

Apparel USA Inc. v JLC Indus. LLC
2022 NY Slip Op 33498(U)
September 30, 2022
Supreme Court, New York County
Docket Number: Index No. 650400/2022
Judge: Lucy Billings
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41

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APPAREL USA INC. and MADRAS TRADING CORPORATION,

Plaintiffs

Index No. 650400/2022

- against -

DECISION AND ORDER

JLC INDUSTRY LLC, HERTLING, LLC, and JUSTIN CHRISTENSEN,

Defendants
-----x

LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Plaintiffs move for a default judgment against all three defendants. Plaintiffs do not specify the claims on which they seek a default judgment, but refer to their verified complaint. It claims: (1) breach of a promissory note against JLC Industry LLC; (2) promissory estoppel against JLC Industry and Hertling, LLC, for payment of debts these defendants owed to suppliers; (3) goods sold and delivered against Hertling; (4) breach of contracts against Hertling; (5) an account stated against Hertling; (6) unjust enrichment against JLC Industry and Hertling; (7) conversion against Hertling; and (8) aiding and abetting conversion against JLC Industry and Christensen. Plaintiffs also seek \$12,070.42 in attorneys' fees pursuant to the promissory note by JLC Industry.

II. PLAINTIFFS' MOTION FOR A DEFAULT JUDGMENT

Plaintiffs rely on the promissory note between plaintiff Apparel USA Inc. and JLC Industry, the verified complaint, an affidavit by Sanjay Israni, both plaintiffs' Vice-President, and email correspondence between Israni and Hertling. This prima facie evidence supports plaintiffs' first claim for breach of a contract against JLC Industry, second claim for promissory estoppel against JLC Industry and Hertling, and third claim for goods sold and delivered against Hertling. C.P.L.R. § 3215(f). The court denies the remainder of plaintiffs' motion as follows.

The court denies plaintiffs' motion for a default judgment on their fourth claim against Hertling for breach of contracts agreeing to accept and pay for goods sold and delivered, because the claim arises from the same facts, seeks identical damages, and thus duplicates plaintiffs' third claim for goods sold and delivered. Plaintiffs fail to support their fifth claim for an account stated against Hertling because they do not show on personal knowledge that the invoices were mailed personally or according to a regular business procedure. U.S. Bank Trust, N.A. v. Stewart, 193 A.D.3d 473, 473 (1st Dep't 2021); U.S. Bank Trust, N.A. v. Calhoun, 190 A.D.3d 625, 626 (1st Dep't 2021); Wells Fargo Bank, N.A. v. Merino, 173 A.D.3d 491, 491 (1st Dep't 2019); HSBC Bank USA v. Rice, 153 A.D.3d 443, 444 (1st Dep't 2017). The submitted invoices, moreover, are not even

attributable to Hertling, as they fail to include Hertling's name or business address.

The court denies plaintiffs' motion for a default judgment on their sixth claim against JLC Industry because the enforcement of JLC Industry's written contract sought by plaintiffs' first claim bars an unjust enrichment claim governing the same subject. Corsetto v. Verizon New York, Inc., 18 N.Y.3d 777, 790 (2012); Stile v. C-Air Customhouse Brokers-Forwards, Inc., 204 A.D.3d 429, 431 (1st Dep't 2022); Jennings v. Silfen, 198 A.D.3d 597, 598 (1st Dep't 2021); Garda USA, Inc. v. Sun Capital Partners, Inc., 194 A.D.3d 545, 547-48 (1st Dep't 2021). The court denies plaintiffs' motion for a default judgment on their sixth claim against Hertling because the unjust enrichment claim arises from the same facts, seeks identical damages, and thus duplicates plaintiffs' second and third claims for promissory estoppel and goods sold and delivered.

The court further denies plaintiffs a default judgment on their seventh claim for conversion against Hertling. Plaintiffs' allegations regarding Hertling's conversion of the loans to JLC Industry are not based on personal knowledge, nor supported by evidence that Hertling exercised control over the loans. Mutual Benefits Offshore Fund, Ltd. v. Zeltser, 172 A.D.3d 648, 651 (1st Dep't 2019). Consequently, the court also denies plaintiffs a default judgment on their eighth claim for aiding and abetting

conversion, since it may not stand independent of plaintiffs' seventh claim for conversion. Dragons 516 Ltd. v. GDC 138 E 50 LLC, 201 A.D.3d 463, 464 (1st Dep't 2022).

III. CONCLUSION

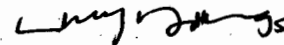
In sum, the court grants a default judgment in favor of plaintiff Apparel USA Inc. on its first claim, for breach of a contract, against defendant JLC Industry LLC for \$150,000.00, the amount that Apparel USA loaned to JLC Industry, plus 14% interest from June 21, 2020, pursuant to the terms of the promissory note between Apparel USA and JLC Industry. The court also grants a default judgment in favor of plaintiffs on their second claim, for promissory estoppel, against JLC Industry LLC and Hertling, LLC, jointly and individually, for \$19,566.52, plus interest at 9% from December 3, 2019. C.P.L.R. §§ 5001(b), 5004. This date is when Hertling emailed its suppliers' outstanding invoices to plaintiffs, which they paid based on JLC Industry's and Hertling's promise of repayment. The court further grants a default judgment in favor of Apparel USA Inc. on its third claim, for goods sold and delivered, against Hertling, LLC, for \$8,143.75, the remaining balance owed for goods sold and delivered to Hertling, plus interest at 9% from December 12, 2019. Id. This date is when the last goods were sold and delivered for which Hertling still owes Apparel USA.

Finally, the court awards plaintiffs attorneys' fees

pursuant to the promissory note against JLC Industry LLC, but reduces plaintiffs' claimed fees of \$12,070.42 for two reasons. First, plaintiffs are entitled to attorneys' fees only for JLC Industry's breach of the promissory note, which is not complex, and which is only one of eight claims alleged by plaintiffs. Second, plaintiffs billed for 33.31 hours of work in this action, which is excessive when defendants neither answered the complaint nor opposed the single motion. Therefore the court reduces plaintiffs' attorneys' fees to a reasonable amount of \$6,000.00.

The Clerk shall enter a judgment as specified above, with costs and disbursements to be calculated and taxed by the Clerk. C.P.L.R. §§ 3215, 8101, .8201(1), 8301(a).

DATED: September 30, 2022



LUCY BILLINGS, J.S.C.

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