

Samsung C&T Am., Inc. v Maroni

2024 NY Slip Op 33014(U)

August 26, 2024

Supreme Court, New York County

Docket Number: Index No. 652529/2024

Judge: Anar Rathod Patel

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

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SAMSUNG C&T AMERICA, INC.	INDEX NO.	<u>652529/2024</u>
Plaintiff,	MOTION	
- v -	DATE	<u>05/15/2024</u>
STEFANO MARONI,	MOTION SEQ.	
Defendant.	NO.	<u>001</u>

DECISION + ORDER ON MOTION

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HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2–13, 17–21 were read on this motion for SUMMARY JUDGMENT IN LIEU OF COMPLAINT.

Plaintiff Samsung C&T America, Inc. (“Plaintiff” or “SCTA”) moves, pursuant to CPLR § 3213, for summary judgment in lieu of complaint against Defendant Stefano Maroni (“Defendant” or “Maroni”) in the amount of \$2,593,331.41, plus prejudgment interest or, alternatively granting summary judgment on liability only with damages to be assessed at a later time; (ii) directing that an inquest be held to determine the amount of costs and expenses (including reasonable attorneys’ fees and court costs) to be awarded to Plaintiff under the parties’ controlling agreement; and (iii) granting such other and further relief as the Court deems just and proper. For the reasons discussed below, Plaintiff’s motion is granted in part.

Relevant Factual and Procedural Background

This case arises from a business relationship between SCTA and Maroni, as well as the Maroni Companies¹, as to the manufacturing, importing, and distribution of consumer products—namely footwear. On or about March 25, 2009, SCTA entered into a Sales Representative Agreement (“SRA”) with Belovefine and GMI. The SRA was amended thereafter to, *inter alia*, include TBF and SMJack; the operative version is dated as of July 1, 2013. Maroni signed the SRA in his capacity as an executive officer of each company. NYSCEF Doc. No. 4 (SRA).

The SRA sets forth the calculation of commission structure using a metric called Available Commission, which “serves as the ultimate gauge of the bottom-line profitability of the SCTA-Maroni venture.” NYSCEF Doc. No. 3 (Choi Aff.) at ¶ 47. The SRA provides that “[i]n the event the Available Commission calculation results in a negative amount for three (3) consecutive

¹ The Maroni Companies include four entities that he owned, operated, and controlled: GMI USA Corp. (“GMI”), Belovefine, Ltd. (“Belovefine”), TB Footwear LLC (“TBF”), and SMJack LLC (“SMJack”).
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months, then the Belovefine Companies² shall be required to pay such negative amount to SCTA within ten (10) business days after the end of such three-month period.” NYSCEF Doc. No. 4 at 5–6. The calculation, pursuant to the terms of the SRA, is generally: Gross Sales less taxes, price adjustments, credits, chargebacks, returns, discounts, allowances equals Net Sales; Net Sales less landed duty paid (LDP) costs and SCTA Overhead equals Earned Commission; Earned Commission less other charges permitted by the SRA equals Commission Reserve; Commission Reserve less Restricted Commission Reserve yields Available Commission. NYSCEF Doc. No. 4 at 4–6; NYSCEF Doc No. 3 at ¶¶ 49–67. As of the date of the instant motion, Plaintiff contends that it is owed the amount of Available Commission of \$2,593,331.41.

On or about October 6, 2020, Maroni executed a personal guaranty (“Guaranty”) for the benefit of SCTA with respect to amounts owed presently or in the future by GMI, Belovefine, and TBF under the SRA. NYSCEF Doc. No. 6 (Personal Guaranty). Relevant to the instant motion, the Guaranty states:

This Guaranty is given by Guarantor to SCTA to induce SCTA to continue to transact business with Debtors [Maroni’s companies] under the [SRA], as modified by a Limited Forbearance and Support Agreement with an Effective Date of October 6, 2020 (the “LFSA”) resulting in payment and/or performance debt by Debtors to SCTA from such transactions.

...

Guarantor hereby absolutely, irrevocably and unconditionally guarantees, except as limited herein, directly and not merely as a surety, to SCTA, its successors and assigns, the full and prompt performance when due of all Debtors’ past, presently outstanding, and future payment, performance and other obligations to SCTA in U.S. dollars, together with interest and penalties thereon and all costs, fees, and expenses arising out of any default by Debtors of any obligation pursuant to the [SRA], as modified by the LFSA, between Debtors and SCTA (“Debtors’ Obligations”); and all costs, fees and expenses, including reasonable attorney’s fees, incurred by SCTA in enforcing its rights under this Guaranty.

NYSCEF Doc. No. 6 at 1.

By letters dated July 21, 2023, August 14, 2023, April 12, 2024, and April 30, 2024, Plaintiff provided written notices of default and formal demands to Maroni and the Maroni Companies that articulate the basis for the demand with reference to the SRA and Guaranty, the basis for default, and the Available Commission provided by month. NYSCEF Doc. Nos. 10, 11, 12 (Schadt Aff. with accompanying letters constituting notice and demand). To date, Maroni has not made payments due under the Guaranty. *See id.*; NYSCEF Doc. 3 at ¶¶ 158–160.

Plaintiff commenced this action by the filing of a Summons and Motion for Summary Judgment in Lieu of Complaint on May 15, 2024. NYSCEF Doc. Nos. 1–13. Said papers were

² Defined as the Maroni Companies in the SRA. *See* NYSCEF Doc. No. 3 at ¶ 18, NYSCEF Doc. No. 4.

served upon Defendant *via* personal service at his residence in New York on May 17, 2024. NYSCEF Doc. No. 16. The return date of the motion was July 19, 2024. NYSCEF Doc. No. 2. Defendant did not file any opposition papers on or before the prescribed date of July 12, 2024. Rather, Defendant submitted a letter to the Court dated August 4, 2024, acknowledging the aforementioned dates and “apologiz[ing] for the delay in responding to the complaint.” NYSCEF Doc. No. 10. Defendant denies Plaintiff’s allegations and asks that the Court decline to enter a default judgment against him. *Id.* The Court refers to the August 9, 2024 letter and supporting affidavit submitted by Plaintiff in response to Defendant’s letter to the Court. NYSCEF Doc. Nos. 20 (8/9/24 Letter), 21 (Choi Aff.).

Legal Discussion

Default in an Action Pursuant to CPLR § 3213

For motions brought under CPLR § 3213, the defendant is required to serve opposition papers when due before the return date. “If there is no appearance and opposition by the defendant by the return date, the defendant will of course be in default and the court is authorized to enter a default judgment (*Counsel Fin. Servs., LLC v. David McQuade Leibowitz, P.C.*, 67 A.D.3d 1483, 889 N.Y.S.2d 811 (4th Dept. 2009).” Mark C. Dillon, Practice Commentaries, McKinney’s Cons Law of NY, CPLR C3213:20. While New York’s public policy favors the resolution of disputes on their merits, if the defendant seeks additional time to oppose a CPLR § 3213 motion but gives no particular reason as to why it should be granted, the court may deny it. *Id.* (citing to *Alfred E. Mann Living Trust v. ETIRC Aviation S.A.R.L.*, 910 N.Y.S.2d 418, 423 (1st Dept. 2010)).

Here, Defendant acknowledges his “mistake” in failing to timely respond to the motion, but offers no explanation or reasonable excuse for his delay. Defendant does not make any application to the Court for, for example, additional time to respond to the motion. In his affidavit, Mr. Choi (Director, SCTA) avers that he has engaged in multiple conversations with Defendant since the action was commenced in May 2024, during which Defendant sought to engage in settlement and acknowledged the pending motion as well as his obligation to file a timely response. NYSCEF Doc. No. 21.

It is undisputed that Defendant did not oppose the instant motion for summary judgment in lieu of complaint, appear on the return date, and/or espouse any reasonable excuse for his failure to timely respond. Accordingly, the Court finds in its discretion that Defendant is in default as of July 19, 2024.

Summary Judgement in Lieu of Complaint

CPLR § 3213 provides an expedited path to resolution when an action is based upon “documentary claims so presumptively meritorious that a formal complaint is superfluous, and even the delay incident upon waiting for an answer and then moving for summary judgment is needless.” *Weissman v. Sinorm Deli*, 88 N.Y.2d 437, 443 (1996) (internal quotations omitted). “When an action is based upon an instrument for the payment of money only . . . the plaintiff may serve with the summons a motion for summary judgment and the supporting papers in lieu of a complaint.” CPLR § 3213. “An unconditional guaranty is an instrument for the payment of

‘money only’ within the meaning of CPLR 3213.” *Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A. (“Rabobank, Intl.”) v. Navarro*, 25 N.Y.3d 485, 492 (2015).

“To meet its *prima facie* burden on its summary judgment motion, [Plaintiff] must prove ‘the existence of the guaranty, the underlying debt and the guarantor’s failure to perform under the guaranty. Thereafter, ‘the burden shifts to the defendant to establish, by admissible evidence, the existence of a triable issue with respect to a *bona fide* defense.’” *Id.* (internal citations omitted).

Here, Plaintiff has submitted the Guaranty executed by Defendant and which is for the payment of money only, the underlying debt that has been guaranteed as set forth in the Guaranty and as calculated under the SRA, and its demand letters establishing Defendant’s default and failure to perform under the Guaranty. *See DB 232 Seigel Mezz LLC v. Moskovitz*, 223 A.D.3d 610, 611 (1st Dept 2024). The Guaranty itself contains explicit language at Section 1 that Defendant’s obligations arising under the SRA are absolute, irrevocable, and unconditional. NYSCEF Doc. No. 6.

Plaintiff accurately argues that “an instrument is not rendered ineligible for CPLR 3213 treatment merely because it does not cite a sum certain on its face.” *Allied Irish Banks, PLC v. Young Men’s Christian Ass’n of Greenwich*, 944 N.Y.S.2d 828 (N.Y. Cty. Sup. Ct. 2012), *aff’d* 961 N.Y.S.2d 920 (2013); *see also Bank of Am., N.A. v Solow*, 2008 WL 1821877 at *4 (N.Y. Cty. Sup. Ct. April 17, 2008), *aff’d* 874 N.Y.S.2d 48 (1st Dept. 2009) (“A guaranty may be the proper subject of a motion for summary judgment in lieu of complaint whether or not it recites a sum certain, and the need to consult the underlying documents to establish the amount of liability does not affect the availability of CPLR 3213.”) (internal citations omitted).

The Court has reviewed the calculations underlying Plaintiff’s application for a judgment in the amount of \$2,593,331.41, with reference to the commission worksheets for December 2022, December 2023, and March 2024 submitted as exhibits to Plaintiff’s motion papers. NYSCEF Doc. Nos. 7 (March 2024 Commission Work Sheet), 8 (December 2023 Commission Work Sheet), 9 (December 2022 Commission Work Sheet); *see also* NYSCEF Doc. No. 3 at ¶¶ 119–154. In doing so, the Court determines that the amount is not readily ascertainable based on this record.


Therefore, the Court grants Plaintiff’s motion as to liability, and directs an inquest as to the calculation of damages (*i.e.*, Available Commission), attorney’s fees, costs, and expenses. *See Allied Irish Banks*, 944 N.Y.S.2d 828, 834 (granting the motion for summary judgment in lieu of complaint as to liability and referring the calculation of damages to a special referee).

Accordingly, it is hereby

ORDERED that Plaintiff’s Motion for Summary Judgment in Lieu of Complaint is granted in part as to liability against Defendant; and it is further

ORDERED that the Court directs an inquest as to an award of damages, attorney’s fees, costs and expenses; and it is further

ORDERED that the parties shall appear before the Court for an inquest on October 2, 2024 at 9:30 a.m. in Courtroom 428.

<u>August 26, 2024</u> DATE			 ANAR RATHOD PATEL, A.J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE