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Order on Defendant PRG Group, LLC's Motion for Summary Judgment (PAYLESS CAR RENTAL SYSTEMS, INC.)

Alice D. Bonner
Superior Court of Fulton County

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IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

PAYLESS CAR RENTAL SYSTEMS, INC. and L & S VEHICLE LEASING, INC.,	)(	
Plaintiffs,	)(	
v.	)(	Civil Action File No. 2007CV129218
PRG GROUP, LLC and ANTHONY ELKIK,	)(	
Defendants.	)(	
PRG GROUP, LLC,	)(	
Third-Party Plaintiff,	)(	
v.	)(	
ORLIN, INC. and ATLIN, INC.,	)(	
Third-Party Defendants.	)(	

FILED IN OFFICE
JAN 07 2010
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

ORDER ON DEFENDANT PRG GROUP, LLC'S MOTION FOR SUMMARY JUDGMENT

On November 18, 2009, counsel appeared before the Court to present argument on the motion for summary judgment of Defendant PRG Group, LLC. After hearing the arguments made by counsel, reviewing the briefs submitted on the motion and the record in the case, the Court finds as follows.

Defendant PRG Group, LLC ("PRG") was a franchisee of Plaintiff Payless Car Rental Systems, Inc. ("Payless"). PRG operated a Payless car rental store at the Atlanta airport from November 2005 to February 1, 2007. Plaintiffs allege that Plaintiff L&S Vehicle Leasing, Inc. ("L&S") and PRG entered into an agreement that called for

PRG to lease or sublease vehicles from L&S. Disputes between the parties over these leased vehicles ensued from the very beginning of the franchise relationship.

L&S asserts three alternative claims against PRG for money it alleges it is owed for vehicles leased by PRG: open account, breach of contract, and quantum meruit. In its Motion for Summary Judgment, PRG argues that all of Plaintiffs' claims should be dismissed based on accord and satisfaction. First, PRG argues that in November 2006, it paid $81,000 to Payless to reconcile and settle certain accounts then agreed to be owing Payless. Second, PRG argues that Payless consented to the sale of the franchise by PRG despite being able to withhold such consent if PRG had not fully complied with its financial obligation to Payless. Instead, Payless accepted a $20,000 transfer fee out of this transaction.

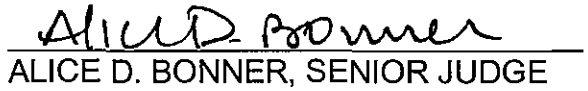
Generally, "whether there is an accord and satisfaction is a question for the jury." USA Mfg. Corp. v. Perfection-Schwank, Inc. 271 Ga. App. 636, 638 (2005). "An accord and satisfaction occurs when 'the parties to an agreement, by a subsequent agreement, have satisfied the former agreement, and the latter agreement has been executed.'" Id. (citing O.C.G.A. § 13-4-101). "An accord and satisfaction is a contract, which requires a meeting of the minds to render it valid and binding. A definite offer and complete acceptance, for consideration, create a binding contract." Id. (citing Moreno v. Strickland, 255 Ga. App. 850, 852 (2002)). "Under OCGA § 13-3-1, one of the essential requirements of a valid contract is "the assent of the parties to the terms of the contract." Id. The Court finds that questions of fact remain for a jury, including whether the parties agreed that the November 2006 payment by PRG to Payless was an agreed-upon accord and satisfaction for the sums disputed in this case.

Issues of fact also remain regarding PRG's remaining arguments in support of its motion for summary judgment on L&S's claims for open account, breach of contract and quantum meruit. Questions concerning an assignment of its rights by Defendant Orlin, Inc. to L&S, whether there was an oral contract between PRG and L&S and what money, if any, is owed to L&S by PRG are examples of the jury issues in this case.

PRG additionally argues that it is entitled to summary judgment on Plaintiffs' claims for attorneys' fees and expenses of litigation pursuant to O.C.G.A. § 13-6-11 because such claims should fall with L&S's contract claim. Because the Court ruled previously in this Order that L&S's contract claims remain in this case, PRG's argument is now moot. Moreover, O.C.G.A. § 13-6-11 specifically provides that a jury may allow expenses of litigation. Only in rare cases where there is no evidence to support an award of fees and expenses may a trial court grant summary judgment on such an issue. American Medical Transp. Group, Inc. v. Glo-An, Inc., 235 Ga. App. 464 (1998). Questions of fact remain as to whether an award of litigation expenses is proper, and must be left for a jury to decide.

Accordingly, PRG's Motion for Summary Judgment is hereby **DENIED**.

SO ORDERED this 7 day of January, 2010.



ALICE D. BONNER, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies to:

Attorneys for Plaintiffs and Third-Party Defendants
Stephen E. Hudson, Esq.
Rachael Lee Zichella, Esq.
Kilpatrick Stockton LLP
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

Attorneys for Defendants/Third-Party Plaintiffs
David W. Davenport, Esq.
Keith A. Pittman, Esq.
Lamar Archer & Cofrin LLP
50 Hurt Plaza, Suite 900
Atlanta, GA 30303