

RECEIVED, 08/17/2023 05:01:21 PM, Clerk, Third District Court of Appeal

IN THE DISTRICT COURT OF
APPEAL OF FLORIDA
THIRD DISTRICT

FRANCOISE WYNNE,

Appellant,

v.

DEBORAH FRIEDMANN, et al.,

Appellees.

CASE NO.: 3D23-1343

L.T. NO.: 2020-020033-CA-01

**NOTICE OF RENDITION OF
SUMMARY JUDGMENT ON COUNTERCLAIM**

The Appellees provide notice of the trial court's judgment on the counterclaim, rendered on August 16, 2023.

Respectfully submitted,

/s/ Andrew J. Bernhard, Esq.

Florida Bar No. 84031

BERNHARD LAW FIRM PLLC

333 SE 2 Ave., Ste. 2000

Miami, FL 33131

Phone: 786.871.3349

E-mail: abernhard@bernhardlawfirm.com

CERTIFICATE OF SERVICE

I CERTIFY that a copy of this document was served by Florida e-portal on August 17, 2023, to: Marshall Dore Louis, Esq., counsel for Appellant, 100 SE 2nd Street, Suite 2800, Miami, FL 33131, mlouis@bsflp.com.

CERTIFICATE OF COMPLIANCE

I CERTIFY that the foregoing document is in compliance with the Rule's font and word count requirements.

/s/ Andrew J. Bernhard, Esq.

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2020-020033-CA-01

SECTION: CA13

JUDGE: Gina Beovides

FRANCOISE WYNNE

Plaintiff(s)

vs.

DEBORAH FRIEDMANN et al

Defendant(s)

_____ /

**ORDER GRANTING COUNTERCLAIMANT'S MOTION FOR SUMMARY JUDGMENT
AS TO COUNTERCLAIM**

THIS CAUSE is before the Court on counterclaimant SABBIA LLC's Motion for Summary Judgment as to the Counterclaim (the "Motion") filed October 14, 2022 (D.E. 92); Plaintiff's Response filed January 23, 2023 ("Plaintiff's Response") (D.E. 121); and Counterclaimant's Reply filed February 10, 2023 ("Defendants' Reply") (D.E. 127); and the Court being fully advised on the premises, having considered the record, it is

ORDERED AND ADJUDGED: SABBIA LLC's Motion for Summary Judgment as to the Counterclaim is GRANTED for the reasons stated below.

BACKGROUND

This issue in this Counterclaim is whether Francoise Wynne (the "Buyer") breached her contract with SABBIA retail jewelry store when she returned the ring, after the Buyer had negotiated and consummated a contract for purchase of the jewelry new, with a \$90,000.00 discount, and immediate alteration to the jewelry, in exchange for a final sale with no returns, paid by cashier's check. The sale required SABBIA to negotiate the discount off the manufacturer's set retail price with the jewelry's designer/manufacturer Sylva & Cie, who allowed the discount contingent on a final sale with immediate payment to Sylva of \$153,280.00 and Sylva's immediate alteration of the jewelry from its new state. This sale was the result of a two-month due diligence process by the Buyer, with multiple showings up to the final sale, and loss of potential full-price sale to other buyers. The Buyer later returned the jewelry on buyer's remorse, and now seeks to reset the sale price lower through this lawsuit. SABBIA seeks payment of the \$90,000.00 in damages based on the Buyer's return in breach of their contract.

STANDARD

The summary judgment standard under Florida Rule of Civil Procedure 1.510 is that “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” In addition to directing courts to look to Federal law in interpreting the new Rule, the Florida Supreme Court, in *In re Amendments to Florida Rule of Civil Procedure 1.510*, 317 So. 3d 72 (Fla. Apr. 29, 2021) provided some additional guidance:

. . . those applying new rule 1.510 must recognize that the correct test or the existence of a genuine factual dispute is whether ‘the evidence is such that a reasonable jury could return a verdict for the nonmoving party.’ *Anderson*, 477 U.S. at 248, 106 S.Ct. 2505 [*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)]. Under our new rule, ‘[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment.’ *Scott v. Harris*, 550 U.S. 373, 380, 127 S.Ct. 1769, 167 L.Ed.2d 686 (2007). In Florida it will no longer be plausible to maintain that ‘the existence of any competent evidence creating an issue of fact, however credible or incredible, substantial or trivial, stops the inquiry and precludes summary judgment, so long as the ‘slightest doubt’ is raised.’ *Id.* at 75.

ANALYSIS

The Counterclaim alleges that the Buyer breached her contract with SABBIA for final sale of a Sylva & Cie jewelry piece with immediate alteration of the jewelry and \$90,000.00 discount off the manufacturer’s set retail price, in exchange for the sale being final with no returns. The elements of a breach of contract claim are: (1) an agreement; (2) a material breach of the agreement; and (3) damages. *Deauville Hotel Mgmt., LLC v. Ward*, 219 So. 3d 949, 953 (Fla. 3d DCA 2017) (holding that breach of contract to host wedding occurred when space was moved within hotel but out of ballroom, even though “function space” was not defined as hotel ballroom).

Under the standard discussed above, if there is sufficient evidence in the record for a reasonable jury to find in the Plaintiff’s favor in regard to each element of these causes of action, then there is a genuine issue of material fact and summary judgment would be improper for that cause of action. But, if there is insufficient evidence that a reasonable jury could rely on to find in favor of the Plaintiff in regard to any element of a cause of action, then summary judgment should be granted as to that cause of action.

Here, the evidence shows that the Buyer and SABBIA had an enforceable contract. The Buyer entered into a purchase and sale agreement for the Sylva & Cie 15-carat Ceylon sapphire jewelry art piece, with a manufacturer's set retail price of \$350,700.00, with a \$90,000.00 price reduction and alteration/accommodation of the jewelry for the Buyer, in exchange for an agreement that the sale was a final cash sale with no returns. Motion Exhibit C at ¶¶ 14–20 (SABBIA affidavit). All of these terms were material.

To arrive at these terms, SABBIA's owner first called the artist, designer, and manufacturer Sylva & Cie to obtain authorization to lower the manufacturer's set retail price by \$90K, given that the history of sale prices changes how much Sylva & Cie can charge for Sylva's jewelry artwork. *Id.* Sylva authorized the sale price in exchange for immediate cash payment in a final sale with no returns. *Id.* Based on the representations, negotiations, and material terms of the Buyer and Sylva & Cie, SABBIA agreed to the final cash sale. *Id.* The Buyer had SABBIA write out a receipt showing the retail price of \$350,700, the accommodation/alteration and discount to \$260,000.00, in exchange for a cashier's check and a "FINAL SALE" with "No returns." Motion Exhibit C at ¶¶ 33–37. Buyer had Ms. Friedmann put the receipt with the jewelry to be shipped out for immediate alteration/accommodation to Buyer's size. *Id.*

There was thus an enforceable contract.

The Buyer testified that when she bought the ring from SABBIA it was not a deposit, but instead was unquestionably payment in full to SABBIA for a final sale:

[Q]: But at SABBIA, SABBIA was not supposed to hold the check for you to go shop for other rings; is that correct?

[BUYER]: We didn't talk about hold the check, no.

[Q]: **Is that because you understood that you were actually purchasing the ring?**

[PLAINITFF]: **Yes. Yes.**

Motion Exhibit A at Tr. 124–127 (Buyer’s deposition). The Buyer testified she understood that contracts are binding whether written or verbal:

[BUYER]: It’s a verbal contract. Contracts can be verbal as well. It is a contract. You’re binding yourself to a contract when you do that.

[Q]: But my question is whether it’s written or it’s verbal only?

[BUYER]: It doesn’t make a difference.

Id. at Tr. 133, ln. 2–10 (Buyer’s deposition). The Buyer understood the difference between a deposit prior to a purchase, and a final consummated sale. *Id.* at Tr. 122–127 (Buyer’s depo). The Buyer confirmed in testimony that the deal had to be a cash deal, as SABBIA had to pay out the manufacturer at an agreed reduced price:

[Q]: --and it was down \$90,000 from the asking price?

[BUYER]: And probably was more than that, yes.

[Q]: And you understood that for that deal, you had to pay in cash; is that correct?

[BUYER]: Well, we mentioned it. Yeah, I don’t think Debbie [SABBIA] would have taken a credit card on that payment. So, yes, that was my understanding, absolutely.

Id. at Tr. 410, ln. 5–12 (8/18/22 deposition of Buyer). Buyer thus admitted she knew that SABBIA relied on this being a final cash sale with no returns.

The Buyer also testified that the reduction of the purchase to \$260K down from the manufacturer's set retail price of \$350K was a "good deal":

[Q]: I'm just staying this quote, "good deal," end quote, that's referring to, you said, the price?

[BUYER]: Yes, yes.

[Q]: Referring to the discount of the price from 350 to 260, that's a good deal, correct?

[BUYER]: It's a good deal from the, from the piece that I'm getting, yes.

Id. at Tr. 405, ln. 8–14. The Buyer testified that she knowingly forewent an appraisal. Motion Exhibit A at Tr. 115, ln. 2–4 (“[BUYER]: Should have done it before – should have done my investigation, my due diligence. I didn’t.”). On January 29, 2020, the Buyer came into SABBIA, pointed at the Sylva & Cie jewelry art piece, and said “That’s my ring!” and then bought it under the above express terms. *Id.* at Tr. 358, ln. 3–6 (Buyer depo); Exhibit C at ¶ 34 (SABBIA affidavit).

Further, the evidence shows that the Buyer confirmed that they had an enforceable contract and its material terms, in writing and in conduct, immediately after sale. After the purchase, the Buyer had SABBIA take videos and photos of her wearing her new jewelry art piece. *Id.* at Tr. 358, ln. 3–6 (Buyer depo); Exhibit C at ¶ 34 (SABBIA affidavit). After the purchase, on January 29th and January 30th, the Buyer repeatedly thanked SABBIA and confirmed she loved the ring in writing. *Id.* at ¶ 42; Exhibit A(15) (actual text messages).

The Buyer also confirmed in writing that “no returns” was a material term of her contract:

[BUYER BUYER]:

[SABBIA’S DEBBIE FRIEDMANN]:

Thu, Jan 30

Let's meet and discuss in a bit. **You made me write no returns yesterday!**

I know Debbie I know.

Exhibit C at ¶ 48 (SABBIA affidavit); Exhibit A(15) (actual texts). Buyer thus confirmed in writing that she made "no returns" a material term of their agreement. The record evidence thus shows this was a fully developed final sale after two-months' due diligence, in which the Buyer independently made up her mind to buy. The evidence confirms there was an enforceable contract.

The Buyer then breached the contract, in what appears to be buyer's remorse, even though SABBIA had already paid the manufacturer and altered the jewelry from its new state. The Buyer then further breached by sending three law firms against SABBIA to coerce a return and repurchase of the ring by SABBIA, in breach of their contract terms.

When Buyer's jewelry had been paid and altered, *the Buyer demanded a return; i.e., that SABBIA buy it from Buyer*. On February 3, 2020, the Buyer notified as much in a text message:

[BUYER BUYER]:

[SABBIA]:

Fri, Jan 31, 9:07 AM Good morning Debbie; I opened the pouch where you place my <<beautiful black pearls! >> and there was a pair in it. I will return it this weekend. **Still debating about the ring.** Please allow me a little more time to be fully convinced about keeping it or not. I really appreciate it. This should have not been an impulsive decision. **I am fully aware of the behavior not being proper and apologize for it.** Have a great day.

Mon, Feb 3, 7:26 AM Good morning Debbie; Decision made. I am not getting the ring.

Purely insane. . . .

My weekend has been a challenged thinking of the ring; not easy and **upset by my behavior.**

Exhibit C at ¶ 50 (SABBIA affidavit); Exhibit A(15) (actual texts).

The Buyer testified that her buyer's remorse came out of thin air; that it was all in her head:

[Q]: So I was just asking you, Francoise [Wynne, the Buyer], whether something external had happened, like a big inclusion appeared in the stone, somebody came and said your ring was trash, you fell down the stairs, something external that happened, or if these second thoughts were all just something that happened inside. Do you remember me asking that?

[BUYER]: Second thoughts happened inside, and I wanted to – I wanted to return it.

[Q]: So nothing happened externally, no new event occurred?

[BUYER]: No.

Exhibit A at Tr. 517, ln. 25–Tr. 518, ln. 11 (Buyer's deposition). In response, SABBIA reiterated the plain terms of their agreement, and the Buyer opted to engage lawyers to force a return:

[BUYER] [SABBIA]:

Mon, Feb 3,
6:20 PM

Francoise

I am sending you the receipt prepared on Wednesday . . . **In furtherance of that agreement** I sent your sapphire ring by courier on Thursday to be sized to your specification. **I also sent a check to the vendor for payment for the ring. Based upon our agreement, I had guaranteed payment for the reduced price. I relied on your statements and the written receipt that**

there were to be no returns and no refunds. For that reason, I accepted the cashiers check hand delivered by Iberia Bank. I know you will enjoy this ring. **It is not a hasty purchase. You have seen and tried the ring 3 separate times over the last 6 weeks.** I would be happy to sit down and discuss the situation. I look forward to hearing your thoughts. With kind regards, Debbie

In total panic.

Tue, Feb 4,
1:58 PM

Francoise

Ring has arrived and is resized. Would you please come in and try it? Kind regards, Debbie

Wed, Feb 5, Debbie, . . . I
1:42 PM **retained legal
counsel**

Exhibit C at ¶ 52 (SABBIA affidavit); Exhibit A(15) (actual texts). Buyer has since employed three separate law firms to make SABBIA buy back the ring, filed this lawsuit, and otherwise kept the jewelry art in limbo for years. Motion Exhibit C at ¶¶ 55–59 (SABBIA affidavit). These acts are a breach of their contract.

The Buyer's breach caused SABBIA to lose the \$90,000.00 off the manufacturer's set retail price, plus the alteration, shipping, and insuring of the jewelry, by seeking return (repurchase) after SABBIA paid the manufacturer \$153,280.00 and sent out the ring for Buyer's alterations/accommodation in reliance on their contract terms. Motion Exhibit B(2) at Tr. 72; Exhibit A(7)(B) (Check to Sylva); Exhibit C (SABBIA affidavit). SABBIA negotiated and obtained the manufacturer's authorization and limited discount in reliance on the Buyer, and SABBIA lost the opportunity cost to sell the jewelry at the manufacturer's set retail price or higher.

SABBIA made a **58% retail upcharge** on the ring, well below the industry standard for luxury retail jewelry or art, which was only agreeable on a contract for final sale with no returns, and immediate cash payment to SABBIA and then to the manufacturer. Motion Exhibit C at ¶¶ 40, 41, 77 (SABBIA affidavit). All of this was done and contingent on the Buyer's agreement that this sale was a final sale with no returns, which the Buyer had negotiated in exchange for a \$90,000.00 discount on the ring manufacturer's set retail price of \$350,700.00. *Id.* The damage of Buyer's refusal to hold up her contractual terms has been punctuated by Buyer's acts thereafter. *Id.*

Multiple independent and unpaid professionals and experts have testified that the jewelry's industry upcharge bracket was up to 500% or more, substantially more than SABBIA got (at 58% upcharge for a final sale with no returns). Motion Exhibit C at ¶ 64 and C(1)–(4) (Affidavits). As these professionals testified, the Buyer got this ring at a discounted rate below the retail mark-up regularly charged in the jewelry retail industry, both for common and luxury jewelry items (which ranges from 100% to 500% or more). *Id.* The evidence shows SABBIA's losses for anything less than \$350,000.00 retail given that the Buyer breached her contract. The evidence shows that the Buyer breached her contract with SABBIA, causing SABBIA losses.

CONCLUSION

Accordingly, the Court enters summary judgment on Count I (breach of contract) and awards damages of \$90,000.00 to SABBIA.

WHEREFORE, it is hereby **ORDERED** and **ADJUDGED** that: SABBIA's Motion for Summary Judgment as to the Counterclaim is **GRANTED**.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 16th day of August, 2023.

2020-020033-CA-01 08-16-2023 2:51 PM


2020-020033-CA-01 08-16-2023 2:51 PM

Hon. Gina Beovides

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

Electronically Served:

Andrew Bernhard, abernhard@bernhardlawfirm.com

Marshall Dore Louis, mlouis@bsfllp.com

Marshall Dore Louis, mperez@bsfllp.com

Marshall Dore Louis, marshall-dore-1475@ecf.pacerpro.com

Physically Served: