

Life Sourcing Co. Ltd. v Shoez, Inc.

2018 NY Slip Op 33353(U)

December 21, 2018

Supreme Court, New York County

Docket Number: 655714/2016

Judge: David Benjamin Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAVID BENJAMIN COHEN PART IAS MOTION 58EFM

Justice

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LIFE SOURCING CO. LTD.

Plaintiff,

- v -

SHOEZ, INC., BRANDS UNLIMITED, LLC AND GIF SERVICES, INC.,

Defendant.

INDEX NO. 655714/2016

MOTION DATE 07/13/2017

MOTION SEQ. NO. 001

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

Upon the foregoing documents, it is

The following facts are undisputed. Defendant Shoez Inc. ("Shoez") ordered 1,338 items of men's fleece jackets (the "Goods") from Ravissant Limited. Ravissant ordered the Goods to be manufactured by Quanzhou Xiante Garments Co. Ltd. On or about October 12, 2015, Quanzhou issued an invoice with a remaining balance of \$68,493.60 to Ravissant for the order of the Goods. On or about October 15, 2015, plaintiff Life Sourcing Co. Ltd., a subsidiary of Life Logistics Limited (together with Life Sourcing Co. Ltd., "Life Souring/Logistics"), shipped the Goods to Shoez. Ravissant failed to pay the \$68,493.60 balance. Quanzhou then sought payment from Life Logistics/Life Sourcing. Quanzhou claimed that it would refuse to release the Bill of Lading without payment. Life Sourcing/Logistics contacted GIF, the receiving agent for Shoez seeking the monies due on the order. GIF forwarded the request from Life Sourcing/Logistics to Shoez/Brands.1 On January 21, 2016, GIF sent Life Sourcing/Logistics an

1 The Court does not know the specific relationship between Brands Unlimited and Shoez.

email wherein Deepak Ramani of Shoez/Brands² agreed to pay Life Sourcing/Logistics under certain conditions. Specifically, in the email, Deepak Ramani stated that she was seeking a discount and needed to verify documents with the bank. The email also states that there was “no way I would wire anyone money” prior to receiving a release. On or about January 22, 2016, following receipt of this email, Life Sourcing/Logistics paid the remaining balance for the Goods to Quanzhou. Following the payment, Quanzhou sent a creditor’s confirmation request letter to release the Goods. It is not clear from the record whether this released the Goods or whether the Goods had been released prior to this letter but it is undisputed that the Goods were delivered to Shoez/Brands. Life Sourcing/Logistics sought reimbursement from Shoez/Brands. Despite having received the Goods, Shoez/Brands refused payment absent the release explaining that absent the release from Ravissant it could potentially be responsible for payment to Ravissant.

As the parties could not reach an agreement relating to the reimbursement of Life Sourcing/Logistics, on October 28, 2016 plaintiff filed the instant Complaint against defendants alleging six causes of action: (1) goods sold and delivered, (2) breach of contract, (3) *Quantum Meruit*, (4) unjust enrichment, (5) account stated, and (6) fraudulent inducement. Plaintiff herein moves for partial summary judgment pursuant to CPLR §3212 against defendant Shoez, Inc. on the breach of contract, cost goods sold and delivered, account stated, unjust enrichment, and *quantum meruit* causes of action.

² The Court notes that the various emails from Deepak come from both Brands and Shoez domain. As the email sent by GIF to Life Sourcing/Logistics was seemingly cut and pasted, the Court is not certain which domain the email came from. In addition, the Court notes that several emails from Deepak Ramani are signed as the president of Brands. Herein, a Deepak Ramchandani has filed an affidavit in opposition to the instant motion. In said affidavit, Deepak Ramchandani claims to be an office of Shoez.

Summary judgment is a drastic remedy that should not be granted where there exists a triable issue of fact (*Integrated Logistics Consultants v Fidata Corp.*, 131 AD2d 338 [1st Dept 1987]; *Ratner v Elovitz*, 198 AD2d 184 [1st Dept 1993]). On a summary judgment motion, the court must view all evidence in a light most favorable to the non-moving party (*Rodriguez v Parkchester South Condominium Inc.*, 178 AD2d 231 [1st Dept 1991]). The moving party must show that as a matter of law it is entitled to judgment (*Alvarez v Prospect Hosp.*, 68 NY2d 320 324 [1986]). The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]). After the moving party has demonstrated its *prima facie* entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring a trial (*Zuckerman v City of New York*, 49 NY2d 557 [1980]).

Under New York law “[t]he elements of a cause of action for breach of contract are (1) formation of a contract between plaintiff and defendant, (2) performance by plaintiff, (3) defendant's failure to perform, (4) resulting damage” (*Morris v 702 E. Fifth St. HDFC*, 46 AD3d 478 [1st Dept 2007]). Here, plaintiff claims that defendant agreed to reimburse plaintiff for a payment that plaintiff was going to make to Quanzhou. However, based upon the affidavit of Deepak Ramchandani it remains a question of fact whether the parties indeed ever fully agreed to such reimbursement. In addition, the January 21, 2016 email also raises a question whether the parties reached an agreement for reimbursement. As there remains a genuine issue of fact in dispute, summary judgment on the breach of contract cause of action is denied.

To succeed on a claim for *quantum meruit* plaintiff must establish (1) the performance of services in good faith, (2) the acceptance of the services by the person to whom they are

rendered, (3) an expectation of compensation therefor, and (4) the reasonable value of the services (*Fulbright & Jaworski, LLP v Carucci*, 63 AD3d 487 [1st Dept 2009]). Here, although plaintiff alleges that the Goods were released based upon the assurances of payment from Shoez and plaintiff's expectation of compensation, the affidavit of Deepak Ramchandani and the January 21, 2016 email raises a question whether plaintiff had any basis for such expectation and whether plaintiff released the Goods due to its relationship with (or threat from) Quanzhou. As there remains a genuine issue of fact in dispute, summary judgment on the *quantum meruit* cause of action is denied.

To grant summary judgment based on accounts stated, plaintiff's *prima facie* burden is to prove that it sent defendant invoices, and that defendant failed to object to them within a reasonable time (*Interman Indus. Products, Ltd. V R.S.M. Electron Power, Inc.*, 37 NY2d 151 [1975]; *Rockefeller Group, Inc. v Edwards & Hjorth*, 164 AD2d 830 [1st Dept 1990]). Even if defendant did not expressly assent, it would be bound by them as accounts stated unless fraud, mistake or other equitable considerations were shown (*Rosenman Colin Freund Lewis & Cohen v Neuman*, 93 AD2d 745 [1st Dept 1983]). Here, plaintiff invoiced defendant on January 26, 2016. As the email correspondence from February and March 2016 indicate that Shoez did not agree to pay without certain conditions, plaintiff has not established its *prima facie* requirement that defendant retained the invoice without objection, and summary judgment is denied.

The motion seeking summary judgment for cost goods sold and delivered is denied. This cause of action requires the selling of goods. As pleaded, plaintiff never sold goods to defendant and the parties never had any contract regarding the manufacture of the Goods. Plaintiff was merely the shipper and only claims to have entered into an agreement relating to payments and reimbursement and not the manufacture of the Goods.

However, plaintiff is granted summary judgment on liability for its unjust enrichment claim. To succeed on an unjust enrichment claim, plaintiff must *prima facie* establish “that (1) the defendant was enriched, (2) at plaintiff’s expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered” (*Georgia Malone & Co., Inc. v Rieder*, 19 NY3d 511, 516 [2012]). In this case, it is not disputed that Shoez has received the Goods and has not paid for the Goods; and that plaintiff paid Quanzhou for the Goods in satisfaction of Quanzhou’s claim for payment. Thus, plaintiff has been enriched in two ways. It received the Goods and plaintiff’s payment extinguished claims Quanzhou may have had against Shoez. This enrichment was at the expense of plaintiff’s payments to Quanzhou. In determining the equity, as Shoez has had (and presumably sold) the Goods for three years, and Shoez has not argued that Ravissant (who allegedly never paid Quanzhou for the Goods) has ever sought payment from Shoez, or has ever sought to enforce any legal rights, the Court finds that, as a matter of law, it is against equity and good conscience to permit the other party to retain the benefit of the Goods and the payment to Quanzhou without payment. Accordingly, summary judgment is granted on liability for the unjust enrichment cause of action. However, as Shoez had complained about the lateness of the delivery and of non-conformance and defectiveness of some of the Goods, a trial on damages is warranted to assess the proper amount of the defendant’s enrichment. It is therefore

ORDERED that summary judgment is granted on liability on the unjust enrichment cause of action; and it is further

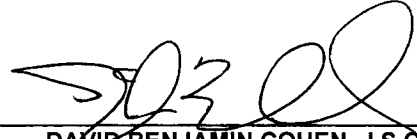
ORDERED that an assessment of damages against defendant Shoez is directed, and it is further

ORDERED that a copy of this order with notice of entry be served by the movant upon the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the assessment above directed; and it is further

ORDERED that such service upon the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

This constitutes the decision of the Court.

12/21/2018
DATE


DAVID BENJAMIN COHEN, J.S.C.

**HON. DAVID B. COHEN
J.S.C**

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE