the ambiguous language or if the extrinsic evidence is so one-sided that no reasonable factfinder could decide contrary to one party's interpretation. In interpreting contracts, the Second Circuit has held "if the court finds that the contract is not ambiguous it should assign the plain and ordinary meaning to each term and interpret the contract without the aid of extrinsic evidence and it may then award summary judgment."

GRT, Inc. v. Marathon GTF Tech., Ltd. 2012 WL 2356489 Del. Ch., 2012. June 21, 2012	In cases involving questions of contract interpretation, a court will grant summary judgment under either of two scenarios: when the contract in question is unambiguous, or when the extrinsic evidence in the record fails to create a triable issue of material fact and judgment as a matter of law is appropriate. But, the ambiguity may be resolved on a summary judgment motion based on extrinsic evidence "when the moving party's record is not ... rebutted so as to create issues of material fact."
Corral v. Outer Marker LLC 2012 WL 243318 E.D.N.Y., January 24, 2012	"When the question is a contract's proper construction, summary judgment may be granted when its words convey a definite and precise meaning absent any ambiguity." "Where the language used is susceptible to differing interpretations, each of which may be said to be as reasonable as another, and where there is relevant extrinsic evidence of the parties' actual intent, the meaning of the words become an issue of fact and summary judgment is inappropriate."
Wiser v. Enervest Operating, L.L.C. 803 F.Supp.2d 109 N.D.N.Y., March 22, 2011	In a contract dispute under New York law, the grant of summary judgment is inappropriate where the disputed language of a contract is ambiguous.
China Privatization Fund (Del), L.P. v. Galaxy Entertainment Group Ltd. 95 A.D.3d 769, --- N.Y.S.2d ----, N.Y.A.D. 1 Dept.,2012, May 31, 2012	"If the court concludes that a contract is ambiguous, it cannot be construed as a matter of law, and dismissal … is not appropriate" (*Telerep, LLC v. U.S. Intl. Media, LLC,* 74 A.D.3d 401, 402 [2010]).
Fehlhaber v. Bd. of Ed. of Utica City Sch. Dist. 2012 WL 2571302 N.D.N.Y.,2012, July 03, 2012	If the contract is deemed ambiguous, and there is relevant extrinsic evidence related to the parties' intent, the provision's interpretation "becomes a question of fact and summary judgment is inappropriate." *Mellon Bank, N.A.,* 31 F.3d at 116.

4. An ambiguity is generally construed against the drafter (*contra proferentum*)

Case	Principle
In re South Side House, LLC --- B.R. ----, 2012 WL 907758 Bkrtcy. E.D.N.Y.,2012, March 16, 2012	And ambiguity in a contract is interpreted against the drafter. *See, e.g.,* *McCarthy v. Am. Int'l Group, Inc.,* 283 F.3d 121, 124 (2d Cir.2002).
In re World Trade Center Disaster Site Litigation --- F.Supp.2d ----, 2011 WL 6425111 S.D.N.Y., December 20, 2011	But where a contract is not capable of straightforward interpretation, whether because it is ambiguous or because it is silent, the court must honor the intentions of the parties, construing the agreement against the drafter.
Highland Capital Management, L.P. v. Global Aerospace Underwriting Managers Ltd. 2012 WL 2510157 C.A.2 (N.Y.),2012, July 02, 2012	The innocent coinsured doctrine is a rule of contractual interpretation that looks to the terms of the insurance policy, reading ambiguous language against the insurer. *See id.* Thus, parties to an insurance policy may vary this rule through policy language unambiguously conveying a contrary intent
Wiser v. Enervest Operating, L.L.C. 803 F.Supp.2d 109 N.D.N.Y., March 22, 2011	Under New York law, as a general matter, a contract will be construed against its drafter since the drafter is responsible for any ambiguity.

Natt v. White Sands Condominium 95 A.D.3d 848, 943 N.Y.S.2d 231 N.Y.A.D. 2 Dept.,2012. May 01, 2012	"It has long been the rule that ambiguities in a contractual instrument will be resolved *contra proferentem*, against the party who prepared or presented it" Hence, a contract which is internally inconsistent in material respects or that reasonably lends itself to two conflicting interpretations is subject to the rule invoking strict construction of the contract in the light most favorable to the nondrafting party.
Shiftan v. Morgan Joseph Holdings, Inc. 2012 WL 120196 Del.Ch., January 13, 2012	RESTATEMENT OF CONTRACTS § 206 (1981) "In choosing among the reasonable meanings of a promise or agreement or a term thereof, that meaning is generally preferred which operates against the party who supplies the words or from whom a writing otherwise proceeds." *Wininger*, 707 A.2d at 43 (holding that ambiguous terms in a partnership agreement that was drafted only by the general partner should be construed against the general partner under the principle of *contra proferentem*)

F. Specific substantive and miscellaneous areas of contract interpretation[6]

1. Arbitration

a. The presumption of arbitrabililty requires that, if there is a reading of the contract that permits the Arbitration Clause to remain in effect, then the courts choose that reading

Case	Principle
Glencore Ltd. v. Degussa Engineered Carbons L.P. Slip Copy, 2012 WL 223240 S.D.N.Y., January 24, 2012	The presumption of arbitrability under the Federal Arbitration Act supplies a background principle of interpretation once it has been established that the parties have entered into an agreement to arbitrate. In that context, the issue presented is one of scope—whether an agreement to arbitrate applies to the dispute at hand—and the presumption favoring arbitrability serves as a thumb on the scale favoring arbitral coverage. However, the FAA's presumption of arbitrability does not apply where (as here) the issue is the threshold one of whether the parties entered into a binding agreement to arbitrate at all. Accordingly, the statutory presumption favoring arbitration applies "*only* where it reflects, and derives its legitimacy from, a judicial conclusion that arbitration of a particular dispute is what the parties intended because their express agreement to arbitrate was validly formed."
Severstal U.S. Holdings, LLC v. RG Steel, LLC --- F.Supp.2d ----, 2012 WL 1901195 S.D.N.Y.,2012. May 25, 2012	The rule in the Second Circuit is that "if there is a reading of the various agreements that permits the Arbitration Clause to remain in effect, we must choose it." *Bank Julius Baer & Co. v. Waxfield Ltd.*, 424 F.3d 278, 284 (2d Cir.2005). The existence of competing interpretations of an agreement containing an arbitration provision is not a sufficient basis to overcome the presumption of arbitrability. *See, e.g.*, *John Hancock Life Ins. Co. v. Wilson*, 254 F.3d 48, 59 (2d Cir.2001) ("Even if we were to accept [appellants'] interpretation ... at best it would raise an ambiguity ... In the face of such an ambiguity, we would be compelled to construe the provision in favor of arbitration");

[6] Listed below are principles of contract interpretation and supporting case law that are specific to certain substantive areas of contracts. These principles are based solely upon the limited case law that was reviewed in connection with compiling this guide and this guide does not purport to include a complete set of all such types of contract-interpretation principles.

	Coca–Cola Bottling Co. of N.Y., Inc. v. Soft Drink & Brewery Workers Union Local 812, 242 F.3d 52, 56–57 (2d Cir.2001) (affirming order compelling arbitration notwithstanding "plausible" reading of arbitration clause that would render dispute not arbitrable). Thus, if an arbitration provision can be interpreted to cover these disputes, then arbitration is appropriate. *In re Chung*, 943 F.2d at 230.

b. An arbitrator exceeds his or her powers only if the court can find no rational construction of the contract that can support the award

Case	Principle
Westminster Securities Corp. v. Petrocom Energy Ltd. 2012 WL 147917 C.A.2 (N.Y.), January 19, 2012	"As long as the arbitrator is even *arguably* construing or applying the contract and acting within the scope of his authority, a court's conviction that the arbitrator has committed serious error in resolving the disputed issue does not suffice to overturn his decision." *ReliaStar Life Ins. Co. of N.Y. v. EMC Nat'l Life Co.*, 564 F.3d 81, 86 (2d Cir. 2009)
Pryor v. IAC/InterActiveCorp Not Reported in A.3d, 2012 WL 2046827 Del.Ch.,2012. June 07, 2012	[A] court may refuse to enforce an arbitration award on the grounds that the arbitrator exceeded his powers only if the court can "fin[d] no rational construction of the contract that can support [the award]." *RBC Capital Markets Corp.*, 2010 WL 681669, at *8. As long as the arbitrator had the power to interpret the ambiguous provision, a court will not disturb the arbitrator's finding because the court would have decided the matter differently. *See Jock*, 646 F.3d at 115; *Barnes v. Logan*, 1996 WL 310115, at *4 (N.D.Cal. May 29, 1996), *aff'd*, 122 F.3d 820 (9th Cir.1997); *TD Ameritrade*, 953 A.2d at 733 (Del.Ch.2008) ("[T]he Court is not to pass an independent judgment on the evidence or applicable law, and [i]f any grounds for the award can be inferred from the facts on the record, the Court must presume that the arbitrator did not exceed his authority and the award must be upheld.") (internal quotation marks and citation omitted); *see also Stolt–Nielsen S.A. v. AnimalFeeds Int'l Corp.*, ––– U.S. ––––, 130 S.Ct. 1758, 1767, 176 L.Ed.2d 605 (2010) (explaining that "in order to obtain ... relief" under § 10(a)(4) of the FAA, a movant "must clear a high hurdle," because "[i]t is not enough for petitioners to show that the panel committed an error—or even a serious error," and it is " 'only when [an] arbitrator strays from interpretation and application of the agreement and effectively 'dispense [s] his own brand of industrial justice' that his decision may be unenforceable' " under § 10(a)(4) of the FAA) (citations omitted).

2. Certificate of Incorporation

a. When a certificate of incorporation is ambiguous, the court looks at extrinsic evidence to determine the common understanding of the language in controversy

Case	Principle
Shiftan v. Morgan Joseph Holdings, Inc. 2012 WL 120196 Del.Ch., January 13, 2012	In the case of documents like certificates of incorporation or designation, the kinds of parol evidence frequently available in the case of warmly negotiated bilateral agreements are rarely available. Investors usually do not have access to any of the drafting history of such documents, and must rely on what is publicly available to them to understand their rights as

	investors. Thus, the subjective, unexpressed views of entity managers and the drafters who work for them about what a certificate means has traditionally been of no legal consequence, as it is not proper parol evidence as understood in our contract law. *Compare* Eagle Indus., Inc. v. DeVilbiss Health Care, Inc., 702 A.2d 1228,1232–33 (Del.1997) (holding that, if there is an ambiguous provision in a negotiated bilateral agreement, parol evidence should be considered if it would tend to help the court interpret that provision), *with* Kaiser, 681 A.2d at 397 (consideration of parol evidence for common understanding of a certificate of designation was inappropriate because it would reveal information "about the thoughts and positions of, at most, the issuer and the underwriter," not the investors in the preferred stock issued under the certificate). Furthermore, "unless extrinsic evidence can speak to the intent of *all* parties to a contract, it provides an incomplete guide with which to interpret contractual language," because there must be "some connection between the expectations of contracting parties revealed by extrinsic evidence and the way contract terms were articulated by those parties." Wininger, 707 A.2d at 43. *But see* Airgas, Inc. v. Air Prods. & Chemicals, Inc., 8 A.3d 1182, 1191 (Del.2010) (the subjective belief of corporate managers that a charter prevented stockholders from moving the annual meeting date for the corporation forward if that would shorten their terms by months was accepted as evidence to resolve an ambiguity). Kaiser, 681 A.2d at 397–98 (refusing to consider parol evidence to interpret ambiguous certificate of designation because the evidence would not speak to the reasonable expectations of the investors) Wininger, 707 A.2d at 43–44 (finding that consideration of parol evidence was inappropriate where a general partner solicited and signed on 1,850 investors to a "take it or leave it" partnership agreement that those investors had no involvement in drafting).
Alta Berkeley VI C.V. v. Omneon, Inc. 41 A.3d 381 Del.Supr.,2012. March 05, 2012	Certificates of incorporation are regarded as contracts between the shareholders and the corporation, and are judicially interpreted as such. A judicial interpretation of a contract presents a question of law that this Court reviews *de novo.* Unless there is ambiguity, Delaware courts interpret contract terms according to their plain, ordinary meaning. Contract language is not ambiguous merely because the parties dispute what it means. To be ambiguous, a disputed contract term must be fairly or reasonably susceptible to more than one meaning. Further, "[i]t is well established that a court interpreting any contractual provision, including preferred stock provisions, must give effect to all terms of the instrument, must read the instrument as a whole, and, if possible, reconcile all the provisions of the instrument."

b. Unless the extrinsic evidence resolves the ambiguity with clarity in favor of the Preferred Stockholders, the contract should be interpreted in the manner that is least restrictive of electoral rights

Case	Principle
Shiftan v. Morgan Joseph Holdings, Inc. 2012 WL 120196 Del.Ch., January 13, 2012	In these contexts, another method of resolving ambiguity comes into play, which involves interpreting ambiguities against the drafter. Our Supreme Court has frequently invoked this doctrine of *contra proferentem* to resolve ambiguities about the rights of investors in the governing instruments of business entities. This is even true in the case of investors in preferred stock. For example, our Supreme Court held in the *Kaiser* case that when a certificate of designation of a corporation governing the rights of preferred stockholders is ambiguous, the doctrine of interpretation against the drafter should be invoked in favor of the preferred stockholders. Thus, in that context, if a certificate of designation can be reasonably read in the manner the investor in preferred stock advances, the ambiguity should be resolved in her favor. The policy reason for this was put clearly by the Supreme Court: "When faced with an ambiguous provision in a document such as a certificate of designation, the court must construe the document to adhere to the reasonable expectations of the investors who purchased the security and thereby subjected themselves to the terms of the contract." RESTATEMENT OF CONTRACTS § 206 (1981) "In choosing among the reasonable meanings of a promise or agreement or a term thereof, that meaning is generally preferred which operates against the party who supplies the words or from whom a writing otherwise proceeds." *Wininger*, 707 A.2d at 43 (holding that ambiguous terms in a partnership agreement that was drafted only by the general partner should be construed against the general partner under the principle of *contra proferentem*) *Penn Mut. Life Ins. Co. v. Oglesby*, 695 A.2d 1146, 1149–50 (Del.1997) ("It is the obligation of ... the issuer of securities to make the terms of the operative document understandable to a reasonable investor whose rights are affected by the document. Thus, if the contract in such a setting is ambiguous, the principle of *contra proferentem* dictates that the contract must be construed against the drafter.") *Stockman v. Heartland Indus. Partners, L.P.*, 2009 WL 2096213, at *5 (Del. Ch. July 14, 2009) (when an entity's organizing document is ambiguous and "makes promises to parties who did not participate in negotiating the agreement," Del. courts apply the principle of *contra proferentem*).

3. Subordination

a. Where the terms of one provision are expressly stated to be "subject to" the terms of a second provision, the terms of the second provision will control, even if the terms of the second provision conflict with or nullify the first

Case	Principle
United Rentals, Inc. v. RAM Holdings, Inc., 937 A.2d 810 Del. Ch., Dec. 21, 2007	Relying on *Penn Mutual Life Insurance, Co. v. Oglesby*, 695 A.2d 1146, 1150 (Del. 1997) (finding that the phrase "subject to all provisions" operated to subliminate or trump other provisions) and *Supermex Trading Co., Ltd. v. Strategic Solutions Group, Inc.*, 1998 WL 229530 (Del. Ch. May 1, 1998) defendants contend that Delaware law specifically permits the parties to establish supremacy and subservience between provisions such that, where the terms of one provision are expressly stated to be provisions that, where the terms of one provision are expressly stated to be "subject to" the terms of a second provision, the terms of the second provision will control, even if the terms of the second provision conflict with or nullify the first provision. An interpretation of the agreement that relies on the parties' addition of hierarchical phrases, instead of the deletion of particular language altogether, is not unreasonable as a matter of law.

4. Consent Decrees

a. Consent decrees are interpreted like any other contract

Case	Principle
Broadcast Music, Inc. v. DMX Inc. --- F.3d ----, 2012 WL 2123188 C.A.2 (N.Y.),2012, June 13, 2012	Consent decrees are construed "basically as contracts." *AEI* 275 F.3d at 175 We review the district court's interpretation of a consent decree *de novo* and its factual findings for clear error. *Id.* When the language of a consent decree is unambiguous, deference is paid to the plain meaning of the decree's language. *Id.*

5. Contract Formation

a. General principles of contract formation are used to determine whether the parties intended to form a binding agreement

Case	Principle
Burke v. Eaton Associates, Inc. 2012 WL 267982 W.D.N.Y., January 30, 2012	"New York relies on settled common law contract principles to determine when parties to a litigation intended to form a binding agreement." *Ciaramella v. Reader's Digest Ass'n, Inc.*, 131 F.3d 320, 322 (2d. Cir.1997); *see also Jim Bouton Corp. v. William Wrigley Jr. Co.*, 902 F.2d 1074, 1081 (2d Cir.1990) (describing the New York rule of contract formation as "generally accepted"). Typically, unless otherwise specified, a party can accept an offer by beginning performance, as Eaton did here by drafting the check.

	Restatement (Second) of Contracts § 30(2) ("Unless otherwise indicated by the language or the circumstances, an offer invites acceptance in any manner and by any medium reasonable in the circumstances"); *In re Newport Plaza Assocs., L.P.*, 985 F.2d 640, 645 (1st Cir.1993). Indeed, even if the party does not subjectively intend to be bound, if its actions support the conclusion that it has accepted the offer, it is bound to honor the contract. *See Dodge Street, LLC. v. Livecchi*, 32 Fed. Appx. 607, 611 (2d Cir.2002) (summary order).

6. ERISA

a. ERISA plan documents are construed using traditional rules of contract interpretation, as long as they are consistent with federal labor policies

Case	Principle
Burke v. Eaton Associates, Inc. Slip Copy, 2012 WL 267982 W.D.N.Y., January 30, 2012	In adjudicating agreements like these, the Second Circuit has instructed courts to apply "traditional rules of contract interpretation as long as they are consistent with federal labor policies." *Aeronautical Indus. Dist. Lodge 91 of Int'l Ass'n of Machinists & Aerospace Workers, AFL–CIO v. United Techs. Corp., Pratt & Whitney*, 230 F.3d 569, 576 (2d Cir.2000). The contract should be interpreted in light of the underlying goals of ERISA as amended by the Multi-employer Pension Plan Amendment Act of 1990 ("MPPAA"). Because the MPPAA was meant to protect the interests of participants in financially distressed ERISA plans, they argue, the contract should be construed against Eaton, not the Fund. Any other reading would render the phrase entirely superfluous, which is of course contrary to standard contract interpretation policies. *See United Techs. Corp., Pratt & Whitney*, 230 F.3d at 576 ("In addition, as with all contracts, courts should attempt to read [federal labor contracts] in such a way that no language is rendered superfluous.").
Fleisher v. Standard Ins. Co. 679 F.3d 116 C.A.3 (N.J.),2012. May 17, 2012	The dissenting opinion reads as if we were interpreting an ambiguous term in an insurance policy under a *de novo* standard of review. It alludes to notions of contracts of adhesion and reasonable expectations of the insured that populate cases interpreting insurance policies in the first instance. Those concepts are simply not applicable where, as here, the ERISA plan document makes the plan administrator the competent authority to interpret ambiguous plan provisions in the first instance. *See Kimber*, 196 F.3d at 1101 ("[T]he reasonable expectation doctrine is inapplicable to the review of an ERISA disability benefits plan under the arbitrary and capricious standard."). As Judge Cudahy explained in *Morton v. Smith*, 91 F.3d 867, 871 n. 1 (7th Cir.1996): Courts invoke [the *contra proferentem*] rule when they have the authority to construe the terms of a plan, but this authority arises only when the administrators of the plan lack the discretion to construe it themselves.... When the administrators of a plan have discretionary authority to construe the plan, they have the discretion to determine the intended meaning of the plan's terms. In making a deferential review of such determinations, courts have no occasion to employ the rule of *contra proferentem.* Deferential review does not involve a construction of the terms of the plan; it involves a more abstract inquiry—the construction of someone else's construction. Ultimately, we think Judge Garth is mistaken inasmuch as he implies that Fleisher has somehow been the victim of a contract of adhesion, or that he was otherwise misled by Standard. Although the Standard Policy did not

	define the terms "group insurance" or "individual insurance" or reference the term "franchise insurance," it reposed in the administrator the authority to interpret ambiguous terms. Thus, we are not concerned that plan participants like Fleisher—or, as Judge Garth suggests, sophisticated plan participants like the judges on this panel—are misled by insurance policies such as Standard's. Since the Standard Policy vested the administrator with discretion to interpret the Policy, under our well-established case law we have no option but to uphold this interpretation unless it is arbitrary or capricious. As our dissenting colleague observed in another ERISA case, "a court must *actually apply* the correct standard [of review]; *mere lipservice and mere citation* to a standard of review will not suffice." Lasser v. Reliance Standard Life Ins. Co., 344 F.3d 381, 399 (3d Cir.2003) (Garth, J., dissenting). In this case, application of the deferential standard of review precludes reliance upon the general principles of contract law on which the dissent rests. Whether we would reach a different interpretation under *de novo* review is therefore irrelevant.

7. Holding Agents in Escrow

a. Placing a signed contract in escrow is simply a way of creating a condition precedent to the contract's validity

Case	Principle
Edelman Arts, Inc. v. Art Intern. Ltd. --- F.Supp.2d ----, 2012 WL 183641 S.D.N.Y., January 24, 2012	Here, parties intended to have the bill of sale be inoperative until such time as Art International received funds from its undisclosed buyer, Galerie G. That intent is evinced by several pieces of evidence adduced at trial. First, Edelman stated that he would hold the bill of sale "in escrow" until funds from the buyer had been received. "Placing a signed contract in escrow is simply a way of creating a condition precedent to the contract's validity." Edelman's use of the term—one with which he is familiar, —is probative of an intent to condition the effectiveness of the bill of sale on the conditions of the "escrow" arrangement.

8. Indemnification Provisions

a. The court will interpret a contract to avoid reading into it a duty to indemnify that the parties did not intend to be assumed

Case	Principle
Corral v. Outer Marker LLC Slip Copy, 2012 WL 243318 E.D.N.Y., January 24, 2012	"When a party is under no legal duty to indemnify, a contract assuming that obligation must be strictly construed to avoid reading into it a duty which the parties did not intend to be assumed." Tonking v. Port Auth. of N.Y. & N.J., 3 N.Y.3d 486, 490, 787 N.Y.S.2d 708, 821 N.E.2d 133 (2004) (quoting Hooper Assocs. v. AGS Computers, Inc., 74 N.Y.2d 487, 491, 549 N.Y.S.2d 365, 548 N.E.2d 903 (1989)).

9. Motion to Dismiss

a. When ruling on a motion to dismiss, the court must resolve all ambiguities in the contract in favor of the plaintiff

Case	Principle
Malmsteen v. Universal Music Grp, Inc. 2012 WL 2159281 S.D.N.Y., 2012. June 14, 2012	At the motion to dismiss stage, a court may "resolve issues of contract interpretation when the contract is properly before the Court, but must resolve all ambiguities in the contract in [p]laintiffs' favor." *Serdarevic*, 760 F.Supp.2d at 328–29 (citing *Banks v. Corr. Servs. Corp.*, 475 F.Supp.2d 189, 195 (E .D.N.Y.2007)) ("If the interpretation of a contract is at issue, a court is 'not constrained to accept the allegations of the complaint in respect of the construction of the [a]greement,' although all contractual ambiguities must be resolved in the plaintiffs' favor.") (quoting *Int'l Audiotext*, 62 F.3d at 72).
Hamilton Partners, L.P. v. Highland Capital Mgmt., L.P. 2012 WL 2053329 Del.Ch., 2012, May 25, 2012	At this stage, the Court cannot determine whether the correct time to review the actions of Highland and Furlong with regard to the Merger is in April 2010 or September 2010 because the Restructuring Agreement is ambiguous. Therefore, the Court will defer ruling on the motions to dismiss.

b. A contractual statute of limitations is generally respected in NY courts

Case	Principle
Malmsteen v. Universal Music Grp., Inc. 2012 WL 2159281 S.D.N.Y., 2012. June 14, 2012	Contractual statutes of limitations and objection provisions are generally respected by New York courts. *See, e.g.*, *Allman v. UMG Recordings*, 530 F.Supp.2d 602, 605 (S.D.N.Y.2008) (enforcing both a limitation and an objection provision against a plaintiff). Under the C.P.L.R., "[a]n action ... must be commenced within the time specified in this article unless ... a shorter time is prescribed by written agreement." C.P.L.R. § 201. Failure to conform to a contractual limitations period "will subject the action to dismissal, absent proof that the limitations provision was obtained through fraud, duress, or other wrongdoing." *Id.; see also Van Loan v. Hartford Accident & Indem. Co.*, No. 05–cv–1326, 2006 WL 3782709, at *4 (S.D.N.Y. Dec. 22, 2006) (holding that an insurance agreement's two-year limitation period was valid and enforceable and dismissing plaintiff's claim because it was filed after limitation period).

10. Proprietary Lease

a. In the interpretation of leases, the same rules of construction apply as are applicable to contracts generally

Case	Principle
Himmelberger v 40-50 Brighton First Rd. Apts. Corp. 94 A.D.3d 817, 943 N.Y.S.2d 118 N.Y.A.D. 2 Dept.,2012. April 10, 2012	This action is based on a proprietary lease, which is a valid contract that must be enforced according to its terms (*see Brickman v. Brickman Estate at the Point.*, 6 A.D.3d 474, 476, 775 N.Y.S.2d 67). As a general rule, "'[a] lease is to be interpreted as a whole and construed to carry out the parties' intent, gathered, if possible, from the language of the lease' " (*Cobalt Blue Corp. v. 184 W. 10th St. Corp.*, 227 A.D.2d 50, 53, 650 N.Y.S.2d 720)

	Thus, in the interpretation of leases, the same rules of construction apply as are applicable to contracts generally (*see* *George Backer Mgt. Corp. v. Acme Quilting Co.*, 46 N.Y.2d 211, 217, 413 N.Y.S.2d 135, 385 N.E.2d 1062).

11. Release Agreements

a. The general words of a release agreement are limited by the recital of a particular claim

Case	Principle
Camperlino v. Bargabos --- N.Y.S.2d ----, 2012 WL 2164461 N.Y.A.D. 4 Dept.,2012. June 15, 2012	Where, "'[a] release ... contain[s] specific recitals as to the claims being released, and yet conclude[s] with an omnibus clause to the effect that the releasor releases and discharges all claims and demands whatsoever which he [or she] ... may have against the releasee ..., the courts have often applied the rule of ejusdem generis, and held that the general words of a release are limited by the recital of a particular claim' "