Todd English Enters., LLC v Hudson Home Group, LLC
2021 NY Slip Op 32376(U)
November 16, 2021
Supreme Court, New York County
Docket Number: Index No. 652373/2018
Judge: Shawn T. Kelly
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 57

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TODD ENGLISH ENTERPRISES, LLC F/S/O TODD ENGLISH

Plaintiff,

- v -

HUDSON HOME GROUP, LLC,

Defendant.

INDEX NO. 652373/2018

MOTION DATE 07/26/2021

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

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HON. SHAWN KELLY:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118

were read on this motion to/for JUDGMENT - SUMMARY.

Plaintiff Todd English Enterprises LLC f/s/o Todd English moves for an order pursuant to CPLR §3212: (i) Granting Summary Judgment in favor of Plaintiff and against Defendant on Plaintiff's breach of contract claim; and (ii) Granting Summary Judgment in favor of Plaintiff and against Defendant on Defendant's breach of contract counterclaim; and (iii) Awarding Plaintiff damages in the amounts of: a. $235,970.81, plus prejudgment interest of 9% calculated from either February 19, 2018 or May 29, 2018, pursuant to CPLR 5001 and 5004 b, $350,000.00, plus prejudgment interest of 9% calculated from either February 19, 2018 or March 1, 2019, pursuant to CPLR 5001 and 5004; and (iv) Awarding Plaintiff its costs, including reasonable attorney's fees, incurred in this action; and (v) Such other, further and different relief as the Court deems just and proper.

Background

In April 2014, the parties entered into a Marketing and Promotion Agreement ("Agreement") under which Plaintiff was to provide marketing, promotion, and professional services in connection with a line of "English-inspired and English and Hudson branded" cookware and related products. (NYSCEF Doc. No. 104). Under the Agreement, Plaintiff was to be paid royalties, including certain minimum guaranteed annual amounts. Plaintiff alleges that he fulfilled his contractual commitments, but Defendant improperly terminated the agreement in February 2018 and refused to pay Plaintiff the agreed upon guaranteed royalties.

In response, Defendant contends that under the Agreement Defendant had a right to "immediately terminate" the Agreement if, *inter alia,* "any Company personnel or English is involved in any activity or conduct during the Term, or which occurred prior to the Term, but comes to light during the Term, which, in Hudson's reasonable opinion: (a) is damaging to English or his reputation; (b) is perceived to be offensive by the general public ... or (iv) [sic] any Company personnel or English is arrested for, commits an act, or is charged with an act considered under any state or federal law to be a felony or a crime of moral turpitude, or if any Company personnel or English makes any favorable public display for a competing product." (NYSCEF Doc. No. 104, § 5.2.2.). Further, Defendant maintains that there are three grounds that led to the termination of the Agreement: the widespread media attention regarding the allegations of sexual harassment by Todd English at the Plaza Hotel in New York City in October of 2017; the Plaintiff's inept handling of the visa issues regarding Todd English's business trip to Canada for the TSC appearances under the Agreement; and the recognition that Todd English's persistent, unwelcome, and continuous negative publicity during the term of the Agreement had irrevocably damaged his name and identity in the marketplace.

Analysis

"'The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case'" (*Santiago v Filstein*, 35 AD3d 184, 185-186 [1st Dept 2006], *quoting Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The burden then shifts to the motion's opponent to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact" (*Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006], *citing Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *see also DeRosa v City of New York*, 30 AD3d 323, 325 [1st Dept 2006]). The evidence presented in a summary judgment motion must be examined in the "light most favorable to the party opposing the motion" (*Udoh v Inwood Gardens, Inc.*, 70 AD3d 563 1st Dept 2010]) and bare allegations or conclusory assertions are insufficient to create genuine issues of fact (*Rotuba Extruders v Ceppos,* 46 NY2d 223, 231 [1978]).

Issues of credibility are not to be resolved on summary judgment (*see Alvarez v New York City Hous. Auth.*, 295 AD2d 225, 226, 744 NYS2d 25 [1st Dept 2002]).

Election of Remedies Doctrine

Plaintiff contends that under the election of remedies doctrine, Defendant's failure to immediately terminate the contract upon learning about the purported grounds for termination and instead continuing the contract bars Defendant from later terminating the contract on those same purported grounds. Plaintiff maintains that Defendant terminated the contract 40 days before the end of Contract Year 3 and less than one year before the end of the Agreement's nearly five-year term, solely to avoid paying him Year 3 and 4 royalties as dictated by the contract.

In opposition, Defendant argues that the Agreement, at Section 12.10, contained a "no waiver" provision which prevented Hudson's decision to continue with the contract following one breach from forever foreclosing termination in the face of subsequent breaches. Further, Defendant contends that it properly terminated the contract, and even under the doctrine of election of remedies, it waited a reasonable amount of time after Plaintiff's conduct and terminating the contract.

"The doctrine of the election of remedies is a harsh rule which is not to be extended. It is only applicable 'when a choice is exercised between remedies which proceed upon irreconcilable claims of right'; 'where there is, by law, or by contract, a choice between two remedies.'" (*Metro. Life Ins. Co. v Childs Co.*, 230 NY 285, 291 [1921] [internal citations omitted] ["One may not both affirm and disaffirm a contract; or take a benefit under an instrument and repudiate it"]). Put another way, "'for an election of remedies to bar the pursuit of alternative relief, legal and equitable, a party must have chosen one of two or more co-existing inconsistent remedies, and in reliance upon that election, that party must also have gained an advantage, or the opposing party must have suffered some detriment.'" (*331 E. 14th St. LLC v 331 E. Corp.*, 293 AD2d 361, 361 [1st Dept 2002]; *Castlepoint Nat. Ins. Co. v Mt. Hawley Ins. Co.*, No. 150592/2021, 2021 WL 2916995, at *3 [NY Sup Ct July 12, 2021]).

The equitable doctrine of election of remedies is "centuries old" and "deeply rooted in a balance of fairness to both sides" (*Sandles v Magna Legal Services*, 90 NYS3d 843 [Civ Ct NY Co 2018]). Under the doctrine of election of remedies, when a party materially breaches a contract, the non-breaching party must choose between two-options: it can elect to terminate the contract or to continue it (*Kamco v On the Right Track*, 149 AD3d 283, 282 [2d Dept. 2017]). In the ordinary case, an election of remedies is "merely a species of waiver" (*Id* at 283). At the

"root" of the doctrine of election of remedies is the element of estoppel (*Schenck v State Line Telephone*, 238 NY 308, 312 [Cardozo, J. 1912]). The aspects of equity, waiver, and estoppel apply with equal, if not greater, force when the election of remedies is made after an action has been commenced.

Defendant has raised significant questions of fact and a issues of credibility that preclude a finding of summary judgment. There remain material questions of fact regarding Plaintiff's conduct and the alleged time when Defendant became aware of such conduct, which are paramount to Defendant's defense.

Counterclaim, Breach of Contract

Plaintiff contends that summary judgment should be awarded in his favor on Defendant's breach of contract claim. Specifically, Plaintiff states that the parties agree that there was a valid contract and that Plaintiff has fully performed under the contract. Plaintiff argues that Defendant wrongfully terminated the contract when there were just 40 days left of Contract Year 3, with Defendant required to pay Plaintiff the remainder amount of $235,970.81 of Guaranteed Minimum Royalties, and less than 10 months left in the multi-year Agreement's Initial Term requiring Defendant to pay Contract Year 4 Guaranteed Minimum Royalties of $325,000 to Plaintiff.

The elements of a breach of contract claim are "the existence of a contract, the plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages" (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]). Though Plaintiff has met his burden in demonstrating the existence of a contract and Defendant's termination thereof, there remain significant issues of material fact as to whether the contract was rightfully terminated. Accordingly, Plaintiff's motion for summary judgment is denied.

It is hereby,

ORDERED that Plaintiff's motion for summary judgment is denied.

11/16/2021
DATE

SHAWN KELLY, J.S.C.

CHECK ONE:		CASE DISPOSED		[X]	NON-FINAL DISPOSITION		
		GRANTED	[X] DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE