

**Coral Capital Solutions LLC v Best Plastics, LLC**

2014 NY Slip Op 30994(U)

April 10, 2014

Supreme Court, New York County

Docket Number: 653656/2012

Judge: Eileen Bransten

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 3

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CORAL CAPITAL SOLUTIONS LLC,

Plaintiff,

- against-

Index No. 653656/2012  
Motion Seq. Nos. 3, 4  
Motion Date: 1/23/2014

BEST PLASTICS, LLC and MICHEL  
BUCHBUT,

Defendants.

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**EILEEN BRANSTEN, J.S.C.:**

Plaintiff Coral Capital Solutions, LLC (“Coral”) moves to dismiss Defendants’ counterclaims, pursuant to CPLR 3211(a)(1) & (a)(7) (motion sequence 003), and for summary judgment on its complaint, pursuant to CPLR 3212 (motion sequence 004).

Defendants Best Plastics, LLC (“Best Plastics”) and Michel Buchbut, the CEO and owner of Best Plastics, both failed to oppose these motions. For the reasons that follow, the motions are granted.

**I. Background**

This action arises from a May 28, 2009 Factoring Agreement between Coral and Best Plastics, which was personally guaranteed by Buchbut in a continuing guaranty. *See* Compl. Ex. 2. Pursuant to the Factoring Agreement, Defendants pledged all of the assets of Best Plastics to Coral, agreed to sell any of its accounts receivable to Coral, subject to

Coral's approval. Under the agreement, Defendants also agreed to numerous covenants for which Plaintiff seeks damages for alleged breaches and related costs. In May 2009, Coral filed a May 7, 2009 UCC-1, perfecting its security interest in the assets of Best Plastics. *See* Affidavit of Rishi Kumar Ex. B. Coral allegedly purchased certain accounts receivable from Best Plastics, and advanced funds pursuant to the Factoring Agreement.

On September 11, 2009, Best Plastics and Buchbut executed document, entitled "Release," which stated in relevant part that the Defendants

forever release, discharge, and acquit Coral Capital ... of and from any and all claims, demands ... breaches of contract, breaches of duty ... acts omissions, misfeasance, malfeasance, cause or causes of action ... of every type, nature, description or character ... whether heretofore, now existing or hereafter arising ... which in any way arise out of, are connected with or relate to the Factoring Agreement [or] this Release ...

*See* Kumar Aff. Ex. F § 3.02. Best Plastics and Buchbut executed a second release on September 8, 2010, stating that "Best expressly acknowledges that it has no claims against Coral for any transaction, factoring fees or charges for any reasons whatsoever as of the date of this Agreement." *Id.* Ex. G. § 2.03. According to the complaint, Best Plastics ceased operations in December 2010. *See* Compl. ¶ 56.

Plaintiff asserts four causes of action in its Complaint. The first cause of action alleges breach of various provisions of the Factoring Agreement relating to, among other things, granting security interests in the assets of Best Plastics to parties other than Coral, ceding control of Best Plastics, reducing the amount of a receivable without Coral's

consent, and failing to remove judgments against Best Plastics within 30 days. The complaint seeks damages of \$1,170,297.22, including unpaid factoring fees and the costs incurred by Coral in enforcing its rights.

The second cause of action seeks to enforce the personal guaranty executed by Buchbut. The third cause of action is for conversion based upon Defendants' refusal to deliver the collateral to Coral. Buchbut also allegedly converted a \$132,536 check from Central Georgia Electric Corporation payable to Best Plastics, which was the return of a security deposit to Best Plastics after it ceased operations. The fourth cause of action seeks an order directing Defendant to turn over the collateral to Coral so that it can be disposed of pursuant to New York Uniform Commercial Code ("NY UCC") § 9-601.

Defendants filed an answer denying any breach of the Factoring Agreement, and asserting counterclaims for breach of contract, fraudulent inducement, conversion, and under the federal Racketeer and Corrupt Practices Act ("RICO").

While Defendants appeared earlier in the action, they failed to file opposition to either of the instant motions.<sup>1</sup>

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<sup>1</sup> After the filing of Plaintiff's motion to dismiss Defendant's counterclaims, Best Plastics' attorney of record, Joseph J. Fell, attempted to file a motion to withdraw based upon nonpayment of his fees. That motion was not electronically filed and has been rejected by the Clerk of the court pending corrections. That motion is thus not before the Court, and Mr. Fell is still counsel of record.

## II. Analysis

### A. *Plaintiff's Motion for Summary Judgment*

It is well-understood that summary judgment is a drastic remedy and should only be granted if the moving party has sufficiently established the absence of any material issues of fact, requiring judgment as a matter of law. *Vega v. Restani Constr. Corp.*, 18 N.Y.3d 499, 503 (2012) (citing *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986)). Once this showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial of the action. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). When deciding a motion for summary judgment, the Court must view the evidence in the light most favorable to the non-movant. *Branham v. Loews Orpheum Cinemas, Inc.*, 8 N.Y.3d 931, 932 (2007).

As discussed below, Plaintiff has made its prima facie case, demonstrating the absence of any material issues of fact. Since Defendants have not contravened Plaintiff's statement of material facts, the facts asserted therein are deemed true. *See* Commercial Division Rule 19-a(c); *see also Callisto Pharma., Inc. v. Picker*, 74 A.D.3d 545, 546 (1st Dep't 2010). Moreover, Defendants have not produced evidentiary proof, or any proof at all, establishing facts at issue for trial. Accordingly, Plaintiff's motion for summary judgment is granted.

1. Count One – Breach of the Factoring Agreement

Plaintiff's first claim asserts breach of the Factoring Agreement by Defendant Best Plastics. Plaintiff contends that Best Plastics committed numerous breaches of the Factoring Agreement and that Best Plastics therefore was in default, rendering all obligations owed by Best Plastics to be immediately due and payable. Since Best Plastics has failed to pay the amounts due and owing, Plaintiff seeks the amount of the unpaid factoring fees, as well as legal fees and costs incurred in enforcing Best Plastics' obligations under the Factoring Agreement. These arguments are addressed below.

a. **Breaches of the Factoring Agreement and Best Plastics' Default**

Plaintiff first contends that Defendant Best Plastics breached the Factoring Agreement by granting security interests in Best Plastics' accounts, equipment, inventory, and general intangibles to non-parties GP Sales, Modern Medical Modalities Corporation ("MMM"), and Isaak Hayut.

Pursuant to the terms of the Factoring Agreement, Coral purchased certain receivables from Best Plastics and agreed to make advances to Best Plastics based on a certain percentage of the gross face amount of the invoices. *See* Factoring Agreement §§ 1-2. As security for its obligations, Best Plastics granted Coral an interest in, *inter alia*, all of its current and future accounts, receivables, equipment, and general intangibles. *See*

Factoring Agreement § 6.1 (defining “Collateral”). Section 10.4 of the Factoring Agreement provides that Best Plastics “shall not sell or assign, negotiate, pledge or grant any security interest in any Collateral to anyone other than Purchaser [Coral].” *Id.* § 10.4. Further, Coral was barred from assigning this Agreement or Best Plastics’ rights thereunder without Coral’s prior written consent. *Id.* § 10.9.

Plaintiff contends that, notwithstanding the terms of the Factoring Agreement, Best Plastics signed a security agreement with its vendor, GP Sales, granting it a security interest in Best Plastics’ collateral. *See* Steklov Aff. ¶ 17; Statement of Undisputed Material Facts ¶ 36. Defendants entered into another such agreement with MMM, granting it a lien on all of its assets and receivables, and an agreement with Hayut assigning and granting him a security interest in its rights under the Factoring Agreement. *See* Statement of Undisputed Material Facts ¶¶ 37, 38. By entering into these agreements, Best Plastics breached Sections 10.4 and 10.9 of the Factoring Agreement.

In addition to granting security interests to third-parties, Best Plastics issued promissory notes to MMM and Hayut, which permitted MMM and Hayut to convert the notes into a controlling interest in Best Plastics. *Id.* ¶ 38. MMM and Hayut exercised their power of conversion in the fall of 2010. *See* Stelkov Aff. ¶ 16. Best Plastics never notified Coral of this series of agreements or the change in control, *see id.* ¶ 19, breaching Section 4.7 of the Factoring Agreement, which required Best Plastics to “promptly notify

Purchaser [Coral] of any change in control of the ownership of its business organization...” See Factoring Agreement § 4.7.

Finally, Best Plastics agreed to reduce a receivable due from Home Depot Canada without notifying Coral or obtaining its consent in violation of Section 5.1 of the Factoring Agreement. See Steklov Aff. 37; Statement of Undisputed Material Facts ¶ 42.

**b. Best Plastics’ Default Under the Factoring Agreement**

On December 9, 2010, Coral notified Defendants that there were numerous “Events of Default” under Section 9.2 of the Factoring Agreement. Upon default, Coral was entitled to terminate the Factoring Agreement without notice and deem that all obligations be immediately due and payable. See Factoring Agreement § 9.2.

Plaintiff has established Best Plastics’ default. Section 9.2 provides that a default occurs where Best Plastics, *inter alia*, “commits any breach of or default in the performance of its representations, warranties or covenants.” Here, Plaintiff has demonstrated numerous breaches of the Factoring Agreement, as set forth above, including Best Plastics’ breach of the representation in Section 4.7. Therefore, Best Plastics owes \$764,764.37 in unpaid factoring fees to Coral on account of its default. See Steklov Aff. ¶ 26. Again, Defendants offer no evidence demonstrating the existence of factual disputes on this point.

**c. Request for Attorneys' Fees and Costs**

Finally, Plaintiff seeks attorneys' fees and costs, in accordance with Section 7.2 of the Factoring Agreement. In relevant part, Section 7.2 requires Best Plastics to pay all costs, including attorneys' fees, incurred by Coral in connection with "the prosecution ... of any action or proceeding concerning any matter arising out of or connected with this Agreement" or "obtaining performance of the Obligations under this Agreement." The instant action, seeking the amounts due to Plaintiff given Best Plastics' default under the Factoring Agreement, falls within the scope of this provision. Plaintiff seeks \$405,532.85 in fees and expenses. *See* Statement of Undisputed Material Facts ¶ 4054. Again, Defendants offer no disputed facts.

Accordingly, for the foregoing reasons, the Court grants Plaintiff's motion for summary judgment as to Count One of its complaint.

**2. Count Two – Breach of the Guaranty**

Plaintiff next seeks summary judgment as to Count Two of its complaint, asserting breach of contract against Defendant Buchbut. On May 28, 2009, Defendant Buchbut executed a guaranty of Best Plastics' obligations to Coral under the Factoring Agreement. *See* Steklov Aff. Ex. E (Guaranty). Plaintiff contends that Buchbut breached the

Guaranty, by failing to pay the amounts owed by Coral, despite Best Plastics' demand for payment.

Plaintiff's reading of the Guaranty is correct. The Guaranty provides that Buchbut "unconditionally guarantees and promises to pay on demand to [Coral,] ... and to perform for the benefit of [Coral], all Obligations of [Best Plastics] now or hereafter owing to or held by [Coral]." *See* Guaranty § 1. "Obligations" includes the Factoring Agreement and any other debt, duty, obligation, or liability owed by Best Plastics to Coral. *Id.*

On December 9, 2010, Coral notified Buchbut of the "Events of Default" discussed above with respect to Best Plastics. *See* Statement of Undisputed Material Facts ¶ 47; Steklov Aff. ¶ 23. Buchbut since has failed to make payments to Plaintiff. *See* Statement of Undisputed Material Facts ¶ 48; Steklov Aff. ¶ 25. Accordingly, Plaintiff now seeks \$764,764.37 in unpaid factoring fees from Buchbut, plus attorneys' fees and costs in the amount of \$905,590.02 – the same amounts sought from Best Plastics. Buchbut has offered no evidence disputing Plaintiff's contentions or demonstrating material facts in dispute. Thus, Plaintiff's motion for summary judgment as to Count Two is granted.

### 3. Count Three – Conversion

In Count Three of the complaint, Plaintiff asserts that Defendants Best Plastics and Buchbut have refused to return the Collateral to Plaintiff, notwithstanding Plaintiff's immediate right to possession.

Under New York law, “[a] conversion occurs when a party, ‘intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person’s right of possession.’” *Lynch v. City of New York*, 108 A.D.3d 94, 101 (1st Dep’t 2013) (quoting *Colavito v. New York Organ Donor Network, Inc.*, 8 N.Y.3d 43, 49-50 (2006)). “Two key elements of conversion are (1) the plaintiff’s possessory right or interest in the property and (2) the Defendant’s dominion over the property or interference with it, in derogation of plaintiff’s rights.” *Lynch*, 108 A.D.3d at 101 (quoting *Colavito*, 8 N.Y.3d at 49-50). Of particular relevance in this case, the First Department has held that “[a]n action for conversion of money may be made out ‘where there is a specific, identifiable fund and an obligation to return or otherwise treat in a particular manner the specific fund in question.’” *Thys v. Fortis Sec. LLC*, 74 A.D.3d 546, 547 (1st Dep’t 2010) (citation omitted).

Here, Coral maintains that it has the right to full possession of the collateral as a result of Best Plastics’ default. Under the Factoring Agreement, upon the occurrence of an Event of Default, “Purchaser [Coral] shall have all the rights and remedies of a secured

party under the Uniform Commercial Code ...” See Factoring Agreement § 9.4. Article Nine of the New York UCC provides certain rights and remedies to a secured creditor upon the occurrence of a default, including the right to take possession of the collateral at issue. See NY UCC §9-609. In addition, the NY UCC states that upon a default by a debtor, the secured party is entitled to collect amounts receivable and to dispose of the collateral to satisfy the debtor’s obligations. See NY UCC §§ 9-607, 9-610.

Thus, under NY UCC § 9-609, Plaintiff has a possessory interest in the collateral. Defendants’ refusal to return that collateral is in derogation of Plaintiff’s rights and constitutes a conversion. See *Steklov Aff.* ¶ 36; Statement of Undisputed Material Facts ¶ 56. Defendant offers no rebuttal to Plaintiff’s argument nor does it demonstrate the existence of material facts in dispute. Accordingly, Plaintiff’s motion for summary judgment as to Count Three is granted, and Plaintiff is entitled to collect the accounts receivable related to the use of the Collateral and to recover possession of the collateral so to sell or otherwise dispose of it in order to satisfy Best Plastics’ obligations under the Factoring Agreement.

#### 4. Count Four – Foreclosure of Security Interests

Finally, Plaintiff seeks immediate possession of the Collateral, arguing that it is entitled to such given Defendants’ defaults under the Factoring Agreement. As discussed

above with respect to Plaintiff's conversion claim, the Court agrees. Plaintiff has presented its prima facie entitlement to possession of the Collateral, which is unrebutted by Defendants. Accordingly, Plaintiff's motion for summary judgment is granted as to Count Four.

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Therefore, for the foregoing reasons, the Court grants Plaintiff's motion for summary judgment against Defendants Best Plastics and Buchbut in the amount of \$1,170,297.22, comprised of unpaid factoring fees and attorneys' fees and costs and orders Best Plastics and Buchbut to immediately turn over the Collateral to Coral so that it may be disposed of pursuant to NY UCC § 9-601. Further, Coral is permitted to Best Plastics' accounts receivable from prior or current use of the collateral.

B. *Plaintiff's Motion to Dismiss Counterclaims*

Plaintiff next seeks dismissal of each of the five counterclaims asserted against it by Defendants. Defendants assert breach of contract, fraud, conversion, commercial disparagement, and RICO counterclaims, each stemming from the same Factoring Agreement at issue in Plaintiff's complaint. In Defendants' own words, the counterclaims "arise out of the wrongful and fraudulent conduct in 2009 of the Coral

Counter-Defendants ... in inducing and persuading Defendant Best [Plastics] ... into agreeing to a crushingly expensive Factoring Agreement...” (Counterclaims ¶ 1.)

Plaintiff contends that the counterclaims are barred in their entirety by Defendants’ prior release of such claims. By an agreement captioned, “Release”, dated September 11, 2009, Defendants gave a general release to Coral. *See* Kumar Aff. Ex. F. In relevant part, the Release states:

Best Plastics and Guarantors [Buchbut] ... hereby forever release, discharge, and acquit Coral Capital ... of and from any and all claims, demands ... breaches of contract, breaches of duty ... acts, omissions, misfeasance, malfeasance, cause or causes of action ... of every type, nature, description or character ... whether heretofore, now existing or hereafter arising ... which in any way arise out of, are connected with or relate to the Factoring Agreement [or] this Release ...

*Id.* § 3.02 (“September 2009 Release”). This “Release” was executed three months after the Factoring Agreement was signed. On September 8, 2010, Best Plastics and Buchbut signed another release, wherein Best Plastics acknowledged that “it had no claims against Coral for any transaction, factoring fees or charges for any reason whatsoever as of the date of this Agreement.” *Id.* Ex. G at § 2.03.

Defendants’ counterclaims fall within the scope of these releases. Generally, “a valid release constitutes a complete bar to an action on a claim which is the subject of the release.” *Global Mins. & Metals Corp. v. Holme*, 35 A.D.3d 93, 98 (1st Dep’t 2006). If “the language of a release is clear and unambiguous, the signing of a release is a ‘jural

act' binding on the parties." *Booth v. 3669 Delaware*, 92 N.Y.2d 934, 935 (1998), quoting *Mangini v. McClurg*, 24 N.Y.2d 556, 563 (1969). Here, the language of the releases executed by Defendants clearly and unambiguously bar any claims related to or arising from the Factoring Agreement. By Defendants' own account, the claims arise from the Factoring Agreement. See Counterclaims ¶ 1. Defendants' assertion is supported by the allegations of the counterclaims, all of which are "arise out of, are connected with, or relate to the Factoring Agreement." See September 2009 Release at § 3.02.

"Notably, a release may encompass unknown claims, including unknown fraud claims, if the parties so intend and the agreement is 'fairly and knowingly made.'" *Centro Empresarial Cempresa S.A. v. Am. Movil, S.A.B. de C.V.*, 17 N.Y.3d 269, 276 (2011).

The broad wording of the release, encompassing "any and all claims, demands ... breaches of contract, breaches of duty ... acts, omissions, misfeasance, malfeasance, cause or causes of action" in conjunction with the reference to all claims "whether heretofore, now existing or hereafter arising" indicates an intent to release Defendants from the breach of contract, fraud, and other tort claims asserted in this action, whether known or unknown at the time of contract. *Id.* at 277.

Accordingly, Plaintiff has met its "initial burden of establishing that it has been released from any claims." *Id.* at 276. Defendants have made no rebuttal. The Court

therefore grants Plaintiff's motion to dismiss the counterclaims asserted by Defendants on the grounds that they are barred by Defendants' releases.

### III. Conclusion

Accordingly, it is

ORDERED that Plaintiff's motions to dismiss Defendants' counterclaims is granted and the counterclaims are dismissed in their entirety; and it is further

ORDERED that Plaintiff's motion for summary judgment on the complaint is granted and the Clerk is directed to enter judgment in favor of Plaintiff Coral Capital Solutions, LLC and against Defendants Best Plastics, LLC and Michel Buchbut jointly and severally in the amount of \$1,170,297.22, together with interest at the statutory rate from the date of decision on this motion, as calculated by the Clerk, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

Dated: New York, New York  
April 10, 2014

ENTER:



Hon. Eileen Bransten, J.S.C.