

Hublot S.A . v Emotion Inc.

2009 NY Slip Op 32159(U)

September 18, 2009

Supreme Court, New York County

Docket Number: 108012/08

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JUDITH J. GISCHE, J.S.C.

PART 10

Index Number : 108012/2008
HUBLOT, S.A.
 VS.
EMOTION, INC.
 SEQUENCE NUMBER : 001
 DEFAULT JUDGMENT

INDEX NO. _____
 MOTION DATE _____
 MOTION SEQ. NO. _____
 MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
 Answering Affidavits — Exhibits _____
 Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

motion (s) and cross-motion(s) decided in accordance with the annexed decision/order of even date.

FILED
 SEP 23 2009
 COUNTY CLERK'S OFFICE
 NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 9/18/09

JUDITH J. GISCHE, J.S.C.
 J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
 Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

-----X

HUBLLOT S.A.,

Plaintiff,

-against-

EMOTION INC., (a.k.a EMOTION INC., USA),
EMOTION EVENTS, EMOTION LUXURY
EVENTS MANAGEMENT HONG KONG
LIMITED and DENIS MULLER,

Defendants.

-----X

Decision/Order

Index No.: 108012/08

Seq. No. : 001

Present:

Hon. Judith J. Gische

J.S.C.

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

Papers

Numbered

Pltf's motion [d j/mt] w/CPM affirm, CB affid, RG affid, exhs 1

-----X

Upon the foregoing papers, the decision and order of the court is as follows:

This action arises from the defendants' alleged theft of \$50,000 from plaintiff. Plaintiff now moves, pursuant to CPLR § 3215, for an order directing the Clerk of Court to enter a default judgment in its favor and against defendants Emotion Inc. ("Emotion") and Denis Muller. This motion is itself submitted to the court on default, though proof of service has been filed.

Although plaintiff has provided proof of service of the summons and verified complaint on both defendants, plaintiff is not entitled to a default judgment on liability. Plaintiff is entitled to a default judgment, provided it otherwise demonstrates that it has a *prima facie* cause of action. Gagen v. Kipany Productions Ltd., 289 AD2d 844 (3rd Dept

2001). A default in answering the complaint constitutes an admission of the factual allegations therein and the reasonable inferences which may be made therefrom [Rokina Optical Co., Inc. v. Camera King, Inc., 63 NY2d 728 (1984)].

Plaintiff is a designer and manufacturer of luxury watches. Plaintiff claims that it entered into a sponsorship agreement in or about January 2008 whereby the defendants agreed to promote and organize an event showcasing plaintiff's high-end watches at the New York City Public Library (the "Event") in March 2008. Pursuant to this agreement, plaintiff claims that it tendered its initial payment of \$50,000, which was one-half of the sponsorship fee, to the defendants. The defendants, however, allegedly failed to organize the event, or perform any other services they purportedly agreed to in the agreement. Plaintiff claims that the defendants "absconded" with the \$50,000 deposit in a fraudulent scheme.

Plaintiff has asserted the following causes of action in the complaint: [1] breach of the agreement against all defendants; [2] fraud against all defendants; and [3] conversion against all defendants.

Plaintiff has provided a copy of the agreement. This agreement, however, does not appear to be signed by the defendant. Rather, the signature line for Emotion is blank, and there are no signature lines for any of the other defendants in this action. The elements of a cause of action for breach of contract are: (1) formation of a contract between the parties; (2) performance by plaintiff; (3) defendant's failure to perform; and (4) resulting damage. Furia v. Furia, 116 AD2d 694 (2d Dept 1986). Although the agreement is not signed by Emotion, plaintiff's claims that Emotion executed the agreement, based upon the affidavit of Christophe Barre and Ricardo Guadalupe, are

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sufficient to establish that Emotion signed the agreement. Moreover, the emails between plaintiff and Emotion establish proof of plaintiff's payment. Accordingly, plaintiff has demonstrated a *prima facie* cause of action for breach of contract against Emotion and plaintiff is entitled to a money judgment against "Emotion, Inc.". To the extent that it is unclear why plaintiff claims that Emotion, Inc. is also known as "Emotion Inc., USA", the court declines to award it a money judgment against both entities.

Plaintiff has, however, failed to establish that it entered into a contract with any of the other defendants on this motion. In general, a non-party to a contract cannot be sued for its breach. TNS Holdings Inc. v. MKI Securities, 92 NY2d 335 (1998).

To state a cause of action for fraud, plaintiff must show: (1) that defendants intentionally made a misrepresentation or material omission of fact; (2) that the misrepresentation or material omission of fact was false or known to be false to defendants; (3) plaintiff's reliance; and (4) that the misrepresentation resulted in some injury to plaintiff. Held v. Kaufman, 91 NY2d 425 (1998). Fatal to plaintiff's fraud claim is plaintiff's failure to adduce any proof of payment by it to the defendants. Moreover, plaintiff's general allegations that the defendants entered into a contract while lacking the intent to perform it are insufficient to support a cause of action sounding in fraud. Rocanova v. Equitable Life Assur. Soc. of U.S., 83 NY2d 603 (1994).

In order to assert a cause of action for conversion, a plaintiff must demonstrate an ownership interest in the property alleged to have been converted. State v. Seventh Regiment Fund, Inc., 98 NY2d 249 (2002). Plaintiff's conversion claim fails on these facts because conversion requires the wrongful taking of another's personal property, and here, plaintiff alleges that it voluntarily delivered the payment to the defendants in

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the first instance. Moreover, plaintiff has utterly failed to establish a basis for liability against defendant Muller. Plaintiff's sole basis for liability against Muller is a letter in which Muller, writing on behalf of Emotion, indicated that the Event would be postponed. Plaintiff has not otherwise alleged that Muller himself absconded with the \$50,000 payment, and plaintiff has not alleged sufficient facts through which the corporate veil should be pierced and Muller should be held liable if he is a principal of Emotion. See Joan Hansen & Co., Inc. v. Everlast World's Boxing Headquarters Corp., 296 AD2d 103 (1st Dept 2002); Hyland Meat Co., Inc. v. Tsagarakis, 202 AD2d 552 (2d Dept 1994). In fact, it is entirely unclear what Muller's relationship to any of the other defendants is.

For at least these reasons, the instant motion is granted only to the extent that plaintiff is entitled to a default judgment against Emotion on the first cause of action. The motion is otherwise denied, without prejudice to renew within ninety days from the date hereof in order to address the issues identified herein. Plaintiff's failure to renew within ninety days hereof shall be deemed an abandonment of this action and the court will dismiss for failure to prosecute. CPLR § 3216.

Conclusion

In accordance herewith, it is hereby:

ORDERED that plaintiff's motion is granted only to the extent that plaintiff is entitled to a default judgment against Emotion on the first cause of action; and it is further


ORDERED that the clerk is hereby directed to enter a money judgment in favor of plaintiff Hublot S.A. and against defendant Emotion, Inc. in the total sum of \$50,000 with interest thereon from February 12, 2008; and it is further

ORDERED that plaintiff's motion is otherwise denied without prejudice to renew within ninety days from the date hereof in order to address the issues identified herein. Plaintiff's failure to renew within ninety days hereof shall be deemed an abandonment of this action and the court will dismiss for failure to prosecute.

Any requested relief not expressly addressed herein has nonetheless been considered by the Court and is denied.

This shall constitute the decision and order of the Court.

Dated: New York, New York
 September 18, 2009

So Ordered:


HON. JUDITH J. GISCHE, J.S.C.

FILED
SEP 23 2009
COUNTY CLERK'S OFFICE
NEW YORK