M.T.S.- Officine Meccaniche di Precisione S.p.A. v Electronics for Imaging Italia S.r.L.
2023 NY Slip Op 31615(U)
May 12, 2023
Supreme Court, New York County
Docket Number: Index No. 655004/2022
Judge: Melissa A. Crane
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MELISSA A. CRANE** **PART** **60M**

Justice

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M.T.S.- OFFICINE MECCANICHE DI PRECISIONE S.P.A.,

Plaintiff,

- v -

ELECTRONICS FOR IMAGING ITALIA S.R.L., ELECTRONICS FOR IMAGING, INC.

Defendant.

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INDEX NO. 655004/2022

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18

were read on this motion to/for DISMISS.

Defendants Electronics for Imaging Italia S.r.L. and Electronics for Imaging, Inc. (collectively "Defendants" or "EFI") have moved to dismiss Plaintiff M.T.S. – Officine Meccaniche di Precisione S.p.A.'s ("Plaintiff" or MTS") complaint pursuant to CPLR 3211(a)(7). For the following reasons, Defendants' motion is granted in its entirety.

FACTUAL AND PROCEDURAL HISTORY

This case involves a dispute over who must bear the burden and cost of physically delivering digital prototype machines ("Prototypes") pursuant to an alleged agreement between the parties. The complaint alleges that MTS entered into a purchase agreement ("Purchase Agreement") in July 2015 to sell its equity interests in Reggiani Machine S.p.A. ("Reggiani") to EFI (Complaint, NYSCEF Doc. No. 1, ¶ 12). In June 2017, EFI allegedly made a claim for indemnification under the Purchase Agreement based in part on their claim that the Prototypes were misclassified prior to the sale of Reggiani's interests (Complaint, ¶¶ 15-16).

In order to resolve the dispute over the Prototypes, MTS and EFI allegedly entered into a Confidential Agreement. The Confidential Agreement allegedly states:

> On the Effective Date, as full and final resolution of the Prototype Claim, MTS shall purchase the Prototypes from the Company, on a strictly 'as-is' basis, for a total purchase price in the amount of the Prototype Claim (€1,735,932) which shall be satisfied by EFI retaining this amount from the Initial Indemnity Claim amount. Title and risk of loss for the Prototypes shall transfer to MTS on the Effective Date.
>
> (Complaint, ¶ 18).[1]

Although the Confidential Agreement is not before the court, the parties do not dispute that the Confidential Agreement is completely silent as to where delivery would take place, who would be responsible for physically delivering the Prototypes, who would be responsible for paying to ship the Prototypes to MTS, or whether MTS would be responsible for retrieving the Prototypes. Although EFI asked MTS in an email where it should deliver the Prototypes (January 2018 Email Chain, NYSCEF Doc. No. 17), Plaintiff does not allege that the parties reached an agreement as to who would pay for the delivery. When EFI did not deliver, Plaintiff unilaterally demanded shipment by January 18, 2018 (*id.*; *see also* Complaint, ¶ 19). In the absence of payment for delivery, EFI still did not deliver the Prototypes. However, EFI emailed on January 24, 2018 stating that the goods would be delivered on January 26 and that MTS "would be invoiced" (January 2018 Email Chain). MTS replied on January 24, 2018, stating that "since [the] company [had] not received the delivery by January 18, 2018, the sales contract [was] automatically terminated" (*id.*). MTS requested EFI to "stop the shipment" (*id.*).

MTS filed the complaint in this action on December 27, 2022, alleging causes of action for breach of the Confidential Agreement, unjust enrichment, breach of the implied covenant of good

[1] The court notes that Defendants moved to dismiss solely for failure to state a cause of action under CPLR 3211(a)(7). Defendants have not moved to dismiss on the basis of documentary evidence pursuant to CPLR 3211(a)(1). Neither party has attached the actual Confidential Agreement to their papers and, therefore, the court does not have the Confidential Agreement before it and relies on the parties' representations of its text.

faith and fair dealing, money had and received, and conversion. Defendants moved to dismiss on February 21, 2023. The court held oral argument on May 8, 2023. Because plaintiff failed to allege that the Confidential Agreement (or any other agreement) placed the responsibility to pay for shipping on defendants, the court gave Plaintiff permission to file supplemental exhibits in opposition to the motion no later than May 11, 2023, in order to fill in these missing allegations. On May 11, 2023, Plaintiff filed a letter with an attached email chain supplementing its motion (Supplementary Letter, NYSCEF Doc. No. 20). The email chain included a January 18, 2018 email from EFI to MTS stating that they had "started the goods delivery procedure" and a January 19, 2018 response from MTS requesting EFI to "discontinue [their] dispatch procedure" (Exhibit B to Supplementary Letter, NYSCEF Doc. No. 22).

DISCUSSION

The complaint alleges that MTS breached the Confidential Agreement by failing to deliver the Prototypes to MTS or to reimburse MTS for the purchase price (Complaint, ¶ 31). The Confidential Agreement is undisputedly silent as to place of delivery. Under UCC § 2-308(a), "[u]nless otherwise agreed" the "place for delivery of goods is the **seller's** place of business" (*see Uchitel v F.R. Tripler & Co.*, 107 Misc2d 310, 312-313 [1st Dept 1980] [applying UCC § 2-308(a) and finding that tender of delivery occurred "when the goods were held at [seller]'s premises for [buyer]'s acceptance and [buyer] was notified that the items were ready for pick up"]; *Fanok v Carver Boat Corp., LLC*, 576 F Supp2d 404, 417-418 [EDNY 2008] [granting summary judgment dismissing breach of contract claim based on theory that defendants failed to deliver yacht to plaintiff, finding that under UCC § 2-308(a), plaintiff "did not have to bring in a trailer and take the yacht away to affect a delivery"]).

Because Plaintiff does not allege that the Confidential Agreement required Defendants to deliver the Prototypes physically to Plaintiff, Defendants' alleged failure to do so cannot support a cause of action for breach of contract based on the Confidential Agreement.

Unable to state a cause of action for breach of contract based on the Confidential Agreement, Plaintiff suggested at oral argument that Defendants breached some other agreement related to the Prototypes, and delivery thereof. However, Plaintiff has not alleged that the parties agreed defendants would pay for the cost of delivery and has not provided the court with any evidence to support this circumstance, in the absence of allegations. While email exchanges between EFI and MTS suggest that MTS may have **demanded** delivery of the Prototypes by January 18, 2018, this demand was unilateral. Plaintiff has failed to provide the court with anything indicating that EFI agreed to deliver the Prototypes by that date certain and at its own expense (*see* January 2018 Email Chain).

Nor does Plaintiff allege the parties had some sort of oral agreement whereby EFI would pay for delivery. The absence of an agreement as to who would pay for delivery is a missing material term, without which there is no agreement (*see Directtv Latin America, LLC v RCTV Intern. Corp.*, 115 AD3d 539, 540 [1st Dept 2014] [granting dismissal of breach of contract claim where the purported contract failed to "identify the payment amount or provide a method to calculate that amount"], *citing Cobble Hill Nursing Home v Henry & Warren Corp.*, 74 NY2d 475, 482 [1989] ["Few principles are better settled in the law of contracts than the requirement of definiteness. If an agreement is not reasonably certain in its material terms, there can be no legally enforceable contract."]; *Express Industries and Terminal Corp. v New York State Dept. of Transp.*, 93 NY2d 584, 589 [1999]).

Contrary to Plaintiff's argument in the Supplementary Letter, the email chain between the parties does not suggest that Defendants agreed to ship the Prototypes by January 18. Rather, the newly attached January 18 email from EFI to MTS merely states that EFI had "started the goods delivery procedure," without any reference whatsoever to the date on which the Prototypes would arrive, and who would pay for shipping (Exhibit B to Supplementary Letter). In any event, EFI later stated, on January 24, 2018 that it could ship the Prototypes on January 26, which is a reasonable time for performance (*see* UCC § 2-309 ["The time for shipment or delivery . . . under a contract if not provided . . . shall be a reasonable time"]; *Weksler v Weksler*, 140 AD3d 491, 492 [1st Dept 2016] [stating that "[w]hen a contract does not specify time of performance, the law implies a reasonable time"], *citing Savasta v 470 Newport Associates*, 82 NY2d 763, 765 [1993]). However, on January 24, 2018, plaintiff rejected defendants proposed January 26, 2018 ship date. Further, Plaintiff's argument that Defendants offered to deliver the Prototypes "without mentioning transportation costs" (Supplementary Letter) does not suggest that Defendants agreed to pay those costs themselves.

Thus, the record and the allegations in the complaint only amount to the following: defendants offered to ship within a few days if plaintiff would pay the shipping costs upon which plaintiff then cancelled the delivery and sued. Therefore, due to the lack of agreement on material terms about who would pay for delivery, and because plaintiff cancelled delivery, the court dismisses the complaint's cause of action for breach of contract.

Additionally, the court dismisses the remaining causes of action in Plaintiff's complaint for unjust enrichment, breach of the implied covenant of good faith and fair dealing, money had and received, and conversion as they are wholly duplicative of the defective breach of contract cause of action.

The court has considered the parties' remaining contentions and finds them unavailing.

Accordingly, it is

ORDERED that Defendants' motion to dismiss the complaint is granted in its entirety; and it is further

ORDERED that the Clerk of the Court is directed to mark this matter as disposed.

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DATE: 5/12/2023 **MELISSA A. CRANE, JSC**

Check One: [x] **Case Disposed** [ ] **Non-Final Disposition**

Check if Appropriate: [ ] **Other (Specify _____)**