

**Globe Cotyarn PVT., LTD. v Royal Heritage Home,
LLC**

2022 NY Slip Op 31724(U)

May 26, 2022

Supreme Court, New York County

Docket Number: Index No. 653698/2020

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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GLOBE COTYARN PVT., LTD. INDEX NO. 653698/2020
Plaintiff, MOTION DATE 11/18/2021, 01/06/2022
- v - MOTION SEQ. NO. 003 004
ROYAL HERITAGE HOME, LLC,
Defendant. DECISION + ORDER ON MOTION

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HON. ANDREW BORROK:
The following e-filed documents, listed by NYSCEF document number (Motion 003) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 44, 45, 46, 48, 49, 50
were read on this motion to/for DISMISSAL
The following e-filed documents, listed by NYSCEF document number (Motion 004) 52, 53, 54, 55, 57, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 73, 74, 75, 76, 77, 78, 79
were read on this motion to/for AMEND CAPTION/PLEADINGS

Upon the foregoing documents, the motion seeking to dismiss the complaint pursuant to BCL 1312 (Mtn. Seq. No. 003) is granted. On the record before the Court, Globe Cotyarn PVT, LTD (the Seller) is doing business in New York within the meaning of BCL 1312 by meeting with at least 10 customers and selling over \$11 million to them over many years (Parkwood Furniture Co. v OK Furniture Co., 429 NYS2d 240, 241 [2d Dept 1980]) and has failed to register to do business here in New York.

BCL 1312 provides that registration of a foreign company doing business in New York is necessary for the foreign company to maintain a lawsuit in New York:

A foreign corporation doing business in this state without authority shall not maintain any action or special proceeding in this state unless and until such corporation has been authorized to do business in this state and it has paid to the state all fees and taxes

imposed under the tax law or any related statute, as defined in section eighteen hundred of such law, as well as penalties and interest charges related thereto, accrued against the corporation

(BCL 1312[a]).

Reference is made to the prior Decision and Order (the **Prior Decision**; NYSCEF Doc. No. 17) dated April 20, 2021, pursuant to which this Court denied Royal Heritage Home, LLC (the **Buyer**)'s motion to dismiss without prejudice because the Buyer had failed to demonstrate sufficient evidence that the Seller was doing business in New York such that registration was required (*i.e.*, the Court held that merely alleging two prior lawsuits brought by the Seller where the Seller had alleged that it was owed approximately \$2 million from two New York customers was insufficient).

As discussed above, the record before the Court is now very different. Discovery has since confirmed that the Seller has been doing business in New York from 2015 and has sold more than \$11 million worth of its merchandise here (NYSCEF 43; NYSCEF Doc. No. 34 at Interrogatory No. 17) where it has met with multiple New York customers (NYSCEF Doc. No. 35, Interrogatory No. 18; NYSCEF Doc. No. 50, 97:25-98:4) and is seeking to hire additional New York salespersons (NYSCEF Doc. No. 50, 100:16-24). It is undisputed that the Seller has failed to register to do business in New York State in accordance with BCL 1312 (NYSCEF Doc. No. 36). Therefore, dismissal is appropriate, the Buyer's motion is granted and the complaint is dismissed without prejudice.

The motion seeking leave to file an amended counterclaim (Mtn. Seq. No. 004) must also be granted because the amended counterclaim (NYSCEF Doc. No. 54) is not palpably improper and

does not result in any prejudice to the Seller (*Vue Mgt., Inc. v Photo Assoc.*, 81 AD3d 569, 569 [1st Dept 2011]). The counterclaims have always been premised on the Seller's alleged misrepresentations of the thread count and fabric composition of the bedsheets it sold to the Buyer (*Greenburgh Eleven Union Free Sch. Dist. v Nat'l Union Fire Ins. Co.*, 298 AD2d 180, 181 [1st Dept 2002]). The letter (the **Texas Complaint Letter**; NYSCEF Doc. No. 63), dated April 26, 2021, from the Texas Department of Agriculture to the Seller and the Buyer and the Vartest Laboratories' tests (NYSCEF Doc. No. 77), dated January 19, 2022, provide additional insight into the issues underlying the Buyer's original counterclaims (NYSCEF Doc. No. 19). The Texas Complaint Letter which the Seller received was discussed at the deposition of the Buyer's president, Michael Kaplan (NYSCEF Doc. No. 78; 81:5-8). Thus, the amended counterclaim filed months after the original counterclaim results in no prejudice.

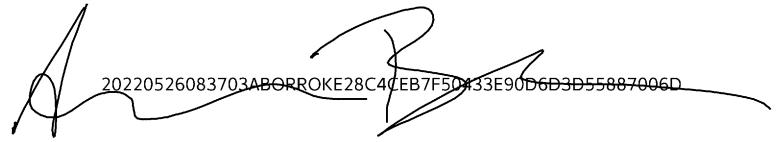
The court has considered the parties' remaining arguments and finds them unavailing.

Accordingly, it is

ORDERED that Royal House Home, LLC's motion to dismiss pursuant to BCL 1312 is granted and the complaint is dismissed without prejudice; and it is further

ORDERED that Royal House Home, LLC's motion to amend the counterclaim pursuant to CPLR 3025(b) is granted; and it is further

ORDERED that the parties shall appear for a status conference on **June 24, 2022 at 12:00 PM.**



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5/26/2022

DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED DENIED

GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE