

All-Ways Forwarding Int'l Inc. v iApparel, LLC

2023 NY Slip Op 32499(U)

July 18, 2023

Supreme Court, New York County

Docket Number: Index No. 650413/2020

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

ALL-WAYS FORWARDING INT'L INC.,

Plaintiff,

- v -

IAPPAREL, LLC, LR ACQUISITION, LLC, HARRY CATTON

Defendants.

-----X

INDEX NO. 650413/2020

MOTION DATE 07/03/2023

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93

were read on this motion to/for JUDGMENT - SUMMARY.

Plaintiff's motion for summary judgment is granted in part and denied in part.

Background

This action arises out of a dispute concerning a shipment of socks from China. Plaintiff, an international freight forwarder, contends that it received nearly 4,000 cartons of socks from a Chinese supplier (called "Amigo") for shipment to the U.S. to fill an order placed by defendants. Plaintiff alleges that defendant Catton, a representative of defendant LR Acquisition LLC ("LR"), promised plaintiff that if the goods (once they had arrived) were released without certain telex releases or original bills of lading, he would provide evidence of payment to the supplier for the merchandise. In other words, Amigo demanded that there be proof of payment before LR took possession of the items but plaintiff released the goods based on Mr. Catton's promise instead of the proper documentation.

Plaintiff insists that, despite the promises, LR never paid. The Chinese supplier, Amigo, then froze plaintiff's bank account because plaintiff had released the goods without the original bills of lading. Plaintiff claims Amigo sought over \$280,000. Plaintiff eventually settled the case with Amigo for \$135,000 but spent over \$56,000 in legal fees.

Plaintiff contends that defendants collectively perpetrated a fraud by inducing plaintiff to release these goods despite knowing that defendant LR was a failed enterprise and would never make the payment for the goods. It alleges that it permitted the goods to leave the dock without the required bill of lading based on years of business dealings with LR's parent company, defendant iApparel, LLC ("iApparel"), on the condition that the goods were to be sent to plaintiff's warehouse. However, plaintiff insists that LR simply took the goods to a third-party, sold these items, and kept the profits. Plaintiff also contends that iApparel was an alter ego of LR and that LR no longer has any assets.

Plaintiff moves for summary judgment and argues that the supplier was never paid, the freight charges were never paid and that defendant Catton made numerous false statements upon which plaintiff relied to its detriment. Plaintiff emphasizes that the terms and conditions of the contract for the transport of the subject goods required defendants to indemnify and hold plaintiff harmless. It also explains why each of defendants' 38 affirmative defenses should be dismissed.

Defendants offer a different account of the events. Defendant Harry Catton (who worked for LR) claims that an employee of plaintiff called him about the shipment and told him that the merchandise could only be held at the port for a certain number of days before additional charges would be incurred (NYSCEF Doc. No. 86, ¶ 14). Mr. Catton insists that this employee suggested that plaintiff would release the merchandise to LR and that LR would try to get the bills of lading

at some point (*id.* ¶ 15). He emphasizes that there was never a date certain to provide a bill of lading (*id.* ¶ 21).

Defendants argue that there are issues of fact about the contract and insist that the terms of the contract, according to plaintiff, keep changing. Defendants maintain that there is no basis to impose alter ego claims and assert that plaintiff attached the terms and conditions for the first time in connection with this motion.

In reply, plaintiff includes an affidavit from its CEO in which he insists that defendants were still responsible to pay their bills and urges that the Court reject defendants' claim that plaintiff permitted them to acquire the goods without the proper documentation.

Discussion

Plaintiff brings causes of action in the complaint for breach of contract, account stated, unjust enrichment, quantum meruit, constructive trust, fraudulent inducement, declaratory judgment, and contribution. However, plaintiff does not discuss all of these causes of action in a sufficient manner in its memo of law (despite moving for summary judgment on everything). For instance, plaintiff gives short shrift to the claim for contribution, which is only mentioned once in the brief, plaintiff did not mention its cause of action for declaratory relief at all, and neither the memo of law nor the affidavit in support make any detailed arguments about the account stated claim.

The Court views the motion papers as largely focusing on the breach of contract claim and so the Court will analyze the papers under that cause of action. The request for summary judgment on the remaining causes of action, except for the fraudulent inducement claim (discussed in greater detail below) is denied as plaintiff only offered conclusory arguments as to

why it is entitled to summary judgment on those claims. In any event, some of the claims are clearly pled in the alternative (*i.e.*, unjust enrichment and account stated).

Turning to the merits, the Court grants plaintiff summary judgment on the breach of contract claim only to the extent that plaintiff is entitled to summary judgment against defendant LR for the \$30,929.94 charged for the shipping/forwarding and custom clearance services as well as the \$135,000 (the amount it settled with the supplier) plus the \$56,895.07 in legal fees incurred due to the litigation with the supplier. There is no dispute that plaintiff transported these goods upon request for the benefit of LR and defendants do not deny that plaintiff delivered the goods or that LR took possession and sold these goods. Mr. Catton admitted in his affidavit in opposition that plaintiff shipped these goods and did not cite a sufficient reason for why LR does not have to pay.

The Court finds that LR is liable for settlement amount with the supplier (Amigo) and the legal fees related to that case because those damages flow directly from LR's failure to turn over the requirement documentation or pay what it owed. Mr. Catton testified at his deposition that "Paul Selvage at All-Ways reached out and said that the shipments are pending telex release and it is approaching the last free day, and that they could release the shipment as long as we sent them the telex release within the next few days" (NYSCEF Doc. No. 62 at 36). This constitutes a valid agreement and an admission that LR had to turn over a telex (or bill of lading) and LR never followed through despite the fact that plaintiff released the goods. There is no question that plaintiff suffered damages (imposed after the supplier sued plaintiff) because LR did not hold up its end of the bargain and send the telex release.

Defendants' attempt to assert that Mr. Catton never made any guarantees about providing a telex or a bill of lading or that other suppliers might permit the release of goods without a bill

of lading is beside the point. Mr. Catton admitted at his deposition that he knew that in return for releasing the goods, plaintiff expected that it be provided with the required documentation. Whether or not plaintiff failed to cite a specific date by which this had to occur is irrelevant because LR never gave the necessary documents at all and plaintiff suffered as a result. And even if Mr. Catton were initially confused, plaintiff attached numerous emails which make clear that it needed the telex release (NYSCEF Doc. No. 72). This is not a situation in which LR belatedly procured the original bill of lading; rather, defendants appear to make the bizarre argument that it never had to pay – who did they think was going to pay for their socks? Because LR breached its obligation to pay, the shipper (plaintiff) ended up shipping it for free and paying for the socks. Defendants' claim that LR had no obligation is without merit. Because LR failed to pay what it was obligated to pay, this establishes LR's liability under a breach of contract theory.

The Court recognizes that the parties disagree about the impact of an alleged terms and conditions connected to the shipment in question. These terms and conditions had no impact on the Court's decision. The Court simply finds that there was clearly an agreement to ship these goods to fulfill LR's order and that there was a second oral agreement whereby the goods would be released from the dock on condition that LR provide the required proof in order to satisfy Amigo. Moreover, these terms and conditions are partially blocked out by a post-it note [NYSCEF Doc. No. 66 at 19] and defendants claim in opposition that these were not disclosed during discovery, a claim that plaintiff does not address in its reply affirmation.

Alter Ego

The Court denies the branch of the motion that seeks to hold iApparel liable for LR's debts under a veil piercing or alter ego claim on summary judgment. "Veil-piercing is a fact-

laden claim that is not well suited for summary judgment resolution” (*First Capital Asset Mgt., Inc. v N.A. Partners, L.P.*, 300 AD2d 112, 117 [1st Dept 2002] [internal quotations and citations omitted]). While there is certainly much discussion about the interplay between LR and its parent company, iApparel, the Court is unable to find as a matter of law that iApparel can be held liable under a veil piercing theory.

Through the affidavits of Sammy and Harry Catton, defendants raised issues of fact concerning the fact that these two entities (LR and iApparel) had separate bank accounts and that iApparel received no money from the transactions at issue.

The Court observes that plaintiff identified certain ways in which the two entities have interactions. Non-party Sammy Catton (defendant Harry Catton’s father) owns and manages both entities and the Cattons run a family business. But plaintiff’s claims about iApparel paying off certain of LR’s debts to its factor (Rosenthal and Rosenthal, an entity used for financing purposes) raises only circumstantial evidence about the extent to which the corporate form was respected. Certainly, the fact that there were consolidated financial statements for the two companies and plaintiff’s CEO’s interactions with iApparel might be relevant at trial, but it does not satisfy the high burden under which this Court can ignore the corporate form of each entity. Simply owning multiple corporate entities that interact with each other is not, by itself, a reason to pierce the corporate veil on summary judgment.

Fraud

Similarly, the Court denies the branch of the motion that seeks summary judgment on plaintiff’s fraud claims. The Court cannot accept, on this record, plaintiff’s view that Mr. Catton never intended to provide the required documentation in exchange for the release of the goods. Although plaintiff suspects that to be the case, the Court cannot make such a credibility finding

on a motion for summary judgment. A fact finder must assess the facts and circumstances surrounding the decision to permit the release of the goods.

As defendants point out simply breaching a contract is not necessarily grounds for a fraud claim (*see e.g., MBIA Ins. Corp. v Credit Suisse Sec. (USA) LLC*, 165 AD3d 108, 114, 84 NYS3d 157 [1st Dept 2018] [noting that fraud damages must address a different harm than those sought for a breach of contract]). But a jury may find that, for example, Harry Catton tricked plaintiff into releasing the goods when he had no intention of paying.

Affirmative Defenses

Defendants assert 38 affirmative defenses in the answer. In its moving papers, plaintiff seeks to dismiss these defenses but only addresses a few of them in mostly vague and brief terms (NYSCEF Doc. No. 57 at 9-10). Many of plaintiff's arguments group these defenses together and do not include any citations to affidavits or deposition transcripts in support of the request to dismiss these defenses. Defendants also do not provide detailed arguments about these defenses and assert that to "the extent that the Court finds jurisdiction here, then those are defeated" (NYSCEF Doc. No. 85 at 19-20). Plaintiff did not address these affirmative defense at all in reply.

It is not the role of this Court to make arguments for the parties and conduct its own examination of the affirmative defenses. Therefore, the Court declines to dismiss any of these affirmative defenses with respect to all causes of action *except* for the breach of contract claim. That is, they remain except that plaintiff is entitled to summary judgment against LR for breach of contract as noted above.

Other Issues

The Court denies defendants' request for summary judgment in its favor. Defendants did not cross-move for such relief and so it would be inappropriate for the Court to grant such relief under these circumstances. The Court declines to sua sponte search the record and grant defendants any affirmative relief.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment is granted only with respect to its breach of contract claim and only as against defendant LR Acquisition LLC in the amount of \$30,929.94 plus statutory interest from October 21, 2018 (when plaintiff inquired about the pending telex in an email) plus \$135,000 for the settlement and \$56,895.07 in legal fees and statutory interest for these two amounts from July 13, 2020 (the date of the settlement [NYSCEF Doc. No. 76]) along with costs and disbursements upon presentation of proper papers therefor; and it is further

ORDERED that the remaining branches of the motion are denied and the remaining claims are severed.

7/18/2023

DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: