

Canon U.S.A., Inc. v Stereo Advantage, Inc.
2019 NY Slip Op 32394(U)
August 9, 2019
Supreme Court, New York County
Docket Number: 656179/2017
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

-----X

CANON U.S.A., INC.

Plaintiff,

- v -

STEREO ADVANTAGE, INC.,

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70

were read on this motion to/for DISMISS

DECISION AND ORDER

Canon U.S.A., Inc.'s (Canon) motion to dismiss the First, Second, and Seventh Amended Counterclaims of Stereo Advantage, Inc. (SA) is granted pursuant to CPLR § 3211 (a) (1) and (7).

THE RELEVANT FACTS AND CIRCUMSTANCES

Canon commenced this action seeking recovery of \$4.4 million in instant rebate payments that it paid to SA. SA alleges that as its business grew it became a wholesaler, but Canon asserts that no contract was ever entered into or amended to reflect this change in status. SA alleges that Canon sales employees manipulated wholesale transactions by selling through SA to expand their commission base and instructing SA that it could take rebates for those purchases, only to thereafter deny SA payment of the instant rebates. SA acknowledged that it placed rebate requests in excess of the number of items that it actually shipped or sold and previously entered into a repayment plan with Canon for the full amount of the excess reimbursements. After

failing to make payments in accordance with the repayment plan, however, Canon commenced this action to recover the outstanding balance.

DISCUSSION

A party may move for judgment dismissing one or more causes of action on the ground that the pleadings fail to state a cause of action for which relief may be granted (CPLR § 3211 [a] [7]). On a motion to dismiss pursuant to CPLR § 3211 (a) (7), the court must afford the pleadings a liberal construction and accept the facts alleged in the complaint as true, according the plaintiff the benefit of every favorable inference (*Morone v Morone*, 50 NY2d 481, 484 [1980]). The court's inquiry on a motion to dismiss is whether the facts alleged fit within any cognizable legal theory (*id.*). Bare legal conclusions are not accorded favorable inferences, however, and need not be accepted as true (*Biondi v Beekman Hill House Apt. Corp.*, 257 AD2d 76, 81 [1st Dept 1999]). A party may also move to dismiss based on documentary evidence pursuant to CPLR § 3211 (a) (1). A motion to dismiss pursuant to CPLR § 3211 (a) (1) will be granted only where the documentary evidence conclusively establishes a defense to the plaintiff's claims as a matter of law (*Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314, 326 [2002]).

Breach of Implied Contract

An implied-in-fact contract requires the same elements as an express contract including, consideration, mutual assent, legal capacity, and legal subject matter (*Maas v Cornell Univ.*, 94 NY2d 87, 93-94 [1999]). "A contract implied-in-fact may result as an inference from the facts and circumstances of the case, although not formally stated in words" (*Jemzura v Jemzura*, 36

NY2d 496, 504 [1975]). A contract implied-in-fact “is just as binding as an express contract arising from declared intention, since in the law there is no distinction between agreements made by words and those made by conduct” (*id.*). Like an express contract, an implied-in-fact contract requires a showing that there was a meeting of the minds (*I.G. Second Generation Partners, L.P. v Duane Reade*, 17 AD3d 206, 208 [1st Dept 2005]). A cause of action for breach of implied contract cannot be sustained where this is an express contract covering the same subject matter (), as “the theories of express contract and of contract implied in fact . . . are mutually exclusive (*Bowne of New York, Inc. v International 800 Telecom Corp.*, 178 AD2d 138, 138 [1st Dept 1991]).

On the prior motion to dismiss, New York State Supreme Court Justice Charles E. Ramos dismissed the SA’s first counterclaim for breach of implied contract with leave to replead on the ground that SA failed to allege the terms of the purported contract (NYSCEF Doc. No. 38, at 20:15-26). The amended counterclaim suffers from the same deficiency. Simply stated, SA fails to allege the salient terms of the implied contract, a deficiency requiring dismissal of the claim. Moreover, while SA sets forth detailed allegations of its course of dealing with Canon, recounting the parties’ long-standing business relationship, Canon’s prior treatment of rebates and credits, and SA’s status as an authorized wholesaler, (Amended Counterclaim ¶¶ 21-63), reference to such prior conduct is prohibited by the existence of express contracts that govern the subject matter of the issues before the court. As evidenced by the Dealer Sales Agreement, Consumer Imaging Group for Canon Authorized Products (the Sales Agreement), dated April 25, 2007, between Canon and SA, and the Reimbursement Terms and Conditions for Canon, U.S.A., Inc. Camera Products and Camcorder Products Instant Rebates (Instant Rebate Rules), effective

as of March 30, 2014, the parties' business relationship was governed by express, written contracts (Lane aff, exhibits A and B). Accordingly, the first amended counterclaim is dismissed.

Damage to Business Reputation

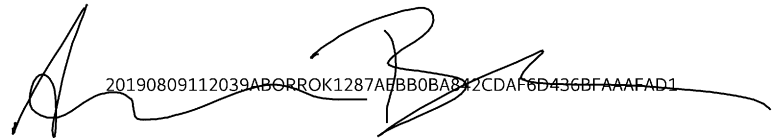
New York law does not recognize an independent cause of action for damage to business reputation (*M.D.T. 1984 Duplications Ltd. v Mark IV Indus., Inc.*, 283 AD2d 1001, 1002 [1st Dept 2001]). At oral argument, the defendant acknowledged that this is not a separate cause of action. Accordingly, SA's second Amended Counterclaim is dismissed.

Quantum Meruit

To prevail on a cause of action for quantum meruit, the proponent must establish: (i) the performance of services in good faith by the plaintiff, (ii) acceptance of those services by the defendant, (iii) with an expectation of compensation for the services, and (iv) the reasonable value of the services (*Freedman v Pearlman*, 271 AD2d 301, 304 [1st Dept 2000]). Here, SA fails to allege an expectation of compensation and alleges no basis to substantiate the reasonable value of the services provided. Further, the disputed transactions at issue in this case were governed by the DSA and the Instant Rebate Rules. Under New York law, "the existence of a valid and enforceable written contract governing the disputed subject matter precludes plaintiffs from recovering in quantum meruit (*Sheiffer v Shenkman Capital Mgt., Inc.*, 291 AD2d 295, 295 [1st Dept 2002]). Accordingly, the seventh amended counterclaim is dismissed.

Accordingly, it is

ORDERED that Canon U.S.A., Inc.'s motion to dismiss is granted, and Stereo Advantage, Inc.'s first, second, and seventh Amended Counterclaims are dismissed.



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8/9/2019
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE