

So & Co Watch LLC v BT Supplies W., Inc.

2023 NY Slip Op 30803(U)

March 16, 2023

Supreme Court, Kings County

Docket Number: Index No. 516736/2020

Judge: Francois A. Rivera

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 16th day of March 2023

HONORABLE FRANCOIS A. RIVERA

-----X

SO AND CO WATCH LLC,

Plaintiff,

- against -

BT SUPPLIES WEST, INC,

Defendants.

-----X

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed by plaintiff So and Co Watch, LLC (hereinafter SCW or plaintiff) on November 18, 2022, under motion sequence number four, for an order pursuant to CPLR 3215 and 5003-A: (1) directing that a judgment be entered in favor of SCW against Defendant BT Supplies West, Inc. (hereinafter BSW), in the amount of \$919,937.00, and (2) awarding costs and attorney’s fees to plaintiff’s attorneys, and (3) imposing sanctions as permitted by law.

- Notice of Motion
- Affidavit in Support
- Affirmation in Support
- Exhibits A-E
- Affirmation in Opposition
- Exhibits A-D
- Affidavit in Opposition
- Affirmation in Reply

BACKGROUND

On September 8, 2020, plaintiff SCW commenced the instant action by filing a summons and verified complaint with the Kings County Clerk’s office (KCCO).

On March 3, 2021, defendant BSW interposed an answer with counterclaims.¹

The verified complaint alleges the following salient facts. On or about June 25, 2020, the SCW sold and delivered to BSW, at their request, goods, wares, and merchandise. BSW accepted all the goods, wares, and merchandise upon delivery. The agreed upon price was \$969,937.00. Although SCW has demanded payment from BSW, no payment has been received. SCW alleges that it has performed all of the terms and conditions of the parties' agreement and BSW has breached by failing to pay the balance due. SCW is seeking damages for the sum of \$969,937.00, plus interest thereon from June 25, 2020.

On October 6, 2021, SCW filed a signed Stipulation of Settlement of the instant action under NSYCEF document No. 85. The Stipulation of Settlement was signed by each party and by each party's counsel. On the same day, SCW also filed a Stipulation of Discontinuance of the action, under NYSCEF document No. 84, which was also executed by the plaintiff, defendant, and their respective attorneys.

Neither the Stipulation of Settlement nor the Stipulation of Discontinuance provided for the Court to retain jurisdiction to enforce the terms of the Stipulation of Settlement and no party otherwise requested the Court to do so.

¹ SCW made a prior motion under sequence number two for a default judgment against BSW. BSW made a prior motion, under sequence number three, seeking dismissal of the complaint. By decision and order dated February 4, 2021, the Court denied BSW's motion to dismiss under sequence number three; denied plaintiff's motion for a default judgment under motion sequence number two; and permitted BSW to answer the complaint on or before March 4, 2021, contingent upon the law firm of JAROSLAWICZ & JAROS PLLC (NOT the defendant) paying costs in the sum of \$500.00 to LIEBERMAN LAW FIRM PLLC simultaneously with serving its answer.

Although SCW requested that the Court “So-Order” the Stipulation of Settlement, BSW opposed that request claiming that certain provisions of the stipulation were not agreed to by the defendant and were visibly crossed out.

LAW AND APPLICATION

The Parties’ Contentions

SCW contends that the instant action was settled by the Stipulation of Settlement of the parties and that the defendant’s failure to pay the amounts due as set forth in the stipulation gives it the right to enter a judgment against BSW pursuant to CPLR 5003-A. BSW contends that there is a dispute regarding the terms of the agreement because many numbered paragraphs of the Stipulation of Settlement had been crossed out by it. As a result, BSW contends that there is a dispute as to whether the terms of the Stipulation of Settlement have been breached by it.

SCW contends that there is no issue as to whether BSW breached the agreement. SCW further contends that the KCCO will not enter a judgment in accordance with CPLR 5003-A without having the Stipulation of settlement, at issue, so ordered by the Court.

The Court’s Jurisdiction

Pursuant to CPLR 3217 (a) (1), provides that:

“[a]ny party asserting a claim may discontinue it without an order by serving upon all parties to the action a notice of discontinuance at any time before a responsive pleading is served or, if no responsive pleading is required, within twenty days after service of the pleading asserting the claim and filing the notice with proof of service with the clerk of the court.”

A plaintiff may voluntarily discontinue an action without a court order by serving the parties with a notice of discontinuance “at any time before a responsive pleading is served or, if no responsive pleading is required, within 20 days after service of the pleading asserting the claim and filing the notice with proof of service with the clerk of the court” (CPLR 3217 [a] [1]). CPLR 3217 (a) (2) and (3) provide for discontinuance by stipulation of the parties (*U.S. Bank Nat. Ass'n v Cockfield*, 143 AD3d 889 [2d Dept 2016]).

CPLR 3217 (a) (2) provides in pertinent part as follows:

“Any party asserting a claim may discontinue it without an order by filing with the clerk of the court before the case has been submitted to the court or jury a stipulation in writing signed by the attorneys of record for all parties, provided that no party is an infant, incompetent person for whom a committee has been appointed or conservatee and no person not a party has an interest in the subject matter of the action.”

There is no dispute that on October 6, 2021, the parties discontinued the instant action pursuant to CPLR 3217 (a) (2) by filing a stipulation of discontinuance with the KCCO through the NYSCEF system. If all the parties stipulate to discontinue, and the stipulation is filed with the clerk with no indication that any nonparty has an interest, the filing of the stipulation presumably discontinues the action, and the case is terminated.

Although a trial court has the power to exercise supervisory control over all phases of pending actions and proceedings (*Cambridge Integrated Services Group, Inc. v Johnson*, 107 AD3d 1588 [4th Dept 2013], citing *Teitelbaum Holdings v Gold*, 48 NY2d 51, 54 [1979]), it lacks jurisdiction to entertain a motion after the action has been “unequivocally terminated ... [by the execution of] an express, unconditional stipulation

of discontinuance” (*Cambridge Integrated Services Group, Inc.*, 107 AD3d at 1588, quoting *Teitelbaum Holdings*, 48 NY2d at 56; see also *Yonkers Fur Dressing Co. v Royal Ins. Co.*, 247 NY 435, 444 [1928]).

As a matter of unfinished business, however, BSW opposed SCW’s request to have the Stipulation of Settlement so ordered. Inasmuch as neither party raised the issue of the Court’s lack of jurisdiction, the parties have, in effect, consented to the Court’s continued jurisdiction with respect to resolving the instant motion. It is apparent that SCW’s motion may be rendered academic by the determination of SCW’s request to so order the stipulation of settlement.

Consequently, the Court will hear from both sides on the issue of whether the stipulation of settlement shall be so ordered. The parties are directed to appear in Part 52 at 2:30 p.m. on April 11, 2023, to address this discrete issue. In the meantime, all other branches of the SCW’s motion are hereby stayed until resolution of the request to so order the Stipulation of Settlement.

The Court hereby vacates its prior oral Order of March 1, 2023, wherein, the parties were directed to submit a proposed order reflecting that the Court lacks jurisdiction. The instant Order supersedes the oral Order of March 1, 2023.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.
HON. FRANCOIS A. RIVERA
J.S.C.