STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

[FILED: February 26, 2014]

GRETCHEN W. NORTHERN	:	
	:	
VS.	:	**C.A. NO. KC 12-0045**
	:	
NEVER ENOUGH, LLC and	:	
ARLETTE CORNWALL	:	

DECISION

RUBINE, J. This matter is before the Court for decision following a bench trial. In accordance with a pretrial order, the parties agreed to stipulate to the undisputed facts.

After reviewing all of the evidence, including the Agreed Statement of Facts, the following constitutes the Court's finding of facts and conclusions of law in accordance with Super. R. Civ. P. 52(a). The Court accepted the Agreed Statement of Facts and incorporates by reference said Agreed Statement of Facts as its finding of facts herein. In addition, the Court has considered the affidavits introduced by Plaintiff without objection with respect to the calculation of the reasonable attorneys' fees incurred by the Plaintiff in pursuing this litigation for the collection of sums due from Defendants.

At trial, the Plaintiff relied exclusively on the Statement of Undisputed Facts, and the documents attached thereto. Defendant Arlette Cornwall (Cornwall) did not appear for trial.[1] The only defense pursued by Defendants was an affirmative defense of fraud. The alleged fraud was related to an allegation by the Defendants that Plaintiff made material misrepresentations to them relating to the underlying purchase by Cornwall of the consignment business known as Never

[1] Not only did Cornwall fail to appear for trial, she indicated through counsel that she had no intention of interrupting her vacation to attend.

Enough, LLC (Never Enough). The promissory note (Note)—which is the subject of the complaint—represented a portion of the purchase price of the business. Never Enough was sold by Plaintiff to Cornwall. Plaintiff's allegedly material misrepresentations induced Cornwall to purchase the business. Therefore, according to the defense of fraud, Plaintiff is not entitled to full payment of amounts allegedly due under the Note. In addition, damages suffered by Cornwall as a result of the alleged misrepresentations should be considered as a set-off to any sums due under the Note.[2] The Note, by its terms, was payable in twelve equal monthly installments of $1500, with the final payment of principal and accrued interest due thirteen months after execution of the Note. It is agreed that neither Cornwall nor Never Enough made any payment to Plaintiff since the date of execution, June 24, 2011. This non-payment of the entire unpaid principal and interest resulted in this suit. The evidence shows that $20,000 of unpaid principal together with unpaid accrued interest of $232.00 is currently due. In addition, the Note called for the payment of reasonable attorneys' fees and costs incurred by Plaintiff if suit is brought to collect. According to the affidavits admitted as full exhibits by agreement, suit for collection of the Note was commenced on January 18, 2012. Attorneys' fees and costs incurred from commencement of the suit through February 12, 2014 total $12,561.36. Based upon the Court's review of the

[2] The Court questioned counsel for the Defendants as to the election of remedy by Cornwall for the alleged fraud. The law provides that a party asserting a claim of fraudulent inducement may elect to rescind the contract or affirm the contract and pursue damages which were the result of the fraud. Bogosian v. Bederman, 823 A.2d 1117, 1120 (R.I. 2003) (quoting Stebbins v. Wells, 766 A.2d 369, 372 (R.I. 2001) (per curiam)). Defendants' counsel indicated that his client's election was to affirm the contract and assert damages for the alleged fraud. Although the Defendants failed to assert a counterclaim for damages, the Court believes that if the alleged defense of fraud were proven, the damages resulting therefrom could be considered as a set-off to the purchase price of the business. The Court, however, questioned the failure of the Defendants to assert their damages claim as a counterclaim. Plaintiff, through counsel, expressed her consent for the Court to consider the set-off as asserted by way of defense, rather than by counterclaim.

billing records of Plaintiff's law firm, and a related affidavit of attorney William M. Heffernan, I find that the reasonable costs and attorneys' fees incurred by Plaintiff in pursuing collection of the Note total $12,561.36. Defendants failed to prove any material misrepresentations by the Plaintiff in connection with the transaction related to the sale of Never Enough, LLC to Cornwall, nor any damages caused by any material misrepresentations. Accordingly, Defendants have failed to present any viable defense to plaintiff's claim for payment in full of all sums currently due under the June 24, 2011 Note payable to Plaintiff. Accordingly, judgment shall enter for the Plaintiff in the amount of $32,793.36 together with post-judgment interest from the date judgment enters until the judgment is paid in full.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Gretchen W. Northern v. Never Enough, LLC and Arlette Cornwall
CASE NO:	KC 12-0045
COURT:	Kent County Superior Court
DATE DECISION FILED:	February 26, 2014
JUSTICE/MAGISTRATE:	Rubine, J.
ATTORNEYS:	
For Plaintiff:	Richard M. Peirce, Esq.; Daniel E. Burgoyne, Esq.
For Defendant:	Steven A. Colantuono, Esq.