

Icon DE Holdings, LLC v Mondani Handbags & Accessories, Inc.

2020 NY Slip Op 30904(U)

April 2, 2020

Supreme Court, New York County

Docket Number: 654772/2019

Judge: Barry R. Ostrager

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

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Icon DE Holdings, LLC

Plaintiff,

- V -

Mondani Handbags & Accessories, Inc.

Defendant.

INDEX NO.	654772/2019
MOTION DATE	
MOTION SEQ. NO.	001

DECISION + ORDER ON MOTION

HON. BARRY R. OSTRAGER

This dispute arises out of a contractual relationship between Icon DE Holdings, LLC (“plaintiff”) and Mondani Handbags and Accessories Inc. (“defendant”). Around August 2007, Icon DE Holdings’ affiliate IP Holdings LLC (“IP Holdings”) entered into a Handbag Agreement with defendant Mondani (the “Agreement”).

Pursuant to the Agreement, IP Holdings, which owned all right, title and interest in and to the trademark LONDON FOG and TOWER DESIGN and certain variations thereof (the “Licensed Mark”), exclusively licensed the Licensed Mark to Mondani for use in connection with the design, manufacture, sale, marketing distribution, advertising and promotion of Handbags and Small Leather Goods in a specified geographic area for a specified period of time. The Agreement was subsequently amended in December 2010 (“First Amendment to the Agreement”), December 2016 (“Second Amendment to the Agreement”), and May 2018 (“Third Amendment to the Agreement”).

Following the execution of the Third Amendment to the Agreement, effective June 1, 2018, IP Holdings assigned the Agreement, as amended, and all rights and remedies thereunder,

including the exclusive right to enforce the Agreement and its terms against Mondani, to plaintiff Icon DE Holdings.

Plaintiff brings a single cause of action for breach of contract, alleging that Mondani was and is required to pay to Icon DE Holdings Minimum Guaranteed Royalties and Minimum Advertising Royalties, under Section 6 of the Agreement. *See* NYSCEF Doc. No. 1. Plaintiff notified Mondani of its alleged default on March 6, 2019 and terminated the Agreement on June 24, 2019. *See* NYSCEF Doc. Nos. 5 and 6. Plaintiff is seeking \$474,000 in damages, plus costs related to the prosecution of this action. On October 28, 2019, defendant Mondani filed its Answer and Counterclaim. *See* NYSCEF Doc. No. 8.

Before the Court is plaintiff's motion sequence 001 to dismiss defendant's counterclaim. For the reasons that follow, plaintiff's motion is granted, without prejudice to defendant repleading its counterclaim in conformity with the directives set forth in this decision.

Defendant's counterclaim is a single cause of action for breach of contract, based on various different alleged breaches. Defendant describes five alleged breaches of the Agreement and/or Amendments. Plaintiff moves to dismiss the counterclaim pursuant to CPLR 3211 (a) (1), (5), and (7). Plaintiff argues that defendant's counterclaim should be dismissed because it fails to identify specific provisions of the Agreement which plaintiff allegedly breached; that the counterclaim is barred by the statute of limitations; and that the counterclaim is barred by substantive terms of the Agreement, particularly the merger clause which prohibits oral modifications.

The Court finds that the Counterclaim must be dismissed as it is currently stated because it lacks specificity. The Counterclaim does not indicate which specific provisions of the

Agreement and/or Amendments plaintiff purportedly violated, nor does it provide dates of the alleged conduct.

While all parties and the Court agree that the six-year statute of limitations for breach of contract bars any claims before October 28, 2013, the Court presently has no way of knowing whether the alleged conduct occurred in whole or part on or after October 28, 2013 because the counterclaim does not have dates.

Also, while the law does permit defendant to supplement its pleadings with an affidavit based on personal knowledge, which defendant has attempted to do (*see* NYSCEF Doc. No. 25), the Court finds that for clarity the better practice is for defendant to replead its counterclaim, identifying specific provisions of the Agreement and/or Amendments plaintiff allegedly breached with dates and details such that the Court can make a determination on the merits. The amended pleadings should make clear that none of the alleged breaches occurred outside the statute of limitations period, and that none are barred by the merger clause or any of the other terms of the Agreement and its Amendments.

The Court notes that this case appears well suited for settlement and encourages a consensual resolution of this action.

Accordingly, it is hereby,

ORDERED that plaintiff's motion to dismiss the counterclaim is granted without prejudice to defendant repleading within 30 days from entry of this decision and order; and it is further

ORDERED that plaintiff must respond to the amended pleading within 30 days from the service by email of the pleading; and it is further

ORDERED that the parties appear for a preliminary conference on June 30, 2020 at 9:30 a.m. with full settlement authority.

Dated: April 2, 2020

Barry R. Ostrager
BARRY R. OSTRAGER, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN