

Orioli SRL v Domenico Vaca
2018 NY Slip Op 30435(U)
March 14, 2018
Supreme Court, New York County
Docket Number: 652104/2010
Judge: Saliann Scarpulla
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: IAS PART 39

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 ORIALI SRL,

Plaintiff,

Index No.: 652104/2010

-against-

DECISION AND ORDER

DOMENICO VACA, DV STORES, LLC, AND
 CHICISSIMO, LLC,

Defendants.
 -----X

Saliann Scarpulla, J.

In this action to recover damages for breach of contract, plaintiff Oriali SRL moves to vacate a stipulation of discontinuance dated January 29, 2013 as to Domenico Vaca (“Vaca”), and to reinstate Vaca as a defendant in this action.

Oriali SRL, a clothing manufacturer, entered into an agreement with defendant Chicissimo, LLC/DV Stores, LLC (“Chicissimo”),¹ a clothing retailer owned and operated by Vaca, for the sale of clothing. Oriali SRL claims that the checks tendered by defendants as payment for the clothing were returned as “not sufficient funds,” “refer to maker,” “stop payment,” or “frozen/block account.”

According to Oriali SRL, during document discovery Vaca insisted that he had no personal liability for the damages arising from the failure of Chicissimo to pay for the clothing, because the debt was solely a corporate obligation. Accordingly, Oriali SRL executed a stipulation of discontinuance without prejudice as to Vaca on January 29,

¹ Chicissimo, LLC changed its name to DV Stores, LLC.

2013. At that time, however, Vaca did not execute the stipulation and did not file it with the County Clerk as required by CPLR 3217.

Oriali SRL now moves to vacate the stipulation of discontinuance, first arguing that it is void because it was never executed or filed. It also argues that, during Vaca's examination before trial in September 2015, which took place two years after Oriali SRL executed the stipulation of discontinuance, Oriali SRL uncovered evidence to show that Vaca was perpetrating a fraud against Oriali SRL. Specifically, Oriali SL contends that Vaca always intended to defraud Oriali SRL and have Chicissimo retain the clothing without paying for it. Oriali SRL argues that it executed the stipulation based on its mistaken belief that Vaca could not be held personally liable for the unpaid clothing.

At his examination before trial, Vaca testified that he sent a series of thirteen letters to Oriali SRL from 2008 through 2009, in which he generally stated that the clothing received was not conforming, and that he would like to cancel orders. Vaca testified that he sent the letters via email, but was unable to produce any evidence showing that these emails were actually sent. In addition, each letter was printed on Vaca's personal letterhead, showing an address that Vaca did not reside at until two years after the letters were printed.

Oriali SRL argues that these letters were fabrications created after the fact by Vaca to cover for the failure to pay for the clothing. Further, even though Vaca claimed that there were problems with the clothing delivered, he continued to issue checks for payment (albeit those checks were later dishonored).

Vaca also testified that, as of March 2015, Chicissimo was in the process of being dissolved and became an inactive business with no remaining assets. Finally, Oriali SRL maintains that vacating the stipulation of discontinuance will not prejudice Vaca because it will place him in the same position he was in originally, as a named defendant. Oriali SRL argues that Vaca has full knowledge of the lawsuit, as he has participated in the defense of his corporate defendants.

In opposition, defendants argue that contrary to Oriali SRL's position, both parties did, in fact, execute the stipulation of discontinuance on January 29, 2013. Interestingly, the stipulation was filed with the court immediately after this motion to vacate was filed.

Vaca argues that he had no intent to defraud Oriali SRL by entering into the stipulation or the original agreement. Rather, it was Oriali SRL that intended to defraud the defendants by entering into an agreement and delivering nonconforming clothing. Defendants fully intended to pay for the clothing but stopped payment on the checks once they realized that the clothing was nonconforming.

According to Vaca, he would be prejudiced if the stipulation of discontinuance were vacated because he is an improper party to this action and bears no personal liability for Chicissimo's debt. Vaca notes that Oriali SRL makes no allegation in the complaint that Vaca personally guaranteed or wrongfully interfered with any agreement between the parties. Finally, Vaca contends that he acted in his capacity as an officer of the corporate entities, and there is no breach of an agreement that could subject him to personal liability.

Discussion

“Stipulations of settlement are favored by the courts and not lightly cast aside...only where there is cause sufficient to invalidate a contract, such as fraud, collusion, mistake or accident, will a party be relieved from the consequences of a stipulation made during litigation.” *Charles v. Ladies Mile, Inc.*, 2013 N.Y. Slip. Op. 31386(U) *21 (N.Y. Sup. Ct., July 1, 2013) (internal quotations omitted).

Here, I find that Oriali SRL has sufficiently demonstrated that the stipulation of discontinuance without prejudice should be vacated. Oriali SRL has demonstrated that when it signed the stipulation, it understood that Vaca, as an officer of the corporate defendants, could not be subject to any personal liability for the contractual obligation of Chicissimo. However, based upon Vaca’s examination before trial testimony, Oriali SRL discovered that it could pursue a claim for individual liability sounding in fraud against Vaca. Further, Vaca will suffer no prejudice by the reinstatement of the action against him, as he has been and is a participant in the defense of the corporate defendant.

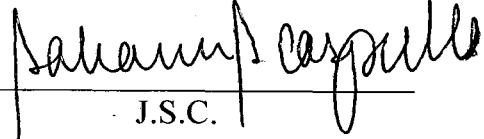
In accordance with the foregoing, it is hereby

ORDERED that plaintiff Oriali SRL’s motion to vacate the stipulation of discontinuance dated January 29, 2013 as to Domenico Vaca and to reinstate Domenico Vaca as a defendant in this action is granted, the stipulation is vacated, and Domenico Vaca is reinstated as a defendant in this action; and it is further

ORDERED that the Clerk of the Court is directed to update its records accordingly.

This constitutes the decision and order of the court.

Dated: March 14, 2018
New York, New York



J.S.C.
HON. SALIANN SCARPULLA