

Endicott Meats, Inc. v A La Turk, Inc.

2019 NY Slip Op 30578(U)

March 6, 2019

Supreme Court, New York County

Docket Number: 651783/2016

Judge: Carol R. Edmead

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

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ENDICOTT MEATS, INC.,

Plaintiff,

-against-

A LA TURK, INC, d/b/a A LA TURKA, and
UMUT MAYA d/b/a UMUT MAYE individually,
And SULEYMAN S. SECER a/k/a SULEYMAN S.
SEGER individually,

Defendants.

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CAROL R. EDMead, J.S.C.:

DECISION AND ORDER

Index No.: 651783/2016

Motion Sequence 002

MEMORANDUM DECISION

In this breach of contract action, Endicott Meats, Inc. (“Plaintiff”) moves for summary judgment pursuant to CPLR 3212. In reply, defendants A La Turk, Inc., Umut Maya, and Suleyman Secer (collectively, “Defendants”) oppose the motion and cross-move for summary judgment in their favor. For the reasons set forth below, the Court denies Plaintiff’s motion and grants Defendants’ cross-motion.

BACKGROUND FACTS

Plaintiff is a supplier of various meat products that at one point provided inventory to A La Turk Inc. (“A La Turk”), the owner of a Turkish restaurant in Manhattan. On April 4, 2016, Plaintiff filed a complaint against A La Turk, along with Umut Maya, the restaurant’s former chef, and Suleyman Secer, the principal manager of the restaurant, seeking compensation for goods ordered and not paid for between 2006 and 2011. The complaint sought a total of \$91,151.07 that Plaintiff claimed it was owed under a Goods and Services Agreement between the parties (NYSCEF doc No. 2, ¶ 4) for the various delivery transactions. The transactions are

governed by the Uniform Commercial Code (UCC) guidelines for offer and acceptance. Per the UCC, a buyer who “accepts goods” must pay for them, and the buyer is deemed to have accepted the goods when he fails to return them after “a reasonable opportunity to inspect them” (UCC § 2-606-607). In its answer, Defendants denied all claims, arguing that the Goods and Services Agreement described by Plaintiff does not exist, and that Defendants never ordered the amount of goods claimed by Plaintiff and that it returned the goods that were ordered due to defectiveness (NYSCEF doc No. 51 at ¶ 13).

Plaintiff argues that Defendants accepted the goods by failing to reject them, and are therefore liable under breach of contract for nonpayment. Plaintiff also claims a second cause of action for Account Stated, as Defendants tendered checks for the goods ordered with insufficient funds to cover them (NYSCEF Doc NO. 39 at ¶ 24). In reply, Defendants oppose the motion, arguing that it is procedurally defective and that questions of fact exist regarding whether money is owed. Defendants also filed their own cross-motion for summary judgment, arguing that the statute of limitations has elapsed on Plaintiff’s claim. Under the UCC, claims for breach of contract must be brought within four years of accrual, and the last alleged transaction was in 2011 (NYSCEF Doc No. 51 at ¶ 64-66). Defendants also argue Plaintiff’s claims are in violation of the Statute of Frauds, as Plaintiff has failed to produce the Goods and Services Agreement and has offered no other writing between the parties to support the intent to enter into a contract for the sale of goods.

DISCUSSION

Summary judgment is granted when “the proponent makes ‘a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact,’ and the opponent fails to rebut that showing” (*Brandy B.*

v Eden Cent. School Dist., 15 NY3d 297, 302 [2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]; *Grossman v Amalgamated Hous. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]). Here, since each side seeks summary judgment, each side bears the burden of making a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*Bellinson Law, LLC v Iannucci*, 35 Misc 3d 1217(A) (Sup. Ct., N.Y. County 2012), *aff'd*, 102 AD3d 563 [1st Dept 2013], citing *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). Once met, this burden shifts to the opposing party who must then demonstrate the existence of a triable issue of fact (*Alvarez, supra*, *Zuckerman v City of New York*, 49 N.Y.2d 557 [1980] and *Santiago v Filstein*, 35 AD3d 184 [1st Dept 2006]).

Before the Court assesses the merits of each party's motion for summary judgment, it must first be determined whether Plaintiff's complaint is timely and procedurally proper. Both parties agree that any agreement that did exist between them is governed by Article 2 of the UCC. The statute holds that the statute of limitations for breach of contract in regard to the sale of goods in New York is four years (UCC § 2-275). The parties may reduce this period by written agreement but may not extend it (*id.*). The cause of action accrues when the breach occurs, i.e. when delivery is made, regardless of the injured party's notice of the breach (*id.*). This is an absolute deadline, in the absence of some sort of warranty between the parties that stipulates an extension extending to future performance (*Heller v U.S. Suzuki Motor Corp.*, 64 NY2d 407, 411-12 [1985]). It is undisputed here that the last delivery made to plaintiffs was in early 2011, as the last date on the billing summary is March 13, 2011 (NYSCEF doc No. 61 at ¶

16). Therefore, the last day Plaintiff could have brought an actionable claim is March 13, 2015, and Plaintiff's 2016 complaint is outside of the statute of limitations.

In reply, Plaintiff argues that the statute of limitations should not preclude its claim as it initially brought an action in 2013 against a related entity, Tarsus Restaurant LLC ("Tarsus"). That matter was captioned *Endicott Meats, Inc. v. Tarsus Restaurant LLC, d/b/a A La Turka Turkish Restaurant and Turko* (NYSCEF doc No. 58). Plaintiff claims goods were ordered by Tarsus and paid for by A La Turk and obtained a default judgment against Tarsus, which was confirmed by the Bronx County court in 2015 (NYSCEF doc No. 59). However, this defense is of no moment because nothing in the record demonstrates that Defendants are in any way affiliated with Tarsus. Tarsus later brought a motion to vacate the judgment against it in Bronx County, where Judge Julia I. Rodriguez noted that "some of the invoices/statements of account submitted in support of the default judgment relate to a separate and unrelated entity, A La Turk" (NYSCEF doc No. 61). Judge Rodriguez ordered that no assets of A La Turk be used to satisfy the judgment against Tarsus (*id.*). The matter against Tarsus is thus wholly irrelevant to any claims Plaintiff has against Defendants, and Plaintiff's claim is barred by the statute of limitations. Defendants also maintain that Plaintiff's complaint is in violation of the Statute of Frauds, which holds that a contract for the sale of goods totaling \$500 or more must be in a signed writing to be enforceable (N.Y. U.C.C 2-201(1)). Plaintiff counters that the invoices satisfy the statute of frauds. The Court need not address this dispute, however, as the statute of limitations alone precludes Plaintiff's complaint from moving forward.

While the elapsing of the statute of limitations means that Plaintiff's complaint must be dismissed, the Court writes separately to note that even if the complaint were timely, Plaintiff's motion for summary judgment would be denied on the merits. Upon review of the record, there

are numerous issues of fact that render summary judgment for Plaintiff implausible. Summary judgment is “a drastic remedy which should not be granted if there is a material and triable issue of fact,” even if there is slight doubt about a single issue (*Duluc v Resnick*, 224 AD 2d 210, 210-11 [1st Dept 1996]). Here, there is a question of fact regarding whether the Goods and Services Agreement Plaintiff bases its claim on exists in the first place, as Defendants deny its existence and Plaintiff has not produced a copy (NYSCEF doc No. 51 at ¶ 57). Maya and Secer, the individual defendants named in the complaint, have both submitted affidavits directly contradicting both the existence of an ongoing agreement, as well as the amounts of product ordered and accepted. As the chef of the restaurant at the time of the orders in question, Maya, never had authority in the first place to enter into agreements or sign for deliveries (*id.* at ¶ 16). Secer affirmed that as the manager, he had sole authority to enter agreements with vendors, and often returned Plaintiff’s products as they were defective and contaminated (*id.* at ¶ 15). Both maintain that in any case, the restaurant is small in size and never would have ordered as much product as the invoices suggest. Plaintiff has also opted not to depose either individual defendant or make any discovery requests that would have bolstered its portrayal of the events (*id.* at ¶ 12). Plaintiff has therefore clearly not met its burden for summary judgment.

Ordinarily, the various issues of fact would preclude summary judgment for Defendants.’ However, as Plaintiff’s complaint is time-barred by the statute of limitations pursuant to Article 2 of the UCC, Defendants’ cross-motion for summary judgment dismissing the complaint must be granted.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED that Plaintiff Endicott Meats, Inc.'s motion for summary judgment is denied in its entirety; and it is further

ORDERED that Defendants A La Turk, Inc., Umut Maya, and Suleyman Secer's cross motion for summary judgment dismissing the complaint is granted; and it is further

ORDERED that counsel for Defendants shall serve a copy of this decision, along with notice of entry, on all parties within 10 days of entry.

Dated: March 6, 2019



Hon. Carol R. Edmead, J.S.C.

HON. CAROL R. EDMEAD
J.S.C.