

Revlon Consumer Prods. Corp. v Pacific World Corp.

2020 NY Slip Op 32058(U)

June 24, 2020

Supreme Court, New York County

Docket Number: 653316/2019

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: <u>HON. ANDREA MASLEY</u>	PART	IAS MOTION 48EFM
<i>Justice</i>		
-----X	INDEX NO.	<u>653316/2019</u>
REVLON CONSUMER PRODUCTS CORPORATION,	MOTION DATE	_____
Plaintiff,	MOTION SEQ. NO.	<u>001</u>
- v -		
PACIFIC WORLD CORPORATION,	DECISION + ORDER ON MOTION	
Defendant.		
-----X		

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 7, 8, 9, 10, 11, 12, 13, 14
 were read on this motion to/for DISMISSAL.

Masley, J.:

In motion sequence number 001, plaintiff Revlon Consumer Products Corporation (Revlon), moves, pursuant to CPLR 3211 (a) (1) and (7), to dismiss defendant Pacific World Corporation’s (Pacific World) counterclaim for breach of contract.

Background

The following facts are alleged in the answer unless noted otherwise, and for purposes of this motion, accepted as true.

On January 28, 2002, the parties entered into a licensing agreement, which the parties amended and restated on December 12, 2003, and subsequently amended in May 2005, October 2006, April 2008, December 2009, June 2011, and May 2013 (collectively, Agreement) (NYSCEF Doc No. [NYSCEF] 10, Summons and Complaint ¶¶12; NYSCEF 12, Answer and Counterclaim ¶¶12). Under the Agreement, Revlon, as licensor, agreed to grant a license to Pacific World, as licensee, to use the Revlon

trademark in connection with the manufacturing, merchandising, promotion, advertising, sale and distribution of certain merchandise (NYSCEF 11, Agreement at 1). The Agreement required Pacific World to pay Revlon a minimum royalty within thirty days following the close of each calendar quarter, with each royalty payment accompanied by a statement signed and certified by Pacific World's Chief Financial Officer (NYSCEF 11, Agreement §6). The Agreement expired by its terms on December 31, 2018 (*id.*, §3.A).

On June 6, 2019, Revlon initiated this breach of contract action against Pacific World for its alleged failure to pay royalties and to provide royalty reports (NYSCEF 10, Summons and Complaint). On July 10, 2019, Pacific World filed its answer, asserting a counterclaim for breach of contract (NYSCEF 12, Answer and Counterclaim). Pacific World alleges that Revlon breached the Agreement by: (1) "failing to provide reasonable assistance to Pacific World during the life of the Agreement in connection with the design direction and quality of the Licensed Merchandise"¹ (*id.* ¶¶67); (2) "unreasonably withholding approval for certain advertising, marketing, and/or promotional programs or initiatives" (*id.* ¶¶69); and (3) failing to "at all times act in manner consistent with good and sound business practices and the terms and conditions of this agreement" (*id.* ¶¶70-71).

Revlon now moves to dismiss this counterclaim on the ground that Pacific World fails to state a claim based on alleged violations of Sections 4.B and 5.B of the Agreement, and that accordingly, Revlon did not fail to act in a manner consistent with good and sound business practices as stipulated in Section 2.B.

¹ The Agreement defines "Licensed Merchandise" as "Merchandise (as that term is defined in Section 1.C below) that is approved by Licensor in accordance with Section 4 hereof and sold or promoted by Licensee under the Licensed Mark." (NYSCEF 11, Agreement §1.B).

Discussion

On a motion to dismiss pursuant to CPLR 3211 (a) (7), the court must “accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). However, factual allegations “that consist of bare legal conclusions, as well as factual claims which are either inherently incredible or flatly contradicted by documentary evidence” cannot survive a motion to dismiss (*Summit Solomon & Feldesman v Lacher*, 212 AD2d 487, 487 [1st Dept 1995] [citation omitted]).

“Construction of an unambiguous contract is a matter of law, and the intention of the parties may be gathered from the four corners of the instrument and should be enforced according to its terms. The court should construe the agreements so as to give full meaning and effect to the material provisions. A reading of the contract should not render any portion meaningless. Further, a contract should be read as a whole, and every part will be interpreted with reference to the whole; and if possible it will be so interpreted as to give effect to its general purpose”

(*Beal Sav. Bank v Sommer*, 8 NY3d 318, 324-325 [2007] [citations omitted]).

Pacific World alleges that “Revlon breached Section 4.B of the Agreement by failing to provide reasonable assistance to Pacific World during the life of the Agreement in connection with the design direction and quality of the Licensed Merchandise, including by failing to provide clarity, guidance, and/or timely assistance with respect to the same” (NYSCEF 12, Answer and Counterclaim ¶¶67). Specifically, Pacific World claims that Revlon failed to timely notify Pacific World of certain changes to the style guide, artwork, and/or models applicable to the Licensed Merchandise (*id.* ¶¶60).

Section 4 of the Agreement governs “Licensed Merchandise and Quality Control.” Specifically, Section 4.B provides, “[s]ubject to Section 4.C. below, Licensor

shall provide reasonable assistance to Licensee concerning, inter alia, the design direction and quality guidelines for the Licensed Merchandise, provided that Licensor's travel expenses for on-site consultation requested by Licensee shall be at the expense of Licensee" (NYSCEF 11, Agreement §4.B). Section 4.C provides, in relevant part, "Licensee must obtain the prior written approval of Licensor for all designs, specification, colors, materials, contract manufacturers and quality standards of all Merchandise and components thereof intended to be sold as Licensed Merchandise, including any labels, instructions, packaging, containers and displays ... intended to be utilized in connection with the Licensed Merchandise" (*id.*, §4.C). Section 4.C then outlines the procedure, including strict deadline requirements, that Pacific World must adhere to in order to obtain Revlon's approval (*id.*, §4.C [i] – [vi]).

Reading these two provisions together, Section 4.C limits Revlon's obligation to provide assistance to Pacific World concerning design direction and quality guidelines in both time and scope. The phrase in Section 4.B, "[s]ubject to Section 4C below," effectively subordinates all of Revlon's obligations under Section 4.B to the limiting provisions of 4.C. Any obligation on Revlon's part to reasonable assistance to Licensee concerning, as required by Section 4.B, is only triggered "with respect to obtaining of such approvals by Licensee" (NYSCEF 11, Agreement §4.C). It is clear that Revlon's limited obligations are only triggered in circumstances where Pacific World sought Revlon's approval regarding design and quality.

Section 4.C sets forth a clear timeline by which Pacific World had to seek approvals by, which ended with the initial line of merchandise in commercial distribution by March 31, 2003. Thus, any obligation Revlon had to provide assistance was

extinguished by March 31, 2003, and not during the life of the Agreement, as Pacific World alleges.

The counterclaim is hereby dismissed to the extent it relies on a purported breach of Section 4.B.

Section 5.B

Pacific World alleges that Revlon breached Section 5.B of the Agreement by “unreasonably withholding approval for certain advertising, marketing, and/or promotional programs or initiatives” (NYSCEF 12, Answer and Counterclaim ¶¶69). Section 5 of the Agreement governs “Public Relations, Advertising and Promotion”. Specifically, Section 5.B states,

“Licensee acknowledges that Licensor shall have complete control over the creative content and themes of all advertising of Licensed Merchandise and that Licensor may, from time to time during the Term, to the extent Licensee desires to use an agency for creation of advertising, designate the advertising agency to be used by Licensee for the creation of all advertising. Without limitation of the foregoing, Licensor shall have the right to approve in advance any and all advertising, marketing, promotion, or public relations programs to be conducted by Licensee, including, without limitation, the materials, themes, talent, spokespersons, media, standards, policies and uses of such materials and programs, for the Licensed Merchandise and all trade materials, business cards, invoices, stationery and other printed matter prepared by or for Licenses for use in connection with the Licensed Merchandise and Licensed Mark. Licensee shall submit to Licensor for its prior approval copies of all of the foregoing. Licensee shall not be responsible for any coop advertising or promotional advertising conducted by third party approved retailers without Licensee's knowledge or consent”

(NYSCEF 11, Agreement §5.B).

Section 5.B of the Agreement is completely unambiguous and the plain language is very clear that “Licensee acknowledges that Licensor shall have complete control over the creative content and themes of all advertising of Licensed Merchandise...” and that “Licensor shall have the right to approve in advance any and all advertising,

marketing, promotion, or public relations programs to be conducted by Licensee..." (*id.*). Thus, even if Revlon's alleged refusal to approve certain advertising, marketing, and/or promotional programs or initiatives was "unreasonable," it had the right to refuse approval under this Section of the Agreement. Pursuant to Section 5.B, the decision whether to approve certain advertising, marketing, and/or promotional programs of initiatives belonged ultimately to Revlon alone. Because Pacific World's allegations of a breach of Section 5.B consist entirely of acts Revlon was authorized to do, those allegations cannot support a claimed breach where the Agreement expressly allowed Revlon to act as alleged.

"[W]hen parties set down their agreement in a clear, complete document, their writing should as a rule be enforced according to its terms. ... We have ... emphasized this rule's special import in ... context[s] ... where commercial certainty is a paramount concern, and where ... the instrument [at issue] was negotiated between sophisticated ... business people ... at arm's length (*Skanska USA Bldg. Inc. v Atl. Yards B2 Owner, LLC*, 31 NY3d 1002, 1006 [2018] [internal quotation marks and citations omitted]).

Further, Pacific World's reliance on the covenant of good faith and fair dealing is unavailing because an implied covenant cannot negative express provisions of the agreement (*Transit Funding Assoc., LLC v Capital One Equip. Fin. Corp.*, 149 AD3d 23, 29 [1st Dept 2017] ["The covenant of good faith and fair dealing cannot negate express provisions of the agreement"]).


The counterclaim is hereby dismissed to the extent it relies on a purported breach of Section 5.B.

Section 2.B

Pacific World also alleges that Revlon breached Section 2.B of the Agreement by breaching the provisions discussed above (*id.*). According to Pacific World, the breaches of Sections 4.B and 5.B violate Revlon’s agreement to “at all times act in manner consistent with good and sound business practices and the terms and conditions of this agreement” (NYSCEF 12, Answer and Counterclaims, ¶¶70-71). Since the Court has already dismissed the Counterclaim to the extent it relies on purported breaches of Sections 4.B and 5.B, finding that Pacific World has failed to state a breach of contract claim, there can be no breach under Section 2.B, as this alleged breach, as plead, requires a breach of Sections 4.B and 5.B.

Accordingly, it is

ORDERED that the plaintiff’s motion to dismiss is granted and the counterclaim is dismissed in its entirety with costs and disbursements to the plaintiff as taxed by the Clerk.


J.S.C.

6/24/2020
DATE

CHECK ONE:

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<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE