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| <b>Chun Lam Co. v Worldwide Dreams, LLC</b>  |
| 2011 NY Slip Op 33895(U)   |
| November 30, 2011  |
| Supreme Court, New York County   |
| Docket Number: 651948/2011   |
| Judge: Melvin L. Schweitzer  |
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: MELVIN L. SCHWEITZER
Justice

PART 45

Index Number : 651948/2011
CHUN LAM COMPANY
vs.
WORLDWIDE DREAMS LLC
SEQUENCE NUMBER : 001
DISMISS ACTION

INDEX NO.
MOTION DATE
MOTION SEQ. NO. 001

The following papers, numbered 1 to , were read on this motion to/for

Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s).
Answering Affidavits — Exhibits No(s).
Replying Affidavits No(s).

Upon the foregoing papers, it is ordered that this motion is by defendants to dismiss
the complaint is DENIED
per the attached Decision
and order.

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

Dated: November 30, 2011

Melvin L. Schweitzer J.S.C.

- 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



price of the handbags and other accessories with Chun Lam. After receiving the purchase orders from Yick Bo, Chun Lam manufactured the handbags and other accessories in its factories, and shipped the handbags and other accessories directly to the U.S. warehouse owned by WWD. Payments to Chun Lam for the goods sold and delivered to WWD were due 30 days after shipment to WWD. The goods from Chun Lam were delivered to Target and Wal-Mart, which in turn made payments for the goods. To date, neither Yick Bo nor WWD has made any payment towards outstanding invoices from Chun Lam totaling \$714,330.68.

### Discussion

Defendant WWD filed a motion to dismiss the complaint for failure to state a cause of action pursuant CPLR 3211 (a)(7). CPLR 3211(a) provides, in part, that “[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that . . . (7) the pleading fails to state a cause of action. . . .”

Courts must construe a complaint liberally when determining if it withstands a motion to dismiss under CPLR 3211 (a)(7), accepting all allegations as true and giving the plaintiff the benefit of every favorable inference. *511 West 232nd Owners Corp. v Jennifer Realty Co.*, 98 N.Y.2d 144, 152 (2002). “[T]he sole criterion is whether the pleading states a cause of action.” *Weiss v Cuddy & Feder*, 200 AD2d 665, 666-67 (2d Dept 1994) (quoting *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 (1977)). If allegations are discerned from the four corners of the complaint which, taken as a whole, state *any* cause of action recognized by law, a motion to dismiss under CPLR 3211 (a) (7) must be denied. *Id.*, 200 AD2d at 667; *Cooper v 620 Prop. Assoc.*, 242 AD2d 359, 360 (2d Dept 1997).

Defendant WWD argues that the complaint is devoid of allegations of an agency relationship between defendants, Yick Bo and WWD, that would establish privity between

Plaintiff and WWD. As such, Defendant WWD argues that under New York law, Yick Bo and WWD must be treated separately and independently for purposes of assigning legal responsibility and thus, WWD must be dismissed from this action. Specifically, Defendant WWD points to the invoices generated by the Plaintiff pertaining to the goods at issue in this action and highlights that the goods at issue were “SOLD TO” Yick Bo and were “TO BE PAID BY YICK BO” (emphasis in invoices).

The sample purchase order annexed to the Complaint and the invoices also annexed show that Yick Bo is a trading company that purchased goods to be sold to its customer, WWD, who, in turn, intended to resell these goods to its customers, Target and Kmart. Defendant WWD argues that it was not a party to any of the transactions at issue in this action nor did Yick Bo purchase these goods as WWD’s agent.

Plaintiff Chun Lam insists that privity exists between it and WWD on the ground that Yick Bo placed these orders in its alleged capacity as “agent” for WWD. The purchase orders are the contracts defining the parties’ relationship, rights, and obligations. They unequivocally designate Yick Bo as an agent and acknowledge WWD as the “purchaser” of “Shipper’s” contract goods. The purchase orders mention WWD’s name exactly eight times.

The essence of WWD’s motion rests not on denying that goods were delivered to WWD by Chun Lam, but on pointing out that there is no evidence (at the pleading stage) that WWD accepted liability for payment of the goods. However, according to Plaintiff Chun Lam, WWD’s claim that no contractual privity existed because there was no agency relationship ignores the purchase orders’ terms which expressly designate “Yick Bo Trading Limited” as “Agent” at the top left hand corner of every page. According to Plaintiff Chun Lam, WWD contractually bound

itself to pay for the goods it ordered from Chun Lam through its agent Yick Bo. It is Plaintiff's position that it and WWD were in contractual privity for each purchase order.

WWD misinterprets the standard for a CPLR 3211(a)(7) motion because it makes the argument that "allegations of the complaint do not establish the existence of an agency relationship between WWD and Yick Bo." However, the Complaint does not need to establish an agency relationship, it only needs to make an allegation of agency that fits a cognizable theory. In this case, the Complaint states that Yick Bo is wholly owned by WWD, that WWD ordered goods through its agent Yick Bo after receiving bulk orders from its U.S. clients, and Yick Bo generated purchase orders after negotiating the price of the goods with Plaintiff Chun Lam.

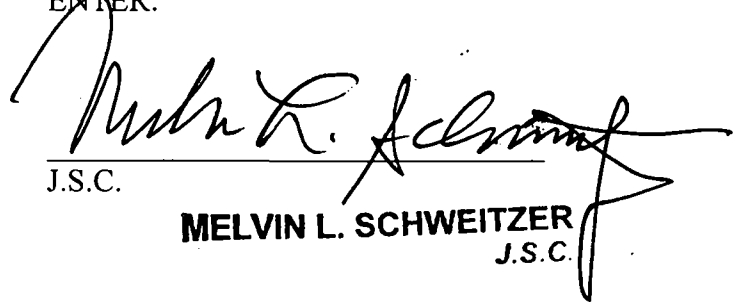
Plaintiff Chun Lam's allegations are more than sufficient to withstand defendant WWD's CPLR 3211 (a)(7) motion to dismiss. Plaintiff's allegations are that Defendant WWD submitted purchase orders for Chun Lam's goods through its agent, Yick Bo; Plaintiff shipped WWD the goods ordered by Yick Bo and WWD never paid plaintiff for the shipped goods. These allegations form a cognizable legal theory for an account and for goods sold and delivered.

Accordingly, it is

ORDERED that Defendant WWD's motion to dismiss the complaint is denied.

Dated: November 30, 2011

ENTER:

  
J.S.C.  
**MELVIN L. SCHWEITZER**  
J.S.C.