

Merrill Lynch Commodities, Inc. v Jamex Mktg., LLC
2018 NY Slip Op 30896(U)
May 10, 2018
Supreme Court, New York County
Docket Number: 655523/2017
Judge: Barry Ostrager
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 61

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MERRILL LYNCH COMMODITIES, INC.

Plaintiff,

- v -

JAMEX MARKETING, LLC (F/K/A BRIDGER MARKETING, LLC
AND BRIDGER TRADING, LLC),

Defendant.

INDEX NO. 655523/2017

MOTION DATE _____

MOTION SEQ. NO. 002

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number 10, 11, 12, 13, 14, 15, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 53

were read on this application to/for Summary Judgment

HON. BARRY R. OSTRAGER:

Plaintiff Merrill Lynch Commodities, Inc. (“MLC”) is a global commodities trading and marketing firm. Defendant Jamex Marketing, LLC (“Jamex”) is in the crude oil transportation, storage, and sales business. MLC claims that Jamex breached a contract between the parties by failing to pay a June 2016 invoice. MLC moves for summary judgment on that claim. For the reasons stated herein, MLC’s motion for summary judgment is granted.

Factual Background

Under an Intermediation Agreement (the “Agreement”) between the parties, MLC entered into contracts with third parties for the purchase or sale of crude oil upon Jamex’s request. The contracts were negotiated by Jamex and were substantially for the benefit of Jamex. Jamex used MLC’s services because Jamex was able to obtain more favorable terms than it

would have if it entered into such contracts with third parties directly. Jamex compensated MLC for such services by paying a fee per barrel of crude oil.

Due to the nature of the crude oil business, invoices issued by MLC necessarily required adjustments because the actual volume of oil delivered is not known until it is measured after delivery. As a result of the disparity between the amount of oil loaded for delivery and the amount actually delivered, the parties agreed under Section 4.03(a) of the Agreement that MLC would have the right to incorporate adjustments to invoices in subsequent invoices.

In June 2015, the parties entered into several agreements to terminate the Intermediation Agreement. Under Section 17.01 of the Intermediation Agreement, MLC would continue to issue invoices beyond the termination date with respect to any outstanding amounts owed and any true-up corrections required. Further, under Section 4.06 of the Agreement, entitled "Disputed Invoices," Jamex maintained the right to, in good faith, dispute the amount of any invoice by "provid[ing] MLC with written notice stating the reasons for the dispute, along with supporting documentation." (Khan Aff. Ex. 1 [NYSCEF Doc. 13]).

In December 2015, MLC sent Jamex an invoice in the amount of \$4,762,466.76. (Jilla Aff. Ex. G [NYSCEF Doc. 40]). Email correspondence between the parties clearly shows that Jamex invoked its Section 4.06 right to dispute the invoice by written notice. (Jilla Aff. Ex. H [NYSCEF Doc. 41]). Thereafter, the parties corresponded, exchanged data underlying the invoices, and eventually met in person on April 12, 2016 to attempt to resolve the dispute. (See Jilla Aff. Ex. J [NYSCEF Doc. 43]).

In the weeks following the meeting, the parties continued to correspond regarding the dispute. On June 1, 2016, Jamex wrote to MLC, stating that "Jamex has analyzed the data provided to it by MLC and developed the list of additional requests and questions attached to this

letter” and further asking MLC to provide a written response to those additional requests in order to resolve the dispute. (Khan Aff. Ex. 7 [NYSCEF Doc. 13]).

On June 21, 2016, MLC sent Jamex a “Final Revised” invoice for \$4,749,193.00. (Khan Aff. Ex. 8 [NYSCEF Doc. 13]). In addition to the invoice, MLC provided itemized responses to the requests and questions raised in Jamex’s June 1, 2016 letter. *Id.* Importantly, Jamex did not provide MLC with a written notice disputing the June invoice. Ostensibly, the parties did not engage in any further written communications, although they met on August 18, 2016 in an unsuccessful attempt to resolve the dispute. Approximately one year later MLC commenced this lawsuit. MLC now moves for summary judgment on its sole claim for breach of the Agreement.

Discussion

“The proponent of a motion for summary judgment must establish that there are no material issues of fact in dispute and that it is entitled to summary judgment as a matter of law.” *Mazurek v. Metropolitan Museum of Art*, 27 A.D.3d 227, 228 (1st Dep’t 2006). Where the movant has made such a showing, the burden then shifts to the party opposing the motion to raise genuine, triable issues of fact necessitating a trial. *Id.* Summary judgment on a breach of contract claim may be granted upon evidence of a breach and establishment of an account stated. *See Friedlander, Gaines, Cohen, Rosenthal & Rosenberg v. Int’l Compumedics Corp.*, 54 A.D.2d 859, 859 (1st Dep’t 1976).

Here, MLC had the right to issue invoices for outstanding amounts owed under the Intermediation Agreement between the parties. In December 2015, MLC provided Jamex with an invoice for amounts due. Pursuant to Section 4.06 of the Agreement, Jamex provided MLC with written notice that it disputed the amount invoiced. The parties engaged in discussions to resolve the dispute in which MLC provided Jamex with documentation supporting the invoiced amount.

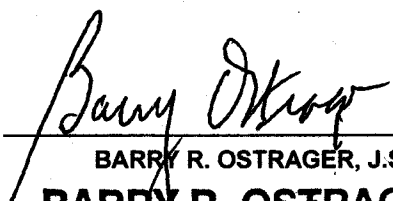
(Jilla Aff. Ex. J [NYSCEF Doc. 43]). In June 2016, MLC sent Jamex a “Final Revised” invoice for a slightly lower amount due, as well as a letter responding to Jamex’s questions regarding the calculations. It is undisputed that Jamex did not pay the June invoice and did not provide a subsequent written notice stating that it intended to dispute the revised amount due in accordance with Section 4.06 of the Agreement. Once the June invoice was sent to Jamex, it had a contractual obligation to either pay the invoice or provide written notice that it intended to dispute the amount due. Jamex did neither, and as such, breached its obligations under the Agreement.

Additionally, this pre-discovery summary judgment motion is not premature. Any evidence that would rebut MLC’s prima facie case, such as a written notice disputing the June invoice, would be in Jamex’s possession.

Accordingly, it is hereby

ORDERED that Plaintiff’s motion for summary judgment is granted. The Clerk is directed to enter judgment in favor of Merrill Lynch Commodities, Inc. against Jamex Marketing, LLC in the amount of \$4,749,193, with interest accruing at the contractual rate of 5.65% per annum from June 23, 2016 and post-judgment interest at the statutory rate.

5/10/2018
DATE


BARRY R. OSTRAGER, J.S.C.
BARRY R. OSTRAGER
JSC

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER FIDUCIARY APPOINTMENT REFERENCE

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