

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SERTA SIMMONS BEDDING, LLC et al., :
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 Plaintiff, :
 -against- :
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 CASPER SLEEP INC., :
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 Defendants. :
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**ORDER DENYING MOTIONS TO
VACATE AND TO ENFORCE
SETTLEMENT**

17-cv-7468

ALVIN K. HELLERSTEIN, U.S.D.J.:

Background

This is a patent infringement action filed by Plaintiff Serta Simmons on September 29, 2017, alleging that Defendant Casper’s “Wave” mattress and the method used to manufacture it infringe on three patents owned by Plaintiff. Following a *Markman* hearing, a motion for reconsideration, and the completion of fact discovery, the parties cross-moved for summary judgment on May 18, 2018.

On June 18, 2018, while the cross-motions for summary judgment were pending, the parties notified the Court that they entered “into a Settlement Agreement, the terms of which are intended to resolve the matters in controversy in the instant litigation,” and jointly moved to “stay all pending deadlines in the Court’s Amended Civil Case Management Plan until July 5, 2018, by which date the Parties anticipate they will have filed appropriate dismissal papers” (the “Notice”). “Reply” papers for the motions for summary judgment were due one day later, June 19, 2018.

On June 20, 2018, the court denied the motion to stay, and granted summary judgment to defendant Casper, finding that Casper did not infringe on the asserted patents (the “Order”). *See* Dkt. No. 175. The Clerk closed the case.

Following the Court's Order, Serta Simmons moved to Vacate Judgment and Modify Order, *see* Dkt. No. 191, pursuant to Fed. R. Civ. P. 52(b) (motion to amend findings), 59(e) (motion to alter or amend judgment), 60(b) (motion for relief from judgment), arguing that the Court lacked jurisdiction to enter the June 20 Order following the parties' June 18 Notice. Serta Simmons also moved to Reopen Docket and Enforce Settlement Agreement, *see* Dkt. No. 177, providing the Court with the Settlement Agreement executed by the parties on June 18, 2018 (the "Agreement"), and seeking an order directing Casper to fulfill its obligation under it.

The Motion to Vacate Judgment and Modify Order is Denied

Article III of the U.S. Constitution limits federal jurisdiction to justiciable "cases and controversies," which must be ripe and not moot for federal courts to have adjudicatory power over them. The mootness doctrine provides that "an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." *Steffel v. Thompson*, 415 U.S. 452, 459 n. 10 (1974). "[A] case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Powell v. McCormack*, 395 U.S. 486, 496 (1969). The issue here is whether, following the parties' notice of settlement and motion to stay, a justiciable controversy remained before the Court. I hold that there was.

The notice of settlement, stylized as a motion to stay, subsequently denied by the Court, failed properly to dismiss the case. The parties indicated only that dismissal would follow by a later date, July 5, 2018, and that the Settlement "intended to resolve the matters in controversy," not that the parties in fact settled the claims or were dismissing them, as was their right under Fed. R. Civ. P. 41(a)(1)(A)(ii).

As it turns out, as evident in Settlement subsequently provided to the Court, the parties did not intend to immediately dismiss the claims, instead keeping the action alive until the parties fulfilled their obligations under the Settlement. The June 18 Settlement Agreement required that Casper pay Serta Simmons \$300,000 by June 28, 2018, *see* § 2.1, and that, within five days of

said payment, the parties would file “appropriate papers to dismiss all of Serta Simmons’ claims in the Litigation with prejudice, and all of Casper’s counterclaims in the Litigation without prejudice, and with the Parties to bear their own litigation costs and fees.” *See* § 2.2. Before such payment and dismissal occurred, the parties would “file a joint motion to stay the Litigation pending final settlement.” *Id.* The Settlement further required that, by certain prescribed dates, Casper will “discontinue the manufacture, and will no longer cause to be manufactured, the Accused Wave products,” will sell off remaining inventory, and will cease advertising of the Wave. *See* §§ 2.3–2.4. The Settlement required, finally, that Serta Simmons will release its claims arising from the litigation “upon performance of the obligations of Paragraphs 2.1–2.4” by Casper, and that Casper will similarly release its claim against Serta Simmons “upon performance of the obligations of Paragraph 2.2,” namely the filing of dismissal by the parties. *See* § 2.6–2.7. Thus, as the Agreement makes clear, dismissal was contingent on and would follow the parties’ performances, and that until such time the parties intended *not* to dismiss or release their claims.

The Court was unaware of these Settlement terms on June 20, of course, but the notice of settlement made equally clear the same, that the parties sought to stay, not dismiss, the action. A dismissal not having been filed, and the payment under the settlement not having occurred, the Court retained jurisdiction over the claims presented to it for adjudication. *See e.g., Gould v. Bowyer*, 11 F.3d 82, 83 (7th Cir. 1993) (where the district court granted summary judgment before payment under a settlement had been due or paid, “[t]he dispute between the parties had not yet become moot when the judgment was entered, because the settlement agreement had not yet become effective”). The claims not dismissed by the parties, the Court promptly and justly dismissed them.

The Motion to Reopen Docket and Enforce Settlement Agreement is Denied

Serta Simmons also moves to enforce the Settlement, arguing that the parties executed a binding agreement, recognizing the risks and costs of litigation, and that no provision or precondition relieves Casper of its obligations. Casper argues, in response, that the Court's denying the motion to stay and granting of summary judgment frustrated the purpose of the Agreement, relieving Casper of its obligations.

Whether Serta Simmons or Casper has the better argument here is not for the Court to decide, as the Court has no subject matter jurisdiction to interpret or enforce an out-of-court settlement not incorporated in the Court's order. "Absent such [incorporation], however, enforcement of the settlement agreement is for state courts, unless there is some independent basis for federal jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 382 (1994). Having granted judgment to Casper and dismissed the case, the Court lacks subject matter jurisdiction to review Serta Simmons' breach of contract claims, however valid. Serta Simmons remains free to bring its claims in a state court of appropriate jurisdiction.

The Court's Order Resolved All Claims at Issue

Serta Simmons finally argues that the June 20 Order is deficient in two respects, one relating to Rule 54 and the other Rule 58.

First, Serta Simmons argues that the Order failed to resolve all claims and counterclaims, as required by Fed. R. Civ. P. 54(b),¹ in particular failing to dismiss Casper's counterclaims. Serta Simmons' argument lacks merit as the Order fully disposed of the claims at issue in the Complaint and Counterclaim.

¹ Rule 54(b) provides that "[w]hen an action presents more than one claim for relief" or "when multiple parties are involved" the court may "direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." Fed. R. Civ. P. 54(b). Otherwise, an order "that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." *Id.*

The June 20 Order granted summary judgment to “Casper that neither its Wave mattress, nor its method of manufacturing the Wave mattress, infringes on Serta’s patents 7,424,763; 7,036,173; and 8,918,935” and directed the Clerk to “enter judgment for Defendant Casper, dismissing the Complaint, with costs to be taxed by the Clerk.” The Complaint contains five claims of patent infringement, alleging that the Wave and its method of manufacturing infringe on U.S. Patent Nos. 7,424,763; 7,036,173; 8,918,935. The Counterclaim contains seven corollary declaratory judgment claims, three requesting declarations of non-infringement of the asserted patents, three seeking declarations of the invalidity of the patents, and a seventh seeking a declaration that the patents are unenforceable due to inequitable conduct. The June 20 Order, in granting summary judgment to Casper, held that Casper did not infringe on the asserted patents, and, having so held, declined to rule on the merits on the invalidity and inequitable conduct contentions raised by Casper as defenses to the Complaint and as counterclaims in their own right. The June 20 Order sufficiently made clear that the Complaint is dismissed with prejudice, that the three counterclaims for declaratory judgment of non-infringement are, by the same logic of the decision, dismissed with prejudice, and that the remaining counterclaims are dismissed without prejudice. Having resolved all claims, the Order directed the clerk to enter judgment accordingly.

Second, Serta Simmons argues that the June 20 Order fails to “set out in a separate document” the judgment or amended judgment, as required by Rule 58(a). The Clerk will be directed accordingly.

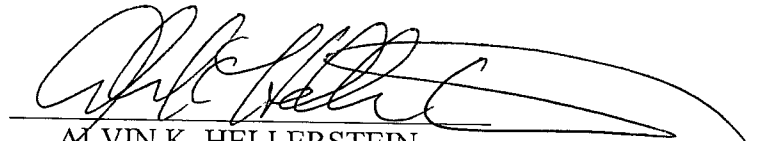
Conclusions

For the reasons stated above, Serta Simmons’ motions to vacate the June 20 Order and to enforce the Settlement Agreement are denied. The clerk shall terminate the motions (Dkt. No. 177, 191), as well as the motions to seal (Dkt. Nos. 180, 184, 193, 196) which were resolved by the Court’s Order dated August 3, 2018. *See* Dkt. No. 203.

Consistent with the June 20 Order, and the order herein, the Clerk is directed to enter judgment for Casper in a separate document.

SO ORDERED.

Dated: September 7, 2018
New York, New York



ALVIN K. HELLERSTEIN
United States District Judge