

**IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

SHUN DA CLOTHES, INC.

Plaintiff,

v.

**DENIM KIN NEW YORK, INC. a/k/a
R2M2, INC.**

Defendant.

: APRIL TERM, 2012

: No. 03407

OPINION

ALBERT JOHN SNITE, JR., J.

July 15, 2013

PROCEDURAL HISTORY

On April 27, 2012, this case was commenced by the issuance of a praecipe for writ of summons.

On August 13, 2012, Plaintiff Shun Da Clothes, Inc., (herein "Shun Da") filed a Complaint against Defendant Denim Kin New York, Inc. a/k/a R2M2, Inc. (herein "Denim Kin"), alleging Count I: Breach of Contract (Failure to Pay); Count II: Unjust Enrichment; Count III: Breach of Contract (Failure to Pay); Count IV: Unjust Enrichment; and Count V: Tortious Interference with Business Relationship. The complaint requested liquidated damages in the amount of \$368,532.60 for its breach of contract claims.

On January 7, 2013, Plaintiff filed a Praecipe to Reinstate the Complaint. On January 24, 2013, an Affidavit of service of plaintiff's complaint upon Denim Kin was filed. On February 5, 2013, Eric F. Spade and John M. Wills entered their appearance on behalf of Denim Kin.

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On March 12, 2013, a Notice of Praecipe to Enter Judgment by Default pursuant to Pa. R. Civ. P. 237.1, was served upon Denim Kin via certified mail and first class mail, postage prepaid. On March 25, 2013, more than ten (10) days after the Praecipe to Enter Default Judgment was filed, plaintiff filed a Praecipe for Entry of Default Judgment, for failure to answer the complaint within twenty (20) days.

On April 3, 2013 Denim Kin filed a Petition to Open Default Judgment. On April 23, 2013 Plaintiff filed an Answer in Opposition thereto.

On May 1, 2013, I denied Denim Kin's Petition to Open Default Judgment.

On May 13, 2013 Denim Kin filed a Motion for Reconsideration of the court's May 1, 2013 Order. On May 16, 2013, I denied the Motion for Reconsideration.

On May 30, 2013, this court received notice that Denim Kin had filed an appeal to the Superior Court of Pennsylvania from this court's May 1, 2013 order.

On June 14, 2013, pursuant to Pennsylvania Rule of Appellate Procedure 1925(b)(1), I ordered Denim Kin to file a statement of the errors complained of on appeal. On July 12, 2013, Denim Kin filed its 1925(b) statement.

FACTUAL BACKGROUND

This is a dispute related to the wholesale of retail clothing, and five (5) "Lot" sale contracts for the purchase of ladies' jeans between and October 2011 and December 2011. In its complaint, Shun Da (the seller) states that instead of manufacturing the ladies jeans itself, Shun Da arranged to have a company in China manufacture the jeans and deliver them directly to Denim Kin (the buyer). After the jeans were delivered, it was discovered that there were some problems with the sizing of the jeans and the manner in which certain embellishments were attached. As a result of the problems, Shun Da and Denim Kin negotiated, and on January 19,

2012 agreed to a price reduction. In its complaint, Shun Da alleges that the outstanding balance due on the contracts for Lots 1-5, with the price per piece reduction, is \$368,532.60.

The complaint was filed on August 13, 2012. After receiving the complaint, Denim Kin's counsel requested an extension of time to file its answer. However, since Shun Da could not obtain proof of service for filing with the court, it had the summons and complaint reissued. The affidavit of service was filed January 24, 2013, with proper service having been effected on January 10, 2013. Pursuant to Pa. R. Civ. P. 1026, the complaint contains notice to defend within twenty days, which would have been January 30, 2013.

Denim Kin's counsel entered an appearance on February 5, 2013. On March 12, 2013, more than a full month later, still without an Answer, Shun Da served Denim Kin with a Notice of Intention to Enter Default Judgment, as required by Pa. R. Civ. P. 237.1. No answer was filed within ten (10) days of the Notice, and on March 25, 2013, Shun Da filed a default judgment.

Nine days later, on April 4, 2013, Denim Kin filed its Petition to Open Default Judgment.

DISCUSSION

A petition to open a judgment is addressed to the equitable powers of the court and is a matter of judicial discretion.¹ The court will only exercise this discretion when (1) the petition has been promptly filed; (2) a meritorious defense can be shown; *and* (3) the failure to appear can be excused.² Pursuant to Pa. R. Civ. P. 237.3, (b), if the petition is filed within ten days after the entry of the judgment on the docket, the court shall open the judgment if the proposed complaint or answer states a meritorious cause of action or defense. The explanatory comments further state: "Case law has imposed three requirements for opening a judgment by default: a

¹ Schultz v. Erie Ins. Exch., 477 A.2d 471, 472 (Pa. 1984).

² Id. (citation omitted).

petition timely filed, a reasonable explanation or legitimate excuse for the inactivity or delay and a showing of a meritorious defense.”

Denim Kin did in fact file its Petition within ten days of the entry of Default Judgment. However, I have found that Denim Kin has failed to meet the next two requirements.

First, a meritorious defense must be shown. A defendant is required to allege facts of record in the petition that support a meritorious defense.³ A defendant may not simply set forth in its petition conclusions of law and challenges to the plaintiff’s proof.⁴

Here, Denim Kin’s Petition does not provide facts upon which any alleged meritorious defenses are based. In its Petition and attached verified Answer, Denim Kin merely states that it “alleges valid defenses, most notably the statu[t]e of limitations defense [,] doctrine of lache[s], equitable estoppels and plaintiff’s own breaches of the contract.”⁵ Nowhere are there facts to support such defenses. For example, it is unclear what possible basis Denim Kin could have for asserting a statute of limitations defense, where the contracts at issue are from October 2011 and December 2011, and the current lawsuit was filed in April 2013 – certainly within the four year statute of limitations for a contract action in Pennsylvania.

By further example, Denim Kin alleges a defense of Shun Da’s own breach of contract. In its verified Answer, however, Denim Kin admits at paragraph 46 that although it received defective materials, Shun Da made a price reduction. It is impossible to glean any further defense beyond what Denim Kin admits: that the original contract price was reduced by Shun Da. Likewise, there are no facts to support Denim Kin’s assertions of Shun Da’s failure to state

³ Smith v. Morrell Beer Distributors, Inc., 29 A.3d 23, 27-29 (Pa. 2011).

⁴ Id. at 26, 28.

⁵ Petition ¶ 11.

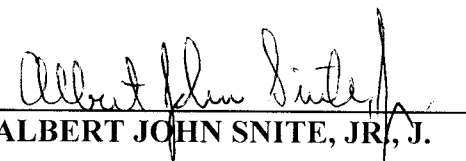
a cause of action for breach of contract, or how/why Shun Da's claims are barred by the doctrines of laches, waiver, unclean hands, or estoppel.⁶

Next, in its Petition, Denim Kin states: "It was understood by plaintiff's counsel that plaintiff had given defendant additional time to file its answer."⁷ In no way is this unsupported statement a reasonable explanation or legitimate excuse for the failure to respond within the prescribed time period.⁸

CONCLUSION

As such, Denim Kin failed to meet the requirements for this court to consider opening the default judgment.⁹ This court asks that the May 1, 2013 order be affirmed.

BY THE COURT:


ALBERT JOHN SNITE, JR., J.

⁶ Verified Ans. ¶ 84-89.

⁷ Petition ¶ 5.

⁸ The only allegation is that Denim Kin was given an extension to answer the complaint first filed in August 2011, but not after the reissuance of the complaint in January 2012. Such facts are only alleged by Shun Da in its response to Denim Kin's Petition, not Denim Kin's Petition or verified Answer. Furthermore, a Notice of Intention to Enter Default Judgment was served on March 12, 2013. This is certainly formal notice that even if there had been an understanding sometime in the past, Denim Kin was made aware that it had ten days to respond to that Notice (by March 22, 2013), which it did not.

⁹ Additionally, Denim Kin's 1925(b) statement provides this court no further information about its' allegedly meritorious defenses, as it merely states that all of the elements of Rule 237.3 were satisfied.