Tecchia v Bellati
2016 NY Slip Op 31311(U)
July 12, 2016
Supreme Court, New York County
Docket Number: 652257/2015
Judge: Saliann Scarpulla

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 39

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SARA TECCHIA, 5N WOOSTER LLC,

Plaintiffs,

DECISION/ORDER
Index No. 652257/2015

-against-

BARTOLOMEO BELLATI D/B/A MINIMAL USA,
STEFANO VENIER

Defendants.

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HON. SALIANN SCARPULLA, J.:

In this action to recover damages for, inter alia, breach of contract, defendants Bartolomeo Bellati d/b/a "Minimal USA" and Stefano Venier ("Defendants") move to dismiss the complaint for failure to state a cause of action and based on documentary evidence. Defendants also seek dismissal of plaintiff's demand for punitive damages.

As alleged in the complaint, plaintiff Sara Tecchia ("Tecchia")[1] purchased an apartment at 50 Wooster Street (the "Wooster Apartment") on March 1, 2010. In May 2012, Tecchia met Bellati in his New York showroom, where he represented that he was the owner of Minimal USA, that he was affiliated with Minimal Cucine, an Italian

[1] Plaintiff 5N Wooster LLC is a limited-liability corporation to which Tecchia assigned her contract with Defendants.

bespoke kitchen designer, and that he could perform the construction improvements that Tecchia sought. During the course of the next year, Tecchia, Bellati and Venier met and exchanged email concerning the construction plans. In an email dated April 16, 2013, Bellati told Tecchia that the renovations would take "3-4 month[s]." In another email, dated June 12, 2013, Bellati told Tecchia that there was "no issue in being able to finish by December [2013]."

Bellati sent a contract (the "Contract") to Tecchia on October 30, 2013 and Tecchia's representative countersigned it on February 24, 2014. Among other things, the Contract listed all of the improvements to the Wooster Apartment's "kitchen, bathrooms, plumbing, bedrooms and new doors." The Contract also specified the items' prices as well as the prices for shipping and installation.

Plaintiffs alleges that there were "constant delays" caused by Bellati. Plaintiffs also allege that some of the delay was the result of Bellati's mistakes in that he:

> ordered the wrong items from Italy, such as glass doors that were not the type agreed upon; installed sliding doors to a closet backwards which required new doors to be shipped from Italy; ordered a freezer door that did not open; used wood of very poor quality that was not adequate to achieve the look approved by the client; installed a motorized bed without making sure the motor actually worked; installed misaligned luggage storage and closet doors; installed appliances in the wrong place; installed items without first measuring them; and damaged the building's lobby, elevator and flooring in the Wooster Apartment.

Tecchia also seeks damages for work that Bellati performed at another apartment, located at 125 Greene Street (the "Greene Street Apartment"). Tecchia states that Bellati failed properly to install a custom-made Gaggenau refrigerator. According to Tecchia, Bellati mismeasured the kitchen space and elevator at the Greene Street Apartment,

which caused damage to both the kitchen and elevator and necessitated a boom crane for the refrigerator's removal. On December 8, 2014, Bellati sent a signed document to Tecchia, denominated as "an Addendum to the contract signed on 2/24/2014," in which he agreed to remove the Gaggenau refrigerator at his own expense.

Tecchia terminated Defendants in January of 2015. Prior to the termination, Tecchia paid Defendants $593,808.29 under the Contract.

Plaintiffs' complaint avers that "there is no company named Minimal Cucine or Minimal USA authorized to do business in the State of New York" despite the fact that Bellati's email signature includes the web address for "minimal usa.com" and contains a link to the Italian company's website, "minimalcucine.blogspot.com." Plaintiffs' state that Canova, Inc. is the only company associated with Bellati that was ever authorized to do business in New York. However, Plaintiffs claim that Canova's authority to conduct business in New York was annulled on January 26, 2011.

In the complaint, Plaintiffs assert causes of action for breach of contract, and violation of N.Y. Gen. Bus. Law ("GBL") § 349. Plaintiffs also seeks punitive damages for the breach of contract claim and treble damages in connection with the General Business Law claim.

Defendants now move to dismiss the complaint based on documentary evidence and for failure to state a claim. The Defendants also request that the Court change the caption name of defendant to "Canova Inc. d/b/a Minimal USA."

At oral argument on this motion, I dismissed: 1) Plaintiffs' punitive damages and treble damages requests; 2) the complaint against defendant Venier; and 3) Plaintiffs'

GBL § 349 claims. The only issue that remains to be decided on this motion is whether Plaintiffs' breach of contract claim should be dismissed as against individual defendant Bellati.

Discussion

On a motion to dismiss pursuant to CPLR § 3211(a)(7), the court accepts as true the complaint's factual claims and accords the plaintiff the benefit of all favorable inferences in order to determine "whether the plaintiff can succeed upon any reasonable view of the facts as stated." *Schneider v. Hand*, 296 A.D.2d 454 (2d Dept. 2002).

A motion to dismiss based on CPLR § 3211(a)(1) may only be granted where "the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.'" *Leon v. Martinez*, 84 N.Y.2d 83, 87-88 (1994). Moreover, affidavits submitted by a party as evidence to rebut the sufficiency of a pleading, "will seldom if ever warrant the relief he seeks unless too the affidavits establish conclusively that plaintiff has no cause of action." *Rovello*, 40 N.Y.2d at 636.

1. Proper Party Designation

Defendants argue that "irrefutable documentary evidence" shows that Bellati is not a party to the Contract. They posit that the contracting party is actually Canova Inc. d/b/a Minimal USA and that Minimal USA is a trade name for Canova. Defendants argue that the Contract is between Tecchia and Canova and therefore Plaintiffs claims should be dismissed as to Bellati. The proffered documentary evidence includes a Chase bank depositary agreement and Canova's Certificate of Incorporation. In reply, Defendants also rely on an affidavit by Bellati that contains, among other things, the following

exhibits: Bellati's "original" proposed contract with the Canova name; wire instructions to Tecchia's architect; an invoice; and a check payable to "Canova."

In opposition, Plaintiffs argue that the Contract lacks any reference to Canova and that Bellati is personally liable because he signed on behalf of Minimal USA, which is merely a trade name. Plaintiffs also claim that Canova could not have entered a contract with Tecchia because, as of January 26, 2011, it was not authorized to conduct business in New York.

The Contract letterhead reads, "Minimal USA" and lists Minimal USA as the "Seller" and Sara Tecchia as the "Customer." The footer lists contact info, including a web address for Minimal USA. In the section entitled, "Payment Terms," the Contract states "Please send check to: 'Minimal USA' 250 West 19th Street..." The contract also provides for Wire Transfer to:

> Minimal USA
> JP Morgan Chase
> Account Number: 987096467565
> Routing/ABA 021000021
> Address of account holder:
> Bartolomeo Bellati
> 250 West 19th St. Suite 14M
> New York, NY 10011
> USA
> Tel: 2123523582

The Contract is signed by Bartolomeo Bellati above the line that says "Minimal USA." The name Canova does not appear anywhere on the Contract.

Under New York law, "an agent who fails to disclose at the time the parties enter a contract that he is acting on behalf of a principal becomes personally liable under the

contract." *UBS Securities, Inc. v. Tsoukanelis*, 852 F.Supp. 244, 247 (S.D.N.Y. 1994); *New England Marine Contractors, Inc. v. Martin*, 156 A.D.2d 804, 805 (3d Dept. 1989). Further, "[o]ne who acts as an agent for a principal with no legal status will be personally liable on the contract." *Chase v. Stendhal*, 2007 WL 2668526 at *6 (N.Y. Sup. 2007). And, a defendant asserting an agency relationship as a defense to avoid individual contractual liability has "the burden of establishing the disclosure of the agency relationship and the corporate existence and identity." *Stonhard v. Blue Ridge Farms, LLC*, 114 A.D.3d 757, 758 (2d Dept. 2014).

Here, the Contract was signed by individual defendant Bellati over a line that bore the name "Minimal USA" and there is no indication that it was disclosed to Tecchia that Bellati was acting on behalf of corporate entity Canova instead of individually or on behalf of non-corporate entity Minimal USA.

None of the documents submitted by Defendants "conclusively" establish a defense to the claims asserted against Bellati. Defendants' argue that an invoice bearing the name "Canova Inc." gave Tecchia reason to suspect that Bellati was acting on Canova's behalf. However, the fact that a plaintiff has reason to suspect that an individual is acting as an agent in and of itself is insufficient to relieve the agent from liability. *UBS Securities, Inc.*, 852 F.Supp. at 247. "Knowledge of the real principal is the test, and this means actual knowledge, not suspicion." *Ell Dee Clothing Co. v. Marsh*, 247 N.Y. 392, 397 (1928). Indeed, "nothing short of full disclosure of the principal's status will relieve an agent from personal liability." 852 F.Supp. at 247.

Defendants' argument that the Delaware Certificate of Incorporation for Canova Inc. (dated 8/12/2003 and listing Bartolomeo Bellati as director) and the Registration of Trade, Business & Fictitious Name Certificate that lists "Minimal USA" as a Trade Name establish a defense to Plaintiffs' claim against Bellati is also erroneous. A plaintiff is not required to conduct an investigation "to obtain actual knowledge whether the defendant[] with whom it was dealing [was], in fact, [an] agent[] for an undisclosed corporate principal." *UBS Securities, Inc.*, 852 F.Supp. at 247. (citation omitted); *see also Winer v. Valentino*, 121 A.D.3d 1264, 1265 (3d Dept. 2014) (holding that plaintiff did not have a duty to investigate the identity of the principal "[c]ontrary to defendants' argument that the use of the [] trade name instead of the name of the corporation was inconsequential since the trade name is registered with the Secretary of State and is a matter of public record."). Significantly, this rule's purpose is to ensure that "a party entering a contract knows precisely with whom it is dealing and protects a party from unknowingly being required to do business with an entity incapable of meeting its contractual obligation." 852 F.Supp. at 247. Tecchia did not have a duty to investigate the identity of the principal by looking up certificates of incorporation in different states and thus neither the Certificate of Incorporation nor the Trade Name Registration Certificate serve to refute Plaintiffs' claim.

Another document offered by the Defendants is the Chase Business Depositary Certificate for the account number given to Tecchia. On the Chase Certificate, the title for the account number provided to Plaintiffs is "CANOVA INC. D/B/A MINIMAL USA D/B/A HANGAR DESIGN GROUP USA" and Bartolomeo Bellati is named as

"President." This Chase Certificate was not issued to the Plaintiffs and so cannot be used as documentary evidence by Bellati to shield him from individual liability on the Contract. *See Winer*, 121 A.D.3d at 1266 (finding that insurance certificates submitted by defendants to avoid individual liability that were issued by defendants' insurer to a local town building department and not to plaintiff were "insufficient to warrant dismissal"). Moreover, the Contract's wire instructions expressly state that funds should be wired to Minimal USA and list Bellati as the account holder, omitting any reference to Canova.

Exhibit 1 to Defendant Belllati's affidavit purports to be the "original" contract between the parties and is designated as "Contract which [Bellati] signed on 12-23-11, but which plaintiffs never signed." As Exhibit 1's title suggests, it doesn't contain Plaintiffs' signature but is on Canova letterhead. The Exhibit 1 "contract" also differs from the "True Copy of Contract" which is submitted as Exhibit 2 to the Rice Affirmation. Besides containing signatures for both parties, the latter document is much more specific regarding the services that Defendants are to provide, includes detailed price information, and fails to reference Canova. Given the conflicting nature of these documents, they cannot serve as a basis for dismissal.

In this case, instead of "conclusively" establishing a defense to Plaintiffs' breach of contract claims as a matter of law, Defendants' documents and Defendant Bellati's affidavit, highlight the need for further discovery. Because the documents neither "demonstrate the absence of any dispute nor completely refute the allegations" of

Bellati's individual contractual liability, Defendants have failed to show entitlement to dismissal pursuant to CPLR § 3211 (a) (7).

2. Breach of Contract Claim

In New York, to state a claim for breach of contract, a plaintiff must allege facts showing (1) the existences of a contract; (2) the plaintiff's performance under that contract; (3) the defendant 's breach of its contractual obligations; and (4) damages resulting from the breach. *See Elisa Dreier Reporting Corp., v. Global Naps Networks, Inc.*, 84 A.D.3d 122, 127 (2d Dept. 2011).

Plaintiffs' complaint sufficiently alleges each of the above-listed elements of a breach of contract claim with respect to the Wooster Apartment. In relevant part, Plaintiffs allege: (1) there was an October 30, 2013 Contract between Minimal USA and Sara Tecchia; (2) Tecchia made payments pursuant to the Contract; (3) Defendants, among other things, failed to order the correct products and improperly installed products in contravention of the terms of the Contract; and (4) because of Defendants' breach, Plaintiffs suffered damages in that the product received was inferior to the custom furniture referenced in the contract and resulted in additional costs by Tecchia. Hence, Defendants' motion to dismiss the breach of contract claim as to the Wooster Apartment is denied.

Plaintiffs' complaint also sufficiently alleges the elements of a breach of contract claim with respect to the Greene Street Apartment. Plaintiffs contend that Defendants failed to properly install a custom-made refrigerator, and mismeasured both the space for

the refrigerator in the apartment and the size of the elevator causing damage to both. Plaintiffs also state that subsequent to Bellati's failure to properly install the refrigerator at the Green Street Apartment, Defendants agreed, in an exchange of emails, to remove the refrigerator via boom crane at their expense.

"[A]n exchange of emails may constitute an enforceable contract, even if a party subsequently fails to sign implementing documents, when the communications are 'sufficiently clear and concrete' to establish such an intent." *Brighton Investment, Ltd. v. Har-Zvi*, 88 A.D.3d 1220, 1222 (3d Dept. 2011) (citation omitted). That is, the emails should include "all of the agreement's essential terms." *Kasowitz, Benson, Torres & Friedman, LLP v. Reade*, 98 A.D.3d 403, 404 (1st Dept. 2012). Accordingly, the emails here may evidence the existence of a separate contract between the parties regarding the Greene Street Apartment. The court declines to make a determination as to whether such a contract exists. Rather, at this stage of the litigation, discovery is necessary to ascertain its existence. Therefore, Defendants' motion to dismiss the breach of contract claim as to the Greene Street Apartment is denied.

In accordance with the foregoing, it is

ORDERED that the motion by Defendants to dismiss Plaintiffs' breach of contract claim as against individual defendant Bartolomeo Bellati is denied; and it is further

ORDERED that the motion by Defendants for a party substitution and caption change is denied; and it is further

ORDERED that counsel are directed to appear for a status conference at 60 Centre Street, Room 208 on August 17, 2016 at 2:15pm; and

In accordance with my previous ruling on the record during oral argument on February 3, 2016, it is

ORDERED that the motion by Defendants to dismiss Plaintiffs' breach of contract claim as against individual defendant Stefano Venier is granted; and it is further

ORDERED that the motion by Defendants to dismiss Plaintiffs' requests for punitive damages and treble damages is granted; and it is further

ORDERED that the motion by Defendants to dismiss Plaintiffs' N.Y. General Business Law § 349 claims is granted.

This constitutes the decision and order of the Court.

DATE : 7/12/2016

SALIANN SCARPULLA, JSC