

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

(FILED: APRIL 10, 2012)

EXPRESS FINE JEWELRY :
MANUFACTURING CORPORATION :

VS. :

C.A. No. KC 2009-0089

R & S TRADING, INC. D/B/A :
NATIONAL GOLD & DIAMOND :

DECISION

RUBINE, J. This matter was tried to the Court without a jury. Plaintiff produced one witness, Rabi Yaghoubzadeh (hereafter “Rabi”), the President of the Plaintiff corporation. Defendant did not produce any witnesses to testify. Several documents were received by the Court as full exhibits.

I

Findings of Fact

1. Plaintiff, a jewelry manufacturer and distributor, claims that Defendant owes \$28,152.57, on book account, for merchandise sold and delivered to Defendant as shown on the final statement rendered by Plaintiff to Defendant. That statement (Exhibit 5) is dated December 8, 2008.
2. According to the unrebutted testimony of Plaintiff’s President, that final statement represents a final compilation and current balance of all invoices rendered to Defendant, together with the detail of credits to the account, by way of payment or credits for goods returned.

3. In addition, certain invoices were entered into evidence, only one of which contains an amount disputed by the Defendant. Invoice number 13605 (Exhibit 7) has an entry entitled “Transfer Balance from Deveers of \$36,986.96.” Because Defendant does not dispute charges reflected of any invoices or statements for goods sold and delivered directly from Express (see, e.g., Exhibits 1 and 4), other than the charge for “Transfer Billing” in the amount of \$36,986.96, this trial focused on disputed facts with respect to that charge. Those facts are as follows:

1.) Express has had a long history of selling jewelry merchandise directly to customers, including Defendant R & S doing business as “National Gold and Diamond.” At all times pertinent to this complaint, those sales were made on behalf of R & S by a salesman for Express, whose name is Moshe Kendil (hereafter “Kendil”). Initially, Kendil, as a commissioned manufacturer’s representative, sold Express merchandise to Express customers (including R & S), which was billed by invoices prepared and sent from the Express office on 47th Street in New York City. In addition, Kendil would purchase merchandise from Express on his own account (d/b/a Deveers Fine Jewelry). Kendil then would directly bill customers for the Express merchandise he sold. At some point in 2005, Kendil had amassed a substantial debt with Express for merchandise he purchased for sale on his own account (d/b/a Deveers Fine Jewelry). Some time in 2005, Kendil’s unpaid account with Express became so large that Rabi,

as President of Express, believed Kendil's arrangement had to change. At that time, Kendil transferred (or assigned) to Express his personal receivables (d/b/a Deveers Fine Jewelry) in partial satisfaction of Kendil's open account with Express. In other words, Express accepted accounts receivable in lieu of cash payments from Kendil, to satisfy Kendil's outstanding balance with Express. Those receivables, in at least one instance, included Kendil's receivables from customers which, on previous occasions, purchased merchandise directly from Express. After this transaction between Express and Kendil (d/b/a Deveers Fine Jewelry) was completed, certain customers, including Defendant, owed Express both on receivables for merchandise Express sold and delivered directly to Defendant, and, in addition, amounts Defendant owed Express (as assignee of Kendil) for debts that previously were owed to Kendil (d/b/a Deveers Fine Jewelry).

- 2.) Express' customers (including Defendant) were informed of this arrangement regarding receivables, by letter prepared jointly by Kendil and Rabi. The letter went out, however, over Kendil's signature. The letter Kendil sent (Exhibit 7) was dated November 17, 2006, and enclosed therewith a copy of invoice number 13605, which reflected the "Transfer Balance from Deveers." That invoice reflected a charge of \$36,986.96 shown

as “Transfer Balance from Deveers.” Although the November 17, 2006 letter was not carefully worded to explain the nature of the entry “Transfer Balance from Deveers,” no one at R & S (d/b/a National Gold and Diamond) questioned the letter, or the entry on invoice number 13605, to seek a more thorough explanation of the transfer charge, at or near the time it was made. In fact, Defendant made several payments on account after receiving invoice number 13605, and in fact Defendant made at least two payments on account payable to Express after receiving invoice number 13605, and the November 17, 2006 letter, without questioning the substantial charge reflected as “Transfer Balance from Deveers.” The testimony of Rabi, President of Express (the “assignee”) concerning the agreement with Kendil to pay off Kendil’s account balance with Express by assignment of the receivable from R & S to Kendil (d/b/a Deveers) to Express, together with the letter signed by Kendil (the “assignor”) is sufficient evidence in the Court’s view to establish the making of the assignment of the R & S receivable to Express, even in the absence of a writing, other than the co-authored letter.

- 3.) Accordingly, this Court can and does infer that Defendant knew and understood the nature of the charge on invoice number 13605 for \$36,986.96 representing “Transfer Balance from

Deveers.” Without any testimony from R & S (d/b/a National Gold and Diamond) claiming a misunderstanding of that invoice, the Court finds \$36,986.96 reflected an amount due and owing on account of Express merchandise sold and delivered to National Gold and Diamond that was previously billed directly by Kendil (d/b/a Deveers Fine Jewelry). There was no testimony that Defendant did not receive Express merchandise from Deveers, having a value of \$36,986.96, and therefore, Defendant, by reason of the transfer (or assignment) of that receivable, now owes that amount to Express, as explained in the letter of November 17, 2006. Invoice number 13605 was among those set forth on the December 8, 2008 statement, which statement formed the basis of the claim alleged in the current suit. In fact, the statement reflects two payments of \$2,500.00 each, and one payment of \$15,000 credited at Defendant’s request to invoice number 13605, which invoice reflected the Deveers balance transfer. These payments are further acknowledgment by Defendant of the debt created by the transfer of the Deveers receivable..

- 4.) Based upon all the credible evidence produced at trial, the Court finds that Plaintiff is currently due and owing \$28,152.57 from the Defendant on book account, which includes the outstanding balance transfer which R & S previously owed Kendil. The

Court finds as a matter of fact that the Kendil (d/b/a Deveers Fine Jewelry) receivable from R & S was transferred and assigned to Express. Therefore, Express properly invoiced R & S for that amount, together with other charges for merchandise sold and delivered directly by Express to R & S.

II

Analysis

Defendant suggests in its post-trial memorandum from counsel that the transfer billing from Deveers of \$36,986.96 is void and unenforceable because the “assignment” resulting in that charge was not in writing as required by R.I.G.L. § 9-2-8.¹ In other words, a person or entity which has been assigned a non-negotiable chose in action may not bring an action to enforce the right to payment thereon, unless the assignment is in writing.

Although it appears that a receivable is a “non-negotiable chose in action,” there is a question as to the standing of R & S to challenge the assignment for that reason. In this case it is undisputed that R & S (the debtor) is not a party to the Kendil-Express assignment. As a stranger to the assignment, it is well-settled that such a stranger, in this case R & S, cannot assert the invalidity of the assignment as a defense or claim for collection of that receivable. See 6 Am. Jur. 2d Assignments § 2, citing to the corollary of the standing issue in stating the general rule that “an assignment generally requires neither the knowledge nor the assent of the obligor, [and] because an assignment cannot

¹ That statute provides, in relevant part: “§ 9-2-8 Assignee of non-negotiable chose in action: The assignee of a non-negotiable chose in action which has been assigned in writing may maintain an action thereon in his or her own name, but subject to all defenses and rights of counterclaim, recoupment, or setoff to which the defendant would have been entitled had the action been brought in the name of the assignor.”

change the obligor's performance.” That same principle has been adopted by the R.I. Supreme Court in Brough v. Foley, 525 A.2d 919, 921-22 (R.I. 1987).² In other words, the assignment (if the transfer can be so characterized) does not vary the fact that R & S owes the obligation, but only raises the question of to whom the obligation is payable.³ The subject matter of the assignment in the Brough case was a right of first refusal to purchase property, and in Livonia, the assignment of a mortgage. Brough, 525 A.2d at 919; Livonia, 717 F. Supp. 2d. at 724. Although here the subject matter of the assignment was an account receivable (originally owed by R & S to Deveers), the principles of Brough and Livonia are no less valid. See Brough, 525 A.2d. at 921-22; Livonia, 717 F. Supp. 2d at 735-36. R & S cannot claim a defense to payment by proof that the assignment was not in writing. As stated in Livonia, “[T]he validity of the assignments does not effect *whether* Borrower owes its obligations, but only to *whom* Borrower is obligated.” 717 F. Supp. 2d at 735 (emphasis in original). Accordingly, the debtor company (R & S) cannot assert defects in the assignment from Kendil to Express as a defense to payment of the amount due. The debtor would be able to assert any defense to payment that it originally had against the assignor, when collection is sought by the assignee. R & S, however, has never disputed that it owed Kendil (d/b/a Deveers Fine Jewelry) the amount billed by Express (\$36,986.96) as a result of the transfer. Its only defense is related to the invalidity of the assignment of that receivable.

² Holding that in the case of the assignment of a right of first refusal, the plaintiffs, who were strangers to the assignment transaction, had no standing to challenge its validity. 525 A.2d at 922.

³ See also Livonia Props. Holdings, L.L.C. v. 12840-12976 Farmington Rd. Holdings, L.L.C., 717 F. Supp. 2d 724, 735-36 (E.D. Mich. 2010), which stands for the proposition that a property owner lacks standing to challenge the assignment of his mortgage to another entity, as a defense to foreclosure by the assignee. See also Paquette v. Mortgage Elec. Registration Sys., Inc. et al, No. PC-2009-5875, 2011 W.L. 3794700 (R.I. Super.).

There is even a question as to whether the transfer of the Deveers debt to Express is a true assignment. Although the lack of writing may present a defense to an assignee who has proper standing (i.e., a party to the assignment), it may not be asserted by the debtor in the account assigned. Accordingly, this Court believes that Express has the full right to collect the receivable transferred to it by Kendil (d/b/a Deveers), and R & S is obligated to pay the balance due to the current holder of the receivable. Here, Kendil and Rabi, at least as a courtesy, although not a legal prerequisite to enforcement, wrote to R & S to explain that the Deveers account was now due to be paid to Express, and thereafter, the Deveers account balance was properly reflected as a debt due Express on invoice number 13605, and the subsequent statement of December 8, 2008. The judgment herein shall authorize Express to collect that receivable, along with all other debts due from R & S to Express, as set forth in the most recent statement of account.

III

Conclusion

Judgment in the amount of \$28,152.57 shall enter in favor of the Plaintiff Express Fine Jewelry Manufacturing Corporation and against the Defendant R & S Trading, Inc. (d/b/a National Gold and Diamond).