Honeywell Intl., Inc. v Service Select, LLC
2013 NY Slip Op 30256(U)
February 1, 2013
Supreme Court, Suffolk County
Docket Number: 21629-2010
Judge: Emily Pines
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SHORT FORM ORDER

INDEX NUMBER: 21629-2010

SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION, PART 46, SUFFOLK COUNTY

COPY

***Present*: HON. EMILY PINES**
J. S. C.

Original Motion Date: 08-28-2012 & 10-02-2012
Motion Submit Date: 11-13-2012
Motion Sequence Nos.: 005 MDCASEDISP
006 MGCASEDISP
[x] **FINAL**
[ ] NON FINAL

---X

HONEYWELL INTERNATIONAL, INC.,

Plaintiff,

-against-

SERVICE SELECT, LLC., and O'NEILL PATRICK QUINLAN, III,

Defendants.

---X

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ORDERED, that the motion for summary judgment by defendant O'Neill Patrick Quinlan, III (Mot. Seq. 005) and the cross-motion for summary judgment by Plaintiff (Mot. Seq. 006) are decided as set forth herein.

FACTUAL AND PROCEDURAL BACKGROUND

In February 2006, defendant Service Select, LLC ("Service Select") applied for a credit line with ADI, a division of plaintiff Honeywell International Inc., a supplier of low voltage products. In connection therewith, a two-page "New Account Application" requesting a credit line of $10,000 was signed by Service Select's President, defendant O'Neill Patrick Quinlan III ("Quinlan") in two places. The first signature appears on the first page below "AUTHORIZATION TO OBTAIN CREDIT INFORMATION FOR OFFICERS, PARTNERS OR OWNER." Directly above the "Signature" line on the first page is a line labeled "Title," on which "President" is handwritten. Quinlan also signed the New Account Application at the bottom of the second page. Next to his signature is a line labeled

"Title" on which "President" is handwritten. The New Account Application provides, among other things, that "[a]ll invoices are due on a net 45 day basis" and that "[i]n consideration of ADI extending credit to the Company shown on this application, the undersigned jointly and severally agree to be personally liable for the payment of any amounts owing to ADI."

Thereafter, a second application for credit with ADI was completed. The second application is signed by Quinlan in three separate locations, each of which has a line labeled "Title" on which "President" is handwritten. The second application, like the first, provides, among other things, that "[a]ll invoices are due on a net 45 day basis" and that "[i]n consideration of ADI extending credit to the Company shown on this application, the undersigned jointly and severally agree to be personally liable for the payment of any amounts owing to ADI." Additionally, the second application states that ADI "may at any time require the undersigned to execute a personal guarantee or require Company to give ADI a secured interest in product sold." Quinlan's signature appears below the foregoing provisions. Quinlan provided the number of his personal credit card on the second application and gave plaintiff the right to apply charges to the card if the account went out of terms.

It is undisputed that Service Select purchased in excess of $775,000 in goods on credit from Plaintiff and failed to make payment for or return the goods.

Plaintiff commenced the instant action against Service Select and Quinlan in 2010. The original complaint asserted four causes of action. The first cause of action, asserted only against Service Select, was for breach of contract based upon Service Select's failure to pay for goods sold and delivered pursuant to the credit agreements in the amount of $775,621.94. The second cause of action was asserted only against Quinlan and claimed that he personally guaranteed Service Select's obligations under the credit agreements. The third cause of action against both Service Select and Quinlan was for unjust enrichment. The fourth cause of action against both defendants alleged violations of Debtor and Creditor Law §§ 276 and 279 through the disposition, sale and or transfer of the property purchased from plaintiff on credit with the actual intent to defraud plaintiff as a creditor.

Service Select has never appeared in the action.

By Order dated May 6, 2011, this Court (Pines, J.) granted Quinlan's motion to dismiss the complaint as asserted against him and granted plaintiff's motion to amend the complaint to add, among other things, a claim that Quinlan is liable for breach of contract as co-obligor under the credit agreements.

Plaintiff served an Amended Verified Complaint dated June 3, 2011, containing four causes of action. The first cause of action, asserted against Service Select and Quinlan, is for breach of contract and alleges, among other things, that Quinlan was a co-obligor on the credit agreements. The second cause of action, asserted only against Service Select, is for unjust enrichment. The third cause of action, asserted only against Service Select alleges violations of Debtor and Creditor Law §§ 276 and 279 through the disposition, sale and or transfer of the property purchased from plaintiff on credit with the actual intent to defraud plaintiff as a creditor. The fourth cause of action, asserted only against Quinlan, is for fraud. Plaintiff alleges, among other things, that Quinlan knowingly made numerous false statements upon which Plaintiff relied, including: that Quinlan was President of Service Select at the time the credit agreements were signed; that Quinlan's personal credit card account was available as additional security to plaintiff; and that Quinlan would pay any debts due and owing to plaintiff arising out of the credit agreements.

Quinlan now moves for summary judgment dismissing the complaint as asserted against him. Plaintiff cross-moves for summary judgment against Quinlan in the amount of $775,621.94, plus interest, costs and attorneys' fees.

In support of the motion, Quinlan submits, among other things, an affidavit wherein he states, among other things, that although he signed the credit agreements, he never agreed to be personally liable for Service Select's debts to Plaintiff, as he signed the credit agreements only in his capacity as an officer and employee of Service Select. He further states that he only provided his personal credit card number because Service Select did not have any corporate credit cards. Quinlan argues, among other things, that he was not a party to the credit agreements between Plaintiff and Service Select and, therefore, cannot be held liable for breach thereof. Quinlan also argues that the breach of contract claim against him should be dismissed based on the statute of frauds. Quinlan further contends that the fourth cause of action for fraud should be dismissed as the undisputed evidence demonstrates that Quinlan was the President of Service Select at the time he signed the credit agreements. Finally, Quinlan argues that if it is determined that he is a co-obligor on the credit agreements, his liability should be limited to $10,000, the amount of credit requested in the first application.

Plaintiff opposes Quinlan's motion and cross-moves for summary judgment. Plaintiff submits, among other things, an affidavit from Joshua Foster, Assistant General Counsel. Foster states, among other things, that the terms of the credit agreements expressly impose personal liability on Quinlan. Foster adds that the fact that Quinlan provided his personal credit account number is further evidence that he agreed to be "jointly and severally" and "personally" liable for paying any amounts owed to Plaintiff.

DISCUSSION

A party moving for summary judgment has the burden of making a prima facie showing of entitlement to judgment as a matter of law, offering sufficient evidence demonstrating the absence of any material issues of fact (*Winegrad v. New York Univ. Med. Ctr.*, 64 NY2d 85 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557 [1980]). Once a prima facie showing has been made by the movant, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to establish material issues of fact which require a trial (*see, Zayas v. Half Hollow Hills Cent. School Dist.*, 226 AD2d 713 [2nd Dept. 1996]). "[I]n determining a motion for summary judgment, evidence must be viewed in the light most favorable to the nonmovant" (*Pearson v Dix McBride, LLC*, 63 AD3d 895 [2d Dept 2009]). Since summary judgment is the procedural equivalent of a trial, the motion should be denied if there is any doubt as to the existence of a triable issue or when a material issue of fact is arguable (*Salino v IPT Trucking, Inc.*, 203 AD2d 352 [2d Dept 1994]).

The elements of a cause of action for breach of contract are (1) the existence of a contract between plaintiff and defendant, (2) performance by the plaintiff, (3) defendant's failure to perform, and (4) damages resulting from such failure to perform (*see Furia v. Furia*, 116 AD2d 694 [2d Dept. 1986]).

> "'A written agreement that is clear, complete and subject to only one reasonable interpretation must be enforced according to the plain meaning of the language chosen by the contracting parties. To determine whether a writing is unambiguous, language should not be read in isolation because the contract must be considered as a whole. Ambiguity is determined within the four corners of the document; it cannot be created by extrinsic evidence that the parties intended a meaning different than that expressed in the agreement and, therefore, extrinsic evidence may be considered only if the agreement is ambiguous. Ambiguity is present if language was written so imperfectly that it is susceptible to more than one reasonable interpretation' (*Brad H. v City of New York*, 17 NY3d 180, 185-186 [citations and internal quotation marks omitted])."

(*Critelli v Commonwealth Land Title Ins. Co.*, 98 AD3d 556, 557 [2d Dept. 2012]).

An agent who signs an agreement on behalf of a disclosed principal will not be held responsible for its performance unless there is clear and explicit evidence of the agent's "intention to substitute or superadd his personal liability for, or to, that of his principal" (*Savoy Record Co. v Cardinal Export Corp.*, 15 NY2d 1, 4-6 [1964]).

Here, the Plaintiff established its entitlement to judgment as a matter of law on its first cause of action for breach of contract by demonstrating that the credit agreements executed by Quinlan expressly and unambiguously made him a co-obligor thereunder, notwithstanding the fact that he added his corporate office next to his signature [(*see Florence Corp. v. Penguin Constr. Corp.*, 227 AD2d 442, 443 [2d Dept 1996]). The credit agreements at issue are two-page documents that expressly and unambiguously state that Quinlan agrees "to be personally liable for the payment of any amounts owing to ADI." Thus, "this is not a situation wherein the plaintiff attempted to trap an unwary corporate officer into making an unintended assumption of personal liability by inserting an obscure clause in the midst of a lengthy and complex contract" (*Id.* at 443).

In opposition to the Plaintiff's prima facie showing, Quinlan has failed to set forth evidence demonstrating the existence of nay material issue of fact. Quinlan's claim that he only provided his personal credit card account number on the second application because Service Select did not have a corporate credit card, does not demonstrate that the parties did not intend that Quinlan would be personally liable. To read the credit agreements as not imposing personal liability upon Quinlan as co-obligor would pervert the plain language and render the such language superfluous.

Contrary to Quinlan's contention, the statute of frauds defense is not applicable as the credit agreements at issue are in writing and are signed by Quinlan. In any event, as stated above, Quinlan's liability is that of a co-obligor, not a guarantor. Therefore, General Obligations Law § 5-701(a)(2), which addresses a promise to answer for the debt or default of another, does not apply.

Additionally, there is absolutely no evidentiary support for Quinlan's contention that his personal liability, if any, should be limited to $10,000. There is no such language in either of the credit agreements at issue.

Accordingly, that branch of Quinlan's motion for summary judgment dismissing the first cause of action for breach of contract as asserted against him is denied and that branch of Plaintiff's motion for summary judgment in the amount of $775,621.94 on the first cause of action for breach of contract as asserted against Quinlan is granted.

However, that branch of Quinlan's motion for summary judgment seeking dismissal of the fourth cause of action for fraud is granted, and that branch of Plaintiff's cross-motion for summary judgment on the fourth cause of action is denied. The elements of a cause of action seeking to recover damages for fraud are "'a representation of material fact, the falsity of that representation, knowledge by the party who made the representation that it was false when made, justifiable reliance by the plaintiff, and

resulting injury'" (*Centro Empresarial Cempresa S.A. v. America Movil, S.A.B. de C.V.*, 17 NY3d 269, 276 [2011] quoting *Global Mins. & Metals Corp. v. Holme*, 35 AD3d 93, 98 [1st Dept. 2006]). Here, contrary to Plaintiff's allegations in support of its fraud claim, Quinlan has made a prima facie showing that he was the President of Service Select at the time the credit agreements were signed and that he provided the number of a valid credit card account number at the time he executed the second credit agreement. Plaintiff has failed to produce any evidence contradicting these assertions. The fact that the credit card account was cancelled shortly after the second credit agreement was executed is irrelevant, as there is no evidence that the account was not valid at the time the second agreement was entered into.

Finally, the Court, upon its own initiative pursuant to CPLR 3215(c), hereby dismisses the Amended Complaint as asserted against Service Select as Plaintiff has failed to take proceedings for the entry of judgment within one year after Service Select's default in answering the original complaint.

This constitutes the ***DECISION*** and ***ORDER*** of the Court.

Dated: February 1, 2013
Riverhead, New York

EMILY PINES
J. S. C.

[x] FINAL
[ ] NON FINAL