

Castor SRL v Really Great Things, Inc.

2010 NY Slip Op 32283(U)

August 2, 2010

Supreme Court, New York County

Docket Number: 601037/2009

Judge: Saliann Scarpulla

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SCANNED ON 8/25/2010
[* 1]
SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: SCARPULLA
Justice

PART 19

CASTOR SRL

INDEX NO.

601037/09

MOTION DATE

MOTION SEQ. NO.

03

MOTION CAL. NO.

- v -
REALLY GREAT THINGS, INC.

The following papers, numbered 1 to _____ were read on 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

decided per the memorandum decision dated 8/2/10
which disposes of motion sequence(s) no. 03

FILED

AUG 25 2010

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 8/2/10

Salvatore Scarpulla
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 19

----- X

CASTOR SRL,

Index Number 601037/2009
Submission Date June 23, 2010

Plaintiff,

DECISION AND ORDER

- against -

REALLY GREAT THINGS, INC.,

Defendant.

----- X

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FILED
AUG 25 2010
NEW YORK
COUNTY CLERK'S OFFICE

Papers considered in review of these motions:

Plaintiff's Order to Show Cause and Affirmation in Support	1
Affidavit of Ryan Zentner	2
Plaintiff's Affirmation in Opposition	3
Reply Affidavit of Ryan Zentner	4

HON. SALIANN SCARPULLA, J.:

In this breach of contract action, plaintiff Castor Srl ("Castor") moves by order to show cause for an adjudication of defendant Really Great Things, Inc.'s ("RGT") monetary liability in connection with a default judgment previously entered against RGT by this Court. RGT moves pursuant to CPLR 5015 to vacate the default judgment.

Factual and Procedural Background

This action arises from a series of three transactions that were allegedly consummated in 2008 between Castor, an Italian clothing manufacturer, and RGT, a New York-based clothing retailer. Castor's verified complaint asserts that Castor produced, and that RGT received, two shipments of clothing pursuant to orders placed by RGT in

March 2008 and August 2008. Additionally, Castor maintains that, in October 2008, RGT ordered a custom shipment of clothing and then wrongfully cancelled the contract after Castor had produced the goods.

Castor attached two invoices and one purchase order to its complaint, which it maintains reflect the payments due in connection with the three above-referenced clothing orders. The amounts listed were payable in Euros. With respect to the March 2008 order, Castor sent RGT invoice #448 totaling €120,496.12, of which Castor alleges RGT paid only €95,755.50, leaving a balance of €24,740.53. In connection with the August 2008 order, Castor sent RGT invoice #1156 totaling €54,123.09, of which Castor alleges RGT has made no payments. With respect to the October 2008 order, Castor maintains that RGT has made no payments toward the €47,311.00 due on purchase order #E9/000010. As a result of RGT's partial payment and non-payment of these billing statements, Castor alleges that it is owed a total of €126,174.60¹ from RGT. Castor's complaint maintains that the accurate U.S. Dollar equivalent for this sum is \$181,509.65.

Castor commenced this action in or about April 2009 seeking to recover the amounts it claims it was owed on the invoices. Following service of the complaint, no answer was filed by RGT. Castor then brought a motion for a default judgment under CPLR 3215. On July 20, 2009, this Court (Lehner, J.) granted Castor's motion solely with respect to the question of RGT's liability. Pursuant to the Order granting Castor's

¹ The Court notes that the accurate calculation of the balance owed on invoice #448, based on the amount of the invoice and the alleged partial payment, is €24,740.62, and notes that the accurate figure for the total alleged amount due to Castor, based upon the billing statements and the alleged partial payment, is €126,174.71.

motion for a default judgment, the Court directed Castor to file a note of issue to calendar the action for a damages inquest.

Castor filed the note of issue on or about July 29, 2009. Subsequently, Castor applied to the Court for an order fixing damages at \$182,509.65. Castor argued that, because the contractual liability as demonstrated by the invoices and purchase order could be reduced to a “sum certain,” a trial assessing Castor’s damages was unnecessary. The Court denied Castor’s application, finding that as the contracts between the parties were payable in Euros, an inquest was necessary to determine the proper exchange rate between Euros and United States Dollars.

Castor now moves by order to show cause pursuant to CPLR 3215 for an order adjudging its damages at €126,174.60. Castor further requests that the Court refer the matter to a Judicial Hearing Officer or to schedule a hearing for the sole purpose of determining the appropriate Euro-Dollar exchange rate. Castor argues that it has provided sufficient evidence pursuant to the requirements of CPLR 3215 for the Court to adjudge damages. In addition, Castor maintains that RGT has failed to provide a reasonable excuse for its failure to answer the complaint and that RGT has not established that it has meritorious defenses to Castor’s allegations. Castor therefore argues that it would be inappropriate for this Court to vacate the default judgment entered against RGT in July 2009.

RGT responded to Castor’s motion and now moves pursuant to CPLR 5015 to vacate the default judgment ordered by this Court on July 20, 2009. RGT asserts that its failure to answer the complaint is excused because RGT’s principal, Ryan Zentner

(“Zentner”) relied on advice from an attorney. Zentner maintains in his affidavits that this attorney advised him that an appearance was unnecessary because settlement negotiations between the parties were proceeding.

Zentner also asserts in his affidavits that the three clothing orders were either never shipped or that the orders were not confirmed by RGT. Zentner avers that the alleged contracts from August and October 2008 actually represent one proposed order, which was cancelled by RGT via facsimile on October 31, 2008, a copy of which was supplied to this Court. Along with its motion papers, RGT has attached a proposed answer.

Discussion

To vacate a default judgment based upon a failure to answer, a defendant is required to demonstrate both a justifiable excuse for the default and a meritorious defense to the plaintiff’s cause of action. CPLR 5015(a)(1); *see also Stillman v. City of New York*, 39 A.D.3d 301, 303 (1st Dep’t 2007). RGT has shown that it has a reasonable excuse for its failure to timely answer Castor’s complaint. In assessing a motion to vacate a default judgment, a court is authorized to consider law office failure in deciding whether to restore the action. CPLR 2005; *see also Leary v. Pou Pouné, Inc.*, 273 A.D.2d 8, 8 (1st Dep’t 2000) (vacating default judgment and noting that “a default judgment may be vacated . . . despite the existence of egregious law office failure”). Here, Zentner avers that he spoke with an attorney who advised Zentner that RGT did not have to appear in the action because the attorney had received postponements and was working with Castor to settle the matter. Although this advice was erroneous, it

constitutes “a valid excuse why [RGT] might justifiably have believed [its] interests were being protected when in fact, they were not.” *Clark v. Sherwood*, 117 A.D.2d 973, 973 (4th Dep’t 1986).

RGT has also established that it has meritorious defenses. “In order to demonstrate a meritorious defense, a party must submit an affidavit from an individual with knowledge of the facts.” *Peacock v. Kalikow*, 239 A.D.2d 188, 190 (1st Dep’t 1997); *see also* Siegel, *New York Practice*, § 108 (4th ed. 2005). Here, Zentner – a principal of RGT – submitted affidavits denying that RGT has any outstanding obligations to Castor and specifically addressing the factual assertions made in Castor’s complaint. Zentner avers that the alleged August 2008 and October 2008 contracts are in fact the same order that was never finalized. Furthermore, RGT has submitted documentary evidence that this potential order was cancelled by RGT in its October 31, 2008 facsimile. Such proof is sufficient to establish that RGT has meritorious defenses to Castor’s claims.

New York maintains a strong public policy in favor of resolving disputes on the merits. *See Congress Talcott Corp. v. Pacemakers Trading Corp.*, 161 A.D.2d 554, 555 (1st Dep’t 1990) (“It is the policy of this court to allow matters to proceed to trial on the merits, whenever possible.”). In this case, RGT has shown a reasonable excuse for its failure to timely answer the complaint and has established that it has meritorious defenses to Castor’s causes of action. RGT’s demonstrated involvement in the resolution of this matter further convinces this court of the appropriateness of allowing this case to be

decided at trial. Accordingly, this Court grant's RGT's motion to vacate the default judgment previously entered against it.

As a result of the above determination that this action should go forward on the merits, it is unnecessary for this Court to address the merits of Castor's motion requesting entry of RGT's liability in the amount of €126,174.60.

In accordance with the foregoing, it is

ORDERED that plaintiff Castor Srl's motion to adjudge defendant Really Great Thing's monetary liability is denied; it is further

ORDERED that defendant Really Great Things, Inc.'s motion to vacate the default judgment entered against it on July 20, 2009 is granted; it is further

ORDERED that defendant Really Great Things, Inc.'s proposed answer is deemed served; it is further

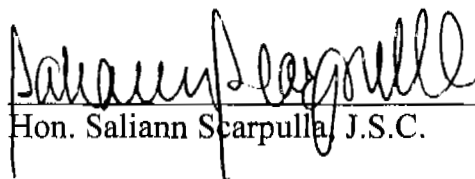
ORDERED that the parties are directed to appear before this Court for a pretrial conference on October 6, 2010 at 2:15 p.m.

This constitutes the decision and order of the Court.

Dated: New York, New York
August 3, 2010

FILED
AUG 25 2010
NEW YORK
COUNTY CLERK'S OFFICE

ENTER:


Hon. Saliann Scarpulla J.S.C.