SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 32

STEVEN BRANDS INC.,

Plaintiff,

-against-

JORDAN LOGISTICS INC. and
BRENDAN FERNANDES,

Defendants.

Index No.: 651058/17

DECISION and ORDER
AFTER INQUEST

The matter came on for inquest on September 28, 2018, after eight adjournments. On October 22, 2018, this Court sent a Court Notice requesting plaintiff to provide the transcript (NYSCEF Doc. No. 18). On January 17, 2019 this Court received a copy of the transcript (NYSCEF Doc. Nos 18-19).

By order dated February 20, 2018, the court (Cohen, J.) found that plaintiff was entitled to a judgment on liability against defendant Jordan Logistics, Inc. ("Jordan") and ordered an inquest to assess damages. Plaintiff's attorney insisted at the inquest that the case against the co-defendant remains active, and that the case should be sent back to Justice Cohen for the balance of the litigation (Inquest tr at 5-6).

At the inquest, the principal of plaintiff (Steven Rosen) testified. Plaintiff is in the women's clothing business and defendant Jordan Logistics is in the warehousing and distribution business. As Justice Cohen had already decided that Jordan was liable, plaintiff's burden on this inquest was to prove the amount of its damages.

Mr. Rosen ("plaintiff" or "Rosen") testified that his merchandise is made in China and

shipped to the United States. Although he has a partnership with another warehouse/distributor in California, that entity was not available and so plaintiff decided to use Jordan. Rosen testified that he hired Jordan to pick up or receive plaintiff's merchandise from ships docked in California, store it in Jordan's warehouse in California and then distribute/ship the merchandise to certain stores as plaintiff would direct. For that, plaintiff agreed to pay fees for incoming and outgoing goods and monthly storage. Plaintiff claims that Jordan failed to perform in 2014 and 2015. Specifically, plaintiff contends that Jordan first came into possession of the merchandise in February 2014, and the last shipment Jordan received was in January 2015. Plaintiff claimed that Jordan failed to return or ship items as instructed by plaintiff and the relationship eventually ended in July 2015 (*id.* at 18).

The Court finds that plaintiff's complaints can be broken down into two time lines. Although later in time, the Court will address the merchandise discussed at the inquest labeled as A35 and A36. As to that merchandise, Mr. Rosen testified that it went into Jordan's warehouse in January 2015 and never came out. Plaintiff sought $58,000 for the value of that merchandise, and the Court awards that amount to plaintiff.

Aside from A35 and A36, plaintiff failed to meet its burden to demonstrate its entitlement to further damages. Although Mr. Rosen personally came across as a reasonable and honest businessman, plaintiff's claims – that it should get refunded every penny it ever sent to Jordan Logistics - is simply without merit. Perhaps it was plaintiff's attorney's sweeping request for a full "refund," but asking this Court to award plaintiff every dollar it paid Jordan caused plaintiff to lose credibility as to the amount of damages.

While Jordan may have been difficult to deal with and may not have been fully

responsive to plaintiff, Mr. Rosen admitted that before the debacle with A35 and 36, Jordan received certain merchandise and distributed it to plaintiff's customers as instructed (*see id.* at 23 ["I did bring in other merchandise that was– that came in, and a hundred percent of it was shipped out"]). Plaintiff failed to show any complaints from customers, lost profits, refusals of delivery due to lateness or some other evidence demonstrating that he lost money due to Jordan's failure to perform before January 2015. And not only did plaintiff continue to pay Jordan throughout 2014 despite the attorneys' claims of Jordan's nonperformance, Mr. Rosen thought enough of Jordan to entrust it with the A35 and 36 merchandise in January 2015.

Mr. Rosen testified that he felt he had no other choice but to use Jordan; he had to please his customers and stay competitive in a cut-throat industry. But he has been in the business for several decades. If he was so unhappy with Jordan in 2014, Mr. Rosen had plenty of time to find another warehouse or he could have used the warehouse with which he already had a partnership. It makes it less credible that Mr. Rosen continued to use Jordan in 2015 despite the fact that it was so terrible in 2014.

Just because Jordan did not perform up to Mr. Rosen's standards does not entitle plaintiff to use Jordan to receive and distribute merchandise in 2014, pay Jordan for services it admittedly rendered in 2014 and then sue for a refund of everything paid to Jordan. The Court has no doubt that Jordan was aggravating and there was testimony that it did not provide various customary documents. But it was plaintiff's burden at the inquest to show its damages, and the failure of plaintiff to concede that it received any benefit whatsoever from Jordan's services leaves this Court with two options: either allow a full refund or allow no recovery as to the merchandise other than A35 or A36.

Plaintiff's attorney refused to even acknowledge that Jordan was entitled to *any* money for the work it did (*id.* at 35-36). And the fact is that plaintiff failed to present any specific evidence which would allow a partial refund for merchandise other than A35 or A36. There was no evidence of customer complaints, returns, damaged merchandise, lost profits or the like. There was no proof, such as plane tickets, to show that Rosen went to the warehouse in 2014 but was denied access. There wasn't even any evidence of how the failure of Jordan to provide documents damaged plaintiff.

Simply because plaintiff contends that Jordan did not present the proper documentation does not entitle plaintiff to a full refund where plaintiff acknowledged that certain merchandise was delivered (*see e.g., id.* at 41-42). Contrary to plaintiff's attorney's argument that Jordan's breach of the contract entitled plaintiff to "the entire value of the services that were subject to that contract" (*id.* at 43), the damages available in a breach of contract action are generally those that flow from the breach (*see American List Corp. v U.S. News and World Report Inc.*, 75 NY2d 38, 42-43, 550 NYS2d 590 [1989] [discussing the availability of general damages in a breach of contract action]).

Although a non-breaching party may also seek "special" damages (which do not directly flow from a breach), those "extraordinary damages are recoverable only upon a showing that they were foreseeable and within the contemplation of the parties at the time the contract was made" (*id.* at 43). Plaintiff did not make a sufficient showing that it was foreseeable, or that the parties contemplated, that plaintiff would receive a full refund if Jordan breached regardless of whether Jordan partially performed. Therefore, plaintiff is not entitled to recover anything other than the merchandise labeled as A35 and A36.

The request for punitive damages in this breach of contract action is also denied.

Accordingly, it is hereby

ORDERED that plaintiff is awarded $58,000 with statutory interest from June 22, 2015 (the date requested in paragraph 14 of Rosen's July 17, 2018 affidavit in support of default judgment). The clerk is directed to enter judgment accordingly upon presentation of the proper papers therefor.

The balance of this action, specifically the claims against defendant Brendan Fernandes, is referred back to Justice David Benjamin Cohen, IAS Part 58.

Dated: New York, New York
January 30, 2019

ENTER:

ARLENE P. BLUTH, J.S.C.

HON. ARLENE P. BLUTH