

Sperro Metal Prods., LLC v Alumnil N.A. Copr.

2016 NY Slip Op 31140(U)

May 6, 2016

Supreme Court, Queens County

Docket Number: 708975/15

Judge: Allan B. Weiss

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, ALLAN B. WEISS IAS PART 2
Justice

SPERRO METAL PRODUCTS, LLC,

Plaintiff,

-against-

ALUMNIL N.A. COPR.,

Defendant.

Index No: 708975/15

Motion Date: 3/10/16

Motion Seq. No.: 1

The following numbered papers read on this motion by defendant in this pre-answer motion to dismiss the complaint pursuant to CPLR 3211(a)(1) & (7)

	<u>PAPERS</u> <u>EF NUMBERED</u>
Notice of Motion-Affidavits-Exhibits	2 - 10
Answering Affidavits-Exhibits.....	12 - 15
Replying Affidavits.....	16

Upon the foregoing papers it is ordered that this motion is determined as follows.

Between March, 2014 and March, 2015 the plaintiff delivered to defendant, at the request of the defendant, various goods for the agreed price of \$256,501.00 on terms of net 30 days.

Plaintiff commenced this action on August 25, 2015 alleging causes of action for breach of contract and an account stated. Plaintiff alleges that plaintiff sent defendant periodic invoices and statements of account for goods sold and delivered, however, after November, 2014 and despite due demanded for payment, the defendant retained the invoices without objection but failed to make further payments leaving a balance due in the amount of \$35,223.25.

Defendant now moves by pre-answer motion to dismiss the complaint pursuant to CPLR 3211(a)(1) and (7) based upon an alleged release dated March 19, 2015 which defendant claims

constitutes a waiver of all of plaintiff's claims against the defendant.

Generally, a release completely bars an action on a claim that is the subject of the release (see Burnside 711 LLC v Amerada Hess Corp., 109 AD3d 860, 861 [2013]; Inter-Reco, Inc. v Lake Park 175 Froehlich Farm, LLC, 106 AD3d 955, 956 [2013]; Global Mins. & Metals Corp. v Holme, 35 AD3d 93, 98 [2006]). A release is a contract and its interpretation is governed by the principles applicable to the interpretation of contracts (Mangini v McClurg, 24 NY2d 556, 562 [1969]). "[A] release 'that is complete, clear, and unambiguous on its face must be enforced according to the plain meaning of its terms' " (Inter-Reco, Inc. v Lake Park 175 Froehlich Farm, LLC, supra 956, quoting Alvarez v Amicucci, 82 AD3d 687, 688 [2011]). As in the case of contracts, the meaning and scope of a release depends upon the controversy being settled and the purpose for which the release was actually given (see Cahill v Regan, 5 NY2d 292, 299 [1959]; Rotondi v Drewes, 31 AD3d 734, 735-736 [2006]). A release, however, may not be construed to include matters that the parties did not intend to cover (see Cahill v Regan, supra at 299; Glassberg v Lee, 82 AD3d 836 [2011]; Rotondi v Drewes, 31 AD3d at 735; Meyer v Fanelli, 266 AD2d 361, 361-362) or construed to bar the rights of the releasor as to a matter that was in dispute at the time the purported release was given (see Cahill v Regan, supra at 299-300).

In considering a motion to dismiss a claim for failure to state a cause of action pursuant to CPLR 3211 (a) (7), the allegations in the complaint and the opposition papers must be accepted as true; the court must accord the plaintiff the benefit of every possible favorable inference and determine only whether the facts as alleged fit within any cognizable legal theory (see Leon v Martinez, 84 NY2d 83, 87-88 [1994]; Rietschel v Maimonides Med. Ctr., 83 AD3d 810 [2011]; Peterec-Tolino v Harap, 68 AD3d 1083, 1084 [2009]). To prevail on a motion to dismiss pursuant to CPLR 3211(a)(1), the defendant is required to demonstrate that "the documentary evidence utterly refutes plaintiff's factual allegations, conclusively establishing a defense as a matter of law" (Goshen v Mutual Life Ins. Co. of N.Y., 98 NY2d 314, 326 [2002]).

In support of the motion, defendant relying upon a document entitled "Total Release and Waiver of Lien" (hereinafter the release/waiver) and asserts that plaintiff released any and all claims it may have had against the defendant. Defendant also submitted the affidavit of its president, Kyprianos Bazzenikas, who asserts that the release/waiver states that "There is currently [a] \$0.00 balance owed [to plaintiff]".

In opposition to the defendant's motion, plaintiff maintains that the release did not encompass the outstanding invoices that are the subject of this action and was given so that defendant could get final payment from its client. Plaintiff also submitted evidence that on March 19, 2015 defendant acknowledged that there were outstanding invoices and that they were approved after plaintiff executed the release/waiver.

The documentary evidence submitted does not support the defendant's claim. A plain reading of paragraph(1) of the release/waiver reveals that Sperro Metal Products, LLC and Alumnil N.A. Copr., as the releasors, "waive[d] and release[d] *** any and all liens, claims of rights to file any lien against the Contractor" [emphasis added], who is identified in the release/waiver as Ecker Window Corp. There is nothing in the release/waiver releasing defendant from any claims plaintiff may have had against the defendant.

In addition, the plaintiff submitted evidence, including e-mails between the parties, which defendant did not refute, that the parties knew of the discrepancy in the amount claimed to have been paid and the outstanding invoices. Moreover, contrary to Mr. Bazenikas' affidavit, the release/waiver does not state that \$0.00 is owed to plaintiff. It merely states that \$0.00 is owed. Viewing this provision together with the contents of paragraph(1) supports the plaintiff's claim that the release/waiver was given to defendant's client to obtain final payment, i.e. releasing the Contractor from any claims the releasors, plaintiff and defendant, may have against the Contractor as there is \$0.00 amount owed.

Accordingly the motion to dismiss the complaint pursuant to CPLR 3211(a)(1) is denied.

The branch of the motion to dismiss the complaint pursuant to CPLR 3211(a)(7) is also denied. The allegations in the complaint sufficiently state a cause of action for breach of contract and account stated.

Dated: May 6, 2016
D#54


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J.S.C.

FILED 7

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