

Berkley Equity, Ltd. v Etra

2023 NY Slip Op 30697(U)

March 7, 2023

Supreme Court, New York County

Docket Number: Index No. 654403/2022

Judge: Melissa A. Crane

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. MELISSA A. CRANE PART 60M

Justice

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BERKLEY EQUITY, LTD.,

Plaintiff,

- v -

AARON ETRA, MOTHERLAND MEDICAL LTD.

Defendant.

-----X

INDEX NO. 654403/2022

MOTION DATE 02/17/2023

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66

were read on this motion to/for

JUDGMENT - DEFAULT

Background

On October 4, 2022, plaintiff Berkley Equity, Ltd. agreed to purchase 1,000,000 boxes of nitrile examination gloves for \$28,750,000 from defendant Motherland Medical Ltd. (“Motherland”). The transaction was documented by an Escrow Agreement (the “Agreement”) between Motherland, plaintiff, and defendant Aaron Etra (“Etra”) as Escrow Agent (Escrow Agreement [NYSCEF Doc. No. 63]). Under the Agreement, plaintiff would wire a \$1 million deposit to Motherland’s escrow account to inspect the gloves, and after a satisfactory inspection, plaintiff would wire the remaining balance to complete the purchase (Lyons Aff. [NYSCEF Doc. No. 62]). However, upon inspection, plaintiff discovered that there were only 10,000 boxes rather than 1,000,000 that was originally agreed to and requested a refund from Motherland and Etra pursuant to the Agreement. After defendants refused to refund the deposit, plaintiff commenced this case.

In Motion Sequence 1, plaintiff moved, by Order to Show Cause, for a pre-judgment attachment and temporary restraining order, pursuant to CPLR 6210, 6211, and 6212, as against defendant Etra’s assets. Etra appeared in connection with the Order to Show Cause on December 8, 2022, but Motherland did not. Initially, Etra agreed to deposit the \$1 million held in escrow into an account maintained by the court (Decision on Motion Sequence 1 [NYSCEF Doc. No. 27]). Ultimately, after Etra failed to deposit the money with the court, the court granted plaintiff’s

motion for a prejudgment attachment and issued a restraining order in plaintiff's favor (Supplemental Order [NYSCEF Doc. No. 29]).

Now, in Motion Sequence 3, plaintiff moves, pursuant to CPLR 3215, for an order granting it a default judgment as against Etra and Motherland jointly and severally, in the amount of \$1,000,000, reflecting the disputed deposit, plus interest, and the costs and attorneys' fees plaintiff incurred. For the reasons discussed below, the unopposed motion is granted in part.

Discussion

Plaintiff has demonstrated *prima facie* entitlement to a default judgment against defendants Etra and Motherland on the first cause of action (Declaratory Judgment) and second cause of action (Breach of Contract) in the complaint only (Complaint [NYSCEF Doc. No. 1, ¶¶ 37-46]).

Plaintiff demonstrates, *prima facie*, that, pursuant the Agreement, it agreed to purchase goods from Motherland, that it provided a \$1 million deposit for those goods, and that it would pay the remaining \$27 million after a satisfactory inspection of the goods (Escrow Agreement [NYSCEF Doc. No. 63]; Lyons Aff. [NYSCEF Doc. No. 62]; Emails [NYSCEF Doc. No. 65]). Plaintiff also establishes that Motherland failed to refund plaintiff's deposit, in accordance with Section 1.9 of the Agreement, after an unsatisfactory inspection (Escrow Agreement [NYSCEF Doc. No. 63, pg. 5]; Lyons Aff. [NYSCEF Doc. No. 62]).

Plaintiff also demonstrates, *prima facie*, that Etra served as the transaction's Escrow Agent, that plaintiff deposited the funds into Etra's escrow account, and that Etra failed to refund plaintiff's deposit in accordance with the Agreement's terms, despite the unsatisfactory inspection, and despite receiving several requests to do so (NYSCEF Doc. Nos. 64-65)

Plaintiff has also demonstrated proof of proper service on both defendants (NYSCEF Doc. Nos. 8, 32-34, 66). Defendant Etra, who as of February 2, 2023 is apparently incarcerated at MDC-Brooklyn, was served with the summons and complaint prior to his incarceration (Affidavit of Service [NYSCEF Doc. No. 8]; Chin Aff. [NYSCEF Doc. No. 53, ¶ 11-12]). Additionally, plaintiff has demonstrated proof of compliance with CPLR 308 and 3215(g)(3)(i) by submitting proof that Etra was served with the required additional notice at various locations, including at his place of business, his place of residence, and at MDC-Brooklyn (Affidavit of Service [NYSCEF Doc. No. 66]) (*Ostroy v Six Sq. LLC*, 74 AD3d 693 [1st Dept 2010]). Plaintiff has also demonstrated that defendant Motherland, a foreign corporation, was properly served under CPLR

311, BCL 307, 3215(g)(4)(i), and the Hague Convention. Plaintiff demonstrated that it served Motherland through a UK solicitor on December 14, 2022, that the affidavit of service was certified by the UK Central authority on January 23, 2022, and that the summons and complaint were mailed to Motherland on December 20, 2022 at the address listed in the Agreement (NYSCEF Doc. Nos. 32-34).

Thus, plaintiff has also demonstrated proof of the facts constituting its first cause of action for a declaration that Etra, as the escrow agent, is required to return plaintiff's \$1 million deposit and second cause of action for breach of contract against both defendants (NYSCEF Doc No. 62). In addition to the above, plaintiff has also submitted proof of defendants' default, and compliance with CPLR 3215(g)(3)(i) and 3215(g)(4)(i). Defendants have not interposed answers in this action, nor have they objected to or otherwise opposed plaintiff's motion for default judgment.

Accordingly, plaintiff is entitled to a default judgment against defendants on its first and second causes of action. However, plaintiff has not established *prima facie* entitlement to a default judgment against Motherland on the third cause of action for fraudulent inducement. Plaintiff has also failed to establish that it is entitled to its attorneys' fees, costs, and expenses, and failed to submit any proof of the same, anyway. The court, therefore, denies the motion for a default judgment as to the third cause of action, the request for attorneys' fees and costs, and plaintiff's request for punitive damages.

Accordingly, it is

ORDERED that Motion Sequence 3 is granted in part; and it is further

ORDERED, ADJUDGED and DECLARED that defendant Aaron Etra is required to return plaintiff's \$1,000,000 deposit under Section 1.9 (b) of the parties' Escrow Agreement; and it is further

ORDERED that plaintiff is granted judgment as against defendants Motherland Medical Ltd. and Aaron Etra, in the amount of \$1,000,000, jointly and severally, for the second cause of action for Breach of Contract; and it is further

ORDERED that the remainder of plaintiff's motion is denied.

3/7/2023

DATE


MELISSA A. CRANE, 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