Capstone Capital Group, LLC v East Coast Cos., Inc.
2022 NY Slip Op 31717(U)
May 24, 2022
Supreme Court, New York County
Docket Number: Index No. 651260/2020
Judge: Louis L. Nock
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LOUIS L. NOCK** **PART** **38M**

Justice

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CAPSTONE CAPITAL GROUP, LLC, CAPSTONE CREDIT, LLC,

Plaintiff,

- v -

EAST COAST COMPANIES, INC., and ROBERT VAN TASSELL,

Defendants.

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INDEX NO. 651260/2020

MOTION DATE 11/12/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35

were read on this motion for SUMMARY JUDGMENT.

LOUIS L. NOCK, J.

Upon the foregoing documents, it is hereby ordered that plaintiffs' motion for summary judgment is denied, based on the following memorandum decision.

Background

In this action for breach of contract, plaintiffs Capstone Capital Group, LLC and Capstone Credit, LLC ("plaintiffs") allege three causes of action: replevin pursuant to CPLR Article 71 (first cause of action), breach of contract against defendant East Coast Companies, Inc. ("East Coast") (second cause of action), and breach of contract against defendant Robert Van Tassell ("Van Tassell") (third cause of action). Presently before the court is plaintiffs' motion for summary judgment on their second and third causes of action for breach of contract.

On September 21, 2018, the parties entered into several related agreements that collectively provide the terms of their contract. Pursuant to a Master Purchase & Sale Agreement ("MPSA"), East Coast sold Capstone Credit, LLC a minimum of $5,000,000 of East Coast's

accounts receivable in exchange for an advance of 75% of the accounts purchased (NYSCEF Doc. No. 14, § 2). Similarly, East Coast and Capstone Capital Group, LLC entered into a Purchase Order Financing Agreement ("PO Agreement"), under which Capstone Capital Group, LLC agreed to provide financing to East Coast in support of its business, either through cash advances or letters of credit, upon East Coast's request (NYSCEF Doc. No. 15, Art. 2). In consideration of these agreements, East Coast granted plaintiffs a security interest in all of its "personal property and fixtures" (NYSCEF Doc. No. 16, § 2), Van Tassell agreed to personally guaranty "the due and punctual payment of all monies owed by [East Coast] to [plaintiffs] pursuant to the PO Financing Agreement and the MPSA" upon East Coast's default (NYSCEF Doc. No. 17, ¶ 1), and separately agreed to grant plaintiffs a security interest in all of East Coast's stock, of which he is the 100% owner (NYSCEF Doc. No. 18).

Plaintiffs, in bringing this action, allege that defendants are in default of the parties' various agreements. David Culotta, plaintiffs' Corporate Finance Manager, attests that over the course of the parties' relationship, plaintiffs' advanced $2,900,000 to East Coast pursuant to the PO Agreement (NYSCEF Doc. No. 13, ¶ 25). Further, he alleges that plaintiffs sent East Coast monthly statements accounting for amounts owed under the agreements (*id.*, ¶ 27). Plaintiffs claim that while East Coast "made various payments to plaintiffs based upon its revenues from construction projects that were facilitated by the advances that East Coast received, East Coast did not timely repay the advances as required under the terms of the PO Agreement (*id.*, ¶ 26). Further, East Coast allegedly submitted false financing requests (*id.*, ¶¶ 28-29), misdirecting payments that were owed to plaintiffs from factored invoices under the MPSA (*id.*, ¶¶ 30-34), failing to turn over invoices it was obligated to sell to plaintiffs under the MPSA (*id.*, ¶ 35), stopped assigning its accounts receivable to plaintiffs (*id.*, ¶ 36), borrowing money from various

other lenders and allowing those lenders to enter various liens and judgments against it in violation of the Security Agreement (*id.*, ¶¶ 37-38), and, along with Van Tassell, disposed of various assets pledged as collateral under the Security Agreement and Personal Guaranty (*id.*, ¶¶ 40-41). As supporting proof, plaintiffs also submit various emails between Culotta and East Coast regarding some but not all these alleged defaults (NYSCEF Doc. Nos. 21-24), and one statement sent to East Coast dated January 8, 2020 (NYSCEF Doc. No. 19). The statement shows an unspecified line item in the amount of $995,230.78, and another for "December 2019 Charges" in the amount of $31,460.19, showing without any significant detail that as of January 8, 2020 East Coast had an outstanding balance of $1,026,690.97 (*id.*).

Defendants assert in opposition that plaintiffs have never provided a detailed accounting of what amounts were due to plaintiffs under which agreement, what fees and charges were assessed on those amounts, and how plaintiffs applied payments they received from other parties after East Coast factored its accounts receivable to plaintiffs (NYSCEF Doc. No. 32, ¶¶ 2, 6). Indeed, East Coast asked for an accounting on several occasions, including after plaintiffs sent East Coast a default notice dated November 7, 2019 (NYSCEF Doc. No. 33). Further, Van Tassell asserts that plaintiffs repeatedly promised both Van Tassell and East Coast's clients that plaintiffs would provide sufficient financing for East Coast to complete work on its various projects (NYSCEF Doc. No. 34), but instead provided minimal financing, causing East Coast to walk away from projects with three different companies (NYSCEF Doc. No. 32, ¶ 3). According to Van Tassell, one company (nonparty Redcom Design and Construction LLC) "stated that it was intimidated and threatened by [plaintiffs]" (*id.*). Moreover, plaintiffs rejected numerous receivables on what East Coast asserts is an improper basis, constraining East Coast's cash flow

(*id.*, ¶ 4). Van Tassell also claims that any misdirected payments were in fact previously authorized by Mr. Culotta (*id.*, ¶ 8).

Plaintiffs commenced this action by filing the summons and complaint on February 26, 2020 (NYSCEF Doc. Nos. 1-2). Plaintiffs now seek $1,092,840 in damages on their claims for breach of contract on the instant motion, as well as other relief relating to their claim for replevin which is not before the Court on this motion.[1] The motion is opposed.

Standard of Review

Summary judgment is appropriate where there are no disputed material facts (*Andre v Pomeroy*, 35 NY2d 361, 364 [1974]). The moving party must tender sufficient evidentiary proof to warrant judgment as a matter of law (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). The opposing party must proffer its own evidence to show disputed material facts requiring a trial (*id.*). However, the reviewing court should accept the opposing party's evidence as true (*Hotopp Assoc. v Victoria's Secret Stores*, 256 AD2d 285, 286-287 [1st Dept 1998]), and give the opposing party the benefit of all reasonable inferences (*Negri v Stop & Shop*, 65 NY2d 625, 626 [1985]).

Discussion

A breach of contract requires allegations of "the existence of a contract, the plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages" (*Harris v. Seward Park Housing Corp.*, 79 AD3d 425 [1st Dept 2010]). Here, plaintiffs have not established a prima facie case for breach of contract. The record before the Court establishes the agreements of the parties and little else. The course of the parties' dealings is contested in several respects, but more fatal to plaintiffs' motion is the absence of sufficient evidence regarding

[1] To the extent further relief is requested in plaintiffs' memorandum of law, such relief is not set forth in the notice of motion.

defendants' alleged breaches of the agreements and plaintiffs' resulting damages. Plaintiffs rely almost solely on Culotta's affidavit and submit no documentary proof regarding what advances were not repaid, what invoices were misdirected, what payments were made by defendants, and other documentation supporting the various breaches set forth in plaintiffs' motion papers. The emails attached as exhibits to Culotta's affidavit provide scattered references to certain accounts and other issues on an ad hoc basis, but do not provide an accounting sufficient to support the amount of damages plaintiff claims. Culotta's affidavit describes a series of invoices or statements but does not attach any of them for the Court's review save for one, which provides little if any detail as to the calculation of plaintiffs' damages. "Evidence of the contents of business records is admissible only where the records themselves are introduced. Without their introduction, a witness's testimony as to the contents of the records is inadmissible hearsay" (*Bank of New York Mellon v Gordon*, 171 AD3d 197, 205-06 [2d Dept 2019] [citations omitted]).

Further, a Court may deny a motion for summary judgment where it appears "from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated" (CPLR 3212[f]). In order to succeed on this ground, it is the opposing party's burden to demonstrate that "facts essential to justify opposition to the motion may lie within [defendant's] exclusive knowledge or control" (*Barreto v City of New York*, 194 AD3d 563, 564 [1st Dept 2021]). The "mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is an insufficient basis for denying the motion" (*Morales v Amar*, 145 AD3d 1000, 1003 [2d Dept 2016]).

Here, no discovery has taken place in this action. "[A] motion for summary judgment should be denied as premature where the movant has yet to be deposed" (*Barreto*, 194 AD3d at 564). Moreover, plaintiffs have never provided defendants with a detailed accounting of the parties' transaction history despite repeated requests (*Voluto Ventures, LLC v Jenkens & Gilchrist Parker Chapin LLP*, 44 AD3d 557 [1st Dept 2007]), and based on the facts set forth in Van Tassell's affidavit, the method by which payments were applied to East Coast's account and by which East Coast's present outstanding balance was determined are matters within plaintiffs' exclusive knowledge (*Lyons v New York City Economic Dev. Corp.*, 182 AD3d 499, 499 [1st Dept 2020]). Without such knowledge, defendants cannot successfully mount a defense to plaintiff's allegations, nor can the Court evaluate whether defendants are actually in breach of the agreements.

Accordingly, it is hereby

ORDERED that plaintiffs' motion for summary judgment is denied; and it is further

ORDERED that the parties shall appear for a preliminary conference before the Court at 111 Centre Street, Room 1166, on June 29, 2022 at 10:00 AM.

This constitutes the Decision and Order of the Court.

ENTER:

Louis L. Nock

5/24/2022
DATE

LOUIS L. NOCK, J.S.C.

CHECK ONE:		**CASE DISPOSED**			X	**NON-FINAL DISPOSITION**	
	X	**GRANTED**		**DENIED**		**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**