

FedEx Corporate Servs., Inc. v Krausz
2017 NY Slip Op 33429(U)
May 24, 2017
Supreme Court, Orange County
Docket Number: Index No. EF005991-2016
Judge: Robert A. Onofry
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SUPREME COURT-STATE OF NEW YORK
IAS PART-ORANGE COUNTY

Present: HON. ROBERT A. ONOFRY, A.J.S.C.

SUPREME COURT : ORANGE COUNTY

FEDEX CORPORATE SERVICES, INC.,

Plaintiff,

- against -

SAM KRAUSZ d/b/a M & B SUPPLIES, INC.,

Defendant.

-----X To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Index No. EF005991-2016

DECISION AND ORDER

Motion Date: May 17, 2017

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The following papers numbered 1 to 8 were read and considered on a motion by the Plaintiff, pursuant to CPLR §3212, for summary judgment on the complaint.

Notice of Motion - Singler Affidavit - Exhibits A-D	1-3
Affidavit in Opposition- Krausz- Exhibits A-C- Memorandum of La	4-6
Reply Affirmation - Stein- Exhibit A	7-8

Upon the foregoing papers, it is hereby,

ORDERED, that the motion is granted.

Factual Background/Procedural History

The Plaintiff FedEx Corporate Services, Inc. alleges that, between August 4, 2015, and November 24, 2015, it provided work, labor and services to the Defendant Sam Krausz in the amount of \$10,220.62, as per an agreement between the parties.

Further, it alleges, there is an account stated between the parties for that amount.

Appended to the complaint are (1) invoices generated by "FedEX," with a billing address in

Pittsburgh, Pennsylvania, payable by M & B Supplies, Inc., and (2) and a statement of account, dated July 13, 2016, from the Plaintiff to “SAM KRAUSZ INDIVIDUALLY DBA M & B SUPPLIES, INC.”

Sam Krausz, *inter alia*, denies the material allegations of the complaint. Further, he alleges, he never engaged in business under the name M & B Supplies, Inc., which is a corporation, not a d/b/a.

The Plaintiff now moves for summary judgment.

In support of the motion, Joe Singler, the manager of the Plaintiff, avers that he has personal knowledge of relevant facts, and had reviewed the books and records of the Plaintiff.

Singler asserts that the charges at issue arose from courier services provided to Krausz during the period stated. Further, he argues, Krausz’s answer does not raise a triable issue of fact as to the same because it consists of mere general, conclusory denials.

In opposition to the motion, Krausz does not dispute that M & B Supplies, Inc. had a shipping account with a company that called itself “FedEx” or “Federal Express,” or that it was billed as alleged. However, he avers, he is a natural person, and had never engaged in business under the name M & B Supplies, Inc. or any variant thereof. Indeed, he asserts, no such d/b/a exists. Rather, he avers, M & B Supplies, Inc. is a corporation. Further, he asserts, although he is an officer of the same, he never agreed to or bound himself to be personally liable for any debts incurred by M & B Supplies, Inc. Indeed, he notes, the invoices appended to the complaint are addressed to M & B Supplies, Inc., not him personally, and direct payments to “FedEx,” not the Plaintiff (“FedEx Corporate Services, Inc.”).

In reply, counsel for the Plaintiff, Ari J. Stein, notes that Krausz fails to mention that M & B Supplies, Inc. was dissolved on April 27, 2011, due to a failure to pay taxes. Thus, he argues, Krausz, who continued the business, may be held personally liable for the charges at issue.

Finally, Stein notes, the statement of account appended to the motion papers clearly identifies the sending party as the Plaintiff, and the recipient as Krausz, in his individual capacity.

Appended to the reply affirmation is a report from the New York State Department of State indicating that M & B Supplies, Inc. was dissolved on April 27, 2011. Krausz is listed as the contact for the corporation.

Discussion/Legal Analysis

A party seeking summary judgment bears the initial burden of establishing a *prima facie* entitlement to judgment as a matter of law by tendering competent evidence, in admissible form, sufficient to eliminate any triable, material issues of fact from the case. If the moving party fails to meet this burden, the papers submitted in opposition need not be considered. If the moving party makes such a *prima facie* showing, the burden shifts to the opposing party to demonstrate the existence of an issue of fact requiring a trial. *Phillip v. D & D Carting Co., Inc.*, 136 A.D.3d 18 [2nd Dept. 2015]; *Dempster v. Liotti*, 86 A.D.3d 169 [2nd Dept. 2011].

An account stated is an agreement between parties, based upon their prior transactions, with respect to the correctness of the account items and the specific balance due. *Bashian & Farber, LLP v. Syms*, 147 A.D.3d 714 [2nd Dept. 2017]. Although an account stated may be based on an express agreement between the parties as to the amount due, an agreement may be implied where a defendant retains bills without objecting to them within a reasonable period of time, or makes partial payment on the account. *Bashian & Farber, LLP v. Syms*, 147 A.D.3d 714 [2nd Dept. 2017]. The

“agreement” at the core of an account stated is independent of the underlying obligation between the parties. *Bashian & Farber, LLP v. Syms*, 147 A.D.3d 714 [2nd Dept. 2017]. Here, the Plaintiff demonstrated, *prima facie*, that it sent an account statement to Krausz, which Krausz had retained without objection.

Typically, this would be sufficient to demonstrate a *prima facie* entitlement to recover on an account stated. However, the Court was struck by the fact that Krausz is named as “d/b/a M & B Supplies, Inc.,” which appears, on its face, a legal impossibility, and was not otherwise explained in the complaint. Indeed, this very issue was expressly raised in the affidavit from Krausz. However, based on the Plaintiff’s reply papers, and the document appended thereto, and a search of the New York Department of State corporation database, it is clear that Krausz has attempted to mislead this Court, as M & B Supplies, Inc. was dissolved in 2011, which is before the period at issue. Thus, Krausz can be, and is, held personally liable for the debts incurred by the defunct corporation. *Spring Val. Improvements, LLC v Abajian*, 40 A.D.3d 619 [2nd Dept. 2007].

Accordingly, and for the reasons cited herein, it is hereby,

ORDERED, that the motion is granted as to the cause of action sounding in an account stated; and it is further,

ORDERED, that the Plaintiff may enter a judgment against Sam Krausz, personally, in the amount of \$10,220.62, without further order or direction of this Court.

The foregoing constitutes the decision and order of the court.

Dated: May 24, 2017
Goshen, New York

ENTER

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