

Parlux Fragrances, LLC v S. Carter Enters., LLC

2022 NY Slip Op 32125(U)

July 6, 2022

Supreme Court, New York County

Docket Number: Index No. 650403/2016

Judge: Andrew Borrok

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

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PARLUX FRAGRANCES, LLC, PERFUMANIA HOLDINGS, INC.,	INDEX NO.	<u>650403/2016</u>
Plaintiff,	MOTION DATE	_____
- v -	MOTION SEQ. NO.	<u>041 042</u>
S. CARTER ENTERPRISES, LLC, SHAWN CARTER,	DECISION + ORDER ON	
Defendant.	MOTION	

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 041) 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074

were read on this motion to/for SET ASIDE VERDICT.

The following e-filed documents, listed by NYSCEF document number (Motion 042) 1952, 1953, 1956 were read on this motion to/for DISMISS.

A jury trial was held in this matter from October 18, 2021 – November 10, 2021, where the jury found that the Plaintiffs failed to prove their case and that the Defendants failed to prove theirs.

The Plaintiffs motion (Mtn. Seq. No. 41) for judgment notwithstanding the verdict is denied, and the Defendants’ motion (Mtn. Seq. No. 42) to the extent that it seeks entry of judgment with respect to the unpaid guaranteed minimum royalties due under the License Agreement (hereinafter defined) is granted.

Reference is made to this Court's Decision and Order, dated November 16, 2020 (the **Prior Decision**; NYSCEF Doc. No. 1395). In the Prior Decision, this Court held that the Plaintiffs breached their obligations to pay the guaranteed minimum royalties pursuant to the terms of a certain License Agreement (the **License Agreement**; NYSCEF Doc. No. 1184), dated April 18, 2012, by and between SCE, for the services of Mr. Carter, as licensor, Mr. Carter personally as to certain provisions of the License Agreement, and Artistic Brands, as licensee, and only did not enter judgment at that time because of the potential substantial offsets that the Plaintiffs claimed based on the alleged Defendant defaults. Previously, the Defendants argued, among other things, that they did not breach Article 11E or Article 7C of the License Agreement or the covenant of good faith and fair dealing because the Plaintiffs failed to follow the technical requirements of the notice provision of the License Agreement and did not otherwise present them with a Product Development Plan. In the Prior Decision, this Court held that whether the Defendants received adequate notice or what a Product Development Plan was were questions to be answered by the jury.

CPLR 4401 provides in part that “[a]ny party may move for judgment with respect to a cause of action or issue upon the ground that the moving party is entitled to judgment as a matter of law, after the close of the evidence presented by an opposing party with respect to such cause of action or issue, or at any time on the basis of admissions.” “To set aside a jury verdict as unsupported by sufficient evidence, the movant must demonstrate that there is simply no valid line of reasoning and permissible inferences which could possibly lead rational people to the conclusion reached by the jury on the basis of the evidence presented at trial” (*Cruz v Bronx Lebanon Hosp. Ctr.*, 129 AD3d 631, 632-33 [1st Dept 2015] [internal quotation marks omitted]).

“The standard for setting aside a verdict as against the weight of the evidence is whether the evidence so preponderated in favor of the movant that the verdict could not have been reached on any fair interpretation of the evidence” (*id.*, at 633). “A verdict should be set aside as against the weight of the evidence only where it seems palpably wrong and it can be plainly seen that the preponderance is so great that the jury could not have reached their conclusion upon any fair interpretation of the evidence” (*Revill v Bos. Post Rd. Dev. Corp.*, 293 AD2d 138, 142 [1st Dept 2002] [internal quotation marks omitted]). “It is for the jury to make determinations as to the credibility of the witnesses, and great deference in this regard is accorded to the jury, which had the opportunity to see and hear the witnesses” (*KBL, LLP v Cmty. Counseling & Mediation Servs.*, 123 AD3d 488, 489 [1st Dept 2014] [internal quotation marks omitted]).

With respect to the Plaintiffs’ case (Mtn. Seq. No. 41), there were plenty of reasons for the jury to come to the conclusions that they did – including simply, that the Plaintiffs’ witnesses were not credible. As PJI 1:8 instructs, “[i]n deciding what evidence you will accept you must make your own evaluation of the testimony given by each of the witnesses, and decide how much weight, if any, you choose to give to that testimony.” It was undisputed at trial that the parties dealt with each other informally instead of adhering to the strict requirements of the License Agreement and that the Plaintiffs did not serve notice as specifically provided for under the License Agreement. Instead, the Plaintiffs sent a “Run of Show” (PX-400) which indicated that it was subject to change, that it was not finalized, and they asked for feedback. The jury found that this was insufficient notice. This finding was not irrational. Among other things, there was nothing in any surrounding correspondence or the correspondence itself to put the Defendants on notice that this was the Plaintiffs invoking their right to **require** the Defendants’ appearance

pursuant to Article 11E. Mr. Carter only agreed to do the appearances identified in Article 11E of the License Agreement. Any other appearances would have been an accommodation and without obligation. Stated differently, putting aside that notice was not sent as technically required by the License Agreement, the correspondence never identified that the **tentative** appearances identified on the Run of Show were to be the specific appearances that Mr. Carter agreed to do in Article 11E. Mr. Carter did not agree in the License Agreement to do “freebees”. Having failed in any way to indicate to Mr. Carter that these appearances were the Article 11E appearances in any of the correspondence, it is not an impermissible inference or otherwise illogical that the jury held that the Plaintiffs failed to prove that Mr. Carter received adequate notice to trigger his Article 11E obligations. With respect to the alleged Product Development Plan, the evidence adduced at trial were that a number of ideas were sent to the Defendants for their consideration. It is not surprising or irrational that the jury concluded that what was sent was insufficient to constitute a Product Development Plan. Lastly, it is also not surprising or irrational under the circumstances as presented at trial that the jury concluded that the Defendants did not breach the covenant of good faith and fair dealing. Mr. Carter himself was a terrific witness. He was credible, direct, and respectful. Desiree Perez, the CEO of Roc Nation, was also an excellent witness. The Plaintiffs’ attempts to discredit her came across as mean spirited and only served to emphasize her many accomplishments. The evidence at trial indicated that Mr. Carter did provide feedback through his team and that Ms. Perez, the CEO of his company, was in communication with the Plaintiffs’. Given the stage of development of certain ideas (*e.g.*, the story board), it was understandable why, when Mr. Carter saw those ideas more fully developed, he gave different feedback. Indeed, it was entirely rational for the jury to

conclude that the Plaintiffs failed to prove that the Defendants breached the covenant of good faith and fair dealing.

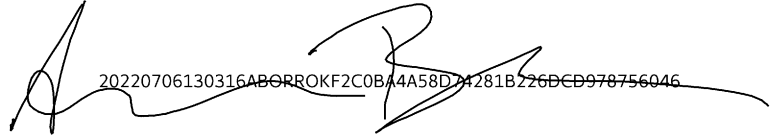
With respect to the Defendants case (Mtn. Seq. No. 42), however, this is an entirely different matter. The License Agreement was entered in evidence at trial and specifically provided the specific amounts of the guaranteed minimum royalties to be paid to the Defendants. There is no rational basis that the jury could have concluded that the Defendants did not prove that the Defendants were entitled to the guaranteed minimum royalties provided for under the License Agreement. Even if this were not the case, as discussed above, in the Prior Decision, this Court held that the Plaintiffs breached their obligation to pay the guaranteed minimum royalties under the License Agreement and the only reason that judgment was not entered at that time was because of the potential offset due to the Plaintiffs. This, the Court should have entered (*see Parlux Fragrances, LLC v S. Carter Enterprises, LLC*, 204 AD3d 72 [1st Dept 2022]). Thus, the Defendants are directed to enter judgment on notice.

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

It is hereby ORDERED that the Plaintiffs' motion (Mtn. Seq. No. 41) for judgment notwithstanding the verdict is denied; and it is further

ORDERED that the Defendants' motion (Mtn. Seq. No. 42) for judgment notwithstanding the verdict is granted to the extent that the Defendants are entitled to the entry of judgment as to the unpaid guaranteed minimum royalties under the License Agreement; and it is further

ORDERED that the Defendants are directed to enter judgment on notice.


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7/6/2022
DATE

ANDREW BORROK, JSC

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