Route 46 Chrysler LLC v L&S Collision Auto Body Inc.
2016 NY Slip Op 31346(U)
June 14, 2016
Supreme Court, Richmond County
Docket Number: 150207/15
Judge: Kim Dollard

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

----------X DCM Part 4

ROUTE 46 CHRYSLER LLC.,

Plaintiff,

-against-

L&S COLLISION AUTO BODY INC., and MUHO GOGA,

Defendants.

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L&S COLLISION AUTO BODY INC.,

Third-Party Plaintiff,

-against-

FATMIR DUKA, ANTONIO PACUKU, and ALLSTATE REMODELING INC.,

Third-Party Defendants.

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Present:

HON. KIM DOLLARD

DECISION AND ORDER

Index No: 150207/15

Motion Nos: 4451-004
130-005
258-006
259-007
446-008

Index No:A150207/15

The following papers numbered 1 to 8 were fully submitted on the 6th day of May, 2016:

Notice of Motion (**004**) by Defendant/Third-Party Plaintiff L&S Collision Auto Body Inc. for Default Judgment against Third-Party Defendants and against Plaintiff on Counterclaims, and to Strike Plaintiff's Amended Complaint (Affidavits in Support) (Dated: December 10, 2015).....1

Notice of Cross Motion(**005**) by Plaintiff to Permit Late Service of Answer and for Sanctions (Affirmation of Albert M. Levi, Esq. in Opposition to L&S Collision's Motion for Default Judgment and to Strike Plaintiff's Amended Complaint, and in Support of Cross Motion to Compel Acceptance of Late Answer and Sanctions)

(Dated: January 8, 2016).....2
Affirmation in Opposition to Plaintiff's Cross Motion
(Dated: January 13, 2016).....3
Affirmation of Andrew Samson, Esq. in Further Support of Cross
Motion to Accept Late Answer
(Dated: February 4, 2016).....4
Affirmation of Albert M. Levi, Esq. in Further Support of Cross
Motion to Accept Late Answer
(Dated: February 10, 2016).....5
Notice of Motion(**006**) by Plaintiff for Summary Judgment Dismissing
Defendants' Amended Counterclaim
(Affirmation of Albert M. Levi, Esq. in Support
of Motion for Summary Judgment, Plaintiff's Statement of
Uncontroverted Material Facts and
Memorandum of Law in Support)
(Dated: January 18-19, 2016).....6

Notice of Motion (**007**) by Plaintiff for Leave to File Second
Amended Complaint
(Affirmation of Albert M. Levi, Esq. in Support)
(Dated: January 19, 2016).....7

Notice of Cross Motion (**008**) by Defendants to Dismiss
Plaintiff's Amended Complaint and to
Require Plaintiff to Post Security
(Affidavit of Safet Tahiri in Support of L&S Collision's
Motion)
(Dated: January 29, 2016).....8

Upon the foregoing papers, plaintiff's cross motion for summary judgment dismissing defendants amended counterclaims (**Motion Seq. No. 006**) is granted in its entirety.[1]

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[1]Of the five motions at bar, two consist of motions made by Defendants/Third-Party Plaintiffs L&S Collision Auto Body Inc., (hereinafter "L&S"), and three by plaintiff Route 46 Chrysler LLC (hereinafter "Route 46"). At the conclusion of oral argument and pursuant to an Order of this Court dated May 6, 2016, four of these motions and cross motions were decided as follows: (1) the motion of Defendants/Third-Party Plaintiff L&S for, *inter alia*, leave to enter a default judgment against plaintiff on its counterclaims (**Motion Seq. No. 004**) was "denied, and the balance of the motion was withdrawn"; (2) Plaintiff's cross motion to compel service of its late answer (**Motion Seq. No. 005**) was granted and the balance of the cross motion was

This matter arises out of a garage-keeper's lien asserted against Route 46 Chrysler, LLC (hereinafter "plaintiff") by defendant L&S for modifications made to a 2014 Dodge Ram 1500 truck. It is undisputed that the modifications were ordered by third-party defendants Fatmir Duka and Antonio Pacuku, the principals of Allstate Remodeling Inc. (hereinafter "Allstate"), the prospective purchaser, at a time when plaintiff still owned the vehicle. It is further undisputed that the customization was neither ordered nor authorized by plaintiff.

By way of background, it appears that in early December of 2014, plaintiff, an automobile dealership located in New Jersey, bought the subject vehicle from Putnam Chrysler Dodge Jeep Inc. (*see* "Certificate of Origin for a Vehicle" attached to Plaintiff's September 15, 2015 First Amended Complaint; Plaintiff's Exhibit B), for purposes of resale at its dealership. Thereafter, on December 13, 2014, plaintiff entered into a "Spot Delivery Agreement" to sell the vehicle to third-party defendants Allstate and Antonio Pacuku, the latter having signed individually and on behalf of Allstate (*see* Plaintiff's Exhibit D [b]). Pursuant to the terms of the Agreement, plaintiff allowed Allstate and Pacaku "to take possession of the [subject] vehicle...subject to [certain] terms and conditions, until a final decision regarding...financing [was] made."[2] Thereafter, on or about

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"withdrawn"; (3) Plaintiff's cross motion for leave to file a second amended complaint (**Motion Seq. No. 007**) was granted, and (4) Defendants' cross motion to dismiss the complaint and to compel plaintiff to post security (**Motion Seq. No. 008**) was denied. In addition, the motion *sub judice*, **Motion Seq. No. 006**, was granted to the extent of dismissing defendants' "Fourth Counterclaim" for breach of contract, as set forth in its October 25, 2015 "Amended Answer with Counterclaims" (*see* Plaintiff's Exhibit C), and decision was reserved on the balance of the motion, *i.e.*, to dismiss the remaining three counterclaims against plaintiff.

[2]The conditions included, *inter alia*, that Pacuku had a valid driver's license; that if financing is not obtained within 7 days, the vehicle would be returned to plaintiff; that the vehicle be returned to plaintiff in the same condition as it was when it left the dealership; that in case of a breach, Allstate and Pacuku would pay all of the expenses incurred by plaintiff in reacquiring possession; and that Allstate and Pacuku would defend, indemnify and hold plaintiff harmless

December 20, 2014 (*i.e.*, the "seventh" day provided in the Spot Delivery Agreement), third-party defendant Fatmir Duka, purportedly identifying himself as the "President" of Allstate, brought the vehicle which was the subject of the still executory purchase contract, to L&S for customization at the estimated cost of $18,437.54. According to L&S, the custom work was completed on January 25, 2015, but when it called Allstate to pick up the truck, it learned for the first time that the vehicle was not owned by Allstate, and that plaintiff was the title owner.

On February 5, 2015, in an effort to secure payment for its work, L&S sent out a letter demanding payment from "all interested parties", namely: plaintiff, Pacaku, and Duka, pursuant to §184 of the Lien Law. Upon receipt of this letter, plaintiff instituted the pending action to cancel the garage-keeper's lien claimed by L&S, and to grant it immediate possession of the subject vehicle.

This matter initially came before the Court approximately one year ago by way of plaintiff's motion to declare the garage-keeper's lien unenforceable, and a cross motion by L&S to authorize the foreclosure of the garage-keeper's lien. On July 20, 2015, this Court issued a Decision and Order (*see* Plaintiff's Exhibit A), (1) granting plaintiff possession of the vehicle and (2) ordering L&S to deliver same to plaintiff within 30 days.[3] In its ruling, this court found, in pertinent part, that the garage-keeper's lien was null and void since the work performed by L&S was undertaken without the plaintiff-owner's consent, and that L&S had failed to take any steps to determine the extent of Pacuku's authority.

On September 25, 2015, plaintiff filed an Amended Complaint adding Safet Tahiri, the

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from and against any losses, liabilities, damages, etc. arising out of their actions.

[3]However, the vehicle was not returned to plaintiff's dealership until seized by the Richmond County Sheriff pursuant to an Order of Seizure signed by this Court on August 15, 2015.

President of L&S (*see* Plaintiff's Exhibit B), as a party defendant, and an allegation to the effect that "upon inspecting the Vehicle, plaintiff discovered that [it] had been damaged while in...[the] possession" of L&S. The Amended Complaint sought unspecified compensatory and punitive damages against defendants L&S and Muho Goga, (alleged to be a "shareholder and/or officer of L&S" [*see* First Amended Complaint, para 3; Plaintiff's Exhibit B]) for (1) conversion (the first cause of action); (2) unjust enrichment (the second cause of action); (3) trespass to a chattel (the third cause of action) and (4) negligence (the fourth cause of action). In response, L&S served an Amended Answer with Counterclaims on or about October 25, 2015 (*see* Plaintiff's Exhibit C).

In its "First Counterclaim" defendant L&S seeks a declaration that, *inter alia*, the third-party defendants were "valid lessees of the vehicle" and therefore authorized to enter into a "valid contract to customize the Truck" (*see* paras [e] and [h] of First Counterclaim; Plaintiff's Exhibit C); that L&S was a "valid bailee" of the vehicle (para [k]); and that plaintiff is the "successor in interest to [the third-party defendants']...contract with...L&S" (para [n]).

In its Second Counterclaim, L&S seeks monetary relief predicated on plaintiff's purported "unjust enrichment" in the amount of $18,437.64, plus storage fees at the rate of $35.00 per day from December 20, 2014 until the truck was seized by the Sheriff on September 1, 2015.

Its Third Counterclaim seeks to recover the same sum on ground of *quantum meruit*[4].

The doctrine of "law of the case", like other species of preclusion, is designed to limit the re-litigation of issues previously decided where the parties have had a full and fair opportunity to litigate same. The doctrine is based (as are the principals of issue and claim preclusion) on the sound

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[4]As previously indicated, the fourth counterclaim was dismissed by this Court in an Order dated May 6, 2016.

principal of public policy that all litigation must come to an end (*see* White v. Murtha, 377 F2d 428, 431[5th Cir 1967]). A "somewhat amorphous" concept as compared to *res judicata* and collateral estoppel (Arizona v. California, 460 US 605, 618 [1983]), the doctrine, as commonly understood, reflects the practice of courts generally to refuse to reopen issues previously decided, *i.e.*, that the decision thereon by a court of competent jurisdiction should govern the issue if and when it is raised in subsequent stages of the same case (*id.*; *see* Messenger v. Anderson, 225 US 436, 444-445[1912]; People v. Evans, 94 NY2d 499).

In this case, the parties previously litigated the issue of whether third-party defendants Duka, Pacuku, and Allstate had the authority, as lessees, to engage L&S to customize a vehicle which they did not own, and whose possession was known by them to be conditioned on, *e.g.*, their obligation to return the vehicle in the same condition as when it left the dealership if they did not take title. In a Decision and Order dated July 20, 2015, this Court held that under §184(1) of the Lien Law, the third-party defendants authority, as purported "lessees", to obligate the owner to pay for the customization of the vehicle arose only if they had the actual or apparent authority to authorize the work. This Court further held that L&S had failed to adduce any proof that it took steps to determine the scope of third-party defendants authority. Nothing has changed (*cf.* Matter of DCFS Trust v. New York State Dept of Motor Veh, 13 Misc3d 1056 [Sup Ct Kings Co. 2006]).

Clearly, to allow L&S to re-litigate this issue simply because it has now been tendered in the guise of a counterclaim would completely eviscerate the salutary effect of this "judicially crafted policy", which operates to conserve court time and judicial resources, and to bring litigation to a timely conclusion (People v. Evans, 94 NY2d at 503).

Accordingly, it is

ORDERED that the balance of plaintiff's motion for summary judgment dismissing the counterclaims asserted against it in the October 25, 2015 Amended Answer of defendant L&S Collision Auto Body, Inc. is granted; and it is further

ORDERED that said counterclaims are hereby severed and dismissed; and it is further

ORDERED that the Clerk enter judgment in conformity herewith.

ENTER,

Dated: June 14, 2016

Kim Dollard, A.J.S.C.