

Ampla, LLC v One Culture Foods, Inc.

2023 NY Slip Op 30513(U)

February 17, 2023

Supreme Court, New York County

Docket Number: Index No. 656833/2022

Judge: Arlene P. Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH **PART** **14**

Justice

-----X

AMPLA, LLC,

Plaintiff,

- v -

ONE CULTURE FOODS, INC., HANSEN SHIEH,

Defendants.

-----X

INDEX NO. 656833/2022

MOTION DATE 02/15/2023

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 25, 27, 29, 32, 37

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 20, 21, 22, 23, 26, 28, 30, 33, 34, 36

were read on this motion to/for DISMISSAL.

Motion Sequence Numbers 001 and 002 are consolidated for disposition.

Defendant One Culture Foods, Inc.’s (“One Culture”) motion (MS001) to dismiss is denied. Defendant Shieh’s motion (MS002) to dismiss is also denied.

Background

Plaintiff contends it entered into a written agreement with defendant One Culture. This involved plaintiff advancing funds to One Culture in exchange for acquiring rights, title, and interest to certain invoices due to One Culture. In other words, plaintiff would receive money when One Culture was supposed to be paid by those customers. Plaintiff alleges that defendant Shieh signed the agreement as a guarantor.

Plaintiff contends that One Culture breached the agreement by not paying over the invoices acquired by plaintiff and by not providing plaintiff with required documentation to obtain the payments (such as a bill of lading) from the customer. It claims that over \$115,000 is due.

One Culture moves to dismiss on the ground that plaintiff failed to state a valid cause of action. It argues that plaintiff never identified the information One Culture was supposed to provide to plaintiff. One Culture claims that the complaint does not set forth the allegations with the requisite particularity to meet the CPLR's pleading standard.

Defendant Shieh makes similar arguments in support of his motion to dismiss. He contends that plaintiff failed to meet the basic pleading threshold. Shieh argues that he is only personally responsible for certain corporate obligations owed by One Culture and not for every loss incurred by plaintiff in connection with the parties' business relationship.

Plaintiff contends that its amended complaint sets out two valid causes of action and specifically identifies the issues in this litigation. Plaintiff emphasizes that it withdrew its unjust enrichment claim in the amended complaint (which was filed after defendants made their respective motions to dismiss). It argues that its allegations are neither vague nor conclusory. With respect to the guaranty against defendant Shieh, plaintiff claims that the agreement provides that he is liable for all losses or damages caused by One Culture's breach of section 5 of the agreement.

In reply, Shieh argues that the filing of the amended complaint does not render the instant motions as moot. He insists that the amended complaint does not satisfy the pleading standard either. Shieh asserts that the limited guaranty does not mean he is liable for all of plaintiff's purported damages.

One Culture claims in reply that the amended complaint is merely a repackaging of the same defective claims in the original complaint.

Discussion

“Under CPLR 3211(a)(7), pleadings are to be afforded a liberal construction, allegations are taken as true, the plaintiff is afforded every possible favorable inference, and a determination is made only as to whether the facts as alleged fit within any cognizable legal theory” (*CSC Holdings, LLC v Samsung Elecs. Am., Inc.*, 192 AD3d 556, 146 NYS3d 17 [1st Dept 2021]).

The Court denies both motions and finds that plaintiff stated valid causes of action. As an initial matter, although plaintiff filed an amended complaint after the instant motions were filed, defendants chose to proceed with filing replies addressed to this amended pleading.

Therefore, the motions are not moot.

The Court observes that plaintiff clearly stated a cause of action for breach of contract against One Culture. It claims that One Culture was supposed to pay certain invoices within 120 days and it did not. Plaintiff specifically identifies sections 2 and 5 of the subject agreement as well in support of the claim that One Culture also breached the agreement by not supplying bills of lading (so that plaintiff could get paid from that invoice). According to plaintiff, a third-party refused to make a payment because One Culture did not turn over a bill of lading and plaintiff was entitled to receive payment from that third-party.

The Court also finds that plaintiff stated a valid cause of action for breach of the guaranty against defendant Shieh. The agreement provides that “The Validity Guarantor that executes this Agreement where indicated below shall be liable to GG for losses or damages caused by (a) Customer’s breach of paragraphs 2, 5 or 9 of this Agreement, or (b) Customer’s intentional

negligence, misrepresentation or fraud. Validity Guarantor will benefit by the transactions under this Agreement and executed this Agreement to induce GG to enter into this Agreement” (NYSCEF Doc. No. 23, ¶ 11). As noted above, plaintiff specifically cites breaches of paragraph 2 and 5 of the agreement by One Culture. That directly implicates Shieh’s potential liability under the terms of the guaranty. Although whether there was a breach and, if there was one, how much will be Shieh’s liability are yet to be determined, that does not compel the Court to grant the motions to dismiss.

The Court acknowledges that the instant pleading would never win a contest for good complaints, but it is good enough. This is not a situation, such as where a claim for fraud is alleged, where a heightened pleading standard is implicated. Under the liberal pleading standards, plaintiffs need not provide every detail imaginable in its pleading, and if amplification is desired, a defendant may serve a demand for bill of particulars. Here, plaintiff provided enough details so defendants know what this case is about—that invoices remain unpaid and that One Culture’s failure to send a bill of lading caused a third-party (whose invoice plaintiff had apparently purchased) to refuse to make its payments. Discovery will be required to explore the specific invoices at issue and One Culture’s actions surrounding the bill of lading. The necessity for the discovery process does not mean the pleading fails to state a cause of action.

Accordingly, it is hereby

ORDERED that defendants’ motions (MS001 and MS002) to dismiss are denied and they shall answer pursuant to the CPLR.

Conference: June 6, 2023 at 12:00 p.m. By May 30, 2023, the parties are directed to upload 1) a discovery stipulation signed by all parties, 2) a stipulation of partial agreement that identifies the areas in dispute concerning discovery or 3) letters explaining why no agreement

could be reached. Based on these submissions, the Court will assess whether an in-person conference is required. The failure to upload anything will result in an adjournment of the conference.



2/17/2023

DATE

ARLENE P. BLUTH, 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