Berniker Decorators, Inc. v Barone
2016 NY Slip Op 32180(U)
October 31, 2016
City Court of Peekskill, Westchester County
Docket Number: CC-292-16
Judge: Reginald J. Johnson

PEEKSKILL CITY COURT
COUNTY OF WESTCHESTER: STATE OF NEW YORK
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BERNIKER DECORATORS, INC.,

DECISION & ORDER

Plaintiff,

--against--

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LAURIE BARONE and FRANK BARONE,

Small Claims Part

Defendants.
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HON. REGINALD J. JOHNSON

This is a Small Claims action commenced pursuant to Uniform City Court Act (UCCA), Article 18-A. The Plaintiff and the Defendants appeared pro se and thereafter this matter proceeded to a bench trial.

For the reasons that follow, this matter is decided in accordance herewith.

Facts

On February 17, 2016, Plaintiff and the Defendants contracted with each other for the installation of eight (8) custom window treatments at the Defendants' residence for a total sum of $5315.06 (Plt's Exhs. "A" and "B"; Defts' Exh. "6"). The Defendants' made a down payment of $2500.00 by telephone via credit card at that time leaving an unpaid balance of $2815.06, the sum being sued upon. After the shades were installed, the Defendants refused to pay the unpaid balance and alleged

that two (2) shades in the living room were wrinkled due to poor stitching and that one (1) shade [a black out shade] was 1" too short on either side in terms of its width, which permitted light to enter the room.

After some discussion between the parties regarding the Defendants' concerns, the Plaintiff agreed to replace the shade in the den room only, but the Defendants did not consider this remedial measure sufficient because there were other issues with the shades-i.e., some shades were not level and some shades had stitching or threads hanging from their ends. According to the Defendant, the Plaintiff was not willing to send the shades back to the manufacturer for re-stitching and correct measurements.

The Plaintiff testified that he offered to steam the shades to remove the wrinkles and to address the other issues concerning the shades but the Defendants refused the offer. The Defendants further alleged that the Plaintiff did not honor a discount coupon in the sum of $500.00 (Deft's Exh. "6").

Discussion

It has been held that the Small Claims Part of a City Court is commanded to "do substantial justice between the parties according to the rules of substantive law." Williams v Roper, 269 A.D.2d 125, 126, 703 N.Y.S.2d 77, 79 (1st Dept. 2000); UCCA §1804; see also, Milsner v.

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McGahon, 20 Misc.3d 127(A), 2008 WL 2522307 (App. Term. 9th & 10th Judicial Districts); Basler v. M&S Masonry & Construction, Inc., 21 Misc.3d 137(A), 2008 WL 4916105 (App. Term, 9th & 10th Judicial Districts). This is especially so since the practice, procedures and forms utilized in the Small Claims Part were meant to "constitute a simple, informal and inexpensive procedure for the prompt determination of such claims in accordance with the rules and principles of substantive law." UCCA §1802-A. Further, the Court "shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence..." UCCA §1804-A.

The elements of a cause of action for breach of contract are (1) formation of a contract between the plaintiff and the defendant, (2) performance by plaintiff, (3) defendant's failure to perform, and (4) resulting damage. See, Palmetto Partners, L.P. v. AJW Qualified Partners, LLC, 83 A.D.3d 804, 921 N.Y.S.2d 260 (2d Dept. 2011); JP Morgan Chase v. J.H. Elec. of New York, Inc., 69 A.D.3d 802, 893 N.Y.S.2d 237 (2d Dept. 2010); Dee v. Rakower, 112 A.D.3d 204, 976 N.Y.S.2d 470 (2d Dept. 2013). Further, where a transaction predominantly involves the sale of goods, the parties' rights and remedies are governed by the Uniform Commercial Code (UCC) Article 2 (See, Sears, Roebuck & Co. v. Galloway, 195 A.D.2d 825, 826, 600 N.Y.S.2d

773 [1993]). A party is deemed to have accepted the goods where that party fails to make an effective rejection after having had a reasonable opportunity to inspect the goods (UCC 2-606[1][b]). "The burden is the buyer to establish any breach with respect to the goods accepted" (UCC 2-607(4)).

Although a buyer is contractually bound to pay for accepted goods (UCC 2-607[1]), and is precluded from rejecting said goods, acceptance does per se preclude the buyer from resorting to any other remedy available under UCC Article 2 for nonconformity (UCC 2-607[2]). "[A]cceptance leaves unimpaired the buyer's right to be made whole, and that right can be exercised by the buyer not only by way of cross-claim for damages, but also by way of recoupment in diminution or extinction of the [purchase] price" (UCC 2-607, official comment 6). Further, a buyer who has accepted goods "must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy" (UCC 2-607[3][a]).

Based on the testimony of the parties, the Court finds that the Defendants timely notified the Plaintiff of the alleged defects in the material and installation of some of the shades (Defts' Exh. "5"). However, even were the Court to find that some of the shades and their

installation was defective, the Defendants were still required to provide the court with at least two (2) unpaid written estimates, one paid invoice, or expert testimony with regard to the proper installation of the shades and/or the costs of remedying or replacing them. See, Uniform City Court Act §1804; U-R Rite Auto Rentals & Leasing, LLC v. Conklin, 43 Misc.3d 1206(A), 990 N.Y.S.2d 440, 2014 N.Y. Misc. LEXIS 1477, 2014 N.Y. Slip Op 50510(U) [Peekskill City Court, April 4, 2014]; McFaddin v. C.A. Putnam Constr., 23 Misc.3d 133(A), 2009 N.Y. Misc. LEXIS 911, 2009 N.Y. Slip Op 50742(U), 885 N.Y.S.2d 712 (App. Term 2d Dept. 2009). Since the Defendants failed to provide the Court with any of the required items of proof regarding the costs of remedying and/or replacing the defective shades and/or the cost of properly installing of same, the Defendant's proof fails as a matter of law. See, Murov v. Celentano, 3 Misc. 3d 1, 776 N.Y.S.2d 430, 2003 N.Y. Misc. LEXIS 1820 (App. Term 2d Dept. 2003).

However, the Court will credit the Defendants the sum of $500.00 based on the March Mania coupon the Plaintiff advertised to prospective customers whose purchase exceeded $5000.00 (See Deft's Exh. "6").

Based on the testimony and evidence presented at the hearing in this matter, and in the interests of substantial justice in accordance with the rules and principles of substantive law, it is

Ordered that the Plaintiff is entitled to a judgment in the sum of $2815.06 less $500.00 for a judgment of $2315.06.

This constitutes the decision and order of the Court.

Hon. Reginald J. Johnson
Peekskill City Court Judge

DATED: Peekskill, New York
October 31, 2016