

Circa Inc. v Renaissance Watch Co., LLC
2016 NY Slip Op 30217(U)
February 8, 2016
Supreme Court, New York County
Docket Number: 653756/2014
Judge: Jeffrey K. Oing
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL PART 48

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CIRCA INC.,

Plaintiff,

Index No.: 653756/2014

-against-

Mtn Seq. No. 001

RENAISSANCE WATCH COMPANY, LLC,

DECISION AND ORDER

Defendant.

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JEFFREY K. OING, J.:

Relief Sought

Plaintiff Circa Inc. ("Circa") moves for an order, pursuant to CPLR 3212, granting it summary judgment against defendant Renaissance Watch Company, LLC ("Renaissance"). Plaintiff asserts claims for: (I) breach of contract; (ii) account stated; and (iii) unjust enrichment.

Factual Background

The following facts are not in dispute: on or about August 6, 2013, plaintiff and defendant entered into an agreement whereby Circa agreed to provide jewelry to defendant at defendant's request (Compl. at 5, Singer Aff., Ex. A). From that date through October 31, 2014, plaintiff delivered goods to defendant's place of business upon defendant's request (Id. at 5-6). Upon completion of the various deliveries, plaintiff delivered an itemized invoice to defendant (Id. at 7). These

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fifteen invoices totaled \$306,793.15 (Id.). Plaintiff gave defendant a credit of \$29,488.00 on November 22, 2013, and a credit of \$17,784.00 on April 9, 2014 (Id.). On June 3, 2014, defendant made a partial payment in the amount of \$12,578.00 (Id.). As a result, defendant owed plaintiff \$246,943.15 as of October 24, 2014 (Id.).

By letter to defendant dated October 24, 2014, plaintiff demanded payment of the \$246,943.15 owed, attaching a detailed invoice (Demand Letter, Singer Aff., Ex. B). Defendant did not remit payment to plaintiff (Compl. at 13, Singer Aff., Ex. A). Defendant's attorneys, instead, responded in a letter dated November 3, 2014 wherein they explained that a third party had defrauded Renaissance and that Renaissance had, as a result, suffered "a substantial loss of income" leading to "financial hardship" (Response Letter, Singer Aff., Ex. C). The letter continued by stating that "Renaissance has every intention of reaching an amicable resolution with [plaintiff] for the amounts owed" and asked that plaintiff "accept a payment plan of approximately \$10,000.00 monthly" (Id.).

Discussion

Under the well-settled summary judgment principles set forth in Winegrad v New York Univ. Med. Ctr., 64 NY2d 851 (9185),

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plaintiff has demonstrated its entitlement to summary judgment on the complaint through: (I) the invoices regularly submitted to defendant; (ii) evidence of defendant's partial payment; (iii) the Notice of Default setting forth the amount owed; and (iv) defendant's Response Letter to plaintiff's Notice of Default stating defendant's intent to repay plaintiff in full (Titan Communications, Inc. v Diamond Phone Card, Inc., 94 AD3d 740, 741 [2d Dept 2012] [summary judgment granted on complaint containing claims for breach of contract, account stated, and unjust enrichment, where plaintiff, pursuant to its agreement with defendant, sent certain phone cards to defendant for which defendant did not tender full payment and plaintiff submitted invoices to which defendant did not object but did not pay in full]; see also Castle Oil Corp. v Bokhari, 52 AD3d 762, 762 [2d Dept 2008]; Stephanie R. Cooper, P.C. v Robert, 78 AD3d 572, 573 [1st Dept 2010] [summary judgment granted on account stated claim based on regularly mailed invoices]; Berkman Bottger & Rodd, LLP v. Moriarty, 58 AD3d 539, 539-541 [1st Dept 2009] [same]; RPI Professional Alternatives, Inc. v Citigroup Global Markets Inc., 61 AD3d 618, 619 [1st Dept 2009] [same]).

The burden now shifts to defendant to come forward with evidence in admissible form to establish the existence of a

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material issue of fact requiring a trial (Franchini v Palmieri, 1 NY3d 536, 537 [2003])). Defendant proffers no such evidence. In fact, neither defendant's Answer nor its Affirmation in Opposition denies any of the allegations in plaintiff's complaint or offers any contradicting facts (or, indeed, any facts at all), but merely denies knowledge and information sufficient to form a belief as to the truth of plaintiff's allegations. Defendant's sole counter-argument is that it cannot pay the amounts owed due to a fraud perpetrated against it by a third party and that "a judgment against the defendant would destroy the years of its honorable business relationship and bargaining capabilities, all to its damage." This argument is insufficient as a matter of law to establish a triable issue of fact to overcome plaintiff's summary judgment motion (Drug Guild Distributors v 3-9 Drugs Inc., 277 AD2d 197, 198 [2d Dept 2000] [conclusory denial of the transaction was insufficient to counter facts established by Plaintiff's documentary evidence]).

Defendant also pleads nine affirmative defenses, all of which are unsupported by any facts and are either inapplicable or conclusory. Accordingly, they are stricken (170 W. Vil. Assoc. v G & E Realty, Inc., 56 AD3d 372, 372-73 [1st Dept 2008]; Noble v Ambrosio, 173 AD2d 801, 802 [2d Dept 1991]), and plaintiff's

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motion for summary judgment is granted.

Plaintiff's application for an award of attorney's fees is denied, however, as "[t]he demand for attorney's fees cannot stand in the absence of a viable claim for punitive damages" (Kassis v Royal Ins. Co. of Am., 191 AD2d 384, 384 [1st Dept 1993]) and no such claim exists here.

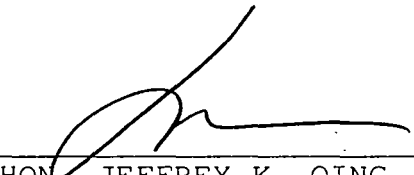
Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment in the amount of \$246,943.15 is granted; and it is further

ORDERED that the Clerk is respectfully directed to enter judgment accordingly.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 2/8/16


HON. JEFFREY K. OING, J.S.C.