

Jan 06 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

John Deere Construction & Forestry)
Company,)
)
)
Plaintiff,)

Civil Action No. 2018-CP-32-04329

vs.)

**ORDER GRANTING SUMMARY
JUDGMENT**

North Edisto Logging, Inc., and Paul)
Gunter,)
)
)
Defendants.)

This matter came before the Court on the Motion for Summary Judgment filed by Plaintiff John Deere Construction & Forestry Company (“Plaintiff”). A hearing on the motion was held via the Cisco Webex Virtual Courtroom on October 27, 2020. Plaintiff was represented by Paul A. Fanning. Defendants North Edisto Logging, Inc. and Paul D. Gunter (“Defendants”) were represented by D. Randolph Whitt, Esq.

Having considered the parties’ memoranda and exhibits, the filed affidavits, the arguments heard at the hearing on October 27, 2020, the applicable law, and the parties’ proposed orders, this Court grants Plaintiff’s Motion for Summary Judgment. The Court presents its findings and conclusions below.

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the Court should view the evidence in the light most favorable to the non-moving party. Fleming v. Rose, 350 S.C. 488, 493–94, 567 S.E.2d 857, 860 (2002). Naturally, “[a] court considering summary judgment neither makes factual determinations nor

considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth the facts that remain undisputed” David v. McLeod Reg’l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006). Entry of summary judgment is mandated, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish that existence of an element essential to that party’s case. Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 116, 410 S.E.2d 537, 545-546 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 317 (1986)). In that kind of situation, “there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” Id. at 116, 410 S.E.2d at 546. “The moving party is entitled to a judgment as a matter of law because the nonmoving party has not made a sufficient showing on an essential element of their case for which they have the burden of proof.” Id.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff’s Complaint asserts causes of action against the Defendants for breach of contract seeking damages of \$946,378.65 along with interest and attorney’s fees. The claims stem from five commercial contracts relating to the purchase and financing of certain logging equipment and warranty products (the “Contracts”). The Contracts were each secured by the financed equipment described therein (the “Collateral”).

Plaintiff’s Complaint alleges that Defendants entered into five separate loan contracts and accompanying security agreements with Plaintiff between January 30, 2014 and September 30, 2015. Defendants admitted each of the Contracts are valid and enforceable. Defendants also admitted that no payments have been made on any of the Contracts since at least January 2017. On December 10, 2018, Plaintiff sent Defendant a notice of default, notice of acceleration, and

demand for payment in full on the Contracts. Plaintiff sought, and was granted, an Order for Dispossession of the Collateral on June 12, 2019. After providing Defendants written notice of their intent and of Defendants' right to redeem, Plaintiff obtained possession of and sold the Collateral, applying the proceeds from the sale to the balance remaining on the Contracts.

In opposition to Plaintiff's Motion, Defendants claim the Collateral was not sold in a commercially reasonable manner after the Order of Dispossession. Defendants rely solely on the Affidavit of Paula Gunter filed on October 22, 2020, five days prior to the hearing. Ms. Gunter states the sales were unreasonably delayed, duplicate expenses and interest were incurred, and the sale prices were inadequate. No additional evidence was provided by Defendants to support these claims. Defendants have reviewed the line itemed account histories for each of the Contracts, and do not contest that the Transaction Histories accurately account for all payments received from or on behalf of Defendants. Defendants do not deny some amount of money is owed to Plaintiff under the Contracts. Defendants claim, however, they are entitled to certain offsets based on Counterclaims they asserted against Plaintiff including breach of the covenant of good faith and fair dealing, negligent supervision, and a class action claim.

ANALYSIS

Defendants assert in their Counterclaim that Plaintiff's conduct in servicing the loans and in attempting to obtain immediate possession was "based on faulty documents, [and] constitutes a breach of contract in that it violates Plaintiff's duty of good faith and fair dealing under each of the loan contracts that are the basis of this action." Specifically, Defendants allege that, over the course of several financing transactions originated by Flint Equipment Company, an authorized dealer of the Plaintiff's equipment, "documents were submitted giving one set of figures to Defendants and inconsistent set of figures to [Plaintiff]."

This allegation seems to center around only one of the Contracts (Contract 5) for equipment and an accompanying warranty plan. The difference in the “inconsistent figures” appears to be a \$30,000.00 credit for a down payment that was included in the total purchase price (the “Purchase Price”) financed through the Plaintiff, but which was not included in the total amount owed, before applying any down payments, featured on original equipment invoice (the “Invoice”). Defendants admit that they agreed to pay the Purchase Price. Defendants also admit they received the Contract 5 Collateral, along with the warranty package, and there was no issue concerning the receipt of either of those items. Plaintiff’s record show Defendants received service on the Contract 5 Collateral, as required under the warranty plan.

Defendants further allege Plaintiff breached the Contracts by failing to provide an agreed six-month extension of payments. However, Defendants have produced no request for a modification or extension of any of the Contracts, much less an agreement by Plaintiff to modify and extend any of the Contracts.

Defendants’ counterclaim for breach of the covenant of good faith and fair dealing fails to state a claim, as it lacks any allegation of their own contractual performance. Additionally, there is no independent cause of action for the implied covenant of good faith and fair dealing under South Carolina law, and even if there was, there is no issue of fact on the record to establish the elements of breach of the covenant of good faith and fair dealing. See RoTec Servs., Inc. v. Encompass Servs., Inc., 359 S.C. 467, 471–73, 597 S.E.2d 881, 883–84 (Ct. App. 2004) (“implied covenant of good faith and fair dealing is not an independent cause of action separate from the claim for breach of contract”). In sum, there is no breach of good faith and fair dealing without a separate and cognizable claim for breach of contract connected with it. It should also be noted that

Defendants neither sought reconsideration nor appeal of the subject Order of Immediate Dispossession on which they base their purported claims here.

In their Answer and Counterclaim, Defendants allege that Plaintiff negligently failed to supervise the filing of documents associated with their request for immediate possession. There is no evidence on the record to establish the elements of negligent supervision. This counterclaim was considered by Judge Keesley in this case at the June 10, 2019 pre-seizure hearing and he determined the request for immediate possession met the requirements of South Carolina law. Again, this Order was not reconsidered or appealed.

Defendants also allege that Plaintiff negligently failed to supervise the production and execution of the loan documents. However, this counterclaim is a restatement of Defendants' first counterclaim regarding inconsistent figures.

Finally, Defendants failed to assert a cause of action in their counterclaim for a Class Action, and their Counterclaims do not form the basis for a Class Action. Further, there is no evidence on the record to establish a Class Action, and Defendants have failed to present any genuine issues of fact that they have suffered any damages as a result of any actions or inactions on the part of Plaintiff.

CONCLUSION

In light of the facts and circumstances presented to this court, Defendant has failed to show that there is a genuine issue as to any material fact on their counterclaim causes of action. Therefore, this Court is persuaded that Plaintiff is entitled to summary judgment.

Based on the foregoing, **IT IS ORDERED**, that Plaintiff's Motion for Summary Judgment is **GRANTED**.

AND IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]

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SC Court of Appeals



Lexington Common Pleas

Case Caption: John Deere Construction & Forestry Company VS North Edisto Logging Inc , defendant, et al

Case Number: 2018CP3204329

Type: Order/Summary Judgment

It Is So Ordered

s/ Walton J. McLeod