Jaramillo v Charlie's Shoe
2018 NY Slip Op 32215(U)
June 18, 2018
City Court of Rye, Westchester County
Docket Number: SC18-035
Judge: Joseph L. Latwin

CITY COURT : CITY OF RYE
WESTCHESTER COUNTY

ANGIE JARAMILLO, SC18-035

Plaintiff,

-against- DECISION AND ORDER

CHARLIE'S SHOE,

Defendant.

Appearances:
Plaintiff *Pro Se*
Defendant *Pro Se*

This is a small claims action arising out of defendant's work on plaintiff's shoes.

Sometime around 1992 designer Christian Louboutin had a bright idea. He began coloring glossy vivid red the outsoles of his high fashion women's shoes. Louboutin meant to give his line of shoes "energy," a purpose for which he chose a shade of red because he regarded it as "engaging, flirtatious, memorable and the color of passion," as well as "sexy." Louboutin succeeded to the point where, in the high-stakes commercial markets and social circles in which these things matter a great deal, the red outsole became closely associated with Louboutin. Leading designers have said it. Film stars and other A-list notables equally pay homage, at prices that for some styles command as much as $1,000 a pair. This recognition is acknowledged, for instance, at least by a clientele of the well-heeled, in the words of Jennifer Lopez: "Boy, watch me walk it out ... Walk this right up out the house I'm throwin' on my Louboutins ..." Jennifer Lopez, *Louboutins* (Epic Records 2009). C*hristian Louboutin S.A. et al., v. Yves Saint Laurent America, Inc*., 778 F.Supp.2d 445 [SDNY 2011], aff'd in part, 696 F.3d 206 [2nd Cir. 2012].

Plaintiff bought a pair of Louboutins for $717.86 in February. To protect the shoes and before they were ever worn, she went to defendant and asked him to wrap the bottom of the shoes with a clear sole that would allow the identifying red sole to be visible. Defendant testified that he told plaintiff, he did not have a clear cover for the shoes, but rather, had soles of different colors, including a red sole. There appears to have been a failure in communication at this point: plaintiff understanding a clear sole would be applied; and defendant not having a clear cover to apply. Nevertheless, plaintiff left the shoes and defendant applied the red sole he had on hand to the shoes. Plaintiff paid $50 for the service. Plaintiff claims the shoes are now ruined and worthless, although she said their value was the same as when purchased. Plaintiff offered no proof of the value of the shoes after defendant applied the red sole. While the unique red sole was covered by the duller red sole, the shoes remained a pair of shoes, capable of being worn, albeit not as "sexy". Thus, there was no indicia of the measure of damages other than the purchase price. Ordinarily, the damages recoverable for a breach of a covenant to repair are measured by the diminution in the value of the property resulting from the failure to repair. Even if the plaintiff has a claim, the Court is unable to determine damages.

Upon receipt of the shoes from defendant, plaintiff saw that a red sole had been applied, completely obscuring the original Louboutin sole. The red sole applied by defendant was not the shiny red of the original Louboutin shoe and in contrast with the original red left uncovered on the shoes' arches.

A contract is a private "ordering" in which a party binds himself to do, or not to do, a particular thing. *Fletcher v. Peck*, 6 Cranch (10 U.S.) 87, 136 [1810]. Before one may secure redress in our courts because another has failed to honor a promise, it must appear that the promisee assented to the obligation in question.

It also follows that, before the power of law can be invoked to enforce a promise, it must be sufficiently certain and specific so that what was promised can be ascertained. Otherwise, a court, in intervening, would be imposing its own conception of what the parties should or might have undertaken, rather than confining itself to the implementation of a bargain to which they have mutually committed themselves. Thus, definiteness as to material matters is of the very

essence in contract law. Impenetrable vagueness and uncertainty will not do. 1 Corbin, Contracts, § 95, p. 394; 6 Encyclopedia of New York Law, Contracts, §301; Restatement, Contracts 2d, §32, Comment a).

There was no meeting of the minds between plaintiff and defendant as to what was to be done with the shoes. The lack of mutual assent may be because of a language barrier between them, or each not understanding, or wanting to understand, what the other was saying. Plaintiff's evidence does not establish the indispensable "meeting of the minds" regarding the material terms of this transaction and, therefore, the existence of an enforceable contract. *Aces Mech. Corp. v Cohen Bros. Realty & Constr. Corp.*, 136 AD2d 503, 523 NYS2d 824 [1st Dept 1988]. At best, it appears the parties were talking past each other. There being no contract, there can be no breach. The moneys paid by plaintiff to defendant should be returned to her.

In providing the parties with substantial justice according to the rules and principles of substantive law (UCCA 1804, 1807; *see Cosme v Bauer*, 27 Misc 3d 130(A), 2010 NY Slip Op 50638(U) [App Term, 9th Jud Dist April 8, 2010]; *Ross v Friedman*, 269 AD2d 584 [2nd Dept 2000]; & *Williams v Roper*, 269 AD2d 125 [1st Dept 2000]) and under a fair interpretation of the evidence (*see Claridge Gardens v. Menotti*, 160 AD2d 544 [1st Dept 1990] with this Court having had the opportunity to observe and evaluate the testimony and demeanor of the witnesses and to evaluate the credibility of the witnesses, (*Nobile v. Rudolfo Valetin Inc.*, 21 Misc3d 128[A], 2008 N.Y. Slip Op 51962[U] [App Term, 9th and 10th Jud Dists 2008] (*see also, Vizzari v. State of New York*, 184 AD2d 564 [2nd Dept 1992]; *Kincade v. Kincade*, 178 AD2d 510, 511 [2nd Dept 1991]; & *Rotem v. Hochberg*, 28 Misc3d 127(A), Slip Copy, 2010 WL 2681875 (Table) [App Term, 9th and 10th Jud Dists , 2010]), the Court finds that plaintiff has proven its claim.

Accordingly, it is,

ORDERED and ADJUDGED that the plaintiff have judgment against the defendant in the sum of Fifty ($50.00) dollars and that plaintiff have execution therefor.

June 18, 2018

_____

JOSEPH L. LATWIN
Rye City Court Judge

ENTERED

_____

Mary Jo Garrity

Appeals

--An appeal shall be taken by serving on the adverse party a notice of appeal and filing it in the Rye City Court Clerk's office. A notice shall designate the party taking the appeal, the judgment or order or specific part of the judgment or order appealed from and the court to which the appeal is taken. CPLR § 5515.

--Pursuant to UCCA § 1701 "Appeals in civil causes shall be taken to" the appellate term of the supreme court, 9th Judicial District.

-- An appeal as of right from a judgment entered in a small claim or a commercial claim must be taken within thirty days of the following, whichever first occurs:

1. service by the court of a copy of the judgment appealed from upon the appellant.

2. service by a party of a copy of the judgment appealed from upon the appellant.

3. service by the appellant of a copy of the judgment appealed from upon a party. Where service as provided in paragraphs one through three of this subdivision is by mail, five days shall be added to the thirty day period prescribed in this section. UCCA § 1703(b).

Exhibits

Exhibits will be held for 30 days by the Clerk. After that time, they may be destroyed, if not picked up or arrangements for their return are not made.