

**Sparx Logistics Hong Kong Ltd. v Shoez, Inc.**

2023 NY Slip Op 32344(U)

July 10, 2023

Supreme Court, New York County

Docket Number: Index No. 650884/2017

Judge: Sabrina Kraus

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SABRINA KRAUS

PART 57TR

Justice

SPARX LOGISTICS HONG KONG LTD., SPARK LOGISTICS US LIMITED,

INDEX NO. 650884/2017

Plaintiff,

DECISION AFTER TRIAL

- v -

SHOEZ, INC., BRANDS UNLIMITED, GIF SERVICES, INC., DEEPAK RAMCHANDANI, GINA NAPOLITANO

Defendant.

BACKGROUND

This action concerns a commercial contract dispute between a freight forwarder and an importer and reseller of apparel.

Pursuant to a decision and order dated July 29, 2021, Judge Shawn Kelly granted plaintiffs' summary judgment on the cause of action for unjust enrichment as against Shoez, Inc., Brands Unlimited, LLC and Deepak Ramchandani<sup>1</sup>, holding that the only triable issue as to said claim was the amount of damages to which plaintiffs were entitled. A second decision and order from the same date dismissed plaintiff's cause of action for a declaratory judgment.

The remaining causes of action in the complaint sound in indemnification, contribution, breach of contract, quantum meruit, fraudulent inducement, and aiding and abetting fraud. In

1 Defendants dispute this in their post-trial memorandum and allege that plaintiffs did not move for summary judgment as to Ramchandani and the court did not grant it. However, plaintiffs' moving papers clearly sought summary judgment against Ramchandani and the court's decision references multiple defendants holding inter alia "... defendants have been enriched in two ways..." and "... it is against equity and good conscience to permit the defendants to retain the benefit of the Goods and the payment to Habib."

their post trial memorandum of law, plaintiffs withdrew the causes of action for breach of contract and *quantum meruit* as against all defendants, and withdrew the causes of action for unjust enrichment, indemnification and contribution as against GIF Services, Inc. (“GIF”) and Gina Napolitano (“GN”).

The court held a bench trial on May 23-24, 2023. The parties submitted post trial memoranda on June 29, 2023, and the court reserved decision.

### **FINDINGS OF FACT**

Sparx Logistics Hong Kong LTD. (“Sparx HK”) is an international freight forwarder, transportation, and logistics company. A freight forwarder organizes shipments to transport goods from an origin port to a destination port. Sparx Logistics USA Limited (“Sparx US”) is the American affiliate of Sparx HK and also provides freight forwarding, shipping, and logistics services.

Life Logistics is a Hong Kong based company that provides freight forwarding, cargo management, and logistical services for shippers and importers. Adi Dagan (“Dagan”) was the managing officer of Life Logistics, as well as an officer of Sparx Hong Kong and Sparx USA.

Shoez, Inc. (“Shoez”) is an importer and reseller of apparel that is wholly owned by the defendant Deepak Ramchandani (“DR”). Shoez was incorporated by DR in or about 2005 in California. Between 2005 and 2008, Shoez had built up a reputation overseas as an importer of clothing merchandise from overseas to sell to retailers in the U.S.

In 2008, DR incorporated a second company, Brands Unlimited (“Brands”), to act as a domestic arm for designing and selling clothing for U.S. retailers, while Shoez contracted with international suppliers. Brands was in the wholesale clothing business selling to retailers in the United States, Canada and Mexico. DR is one of three principals of Brands.

Brands operates by coordinating with big-box retail stores like T.J. Maxx or Burlington. Brands works with its retail customers to design clothing based on research of market trends and selects trademarks to fit its customers' needs. Brands then takes orders from those stores. After Brands works out a design and gets a retail order, it has Shoez arrange for the manufacture and purchase of the product overseas from a seller/sourcing agent. Shoez coordinates and contracts with the sourcing agent for its order, imports the merchandise once it's manufactured, then sells the product to Brands. Brands, in turn, then sells to its U.S. retail customer.

GIF Services is a third-party logistics company that performs custom entry writing and freight forwarding services. GIF was the customs broker for Shoez in connection with the goods which are the subject of this action. GN is the Vice President of GIF but has no ownership stake in the company. GIF has three full-time employees. GIF and GN ensured that goods shipped to Shoez from overseas cleared customs in the United States. GIF and GN also coordinated the shipment of goods from overseas to the United States by communicating with freight forwarding companies on behalf of Shoez. GN acted as the agent for Shoez in connection with freight forwarding matters.

Shoez operates its business by purchasing clothes from overseas and transferring the clothing, without any formalities or consideration, to its affiliate, Brands, who in turn sells to wholesalers and retailers throughout the United States, Canada, and Mexico. Shoez was the corporate vehicle purchasing goods from overseas. Shoez had no salaried employees. All employees were paid through Brands. Both Shoez and Brands used the same trademarks on merchandise, and shared office space. DR testified that there was effectively no difference between Shoez and Brands.

Both DR and Dagan had, through their respective companies, worked with a mutual acquaintance named Manoj Panjabi (“Panjabi”). Panjabi was the principal of a Hong-Kong based global sourcing agent named Ravissant Limited (“Ravissant”). As a global sourcing agent, Ravissant coordinated with factories in Asia to manufacture apparel on behalf of Ravissant’s customers. Shoez was one such customer.

GIF was selected to act as a U.S. shipping agent by Shoez, but the shipping agents at origin (i.e., Sparx and Life) were chosen by GIF in consultation with seller Ravissant.

In or about 2014, Panjabi reached out to DR about doing business together. His sales pitch was that his companies Ravissant Limited and Mastini Creations, based out of Hong Kong, were very competitive in the sourcing business. Goods sourcing involves receiving specifications for a product then working with factories, in this case in China, to manufacture the goods before selling and shipping the final product to the buyer, in this case Shoez.

Panjabi worked in the Western Hemisphere and had heard about Ramchandani’s U.S.-based companies. Shoez and Brands were receptive and began coordinating with Ravissant to source products on clothing shipments in 2014. Ravissant was one of five or six sourcing agents used by Shoez to produce clothing.

In or about the Spring of 2015, Panjabi, introduced GN to Dagan. The purpose of the introduction was for GIF to coordinate with Life Logistics, Sparx HK, and Sparx USA, to act as freight forwarders and arrange for the shipment of goods purchased by Shoez from factories sourced by Ravissant to the United States.

Plaintiffs served as freight forwarders to arrange for the transport of a number of containers of men’s clothing (e.g., jeans, shorts, and jackets) from Ravissant as the shipper/seller

to Shoez. Seven of the containers transported, containing approximately 93,066 units of clothing are at issue in this action.

Ravissant was the seller of the goods at issue in this case and was the entity which entered into contracts with Shoez for the sale and shipment of those goods. The price, quantity, shipment timing, and place of shipment for each order between Ravissant and Shoez were specified in written agreements.

Business between Shoez and Ravissant in 2014 was smooth. The next year, in 2015, Shoez contracted for approximately 20 shipments from Ravissant. Many were delivered between one and three months later than the contractually agreed delivery date.

One of GIF's roles was to coordinate, on behalf of Shoez, with the plaintiffs for their freight forwarding services. GN was the only person that plaintiffs spoke to on behalf of Shoez relative to the transactions in issue. GN confirmed the particulars of the transaction such as shipping rates, dates, amounts, and delivery ports first with Shoez to get the Shoez defendants authorization, and then with Sparx and Life Logistics. The shipping rates and schedules provided by Life Logistics and Sparx HK employees to GN, concerning the goods were all approved by Shoez/Brands prior to booking.

There were seven bills of lading ("BLs") for the transactions at issue. Pursuant to the 7BLs, the original bills of lading must be "surrendered to GIF", for GIF to transfer the original bills of lading to Plaintiff (DX1D, DX2D, DX3D, DX4D, DX5D, DX6D, DX7D). Plaintiffs released the goods to GIF, even though they had not received the original BLs. GIF subsequently provided the goods to the Shoez/Brands.

GIF paid Sparx USA for Plaintiffs' freight forwarding services. Shoez/Brands, in turn, paid GIF for Plaintiffs' freight forwarding services. For seven of the approximately twenty

shipments, Shoez withheld payment from Ravissant. Shoez received all the goods but never paid anyone for the goods. DR exercised all decision-making authority with respect to Shoez and Brands and determined that Shoez would not pay Ravissant for the goods due to issues with charge backs and invoice discrepancies. Shoez transferred the goods to Brands, for no consideration, without any formalities and did not record the transfers on any corporate books or records.

Brands sold the goods to its retail customers. Defendants never received the original BLs for the goods.

Trial Exhibits DX-1(A)-(F) through DX-7(A)-(F) comprise each of the seven shipments at issue: (A) the Sales Confirmation of Ravissant; (B) the Packing List of Ravissant; (C) the Invoice List of Ravissant; (D) the Bill of Lading; and (E); email chain between GIF and Sparx relating to the arrival and telex release of that shipment; and (F) Arrival Notices.

The sum of the prices in the Sales Confirmations in Exhibits DX-1A, 2A, 3A, 4A, 5A, 6A, and 7A is \$423,465.60. All sales confirmations at issue in this action were addressed to Bleu Royale, another company owned and controlled by DR. The sum of the prices in the invoices in Exhibits DX-1C, 2C, 3C, 4C, 5C, 6C, and 7C is \$510,802.62. The “said to contain” value of the goods listed on the BLs totaled \$510,802.62. The total amount invoiced for the sale of the 93,066 goods by Brands to its downstream customers was \$438,960.73. Ravissant subsequently went out of business.

Shoez filed a Certificate of Dissolution, dated January 2, 2018, with the California Secretary of State (PX44). The Certificate states that known debts and liabilities have been paid. Shoez continued to file trademark renewals stating that Shoez uses the RIVER ROCK registered trademark in commerce after the Certificate of Dissolution was filed (PX62).

Habib Bank Zurich (Hong Kong) Limited ("Habib") financed the production and shipment of the goods for Ravissant and was the holder of the original BLs. As Habib was not paid and the goods which were the subject of the BLs were released without payment, on or about June 3, 2016, Habib commenced an action in Hong Kong against Sparx HK as carrier of the goods claiming, *inter alia*, conversion of the goods in the amount of \$510,802.62.

Sparx HK filed an answer to the suit, but judgment was entered against Sparx HK for \$510,802.62 plus interest thereon (the "Hong Kong Judgment"). Pending Sparx HK's appeal of that judgment, Sparx HK and Habib Bank entered into a settlement on December 1, 2017, whereby the parties did not admit liability. Sparx HK agreed to pay \$300,000.00, and Habib agreed to release its rights under the BLs as to any party, upon the full satisfaction of the settlement amount. On December 8, 2018, Sparx HK paid the settlement amount.

### DISCUSSION

#### *Amount of Damages Plaintiffs Are entitled to on the Unjust Enrichment Claim*

“An award of damages as a result of an unjust enrichment claim is limited to restitution of the sum improperly received by the defendant. *Pure Power Boot Camp, Inc. v. Warrior Fitness Boot Camp, LLC*, 813 F.Supp.2d 489, 534 (S.D.N.Y.2011) (citing *U.S. ex rel. Taylor v. Gabelli*, No. 03–CV–8762 (PAC), 2005 WL 2978921, at \*4 (S.D.N.Y. Nov. 4, 2005).

“Unjust enrichment applies, not only where a person receives money or property, but, also, where he otherwise receives a benefit. He receives a benefit where his debt is satisfied or where he is saved expense or loss.” *Blue Cross of Cent. New York, Inc. v. Wheeler*, 93 A.D. 2d 995, 996 (4th Dep’t 1983). The measure of restitution damages for an unjust enrichment claim is the “reasonable value” of the benefit conferred upon the defendants. *See Collins Tuttle and Co.*,

*Inc. v Leucadia, Inc.*, 153 AD2d 526, 526 [1st Dept 1989]; *Giordano v. Thomson*, 564 F3d 163, 170(2nd Cir. 2009).

The court finds in this action that the amount of the unjust enrichment is \$300,000.00 which is the amount plaintiffs had to pay to settle the action with Habib to resolve the breach of contract/conversion claim. That is the amount of actual “loss” that can be recovered by Sparx. The fact that Brands resold the goods at a 25% margin, does not alter the measure of damages for unjust enrichment. Since the release of Habib’s claim was not completed until December 2018, that would be the point on which interest for unjust enrichment would begin to run.

The court rejects defendants’ arguments that set offs it would have claimed as against Ravissant should be deducted from the amount plaintiffs had to pay to settle the Habib action.

***Plaintiffs Remaining Claims for Indemnity and Contribution Are Dismissed***

Plaintiffs seek as additional damages the difference between the judgment amount entered against them in the Habib Action and the settlement amount they actually paid.

A claim for indemnification is premised upon a party seeking financial restitution where it has committed no wrong itself but is nevertheless held vicariously liable solely on account of another’s negligence. *See Glaser v. M. Fortunoff of Westbury Corp.*, 71 N.Y.2d 643, 646 (1988). Indemnity, however, has no application here, because Sparx was not sued by Habib because of vicarious liability for the defendants’ negligence. Instead, Habib sued because it claimed that Sparx intentionally breached the terms of the bills of lading by releasing the goods. Sparx raised the defense that it only acted at the instruction of Ravissant to waive that contractual requirement, but eventually settled the claim.

Sparx was sued for breach of contract based on intentional decisions made at the behest of Ravissant, not Shoez. Indemnification is not available. *Bd. Of Mgrs. of Olive Park*

*Condominium v. Maspeth Props., LLC*, 170 A.D.2d 645, 645 (2d Dep't 2019); *see also Gap, Inc. v. Fisher Dev., Inc.*, 27 A.D.3d 209, 212 (1st Dep't 2006).

CPLR §1404 codifies the concept of common-law contribution and provides in pertinent part:

Except as provided in sections 15-108 and 18-201 of the general obligations law . . . two or more persons who are subject to liability for damages for the same personal injury, injury to property or wrongful death, may claim contribution among them. . .

As the First Department has explained, purely economic damages are not susceptible to a “contribution” claim. *Children’s Corner Learning Ctr. V. A. Miranda Contr. Corp.*, 64 A.D.3d 318, 323 (1st Dep’t 2009).

Additionally, pursuant to New York’s General Obligations Law § 15-108(c), one who has obtained its own release from liability can no longer seek contribution from another party. *See Farrell v. Gristede’s Supermarkets, Inc.*, 50 A.D.3d 603, 603 (1st Dep’t 2008); *Rivera v. 203 Chestnut Realty Corp.*, 173 A.D.3d 1085, 1087 (2d Dep’t 2019); *ARG Trucking Corp. v. Amerimart Dev. Co.*, 302 A.D.2d 876, 877 (4th Dep’t 2003).

### ***The Causes of Action Pertaining to Fraud are Dismissed***

To sustain a cause of action for fraudulent inducement, plaintiffs must show “misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury” *Shea v Hambros PLC*, 244 AD2d 39, 46 [1st Dept 1998].

Absent a present intent to deceive, a statement of future intentions, promises or expectations is not actionable on the grounds of fraud (*Adams v. Clark*, 239 N.Y. 403). *Lanzi v. Brooks*, 54 A.D.2d 1057, 1058 (1976), *aff’d*, 43 N.Y.2d 778 (1977).

Pursuant to the invoices relevant to this action (DX1C, DX2C, DX3C, DX4C, DX5C, DX6C, DX7C) Shoez had the obligation to pay for goods prior to their release to the Shoez defendants. Each sales confirmation and invoice listed the payment terms as “DP” or “DP at sight” which means the purchaser only receives the goods once they are paid for.

In lieu of waiting for payment via the bank and waiting to receive the original bills of lading, plaintiffs who were anxious to do business with defendants on an ongoing basis agreed to release the goods to the defendants without the original bills of lading.

Dagan’s testimony that plaintiffs did so only based on assurances by the defendants, made through GN, that the Shoez defendants would pay for the goods and the original bills of lading would be turned over within a few days after the telex release of the goods is not credited by the court. The court does not credit Dagan’s testimony that GN promised to return the BLs to Dagan within a few days of the release of the goods, and the court does not credit Dagan’s testimony that GN promised that defendants would pay Ravissant in full for the invoices. The court finds that Dagan assumed that the invoices would be paid and the BLs released based on prior transactions he had engaged in where that was the practice between the parties.

The court found GN to be an extremely credible witness, and the court found Dagan to be less credible. While GN credibly testified that she could not recall with certainty whether she and Dagan ever discussed the issue of the BLs, GN also credibly testified that she did not believe she would have promised to return BLs that she was not in possession of and would not have been in possession of in the regular course of business. Additionally, it was clear that Shoez and Ravissant had a custom of business where adjustments were regularly made to invoices, making it unlikely she would have assured Dagan that the invoices would be paid in full notwithstanding the issue of chargebacks and invoice discrepancies.

The finding that Dagan's testimony was not credible in this regard is also supported by the fact that he tried to influence GN's testimony in this action by holding out the offer of employment to GN, conditioned on the additional requirement that GN turn over to plaintiffs all emails related to this action upon becoming so employed.

On May 17, 2016, Dagan wrote GN "[r]egarding your testimony that we had an understanding that the Sparx BL will be surrendered." DX-32. Dagan wrote "I do hope you will agree" to so testify, but then at the end of the email, Dagan turns to the job offer Sparx was dangling in front of her and wrote "As for Ziad [Sparx's owner] I had lunch with him today and he was willing to close the gap with you . . . FYI Tony will be less involved in future and you better handle this matter with Ziad directly."

The court finds no credible evidence in the record to support a finding that GN made intentionally false representations to plaintiffs to induce their reliance in agreeing to a telex release of the goods prior to obtaining the original BLs.

### CONCLUSION

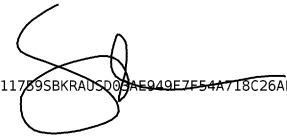
WHEREFORE it is hereby:

ORDERED that plaintiffs, on their cause of action for unjust enrichment, are entitled to a judgment against Shoez, Inc., Brands Unlimited, LLC and Deepak Ramchandani in the amount of \$300,000.00, plus statutory interest as calculated by the Clerk of the Court from December 8, 2018, as well as costs and disbursements as taxed by the Clerk of the Court; and it is further

ORDERED that all other causes of action are dismissed including all claims against GIF Services and Gina Napolitano; and it is further

ORDERED that the parties are to pick up their exhibits from the court within ten days or the court will dispose of them; and it is further

ORDERED that this constitutes the decision and order of the court.



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DATE: 7/10/2023

SABRINA KRAUS, JSC

Check One:

Case Disposed

Non-Final Disposition

Check if Appropriate:

Other (Specify \_\_\_\_\_ )