

Sportswear Realties Assoc. v Welsh

2011 NY Slip Op 33081(U)

November 28, 2011

Sup C, NY County

Docket Number: 103321/09

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. JUDITH J. GISCHE

PART 10

Index Number : 103321/2009
SPORTSWEAR REALTIES ASSOC.
vs.
WELSH, HELEN
SEQUENCE NUMBER : 004
OTHER RELIEFS

INDEX NO. _____
 MOTION DATE _____
 MOTION SEQ. NO. 004

to/for _____
 _____ No(s). _____
 _____ No(s). _____
 _____ No(s). _____

Upon the foregoing papers, it is ordered that this motion is

**MOTION IS DECIDED IN ACCORDANCE WITH
 THE ACCOMPANYING MEMORANDUM DECISION, ORDER &
 JUDGMENT**

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

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

Dated: Nov 28 / 2011

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

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

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

-----x
Sportswear Realities Associates,

Plaintiff (s),

-against-

Helen Welsh and The Helen Welsh
Group, LLC a/k/a The Helen Welsh
Group, LLC,

Defendant (s).

-----x
Helen Welsh and
The Helen Welsh Group, LLC,

Defendants/3rd Party Plaintiff

-against-

USPA Accessories, LLC d/b/a Concept
One and Concept Two Accessories, LLC d/b/a
Concept 2 Accessories, LLC,

3rd Party Defendants,

-----x
USPA Accessories LLC d/b/a Concept
One and Concept 2 Accessories, LLC,

3rd Party Defendants/
4th Party Plaintiffs,

-against-

A&L Sales, Inc.,
4th Party Defendants.

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

Papers	Numbered
Helen Welsh n/m (enter j/m) w/RLR affirm, exhs	1
USPA opp w/ MEM affirm, exhs	2

**Decision, Order &
Judgment**

Index No.: 103321/09
Seq No.: 004

Present:
Hon. Judith J. Gische, JSC

T.P. Index:
590633/09

UNFILED JUDGMENT

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F.P. Index:
590848/09

Helen Welsh reply	3
Stipulation of settlement 8/3/11	4
Letter 8/4/11	5

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

GISCHE J.:

This is an action for breach of a commercial lease and to enforce a personal guaranty. Issue was joined by the defendants in the main and 3rd party actions. Although the 4th party complaint was served, issue was never joined as to that action.

The court granted a prior motion by Sportswear Realities Associates for summary judgment on its first cause of action against Helen Welsh and on its second cause of action against The Helen Welsh Group, LLC a/k/a The Helen Welsh Group, LLC (collectively "Welsh") (see Order, Gische J., 2/1/11 corrected 3/28/11) (hereinafter, collectively "prior order"). In granting the motion, the court directed entry of a money judgment in the principal sum of \$108,221.04 in favor of Sportswear against the Welsh defendants jointly.

The court also ordered, adjudged and declared that 3rd party defendant USPA Accessories, LLC d/b/a Concept One and Concept Two Accessories, LLC d/b/a Concept 2 Accessories, LLC (referred to as "C1" and "C2" in the prior order, herein "USPA") must indemnify the defendants/third party plaintiffs Welsh for the \$108,331.04 judgment that the court directed be entered against the defendants/3rd party plaintiffs.

The court also granted Welsh's cross motion, for their legal fees to be paid by USPA to the extent of setting down the matter for a "reasonableness" hearing before a Special Referee.

When the parties appeared before Referee Liebman, they stipulated to a determination by him of the issues referred for a hearing and agreed that the legal fees for Sportswear were \$29,000 and for Welsh they were \$18,000, without prejudice (Liebman, Stipulation So-Ordered, 6/14/11) ("June 14th stipulation"). This motion ensued for an order that Welsh be permitted to enter judgment against USPA for the judgment amount against Welsh (i.e. \$108,331.04) plus the legal fees (i.e. \$29,000 plus \$18,000) on the basis of a Forced Sale Agreement dated April 16, 2008 ("sales agreement"). USPA and Welsh, parties to the sale agreement agreed, among other things, that:

- 4 (d). CO [C1] and/or C2 shall be responsible for the rent and other obligations associated with the 36th Street Premises. CO [C1] hereby agrees to indemnify and hold [Welsh] harmless from and against any claims, liabilities, losses, costs, expenses (including but not limited to reasonable attorneys' fees both in defense against the landlord's claims and in enforcement of this indemnification), obligations and damages ("Losses") that [Welsh] may incur in relation to thereto the 36th Street Premises and C2's relocation from the Premises including but not limited to (i) the operations of C2 after the date hereof and (ii) liabilities arising under the Lease, and/or any good guy guaranty signed by HW [Helen Welsh] in connection therewith...

After Welsh brought this motion, USPA and Sportswear entered into a stipulation dated August 3, 2011 ("August 3rd stipulation"). In the August 3rd stipulation, USPA and Sportswear stipulated that USPA would pay Sportswear the lesser sum of \$100,000 in full settlement of all of Sportswear's claims against the Welsh defendants. The payment would be made in six installments. In the event of a default in payment by USPA, then upon notice, Sportswear could enter judgment against USPA for the full amount of the judgment it had against Welsh (i.e. \$108,997.65). However, if all sums

were paid, then judgment against Sportswear would be vacated. In consideration for the foregoing, Sportswear agreed to discontinue its claims against Welsh with prejudice and to file a satisfaction of judgment with the court. It was also agreed that Sportswear would not enter any judgment against Welsh or USPA for the Sportswear legal fees (i.e. \$29,000). Welsh is not a signatory to the August 3rd stipulation. Following that stipulation, Welsh notified the court that the sole remaining issue for the court to decide was whether Welsh was entitled to entry of a money judgment against USPA for its legal fees in the total sum of \$47,000.

In opposition to this branch of Welsh's motion, USPA argues that the relief sought is more expansive than what Welsh asked for in its 3rd party complaint, the court already denied this relief and Welsh did not assert a claim for breach of contract, but only for a declaratory judgment.

Discussion

Examination of the court's prior order, the 3rd party complaint and each of the stipulations executed after the court rendered its prior order, reveals that USPA's arguments in opposition are misguided. The court did not, as USPA argues, deny Welsh the right to recover its legal fees in defending against Sportswear's claims against it or in connection with its 3rd party claims against USPA. To the contrary, the court granted the motions by Sportswear and Welsh for their legal fees and directed a hearing before a Special Referee on what amount of was reasonable.

Before Referee Liebman, Sportswear, Welsh and USPA stipulated to legal fees, agreeing that Sportswear's legal fees are \$29,000 and Welsh's legal fees \$18,000. It was also stipulated that plaintiff could enter judgment against Welsh and Welsh could

enter judgment against USPA but that they would forbear on execution thereof. The August 3rd stipulation, to which Welsh is not a party, modifies the earlier stipulation to provide that if USPA pays the stipulated sum of \$100,000, this will satisfy the judgment Sportswear obtained against Welsh and the legal fees (\$29,000) that Welsh would otherwise owe Sportswear. The August 3rd stipulation does not resolve the issue of legal fees that USPA owes to Welsh in the sum of \$18,000. Therefore, Welsh has proved it is entitled to entry of a money judgment against USPA and USPA has no defenses to that claim.

Arguments by USPA, that the court cannot enter a money judgment in connection with Welsh's claim for a declaratory judgment, misstates the law. Where a party seeks declaratory relief, the court must not only declare the rights of the parties, it must also direct entry of a money judgment in favor of the prevailing party, if so warranted (AmBase Corp. v Davis Polk & Wardwell, 30 A.D.3d 171 [1st Dept 2006] *aff'd* 8 N.Y.3d 428 [2007]). The court already adjudged USPA to be liable to Welsh for its legal fees (see, prior order). The only issue that remained was the sum of reasonable legal fees Welsh was entitled to. That having been resolved, Welsh's motion is granted and Welsh is entitled to a money judgment in Welsh's favor, against USPA, in the principal sum of \$18,000 with costs and disbursement.

To the extent that the parties have any lingering dispute about the \$29,000 in legal fees that Sportswear is entitled to recover from Welsh, that dispute is easily dismantled because Sportswear has agreed to look to USPA for its legal fees if USPA defaults in making payments as agreed in the August 3rd stipulation.

In accordance with the foregoing,

It is hereby


ORDERED, ADJUDGE AND DECLARED that that USPA Accessories, LLC d/b/a Concept One and Concept Two Accessories, LLC d/b/a Concept 2 Accessories, LLC must indemnify defendants/third party plaintiffs The Helen Welsh Group, LLC a/k/a The Helen Welsh Group, LLC is granted and USPA Accessories, LLC d/b/a Concept One and Concept Two Accessories, LLC d/b/a Concept 2 Accessories, LLC are liable to defendants/third party plaintiffs The Helen Welsh Group, LLC a/k/a The Helen Welsh Group, LLC for legal fees in the principal sum of Eighteen Thousand Dollars (\$18,000.00), as stipulated before Special Referee Liebman on June 14, 2011; and that the court has directed that the principal sum of Eighteen Thousand Dollars (\$18,000.00), together with costs and disbursement, as taxed by the clerk of the court, be entered as a money judgment in favor of defendant/3rd party plaintiff Helen Welsh and The Helen Welsh Group, LLC a/k/a The Helen Welsh Group, LLC; and it is further

ORDERED that any relief requested but not specifically addressed is hereby denied; and it is further

ORDERED that this constitutes the decision, order and Judgment of the court.

Dated: New York, New York
 November 28, 2011

ENTER:



Hon. Judith J. Gische, JSC

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