

Wuxi Haijiang Print. and Dyeing Co., Ltd. v Jenny Textiles (U.S.A.), Inc.
2007 NY Slip Op 33297(U)
August 29, 2007
Supreme Court, New York County
Docket Number: 0602685/2004
Judge: Herman Cahn
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 49

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WUXI HAIJIANG PRINTING AND DYEING CO.,
LTD.,

Plaintiff,

-against-

Index No. 602685/04

JENNY TEXTILES (U.S.A.), INC. AND
JENNY G. SPRIZZO a/k/a JENNY GU,

Defendants.

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Cahn, J.:

FILED
AUG 31 2007
NEW YORK
COUNTY CLERK'S OFFICE

This action was tried before the undersigned at a bench trial.

The action is basically one for goods sold and delivered. The goods are fabrics of various types manufactured in the Republic of China and sold by plaintiff to the defendant Jenny Textiles (U.S.A.), Inc. ("Textiles"). The goods were shipped from the Republic of China to third parties at the direction of Textiles.

Plaintiff is a corporation organized and existing under the laws of the People's Republic of China with its principal place of business in China.

Textiles is a domestic corporation with its principal place of business in New York.

The defendant Jenny Sprizzo a/k/a Jenny Gu ("Sprizzo") is an individual who is the principal (and possibly the sole) share holder of Textiles.

The parties had a course of conduct in connection with the sale and delivery of fabrics over some period of time. In general, Textiles would place an order with plaintiff for certain fabrics. After agreeing to the price, quantity, inspection and other purchase terms, the order would be finalized. Plaintiff would then dye and/or print raw fabric which it procured from suppliers, and ship the finished goods, pursuant to defendant's instructions, to Textile's

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customers in various other countries. Defendant's quality control inspectors monitored and had the opportunity to monitor the production process, and made inspections prior to shipment. In fact, each purchase order specified that the fabric be "Approved by Buyer prior to Shipping." This action is concerned with the balance claimed to be due on eight shipments. The total value of the eight shipments was \$1,001,680.29. Textile paid \$717,692.19 on account thereof leaving a claimed balance of \$282,671.30.

Textiles placed a small order in September of 2002 for specialty fabric. Around August of 2002, Textiles ordered over 600,000 yards of fabric to be shipped to its clients in several countries. Accordingly, Textiles placed four purchase orders, with fabric specifications, payment terms, and shipping address. In December of 2002, seven shipments were made to fulfill the four purchase orders.

In this action, in addition to the September 2002 shipment of 1,872.6 meters of fabric having a value of \$5,243.28, the following seven shipments are involved: (1) the December 9, 2002 shipment of 73,849.5 yards of fabric with a value of \$112,989.73; (2) the December 9, 2002 shipment of 76,030 yards of fabric with a value of \$116,325.91; (3) the December 21, 2002 shipment of 80,109.7 yards of fabric with a value of \$134,584.30; (4) the December 24, 2002 shipment of 158,879 yards of fabric with a value of \$266,916.72; (5) the December 28, 2002 shipment of 84,020.4 yards of fabric with a value of \$128,551.21; (6) the December 28, 2002 shipment of 79,956.1 yards of fabric with a value of \$122,332.83; and (7) the December 28, 2002 shipment of 74,130.4 yards of fabric with a value of \$113,419.51. There appears to be no dispute as to the bulk of the shipments.

The parties' dispute over one shipment of approximately 29,000 yards which was shipped

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to a third party, Land N Sea, for manufacturing into garments. Defendants claim that Land N Sea manufactured garments from the fabric, and thereafter rejected approximately 15,000 garments so manufactured. The claim was that the defects were caused by defective fabric. Textile claimed that the customer withheld \$148,017.40, from the amount due to it. It seeks to deduct this amount from what is owed to plaintiff.

Plaintiff appointed Juntai Li as its agent to negotiate with defendants in connection with these claims together with others. Li's testimony was offered at trial. After some angry negotiations, plaintiff agreed to have Mr. Li pick up the 1,295 dozen defective garments from South Carolina and deliver the same to his (rented) warehouse in Queens, New York in or about March, 2004.

Mr. Li, on behalf of plaintiff negotiated with Sprizzo on behalf of defendant over some period of time. They finally agreed that 95% "of the responsibility of the alleged defects in the garment" would be accepted by plaintiff, and 5% would be allotted to Textile. Eventually, the garments were sold for 25 cents per garment by Mr. Li.

In a letter written by plaintiff's president to Sprizzo, on December 15, 2003, he acknowledged all of the above and stated as follows:

" Accordingly, the money owed to my company should be 155,249.80 plus 4,691.97 = 159,941.77 U.S. Dollars. Please confirm the aforementioned items and make payment promptly." ¹

The court after having considered all the testimony concludes that indeed there is due and owing to plaintiff from Textiles the sum of \$159,941.77 together with interest thereon from December 15, 2003.

¹ The letter was written in Chinese and translated by a Chinese translator.

Plaintiff also seeks judgment against defendant Sprizzo, individually. The evidence indicated that the plaintiff dealt with Textile, a corporation, and was aware that it was dealing such a corporation. Thus, the various purchase orders were issued by Textiles. Pro Forma Invoices and Commercial Invoices were issued by plaintiff to Jenny Textiles (U.S.A.) Inc. The fact that Sprizzo may be Textiles' sole shareholder, director and officer does not make her liable for Textiles' obligations. In addition to the invoices referred to above, other e-mails and documents submitted in evidence were signed by "Textiles, Jenny G. Sprizzo," indicating that she was signing as an officer of Textiles. The fact that some of the letters were addresses to and/or signed by "Jenny" does not change this conclusion. Plaintiff, itself a corporation, dealt with Textiles, a corporation. Plaintiff has not proven that Textiles and its officer dealt with plaintiff in anything other than corporate capacity, or that Sprizzo agreed to be personally liable for Textiles' debts.

In view of the above, the court finds that plaintiff has not proven its case against Sprizzo and the action should be dismissed as to Sprizzo.

In summary, plaintiff is entitled to judgment against defendant Jenny Textiles (U.S.A.) Inc., in the sum of \$159,941.77 together with interest from December 15, 2003 plus the costs and disbursements of this action.

The action against Jenny G. Sprizzo is dismissed.

The clerk may enter judgment accordingly.

Dated: August 29, 2007

ENTER:

Alan Cohen

 J.S.C.

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