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| <b>Bella Intl. Textiles Inc. v Min Oh Park</b>   |
| 2020 NY Slip Op 32091(U)   |
| June 26, 2020  |
| Supreme Court, New York County   |
| Docket Number: 653401/2018   |
| Judge: Melissa A. Crane  |
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: I.A.S. PART 15

-----X  
BELLA INTERNATIONAL TEXTILES INC. and  
LILLY GARMENTS INC.,

Plaintiff,

Index No.: 653401/2018

-against-

Mot. Seq. No. 002

Decision and Order

MIN OH PARK a/k/a JOHN PARK,  
YOUNG MI LEE AND J&I GLOBAL INC.,

Defendants.

-----X  
MIN OH PARK a/k/a JOHN PARK,

Counterclaimant,

-against-

BELLA INTERNATIONAL TEXTILES INC. and  
LILLY GARMENTS INC.,

Counterdefendants.

-----X  
MIN OH PARK a/k/a JOHN PARK,

Third-Party Plaintiff,

-against-

JOSEPH PANARELLA,

Third-Party Defendant.

-----X  
**MELISSA A. CRANE, J.S.C.:**

Plaintiffs Bella International Textiles Inc., and Lilly Garments Inc., (“Bella” and “Lilly” respectively, and collectively as “plaintiffs”) seek summary judgment against defendants John Park, Young Mi Lee, and J&I Global Inc., (“Park”, “Lee,” “J&I,” respectively, and collectively as

“defendants”) for unpaid loans in the amount of \$312,794.00, plus interest, costs and disbursements, and attorneys' fees. Defendant Park brings counterclaims against plaintiffs and third-party defendant Joseph Panarella (“Panarella”) to recover under a theory of, *inter alia*, breach of contract, unjust enrichment, and fraud. Plaintiffs and third-party defendant move, pursuant to CPLR 3211 to dismiss defendant Park's counterclaims; as well as the claims of third-party plaintiff.

### Background

Bella produces fabrics (Panarella Aff, ¶ 1). J&I manufactures sportswear (Panarella Aff, ¶ 3). In early 2016, Panarella, the president of Bella ran into Park, the president of J&I, on the street. Park told Panarella that he was struggling financially (Am Compl ¶ 9). Panarella felt sorry for Park and offered him a consulting position at Bella with the expectation that Park's expertise and contacts in Asia would expand Panarella's garment business (Am Compl ¶ 10).

Between March 17, 2016 and July 14, 2017, Bella paid defendant J&I a total of \$82,419.00 (including the initial \$10,000.00) in consulting fees and expenses, in exchange for Park's work that involved developing a garment manufacturing business for Bella (Am Compl ¶ 11). Park managed all day-to-day operations, developed contacts at factories, communicated with non-English speaking overseas vendors, and supervised production (Am Compl ¶ 14). During this time, Bella also provided Park with office space, personnel, and computer access so Park could work (Am Compl ¶ 11). On several occasions, Park and Panarella spoke about a potential future business partnership (Am Compl ¶ 15). In September of 2016, Panarella formed Lilly with the intention that it would eventually handle the finished garments business that Park was developing for Bella (Am Compl ¶ 12). Bella would remain in the textile

business after Lilly took over the finished garment business (*id*). In the meantime, Park continued to work as a consultant for Bella, focusing on growing its garment business (*id*).

In August of 2017, Panarella transitioned his garment business from Bella to Lilly. Park became an employee of Lilly (Am Compl ¶ 14). Park's duties at Lilly remained largely the same and he had an initial salary of \$7066.00 per month (*id*). By this time, Park was making frequent requests for Panarella to commit to partnership terms (Am Compl ¶ 15). Panarella made excuses to Park, rather than communicating his uncertainty, because he thought Park might be able to continue growing Lilly's business (Panarella Aff, ¶ 40). Around that time, Park began to ask Panarella for financial assistance with J&I. Beginning in August of 2017, both Lilly and Bella extended loans to J&I so that the company could pay its vendors (Am Compl ¶ 16). In September of 2017, Lilly made a loan to J&I in the amount of \$19,855.65, that J&I repaid in November of 2017 (Am Compl ¶ 17). In addition, Bella made five loans to J&I between August of 2017 and January of 2018, in the total amount of \$264,323.05. J&I repaid \$75,000 for the two loans it had received in August and September of 2017, but did not pay the remainder back (*id*). At that point, Panarella began to ask Park for information about his receivables, but Park never provided any documentation (*Id*).

In late April of 2018, Park told Panarella that J&I needed \$123,470.95 to pay an overseas vendor (Am Compl ¶ 18). That same vendor was also manufacturing garments for Lilly (*id*). Park, who was in direct contact with the vendor, told Panarella that Lilly's orders might not be fulfilled if J&I's invoice was not paid (*id*). Panarella did not want to jeopardize Lilly's orders, so he agreed to pay for J&I's invoice (*id*). Park promised Panarella that J&I would use its receivables, due in June of 2018, to repay the \$123,470.94 invoice, in addition to

all of the remaining amounts owed to Bella. On April 25, 2018, Lilly paid the \$123,470.95 directly to the vendor (Panarella Aff, ¶ 33).

While Park continued to try to convince Panarella to agree to partnership terms, Panarella was becoming increasingly anxious about the money J&I owed to Bella and Lilly (Am Compl ¶¶ 19-20). Following the partial repayment in March of 2018, Bella's accountant continued to demand that Park provide documentation of the J&I receivables to pay the balance of the loans (Panarella Aff, ¶ 20). Park's responses to these demands were evasive, incomplete, and he never provided any information to Panarella other than to promise that J&I would repay Bella and Lilly from certain receivables expected in June of 2018 (*id.*).

In or about early June 2018, Panarella asked for assurance that J&I would repay its debts as promised, and, therefore, requested that Park sign promissory notes memorializing J&I's debts to Bella and Lilly, as well as security agreements with respect to J&I's receivables. Park refused to sign the documents (Am Compl ¶¶ 20-21). Not long thereafter, Park terminated his employment with Lilly (Am Compl ¶ 22). Contrary to his assurances to Panarella, Park did not cause J&I to use its June receivables to pay its debts to Lilly and Bella (*id.*). The amount due and owing to Bella and Lilly at this time is \$312,794.00 (\$189,323.05 plus \$123,470.94). (Panarella Aff, ¶ 35).

## Discussion

### *Motion for Summary Judgement*

A party seeking summary judgment must make a prima facie case showing that it is entitled to judgment as a matter of law by proffering sufficient evidence to demonstrate the absence of any material issue of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). If the movant fails to make this showing, the motion must be denied (*id.*). Once the movant meets its burden, then the

opposing party must produce evidentiary proof in admissible form sufficient to raise a triable issue of material fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

In deciding the motion, the court must draw all reasonable inferences in favor of the nonmoving party and deny summary judgment if there is any doubt as to the existence of a material issue of fact (*Branham v Loews Orpheum Cinemas, Inc.*, 8 NY3d 931, 932 [2007]; *Dauman Displays v Masturzo*, 168 AD2d 204, 205 [1st Dept 1990], *lv dismissed* 77 NY2d 939 [1991]). “Where different conclusions can reasonably be drawn from the evidence, the motion should be denied” (*Sommer v Federal Signal Corp.*, 79 NY2d 540, 555 [1992]).

There is no dispute regarding the amounts due. Both parties agree that the unpaid amount is \$312,794.00 (Panarella Aff, ¶ 35). The issue, then, is about the timing of repayment. There was no written or oral agreement regarding the time for repayment. Plaintiffs argue that the loans are payable immediately upon demand. Defendants argue that the loans are repayable within five years, and, because there are disagreements regarding the timeframe for repayment, triable issues of fact exist.

However, to survive summary judgment, a triable issue of fact must be genuine and material. A fictional disagreement does not count as a triable issue of fact. That defendants repaid Lilly's first loan, and Bella's first two loans, within a year of receiving the loan, suggests that defendants would repay the loans as soon as possible. Further, communication between Panarella and Park demonstrate consent. In an April 2018 email, Park wrote: “we will have to collect all receivables for current Summer 2018 shipments thru J&I. And J&I will pay back to BELLA/LILLY no later than end of June.” Park first brought up the idea of a five-year grace period during this lawsuit, but this contradicts his earlier actions and assurances. Therefore, even after drawing all reasonable inferences in favor of the defendants, there is no valid evidence that

the parties agreed to a five-year grace period. Thus, in the absence of a specified repayment time, “the loan is payable immediately upon demand” (*ABKCO Music & Records, Inc. v Montague*, 90 AD3d 402, 403 [2011]; *See also, Stein v Anderson*, 123 AD3d 1322, 1323 [2014]).

Defendants also argue that plaintiffs fail to meet the requirements of CPLR 3212(b) because plaintiffs fail to attach a copy of pleadings to the summary judgment motion. This argument is outdated. CPLR 2214(c) provides that “in an e-filed action, a party that files papers in connection with a motion need not include copies of papers that were filed previously electronically with the court, but may make reference to them, giving the docket numbers on the e-filing system.” Here, plaintiffs' Memorandum of Law makes reference to pleadings and refers to the e-docket numbers on the e-filing system. Therefore, plaintiffs' motion for summary judgment meets CPLR requirements.

*Motion to dismiss*

As defendants did not oppose plaintiffs' motion to dismiss the counterclaims, this court assumes that defendants do not dispute the motion.

Accordingly, it is

**ORDERED** that the court grants plaintiffs' Motion for Summary Judgment against defendants in the amount of \$312,794.00; and it is further

**ORDERED** that the Clerk is directed to enter judgment in favor of plaintiff in the sum of \$312,794.00, with interest at the statutory rate of 9% per annum from July 6, 2018, until entry of judgment, together with costs and disbursements, as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

**ORDERED** that the court dismisses defendant Park's counterclaims; and it is further

**ORDERED** that the court dismisses the claims of the third-party plaintiff.

The clerk is directed to enter judgment accordingly.

Dated: June 26, 2020

ENTER:

  
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HON. MELISSA A. CRANE, J.S.C.