

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

HA-PE BOUTIQUE, LLC,)
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)
 Plaintiff,)
)
 v.) C.A. No. 12-105 S
)
 ADRIANA PAVON,)
)
)
 Defendant.)

DECISION AND ORDER

WILLIAM E. SMITH, United States District Judge.

In this case, Plaintiff alleges that Defendant failed to supply it with "runway-ready" and "boutique quality" clothes, as she had agreed to do in two separate contracts (each a "Contract" and, together, the "Contracts"). In doing so, Plaintiff alleges that Defendant breached each Contract, breached the implied covenant of good faith and fair dealing under each Contract, and breached warranties contained in each Contract.

On January 8, 2013, this Court conducted a one-day bench trial, which Defendant did not attend. After considering the exhibits, witness testimony, and the parties' written submissions, the Court finds that Defendant is liable for the

breaches described above. For the reasons set forth below, judgment shall enter against Defendant, and for Plaintiff.

I. Findings of Fact

Plaintiff is a clothing designer registered in the state of Rhode Island and owned and managed by Ting Barnard and Noi Reineke. Defendant lives and works in Detroit, Michigan. On September 7, 2011, and October 12, 2011, respectively, Plaintiff entered into the Contracts with Defendant requiring Defendant to manufacture and deliver samples of women's clothing lines designed by Plaintiff. Each Contract stated that the samples would be "boutique quality" (ECF Nos. 1-1 and 1-2, § I.A.5) and "runway-ready" (ECF Nos. 1-1 and 1-2, § VIII.C).

During the planning stages and throughout the period when Defendant was manufacturing the clothing samples, Ms. Barnard and/or Ms. Reineke frequently travelled to Detroit, Michigan or Providence, Rhode Island to discuss with each other and/or Defendant the design and manufacture of the clothes covered by the Contracts. Defendant often failed to attend these agreed upon meetings or showed up several hours late without justification. Moreover, Ms. Barnard and Ms. Reineke made a several-day trip to Boston to meet with a marketing firm to discuss marketing the clothing lines covered by the Contracts. Also, in preparation for marketing the clothes after completion of the samples, Plaintiff incurred significant expenses to

establish a website and arrange a photo shoot, including hiring a model.

Defendant delivered to Plaintiff a portion of the promised clothing samples in January 2012. However, they were not "boutique quality" and "runway-ready" as required by the Contracts. Certain items were too small for the size zero model that Plaintiff hired, the stitching of certain items broke immediately when worn, other items were not sewn correctly, the zipper on a pair of pants did not zip, and other problems existed that were characteristic of poor workmanship by Defendant. (Pl. Ex. 4.) The items were unusable to Plaintiff, who returned all items and all materials to Defendant and demanded a refund. Defendant initially agreed to refund all amounts paid under the Contracts but then refused and instructed Plaintiff to contact her attorney.

Between October 3, 2011 and January 24, 2012, Plaintiff remitted to Defendant seven payments for services rendered under the Contracts, totaling \$69,000. (Pl. Ex. 3.) The expenses incurred by Plaintiff in the trips to meet with Defendant and the Boston marketing firm totaled \$3,068.78. (Pl. Ex. 6.) Expenses incurred on the model, photo shoot, and website totaled \$1,794. (Pl. Ex. 5.) Therefore, all damages alleged by Plaintiff in connection with the Contracts totaled \$73,852.78.

II. Conclusions of Law

A. Jurisdiction

This Court has personal jurisdiction over Defendant in this case. A court may exercise jurisdiction over a party only if it is permitted by both the forum's "long-arm" statute and the Due Process clause of the Constitution. Dennett v. Archuleta, C.A. No. 12-424-S, 2013 WL 142070, at *2 (D.R.I. Jan. 11, 2013). Rhode Island's long-arm statute "permits the exercise of jurisdiction over nonresident defendants to the fullest extent allowed by the United States Constitution."¹ Rose v. Firststar Bank, 819 A.2d 1247, 1250 (R.I. 2003). The Due Process Clause confers personal jurisdiction when there are "minimum contacts between a nonresident defendant and the forum such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" Ne. Land Servs., Ltd. v. Schulke, 988 F. Supp. 54, 57 (D.R.I. 1997) (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)).

Personal jurisdiction can be general or specific, depending on the nature and extent of the contacts. Plaintiff asserts that this Court has specific jurisdiction over Defendant. A court may exercise specific jurisdiction over a party when (1)

¹ Rhode Island General Laws section 9-5-33(a) states that a defendant "shall be subject to the jurisdiction of the state of Rhode Island . . . in every case not contrary to the provisions of the constitution or laws of the United States." R.I. Gen. Laws § 9-5-33(a).

the claim underlying the litigation directly arises out of, or relates to, the party's forum-state activities; (2) the in-state contacts "represent [] a purposeful availment of the privilege of conducting activities in the forum state, thereby invoking the benefits and protections of that state's laws and making the defendant's involuntary presence before the state's courts foreseeable;" and (3) the exercise of jurisdiction is otherwise reasonable. Hainey v. World AM Commc'ns, Inc., 263 F. Supp. 2d 338, 341-42 (D.R.I. 2003) (quoting Sawtelle v. Farrell, 70 F.3d 1381, 1389 (1st Cir. 1995)).

In a contract dispute such as this one, a claim relates to the forum state where "the defendant's activity in the forum state was instrumental either in the formation of the contract or its breach." Adelson v. Hananel, 652 F.3d 75, 81 (1st Cir. 2011). Defendant had frequent contact with Rhode Island during the negotiation and performance of the Contracts. Plaintiff, a Rhode Island-based company, was solely responsible for the selection and approval of designs and samples, and all of the deliverables were intended to be and in fact were shipped to Rhode Island. Defendant communicated often with Plaintiff in Rhode Island via email and Skype, and Defendant had little authority to make changes to the project without consulting Plaintiff. Therefore, Defendant had substantial contact with

Rhode Island during the negotiation and performance of the Contracts.

Next, the Court considers whether the party "purposefully availed" itself of the forum. This inquiry "looks at the voluntariness and foreseeability of a defendant's contacts and actions This prong is met if the defendant should 'reasonably anticipate being haled into court' in the jurisdiction." Dennett, 2013 WL 142070, at *5 (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)). Defendant knowingly and voluntarily entered into a contract with a Rhode Island company and knew that she was producing products to be shipped to and used in Rhode Island. Moreover, each Contract explicitly states that it is governed by Rhode Island law. Therefore, it was entirely foreseeable that Defendant would be haled to court in Rhode Island.

Lastly, courts evaluate the reasonableness of exercising jurisdiction over a party using several factors: "(1) the defendant's burden of appearing; (2) the forum state's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the judicial system's interest in obtaining the most effective resolution of the controversy; and (5) the common interests of all sovereigns in promoting substantive social policies." Hainey, 263 F. Supp. 2d at 343 (citing Nowak v. Tak How Invs., Ltd., 94 F.3d 708, 717

(1st Cir. 1996) (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477 (1985))). While appearing in this court would require Defendant to travel between states, this burden is no greater than that faced by other defendants when their contacts with foreign states require them to defend a claim in another state. Moreover, Rhode Island has an interest in adjudicating this case in order to protect a Rhode Island citizen and business from harm occurring in Rhode Island. On the whole, Rhode Island is the most fair and reasonable forum for resolving this dispute.

B. Liability

1. Breach of Contract

Defendant breached each Contract when she delivered clothes that did not meet the quality standards enumerated in the Contracts. A successful claim for breach of contract requires a showing (1) of an agreement between the parties; (2) that a breach occurred; and (3) that the plaintiff was damaged. See Cappalli v. BJ's Wholesale Club, Inc., C.A. No. 10-407 S, 2011 WL 2606912, at *2 (D.R.I. June 30, 2011).

Here, each of the agreements clearly constituted valid contracts between Plaintiff and Defendant. Each Contract unambiguously required Defendant to produce a specified number of "boutique quality" and "runway-ready" clothing samples in exchange for the contract price. "When performance of a duty under a contract is due any non-performance is a breach."

Restatement (Second) of Contracts § 235 (1981); see also Hawkins v. daly.commerce, inc., No. 2000-5740, 2003 WL 302358, at *5 (R.I. Super. Feb. 10, 2003) ("This Court accepts and adopts Hawkins' definition of material breach as set forth in the Restatement of Contracts."). Therefore, Defendant breached the Contract by failing to provide samples of the quality or in the number required. As a result, Plaintiff incurred \$73,852.78 of damages in money paid under the Contracts and in expenditures made in reliance on receiving the bargained-for goods.

2. Breach of Covenant of Good Faith and Fair Dealing and Breach of Warranty

In Rhode Island "[v]irtually every contract contains an implied covenant of good faith and fair dealing" so that the contractual objective may be achieved. Dovenmuehle Mortg., Inc. v. Antonelli, 790 A.2d 1113, 1115 (R.I. 2002); Ide Farm & Stable, Inc. v. Cardi, 297 A.2d 643, 644-45 (R.I. 1972). A party violates this covenant when it acts to intentionally defeat the objectives of the contract.

Additionally, these Contracts contained express warranties that the clothes would be "'[r]unway-[r]eady' (defined as suitable to be displayed to actual and prospective customers without further alteration)." (ECF Nos. 1-1 and 1-2, § VIII.C); see also R.I. Gen. Laws § 6A-2-313 ("Any affirmation of fact or promise made by the seller to the buyer which relates to the

goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise."). Also, in Rhode Island, "[w]here the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is . . . an implied warranty that the goods shall be fit for such purpose." R.I. Gen. Laws § 6A-2-315. These warranties are cumulative. R.I. Gen. Laws § 6A-2-317.

Defendant breached the implied covenant of good faith and fair dealing and each of the warranties when it failed to produce professional quality clothes. Plaintiff testified that the clothes Defendant provided fell apart at the seams when worn by a model, were not made as designed, and were otherwise unsuitable for sale or display. Cf. Kells v. Town of Lincoln, 874 A.2d 204, 214 (R.I. 2005) ("[D]efendants' failure to uphold their end of the contract violated th[e] covenant of good faith."). Additionally, each Contract clearly states that Plaintiff intended the clothes to be "marketed and sold to customers." (ECF No. 1-1; ECF No. 1-2.) Therefore, each Contract contains implied warranties that the goods would be fit for this purpose and Defendant's failure to honor her promise frustrated the clear purpose of the agreements.

C. Damages

Under the "perfect tender rule," a buyer can reject goods that do not conform to the terms of the contract for purchase. R.I. Gen. Laws § 6A-2-601; U.S.A. Coil & Air, Inc. v. Hodess Bldg. Co., No. 96-3397, 1999 WL 66582, at *2 (R.I. Super. Feb. 8, 1999). In such an event, the buyer may recover so much of the price as has been paid, as well as any incidental and consequential damages. R.I. Gen. Laws § 6A-2-711. Plaintiff demonstrated at trial that it paid Defendant \$69,000 under the Contracts, (Pl. Ex. 3.), and Defendant is liable for this entire amount as a result of its breaches.

Plaintiff also seeks to recover business expenses it incurred in working with Defendant to develop the clothing line and in preparing to market the clothes. These include (1) travel expenses incurred by Ms. Reineke in visiting Ms. Barnard in Providence for purposes of "collection review," (Pl. Ex. 6, Tab 1); (2) expenses incurred in attending various meetings with the Defendant from September 2011 through November 2011, (Pl. Ex. 6, Tab 2); (3) Ms. Barnard's trip to Detroit for "fabric selection," (Pl. Ex. 6, Tab 3); (4) expenses from a trip to Boston to visit a marketing firm, (Pl. Ex. 6, Tab 4); (5) expenses from a trip by Ms. Reineke to Providence to attend a meeting with Ms. Barnard about the collections, during which meeting they contacted Defendant via Skype, (Pl. Ex. 6, Tab 5);

and (6) expenses incurred for a model, photo shoot, and website to market the clothes, (Pl. Ex. 5).

"It is well settled that a court may award damages for breach of contract to place the injured party in as good a position as if the parties fully performed the contract." Guzman v. Jan-Pro Cleaning Sys., Inc., 839 A.2d 504, 508 (R.I. 2003) (quoting Riley v. St. Germain, 723 A.2d 1120, 1122 (R.I. 1999) (per curiam)). However, where a party's damages based on lost profits are uncertain or unmeasurable, "[c]ontract damages may be measured by the injured party's 'reliance interest,' which may include 'expenditures made in preparation for performance or in performance, less any loss that the party in breach can prove with reasonable certainty the injured party would have suffered had the contract been performed.'" Brennan v. Carvel Corp., 929 F.2d 801, 811 (1st Cir. 1991) (quoting Restatement (Second) of Contracts § 349 (1981)).

Here, all of the enumerated business expenses were incurred in performance of the Contracts. They were each investments in the clothing lines made in reliance on the fact that Defendant would deliver a product that met the requirements of the Contracts. When Defendant breached the Contracts, the value of that investment was lost and Plaintiff may now recoup those expenses from Defendant. These expenses amounted to \$4,862.78.

D. Prejudgment Interest

R.I. Gen. Laws § 9-21-10 provides that "[i]n any civil action in which a verdict is rendered or a decision made for pecuniary damages, there shall be added by the clerk of the court to the amount of damages interest at the rate of twelve percent (12%) per annum thereon from the date the cause of action accrued, which shall be included in the judgment entered therein." This applies to damages for breach of contract. See Jolicoeur Furniture Co. v. Baldelli, 653 A.2d 740, 754 (R.I. 1995). Plaintiff asks that interest be awarded for the period from February 15, 2012 (the date the Verified Complaint was filed) until the date of this Order. The Court believes that February 15, 2012 is a conservative date for when "the cause of action accrued,"² and will award interest beginning on that date.

III. Conclusion

For the foregoing reasons, it is hereby ordered that judgment shall enter in favor of Plaintiff and Defendant is hereby ordered to pay \$73,852.78, plus interest in an amount equal to twelve percent (12%) per annum from February 15, 2012

² Rhode Island law provides sellers with the ability to cure defects in goods within a reasonable time of rejection. R.I. Gen. Laws § 6A-2-508. Therefore, the cause of action would not accrue until the expiration of this reasonable time. It became clear prior to the filing of the Verified Complaint that Defendant did not intend to cure defects in the clothes or return to Plaintiff money paid under the Contracts. Therefore, the date requested by Plaintiff is a reasonable date to start the accrual of interest.

until the date of this Order, to Defendant within thirty (30) business days of the date of this Order. Counsel for Plaintiff shall file an affidavit specifying the amount of prejudgment interest within fourteen (14) days.

IT IS SO ORDERED

/s/ William E. Smith

William E. Smith
United States District Judge
Date: March 4, 2013