

Simpson v Peekskill Furniture
2016 NY Slip Op 31730(U)
September 12, 2016
City Court of Peekskill, Westchester County
Docket Number: SC-275-16
Judge: Reginald J. Johnson
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

PEEKSKILL CITY COURT
COUNTY OF WESTCHESTER: STATE OF NEW YORK

-----X

ROSE R. SIMPSON,

DECISION & ORDER

Plaintiff,

--against--

Index No. SC-275-16

PEEKSKILL FURNITURE d/b/a DISCOUNT Small Claims Part
& ELECTRIC CORP.,

Defendant.

-----X

HON. REGINALD J. JOHNSON

This is a Small Claims action commenced pursuant to Uniform City Court Act (UCCA), Article 18. The Plaintiff appeared pro se and she produced her brother Timothy Simpson as her witness. The Defendant defaulted in pleading and appearance, after which this matter proceeded to an inquest on damages.

For the reasons that follow, this matter is decided in accordance herewith.

Facts

The Plaintiff testified that on or about May 23, 2016, she purchased living room furniture from the Defendant for \$2200.00 (See Plaintiff's Exh. "3"). Gabby was the salesperson who sold her the furniture. Plaintiff told Gabby that she was interested in purchasing leather

Index No. SC-275-16

furniture. According to the Plaintiff, she selected what she thought was leather furniture set from a manual provided by Gabby while she was at the Defendant's furniture store; the furniture was to be delivered to the Plaintiff's residence on June 6, 2016 between 7-8:00 p.m. When the furniture was delivered, the Plaintiff noticed that it was not what she had ordered from the catalog. The furniture that was delivered was not leather but "pleather" or non-leather. Plaintiff said that she did not notice that the furniture was not what she ordered, which was left in the hallway of her apartment building outside her door, until she unwrapped some of it in order to inspect it.

Plaintiff stated that she called Gabby the following day to inform her that the furniture that was delivered to her residence was not the furniture she ordered. Gabby said that she would make arrangements to have the furniture picked up but no one ever came to retrieve it. After several unsuccessful phone calls to Gabby and unsuccessful visits to the Defendant's store, the Plaintiff said that she arranged for the furniture to be sent back to the store on June 11, 2016, where the furniture still sits on the showroom floor.

Timothy Simpson testified that the furniture shown in the catalog was not the same furniture that was delivered to the Plaintiff. Mr. Simpson also stated that he inspected the furniture and determined that it was not leather.

Index No. SC-275-16

Lastly, Plaintiff testified that she informed Crest Financial, the company who financed her purchase of the disputed furniture, about her dispute with the Defendant but she said Crest Financial advised her to retrieve the furniture from the Defendant before it could address her dispute (See Plaintiff's Exh. "1"). Plaintiff said she was not amenable to retrieving the furniture from the Defendant. According to a letter from Crest Financial dated June 8, 2016 to the Plaintiff, it stated that she agreed to pay \$341.00 bi-weekly for 12 months via a draft from her credit card (See, Plaintiff's Exh. "2").

Discussion

It has been held that the Small Claims Part of a City Court is commanded to "do substantial justice between the parties according to the rules of substantive law." Williams v Roper, 269 A.D.2d 125, 126, 703 N.Y.S.2d 77, 79 (1st Dept. 2000); UCCA §1804; see also, Milsner v. McGahon, 20 Misc.3d 127(A), 2008 WL 2522307 (App. Term. 9th & 10th Judicial Districts); Basler v. M&S Masonry & Construction, Inc., 21 Misc.3d 137(A), 2008 WL 4916105 (App. Term, 9th & 10th Judicial Districts). This is especially so since the practice, procedures and forms utilized in the Small Claims Part were meant to "constitute a simple, informal and inexpensive procedure for the prompt determination of such claims in accordance with the rules and principles of substantive law."

Index No. SC-275-16

UCCA §1802-A. Further, the Court “shall not be bound by statutory provisions or rules of practice, procedure, pleading or evidence...” UCCA §1804-A.

The sole jurisdiction of the Small Claims Part is for money only. See, Johnson v. Timmerman, 92 Misc.2d 626, 401 N.Y.S.2d 149 (County Court, Jefferson County, 1978). Hence, the Small Claims Part does not have the authority to rescind a contract. But does a Small Claims Part have the authority to declare a contract rescinded by the parties?

When a party has been induced to enter into a contract on the basis of fraud, misrepresentation or other wrongful conduct, that party has three options: (1) immediately rescind the contract; (2) bring an action in equity to rescind the contract based on the alleged wrongful conduct; or (3) retain the benefits of the contract and seek damages. See, Fitzgerald v. Title Guarantee and Trust Co., 290 N.Y. 376, 378-79, 49 N.E.2d 489 (1943); John Berg Inc. v. Associated Spinners Inc., 201 Misc. 627, 629-30, 108 N.Y.S.2d 388 (City Court of the City of NY, 1951).

Further, a misrepresentation of a material fact innocently made will support the rescission of a contract. See, Lindlots Realty Corporation v. Suffolk County, 278 N.Y. 45, 15 N.E.2d 393, 116 A.L.R. 1401 (1938); West Side Federal Sav. & Loan Ass’n of New York City v. Hirschfeld, 101 A.D.2d 380, 476 N.Y.S.2d 292 (1st Dept. 1984); Junius Const. Co. v.

Index No. SC-275-16

Cohen (State Report title; Junius Const. Corp. v. Cohen, 257 N.Y. 393, 178 N.E. 672 (1931)).

It is well settled that parties to a contract may mutually agree to cancel and rescind it. See, Rodger v. Rodgers, 235 N.Y.408, 139 N.E. 557 (1923); Schwartzreich v. Bauman-Basch, 231 N.Y. 196, 131 N.E. 887 (1921); Jones v. Trice, 202 A.D.2d 394, 608 N.Y.S.2d 688 (2d Dept. 1994). Further, where the buyer returns the subject of the contract to the seller and the seller accepts the return, the contract is mutually rescinded as a matter of law. See, Stella v. Banker's Commercial Corporation, 197 A.D. 515, 189 N.Y.S. 511 (1st Dept. 1921).

In the case at bar, the undisputed evidence is that the Plaintiff intended to purchase leather furniture from the Defendant. Gabby provided Plaintiff with a catalog from which she selected what she thought was leather furniture. Gabby prepared the invoice and failed to describe the "Special Order" furniture that Plaintiff purchased by color and by whether it was leather or something else (See Plaintiff's Exh. "3"). After Plaintiff inspected the furniture and rejected it because it was not leather, she returned it to the Defendant five (5) days later. Plaintiff's inspection and rejection of the furniture was timely made. See, White Devon Farm v. Stahl, 88 Misc.2d 961, 389 N.Y.S.2d 724 (Supreme Court, New York County, 1976); see also, UCC §2-608 ("Revocation of

Index No. SC-275-16

Acceptance in Whole or in Part”). Since the Defendant has accepted the return of the furniture from the Plaintiff, the contract between the parties was mutually rescinded. See, Stella v. Banker’s Commercial Corporation, 197 A.D. 515, *supra*.

Now turning to the question posed above: Can the Small Claims Part declare a contract rescinded by the parties? Yes, if the cause of action is for money only. See, John Berg Inc. v. Associated Spinners Inc., 201 Misc. at 628 (“The cause of action thus pleaded in the complaint are not equitable suits *for* rescission; they are actions at law for moneys had and received based *upon* rescission, and of such cause of action the City Court of the City of New York undoubtedly has jurisdiction...”) (emphasis in the original). In other words, where the contract has been rescinded by the parties prior to suit and the suit is strictly for monies allegedly due and owing after the rescission, the Small Claims Part may confirm the rescission-that is, find that there had been a rescission of the contract or not, and then proceed to award a money judgment.

However, “[a] judicial award, even one issued in the context of a small claims action, must rest upon competent evidence, and not mere inference or surmise.” Rollock v. Modell, Inc., 169 Misc.2d 663, 665, 652 N.Y.S.2d 465, 467 (App. Term, 1st Dept. 1996). The Plaintiff is required to provide the Court with proof that she paid any sum of money for the furniture within 10 days of the date of this Decision & Order. If

Index No. SC-275-16

Plaintiff fails to provide the Court with the required proof within this period or if she paid no money at all, the action is dismissed for lack of subject matter jurisdiction. See, Johnson v. Timmerman, 92 Misc.2d 626. If the Plaintiff provides proof of some payment for the furniture, then the Court will enter a judgment in her favor for that amount.

This constitutes the decision and order of the Court.

Hon. Reginald J. Johnson
Peekskill City Court Judge

DATED: Peekskill, New York
September 12, 2016