

202 Conn. App. 315 JANUARY, 2021 315

Northeast Builders Supply & Home Centers, LLC v. RMM Consulting, LLC

NORTHEAST BUILDERS SUPPLY &
HOME CENTERS, LLC v. RMM
CONSULTING, LLC, ET AL.
(AC 41486)

Keller, Prescott and Devlin, Js.

Syllabus

The plaintiff, a building supply company, sought to recover damages from the defendants for breach of contract after they failed to make payments owed for building materials sold to them pursuant to a credit agreement. The credit agreement was signed by the defendant M, who was the sole member of the defendants R Co. and T Co., and by the defendant J, M's husband and a building contractor, in their capacities as both buyers and personal guarantors. The defendants filed a five count counterclaim and the plaintiff moved to strike four of the counts on the ground that they did not arise out of the same transaction that formed the basis for the plaintiff's complaint. The trial court granted the motion to strike and later rendered judgment in favor of the plaintiff on the four stricken counts. Following a trial to the court, the trial court rendered judgment for the plaintiff on its complaint and on the remaining count of the counterclaim alleging breach of contract, from which the defendants appealed to this court. *Held:*

1. The trial court did not abuse its discretion in granting the plaintiff's motion to strike four counts of the defendants' counterclaim because the counts did not arise out of the same transaction that formed the basis for the complaint: the stricken counts involved issues relating to the plaintiff's use of prejudgment remedies, the propriety of the prejudgment remedies, and their legal effect, and the plaintiff's motivation in utilizing such remedies presented factual and legal issues distinct from those necessary to adjudicate whether the defendants breached the credit agreement.
2. The trial court properly rendered judgment on the merits of the complaint and the counterclaim in favor of the plaintiff:
 - a. The trial court's finding that the plaintiff was the seller of the building supplies at issue in the complaint was not clearly erroneous: the defendants failed to provide any basis for this court to conclude that the court erred in viewing an uncontested allegation in the defendants' surviving count of its counterclaim as a judicial admission that the plaintiff was the seller; moreover, even if the court should not have treated the defendants' pleadings as constituting a judicial admission, there was sufficient evidence in the record to support the court's finding that the plaintiff was the seller, including the fact that the credit application identified the plaintiff as the party extending the credit, invoices

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316 JANUARY, 2021 202 Conn. App. 315

Northeast Builders Supply & Home Centers, LLC v. RMM Consulting, LLC

provided to the defendants had the plaintiff's name and logo printed on them and indicated that payment should be remitted to the plaintiff, all funds paid by the defendants were deposited into accounts owned by the plaintiff, and the plaintiff was the actual owner of the materials provided to the defendants.

b. The trial court's finding that J and M acted in dual capacities as buyers and guarantors was not clearly erroneous; the court was entitled to rely on the defendants' allegation in the surviving count of its counterclaim that the defendants collectively, including J and M, purchased goods and materials from the plaintiff as a judicial admission that J and M were buyers under the credit agreement.

c. Contrary to the defendants' claim, the trial court applied the proper standard in considering the defendants' defense of revocation; the court found that the defendants had failed to present evidence that established to what extent any defects in the building materials had impaired the value of the goods delivered to the defendants, which was a necessary element to justify revocation of acceptance.

d. The defendants' claim that the trial court misapplied a provision (§ 42a-2-714) of the Uniform Commercial Code in rendering judgment for the plaintiff on the breach of contract count of their counterclaim was unavailing; although the court found that the defendants had shown that some of the goods may have been nonconforming, the defendants failed to establish the value of the goods as accepted, which prevented the court from comparing the value of the goods as received to the value of the goods had they been received in proper condition.

e. The trial court's award of damages to the plaintiff was not clearly erroneous; there was evidence before the court from which it could make a fair and reasonable calculation of the amount of damages, including copies of statements that accounted for all charges and payments from the time the defendants opened the credit account through the filing of the action and it was free not to credit the evidence submitted by the defendants in support of their challenges to the damages claimed by the plaintiff.

Argued June 15, 2020—officially released January 26, 2021

Procedural History

Action to recover damages for breach of contract, and for other relief, brought to the Superior Court in the judicial district of Fairfield, where the court, *Radcliffe, J.*, granted the plaintiff's motion to strike certain counts of the defendants' counterclaim and rendered judgment thereon; thereafter, the matter was tried to the court, *Arnold, J.*; judgment for the plaintiff on the

202 Conn. App. 315 JANUARY, 2021 317

Northeast Builders Supply & Home Centers, LLC v. RMM Consulting, LLC

complaint and the counterclaim, from which the defendants appealed to this court. *Affirmed.*

Irve J. Goldman, with whom was *Bruce W. Diamond*, for the appellants (defendants).

Bruce L. Elstein, for the appellee (plaintiff).

Opinion

PRESCOTT, J. The action underlying this appeal involves a dispute over payment for building supplies provided by the plaintiff, Northeast Builders Supply & Home Center, LLC, to the defendants, RMM Consulting, LLC (RMM); Todd Hill Properties, LLC (Todd Hill Properties); Maureen Morrill; and Clifford Jones. The defendants appeal, following a trial to the court, from the judgment rendered in favor of the plaintiff on its one count breach of contract complaint and from the court’s earlier partial judgment rendered against the defendants on several counts of their counterclaim following the granting of a motion to strike those counts.¹

On appeal, the defendants claim that the court improperly (1) granted the plaintiff’s motion to strike four counts of their counterclaim on the ground that the counts were improperly joined because they failed the transaction test set forth in Practice Book § 10-10,² and (2)

¹ Because the judgment rendered on those counts of the counterclaim did not dispose of all of the counts brought by the defendants against the plaintiff, it was not immediately appealable at the time the court rendered judgment on the stricken counterclaims. See Practice Book § 61-4.

² Practice Book § 10-10 provides in relevant part: “In any action for legal or equitable relief, any defendant may file counterclaims against any plaintiff . . . provided that each such counterclaim . . . arises out of the transaction or one of the transactions which is the subject of the plaintiff’s complaint; and if necessary, additional parties may be summoned in to answer any such counterclaim”

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318 JANUARY, 2021 202 Conn. App. 315

Northeast Builders Supply & Home Centers, LLC v. RMM Consulting, LLC

rendered judgment in favor of the plaintiff on its complaint and on the sole remaining count of the counterclaim because the court (a) incorrectly determined that the plaintiff was the seller of the goods at issue, (b) wrongly concluded that the individual defendants, Jones and Morrill, were liable as buyers of the goods rather than as guarantors only, (c) failed to properly consider the defendants' defense of revocation of acceptance, (d) rendered judgment for the plaintiff despite having found that some of the goods at issue were defective and that the plaintiff had refused to remedy or replace them, and (e) incorrectly found that the plaintiff proved its damages to a reasonable degree of certainty.³ We affirm the judgment of the court.

The record reveals the following facts and procedural history relevant to our review of the claims on appeal.⁴ In September, 2006, the defendants executed a credit application form (agreement) provided to them by an employee of the plaintiff for the purpose of establishing a \$100,000 open line of credit with the plaintiff in the names of the defendants RMM and Todd Hill Properties.

³ We have reordered, combined, or restated some of the defendants' appellate claims for purposes of clarity and comprehension. We also note that the defendants raised a number of additional claims on appeal directed at the court's decision to grant the motion to strike. Specifically, the defendants claim that the court (1) impermissibly relied on grounds not raised by the plaintiff in its motion to strike or supporting memorandum of law, (2) incorrectly concluded that the defendants had failed to state a proper cause of action for abuse of process, and (3) misinterpreted the defendants' allegation that they had not purchased goods from the plaintiff but from the plaintiff's wholly owned subsidiary as failing to state a legally cognizable counterclaim. Because we conclude that the court did not abuse its discretion by striking the four counts of the counterclaim on the basis that they failed the transaction test, it is not necessary for us to reach the merits of these additional claims of error. See also footnote 18 of this opinion.

⁴ We rely on the facts as found and set forth by the court in its memorandum of decision on the merits of the plaintiff's complaint as well as on additional undisputed facts disclosed in the record.