

COURT FILE NO.: CV-11-426690
DATE: 20181221

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)

PAK GLOBAL TEXTILE)
BEDDING INC.)

Plaintiff)

- and -)

RAPAC BEDSPREADS &)
MANUFACTURING INC. operating)
as RAPAC MFG. and as RAPAC)
BEDSPREAD MFG. INC.)

Defendants)

Zeitoon Vaezzadeh and Alex Nikolaev,
for the Plaintiff

Mark Trenholme, for the Defendants

) HEARD: December 18 and 19, 2018

Judgment

L. A. PATTILLO J.:

[1] The plaintiff Pak Global Textile Bedding Inc. (“Pak Global”) is a manufacturer and importer of textiles such as fabrics, towels and bedding products. The defendant Rapac Bedspreads & Manufacturing Inc. (“Rapac”) is a manufacturer and wholesaler of textile and bedding products.

[2] Pak Global claims \$47,372.25 being the balance owing from the sale of goods to Rapac between the fall of 2009 and the spring of 2010.

[3] The following are my findings of fact in this case arising from the evidence.

[4] In August 2009, Mr. Akram Nadim ("Nadim"), the principle of Pak Global was approached by Mr. Vinicio Raponi ("Raponi"), one of the owners of Rapac about purchasing 22,000 to 24,000 units of comforters. The parties agreed on price of \$9.00 Cdn/unit plus tax. On August 10, 2009. Rapac provided a \$15,000 advance in respect of the agreement.

[5] This was not the first time that Pak Global and Rapac had done business together.

[6] Pak Global sourced the comforters from Sarah Textiles in Pakistan. Beginning in late August 2009, Sarah began shipping containers of comforters to Rapac. In total 10 containers were shipped between August 26, 2009 and December 18, 2009, each containing between 2100 and 4900 comforters. They arrived at Rapac between October 14, 2009 and January 27, 2010.

[7] In a document dated September 10, 2009, addressed to Rapac and signed by Nadim, Pak Global outlined the terms of the agreement. The price of \$9.00 Cdn plus tax per comforter was confirmed based on 9 to 10, 40 foot containers. The \$15,000 advance was acknowledged as received. Payment was LDP Toronto based on 25% advance and the balance of 75% before delivery of the goods. Rapac was responsible for paying the inland charges of the container from customs or the CP/CN yard after customs clearance by Pak Global. The quantity was approximately 22,000 to 24,000 comforters.

[8] Important to this action, the document stated that delivery of the first container was the end of October or early November from Pakistan and then continued with the interval of 2-3 weeks until fulfilled.

[9] The last paragraph of the document stated that the order will be executed after receiving the P.O. from customer and acceptance of all above terms and conditions and payment terms.

[10] The record establishes that in total there were 8 invoices delivered by Pak Global to Rapac between October 7, 2009 and January 29, 2010 in respect of the 10 containers, totaling \$228,866.20. The invoices, apart from the last one which

was sent by fax, were hand delivered by Nadim for each container, after it had been shipped but before it was delivered.

[11] Rapac paid the invoices for each of containers 1, 2, 3&4, 5, 6 and almost all of 10 prior to receiving the containers. Payment was by cheque or, in the case of containers 5 and 6&7, by both cheque and a credit from the advance payment. Rapac did not pay for containers 8 (\$20,180 after applying a credit of \$2,500 from the advance) and 9 (\$22,680). Finally, Rapac paid \$20,000 on the invoice for container 10 leaving a balance owing on that invoice of \$2,680.

[12] As a result, Pak Global submits that the balance owing by Rapac pursuant to the agreement in respect of the 10 containers is \$45,540 (\$228,866.20 - \$180,826.20).

[13] Rapac submits that it does not owe Pak Global any money for the comforters. Raponi's evidence is that he had a verbal agreement with Hudsons Bay/Zellers ("HBC") that Rapac would deliver the comforters to HBC by November 15, 2009. At the time of the agreement with Pak Global, Nadim was aware that delivery of the comforters must occur before November 15, 2009 and Nadim told him that he could get all the product and deliver it on time. He denied that he ever received or saw the September 10, 2009 document until after the law suit had been started.

[14] There is no purchase order from HBC. Raponi says that Rapac would receive a call from HBC indicating their requirements. Price, quantity and delivery date would be agreed. HBC would only issue a purchase order when Rapac confirmed the goods were available and ready to be shipped. When HBC called Raponi sometime shortly before November 15, 2009 to confirm availability, as only two containers had been delivered, Raponi told HBC that he did not have the comforters. As a result, HBC never issued a purchase order to Rapac and obtained them from another source.

[15] Raponi says that Nadim advised him in early November that he could not meet the delivery deadline. Raponi says he then verbally cancelled the agreement. Rapac kept the two containers that had been delivered. Raponi says that one was for a regular customer and the other, which was destined for HBC, was of poor quality and inferior product.

[16] Raponi says that in December 2009, he met with Nadim and they agreed that Rapac would sell the remaining containers based on a cost of \$4.00 USD per

comforter. Both parties would be responsible for the costs of disposing the comforters and once the costs were determined the parties would share the profits and expenses of the sale. In the same paragraph in his affidavit, Raponi states that they agreed that Pak Global would get paid for the first eight containers and two containers would defer Rapac's cost for storage and transportation and the net amount would be Rapac's profit.

[17] Nadim's evidence is that there was never any agreement that the comforters would all be delivered before November 15, 2009. Nor did Raponi ever cancel the agreement. As per the agreement Nadim delivered an invoice for each container after it was shipped but before delivery and was paid by cheque by Rapac before the container arrived. To the extent Rapac didn't pay, Raponi told him that Rapac would pay when it got paid by its customers. Raponi did complain that the goods were of inferior quality but when Nadim asked to see the goods or return them, Raponi didn't produce them.

[18] Nadim said that in December 2009, Raponi complained about the price of the comforters. He felt Nadim was making a lot of money on the deal. Nadim forwarded an email from his supplier and met with Raponi sometime in early 2009 after delivery of the last container to explain his costs to demonstrate to Raponi that his profit was only \$.58 on \$9.00. At no time did he agree to amend the agreement or enter into some form of joint venture to sell the comforters.

[19] Between December 2009 and July 2010, Rapac sold all of the comforters at prices that ranged between \$8.82 and \$10.25 a comforter.

[20] Based on a consideration of all of the evidence, I prefer the evidence of Nadim over that of Raponi in respect of what the agreement concerning the comforters was. I do not accept Raponi's evidence that he cancelled the initial agreement a few days before November 15, 2009. Rapac's actions in continuing to pay for and accept delivery of the containers after that date is inconsistent with any cancellation.

[21] Nor do I accept that in 2009, he and Nadim entered a new agreement to dispose of the comforters. His evidence concerning the new agreement is contradictory. On the one hand, he says that they agreed to sell the remaining comforters based on a cost of \$4 U.S. and split any profits after expenses. On the other he says they agreed that Pak Global would get paid for the first eight containers and Rapac would keep the last two containers to defer its costs.

[22] There is no evidence to support that the first alleged agreement was ever carried out. As noted, Rapac sold the comforters for a lot more than \$4 US. But never supplied an accounting. On discovery, Raponi said that Rapac made "very little profit" on the sale of the comforters. In his affidavit filed on the eve of trial, Rapac provided a form of accounting for the first time showing Rapac lost \$9,781.90. Apart from the failure to account, the inconsistency of Raponi's evidence between profit and loss troubles me.

[23] Nor do I accept that there was any agreement concerning Pak Global receiving payment on the first eight containers and Rapac keeping the last two for the simple reason that Rapac paid for container 10 but did not pay for containers 8 and 9 which is contrary to the alleged agreement.

[24] In light of the above, in the absence of any evidence to corroborate Raponi's evidence of his dealings with HBC concerning the comforters, I also do not accept that he told Nadim that the comforters had to be delivered before November 15, 2009.

[25] Finally, I reject any suggestion that the comforters were of poor quality or were damaged or dirty. Nadim and Mr. Amirali Kasamali went to Rapac's premises in early 2010 to inspect the goods but were not shown any of the comforters. Further, although Pak Global told Rapac to return any spoiled or damaged goods, none were ever returned. Despite Raponi's evidence, Rapac has not established that any of the goods were damaged or of inferior quality.

[26] Having accepted the containers, Rapac is liable to pay for the comforters in accordance with the initial agreement at \$9.00 Cdn. plus tax. Accordingly Rapac owes Pak Global \$45,540 being the balance owing for the ten containers.

[27] Pak Global also claims an additional \$1,832.25 from Rapac based on five oral agreements entered into between Pak Global and Rapac between the fall of 2009 and June 2010 involving the purchase of aprons, sheets and duvet cover sets. Rapac disputes the amounts claimed.

[28] Pak Global claims \$462 in respect of 550 aprons which it says were purchased by Rapac. The documentation indicates that in October 2009, 5350 aprons at \$.80 per apron were delivered to Rapac. Rapac responded that it did not order the aprons and told Pak Global to arrange to pick them up. Raponi said that Nadim asked him if Rapac would keep the aprons and from time to time, Nadim would attend at Rapac's premises and take some of the aprons. Nadim agreed

that's what occurred. When the aprons were eventually returned to Pak Global, it says that there were 550 missing.


[29] In my view, given that Rapac was effectively warehousing the aprons for Pak Global and there is no accounting from Pak Global as to what it took from the container, the responsibility for the "missing" aprons is Pak Global's and not Rapac's. The claim for \$462 is disallowed.

[30] The remaining four invoices involve sales of a small number of bedding sets between January 2010 and June 2010. The amounts claimed to be owing are \$420, \$252, \$357, and \$609 respectively. Rapac's response is that it paid for the items and was doubled billed (invoice 921 for \$420), it paid (invoice 834 for \$357), the price charged was more than agreed (invoice 829 for \$252, the price agreed was \$10 a set, not \$20), it returned the goods (invoice 839 for \$609).

[31] I accept the evidence of Nadim in his affidavit sworn December 12, 2018 which explains the background behind the various amounts claimed and responds to Rapac's positions as set out in the documents. There is no evidence directly from Raponi. In my view, Pak Global's claims for payments of the various amounts has been established. Accordingly, Pak Global's claim for an additional amount of \$1,370.25 is allowed.

[32] In total, therefore, Pak Global is entitled to judgment against Rapac for \$46,910.25 plus pre-judgment interest and costs.

[33] Submissions re pre-judgment interest and costs.



A handwritten signature in black ink, appearing to read "L. A. Pattillo, J.", is written over a horizontal line.

L. A. Pattillo J.