

Maesa LLC v TPR Holdings LLC
2020 NY Slip Op 34523(U)
September 9, 2020
Supreme Court, New York County
Docket Number: 652685/2020
Judge: Jennifer G. Schechter
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JENNIFER G. SCHECTER PART IAS MOTION 54EFM

Justice

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INDEX NO. 652685/2020

MAESA LLC,

MOTION SEQ. NO. 002

Plaintiff,

- v -

DECISION + ORDER ON MOTION & X-MOT

TPR HOLDINGS LLC,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38

were read on MOTION SJ; X-MOT CPLR 2221

Upon the foregoing documents, it is ORDERED that plaintiff's motion for summary judgment is GRANTED and defendant's CPLR 2221 cross-motion is DENIED.

There is no question of fact that defendant breached the settlement agreement (Dkt. 26) and owes plaintiff \$2,435,699 plus pre-judgment interest from September 1, 2019. The only reason why this motion was necessitated was because the settlement agreement did not constitute an agreement for the payment of money only, and not because defendant has a meritorious defense (see Dkt. 22). The court did not overlook anything on the prior motion or set an unreasonable briefing schedule given the simplicity of the issues (see CPLR 2214[b]).

The pandemic does not excuse defendant's performance based on the doctrines of impossibility and frustration of purpose (see Lantino v Clay LLC, 2020 WL 2239957, at *3 [SDNY May 8, 2020] ["financial difficulties arising out of the COVID-19 pandemic" does not excuse performance under pre-COVID settlement agreement], citing Kel Kim Corp. v Cent. Markets, Inc., 70 NY2d 900, 902 [1987]; see also Butler v Suria, 2020 WL 5105160, at *2 [SDNY Aug. 31, 2020] [same]). Indeed, defendant defaulted on its payment obligations before either party was obligated to produce and deliver additional goods (see 407 E. 61st Garage, Inc. v Savoy Fifth Ave. Corp., 23 NY2d 275, 281 [1968] ["where impossibility or difficulty of performance is occasioned only by financial difficulty or economic hardship ... performance of a contract is not excused"], accord Urban Archaeology Ltd. v 207 E. 57th St. LLC, 68 AD3d 562 [1st Dept 2009]). In any event, defendant submits no evidence or explanation of how performance was impossible by the June 15, 2020 cure date (see Dkt. 29 at 4), rather than being difficult due to the pandemic (see Warner v Kaplan, 71 AD3d 1, 5 [1st Dept 2009] ["where performance is possible, albeit unprofitable, the legal excuse of impossibility is not available"]).

Nor is defendant entitled to discovery or denial of summary judgment based on unelaborated defenses. Defendant does not submit any evidence that it complied with its contractual obligations. It merely argues that it breached due to difficult economic conditions. This excuse being unavailing, and defendant not arguing that plaintiff is entitled to less the full amount owed under the settlement agreement rather than just the amount owed for the Finished Goods, it is further ORDERED that the Clerk is directed to enter judgment in favor of plaintiff and against defendant in the amount of \$2,435,699 plus pre-judgment interest from September 1, 2019 to the date judgment is entered.

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9/9/2020
DATE

JENNIFER G. SCHECTER, J.S.C.

CHECK ONE:

MOTION:

X-MOT:

CASE DISPOSED
 GRANTED
 DENIED

DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART
 SUBMIT ORDER

OTHER