

Reynaers Inc. v A.G.M. Deco Inc.

2022 NY Slip Op 31029(U)

March 30, 2022

Supreme Court, Kings County

Docket Number: Index No. 510147/19

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8

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REYNAERS INC.,

Plaintiff, Decision and order

- against - Index No. 510147/19

A.G.M. DECO INC.,

Defendant,

-----X
A.G.M. DECO INC.,

Counterclaim Plaintiff,

- against- March 30, 2022

REYNAERS INC.,

Counterclaim Defendant,

-----X
PRESENT: HON. LEON RUCHELSMAN

The plaintiff and counterclaim defendant Raynaers Inc., has moved pursuant to CPLR §3211 seeking to dismiss the seventh counterclaim filed by the defendant A.G.M. The defendant and counterclaim plaintiff has opposed the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

As previously recorded, from 2013 to 2019 the defendant A.G.M. agreed to buy window and door products from Reynaers at agreed upon prices. During 2017 A.G.M. began to fall behind in payments due and by the time a lawsuit was commenced they owed over two million dollars. The complaint asserts causes of action for breach of contract, goods sold and delivered and account stated. A.G.M. answered and asserted various counterclaims. All of the counterclaims were dismissed except for the seventh.

counterclaim which alleged the invoices submitted were for prices that were higher than agreed upon by the parties. The court held that counterclaim, although vague, was appropriately the subject of discovery and ordered the parties to engage in such discovery. The parties have engaged in such discovery and now Reynaers moves seeking to dismiss the counterclaim on the grounds it has no merit.

Conclusions of Law

It is well settled that upon a motion to dismiss the court must determine, accepting the allegations of the counterclaims as true, whether the party can succeed upon any reasonable view of those facts (Strujan v. Kaufman & Kahn, LLP, 168 AD3d 1114, 93 NYS3d 334 [2d Dept., 2019]). Further, all the allegations contained within the counterclaims are deemed true and all reasonable inferences may be drawn in favor of the party that has alleged such counterclaims (Weiss v. Lowenberg, 95 AD3d 405, 944 NYS2d 27 [1st Dept., 2012]). Whether the counterclaims will later survive a motion for summary judgment, or whether the party will ultimately be able to prove its claims, of course, plays no part in the determination of a pre-discovery CPLR §3211 motion to dismiss (see, Moskowitz v. Masliansky, 198 AD3d 637, 155 NYS3d 414 [2021]).

Paragraphs 110 and 111 of the answer with counterclaims states that "without just cause, Reynaers submitted invoices to

AGM at rates higher than the rates agreed upon, overcharging AGM on windows and doors delivered for several projects including, but not limited to, Kranse, 22-12 Jackson, 10 Montieth and Ditmas Park...For the foregoing reasons, AGM is entitled to damages in an amount to be determined at trial, but not less than \$330,000.00" (id). Louise Murphy, the chief financial officer of Reynaers submitted an affidavit wherein she explained that by February 18, 2019, prior to the initiation of the lawsuit Reynaers issued \$325,368 to AGM as credits. Thus, the amount sought in the complaint for unpaid bills does not therefore include these credits. Consequently, there are no billing issues and no viable claims the amount Reynaers charged was somehow improper and the counterclaim should be dismissed.

A.G.M. does not substantively oppose the motion but argues the motion filed is a successive motion which is improper and the court should deny the request on that basis. It is well settled that "successive motions for summary judgment should not be made based upon facts or arguments which could have been submitted on the original motion for summary judgment" (see, P.J.37 Food Corp., v. George Doulavaris & Son Inc., 189 AD3d 858, 137 NYS2d 437 [2d Dept., 2020]). Thus, where the party sufficiently demonstrates that evidence was not available to it when the first summary judgement motion filed then a successive motion is proper (Hillrich Holding Corp., v. BMSL Management LLC, 175 AD3d 474,


103 NYS3d 846 [2d Dept., 2019]).

In this case Reynaers has successfully demonstrated that the evidence it has presented was not available when the prior motion was filed since the vague nature of the counterclaim prevented Reynaers from determining precisely the basis for the counterclaim. Upon submission by A.G.M. of the details of its counterclaim Reynaers was then able to present irrefutable proof that such counterclaim has no basis. Therefore, based upon the foregoing, the motion seeking to dismiss the seventh counterclaim is granted.

So ordered.

ENTER:

DATED: March 30, 2022
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC