

**Singind Life Sciences (HK) Ltd. v Versailles Indus.
LLC**

2019 NY Slip Op 32046(U)

July 5, 2019

Supreme Court, New York County

Docket Number: 654515/2018

Judge: Jennifer G. Schechter

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

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SINGIND LIFE SCIENCES (HK) LIMITED,

Index No.: 654515/2018
(The Singind Action)

Plaintiff,

-against-

DECISION & ORDER

VERSAILLES INDUSTRIES LLC,

Defendant.

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B.K. REKHATEX (HK) LTD.,

Index No.: 158434/2018
(The Rekhatex Action)

Plaintiff,

-against-

SIMON INTERNATIONAL TRADING CORP.,

Defendant.

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JENNIFER G. SCHECTER, J.:

Motion sequence number 001 in each of the above captioned actions are consolidated for disposition.

The plaintiffs in these two actions, Singind Life Sciences (HK) Limited (Singind) and B.K. Rekhatex (HK) Ltd. (Rekhatex) are owned by Melwani Giresh Gulab. The defendants, Versailles Industries LLC (Versailles) and Simon International Trading Corp. (Simon), are owned by Fouad Hamra. For more than a decade, Gulab and Hamra, through their companies, had a business relationship related to the sale of apparel and textiles. The Singind Action concerns unpaid loans and the Rekhatex Action concerns unpaid invoices. The complaint in each action asserts causes of action for breach of contract, accounts stated and unjust enrichment.

The plaintiffs in each action move for partial summary judgment against the defendants and the defendants cross-move for consolidation of the cases and to amend their answers to assert counterclaims. Plaintiffs' motions are granted to the extent that they are awarded summary judgment on their breach-of-contract claims and defendants' cross-motions are denied.¹

Summary judgment may only be granted if there are no material disputed facts (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 325 [1986]). The moving party bears the burden of making a prima facie showing of entitlement to summary judgment as a matter of law (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Failure to make such a showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993]). Once a prima facie showing has been made, the burden then shifts to the opposing party to produce evidence sufficient to establish the existence of a material question of fact (*Alvarez*, 68 NY2d at 324; *Zuckerman*, 49 NY2d at 562). The evidence must be construed in the light most favorable to the opponent and the motion must be denied if there is any doubt as to the existence of a triable issue (*Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 [1978]; *Martin v Briggs*, 235 AD2d 192, 196 [1st Dept 1997]). Mere conclusions, unsubstantiated allegations or expressions of hope, however, are insufficient to defeat a summary judgment motion (*Zuckerman*, 49 NY2d at 562).

¹ The unjust-enrichment and account-stated causes of action are dismissed as duplicative (*see EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 23 [2005]; *see also Hagman v Swenson*, 149 AD3d 1, 7 [1st Dept 2017]).

The Singind Action

Singind and Versailles are parties to a Loan Agreement dated August 15, 2016, which provides that Singind would make loans of up to \$500,000 to Versailles carrying 3% interest (Singind Action, Dkt. 27 [the Loan Agreement]). Between August and December of 2016, Singind made 13 loans to Versailles totaling \$2,268,367. Versailles repaid nine of the loans, totaling \$1,619,566.70. Versailles did not repay four of the loans, totaling \$648,800.30. Singind submitted the four notes and proof that it remitted the loan proceeds (*see* Singind Action, Dkts. 38-41). This evidence includes bank records showing the transfer of money from Singind to Versailles or to BSD Trading Company Limited (BSD) to satisfy Versailles' invoices (*see, e.g.*, Singind Action, Dkt. 38 at 5). Singind also submitted emails between the parties in which Singind indicates that the four outstanding loans, totaling \$648,800.30, were past due, and in which Versailles' principal states that the loans would be repaid (*see* Singind Action, Dkt. 44).

In opposition, Versailles claims to have never received the full \$648,800.30 and maintains that only some of the notes but not others were actually notes. Acknowledging that Versailles' account appears "puzzling" and that the court may be skeptical, Hamra asserts that the parties entered into some sham transactions so that Singind would be able to present documentation establishing an ongoing business relationship to a Chinese bank in an effort to obtain a line of credit so that Singind could have funds to make loans to others (*see* Singind Action, Dkt. 81 at 3). Versailles asserts that the funds sent to BSD purportedly on its behalf, including funds in connection with notes that Versailles repaid,

were not actual loan transactions and that it never “receive(d) any goods or other consideration from these manufacturing companies” including BSD (*id.*). Versailles explains that some of the notes were real but maintains that because its payments on the fake notes exceeded the money that it received, it is entitled to recover from Singind and, in response to plaintiff’s summary judgment motion, cross-moves to amend its answer to include a counterclaim.

Simply put, Versailles claims, without evidentiary support, that Hamra was complicit in a scheme to defraud a Chinese bank into lending money to Gulab by making it appear that Singind had a certain volume of business that did not actually exist. These self-serving allegations are incompatible with the clear documentary evidence establishing the loans. The documentary evidence conclusively defeats Versailles’ bald, completely unsubstantiated assertions. For instance, in a November 3, 2016 email, Hamra sent a revised BSD invoice to Gulab (*see* Singind Action, Dkt. 40 at 2-4), Gulab then caused Singind to wire money to BSD to pay off the invoice (*see id.* at 5, 8), and a note reflecting Versailles’ obligation to pay Singind was drafted (*see id.* at 6). Likewise, in a November 18, 2016 email, Hamra provided Gulab with BSD’s bank account information² along with “2 new invoices” and a request that the money be wired that day so that Versailles could “inspect the shipment tom and deliver to the customer on Monday,” explaining that Versailles had “special trucking” for faster delivery and turnaround (*see* Singind Action, Dkt. 41 at 2).

² Singind would not have needed that information from Versailles if it was engaged in a scheme and the “purpose of such payments were unrelated to Versailles” (*see* Hamra Aff ¶ 10).

Additionally, in 2017, Hamra committed to paying all of the debts that are the subject of this action (Dkt. 44 at 1, 3, 5-6), apologized for the delay in paying and detailed business difficulties that he was having (*id.* at 6-7). Hamra also acknowledged his debt to Gulab in August 2018.

In sum, the parties' agreement is, on its face, and as its title suggests, a Loan Agreement. Each of the loans, including the four outstanding loans, is independently documented with notes, invoices, and proof that the loan proceeds were either directly remitted to Versailles or to a textile company on behalf of Versailles for which Versailles provided Singind with the invoices and payment information. Versailles also admitted several times in emails that it owed the money and, in fact, expressly agreed to repay the loans. Thus, there is no genuine question of fact that Versailles owes \$648,800.30 to Singind, which is granted summary judgment.

The Rekhatex Action

The parties stipulated that:

Between March 2003 and May 2017, [Rekhatex and Simon] had a trade relationship where [Simon] purchased wearing apparel from [Rekhatex]. On or about April 5, 2017 and May 8, 2017, two shipments of wearing apparel ("Subject Goods") were sold and delivered to Simon by [Rekhatex]. The total invoice amount for the two shipments of Subject Goods delivered to and accepted by [Simon] was \$324,090.80. ... The Subject Goods were delivered to Simon without complaint as to quality or quantity. The Subject Goods were delivered to Simon in a timely manner (Rekhatex Action, Dkt. 13 at 1-2).

Simon does not deny that it did not pay the \$324,090.80 for the goods that it admittedly received without complaint. Rather, Simon claims it is entitled to set off its

liability to Rekhatex with debts owed by Singind to Versailles. But as discussed above, Singind does not owe any money to Versailles. To the contrary, Versailles owes Singind approximately \$650,000. Thus, there is no question of fact that Rekhatex is entitled to summary judgment on the \$324,090.80 owed by Simon. And since there is no debt owed to defendants in the Singind Action that would offset any liability in the Rekhatex Action, consolidation serves no purpose and is denied.

Accordingly, it is ORDERED that Singind's motion for summary judgment on its breach of contract claim is granted and the Clerk is directed to enter judgment in the Singind Action (Index No. 654515/2018) in favor of Singind and against Versailles in the amount of \$648,800.30, plus 9% pre-judgment interest from November 21, 2016 to the date judgment is entered; and it is further

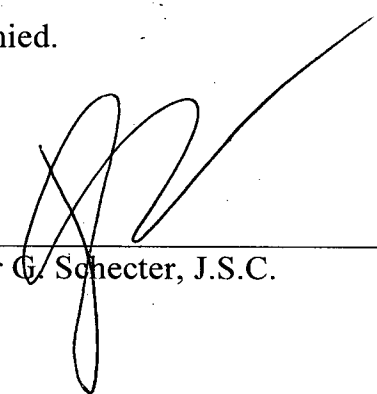
ORDERED that Rekhatex's motion for summary judgment on its breach of contract claim is granted and the Clerk is directed to enter judgment in the Rekhatex Action (Index No. 158434/2018) in favor of Rekhatex and against Simon in the amount of \$324,090.80, plus 9% pre-judgment interest from May 8, 2017 to the date judgment is entered; and it is further

ORDERED that plaintiffs' accounts stated and unjust enrichments claims are dismissed as duplicative; and it is further

ORDERED that defendants' cross-motions are denied.

Dated: July 5, 2019

ENTER:



Jennifer G. Schecter, J.S.C.