

Donoghue v Christie's Inc.

2012 NY Slip Op 33374(U)

July 13, 2012

Supreme Court, New York County

Docket Number: 111928/11

Judge: Anil C. Singh

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

HON. ANIL C. SINGH
SUPREME COURT JUSTICE

PRESENT: _____
Justice

PART 61

Index Number : 111928/2011
DONOGHUE, ANNEMERIE
vs.
CHRISTIE'S INC.
SEQUENCE NUMBER : 002
DISM ACTION/INCONVENIENT FORUM

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). 1, 2
Answering Affidavits — Exhibits _____ | No(s). 3
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is *decided in accordance with the annexed decision and order.*

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 7/13/12

Wec
HON. ANIL C. SINGH, J.S.C.
SUPREME COURT JUSTICE

- 1. CHECK ONE: CASE DISPOSED
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 61

-----X

ANNEMERIE DONOGHUE,

Plaintiff,

DECISION AND
ORDER

- against -

Index No.
111928/11

CHRISTIE'S INC. and HENRY CASTELLANOS,

Defendants.

-----X

HON. ANIL C. SINGH, J.:

This is an action to determine the rights to the net proceeds from the sale of four prints by Andy Warhol ("Andy Warhol Prints"). Defendant Henry Castellanos ("Mr. Castellanos") moves, pursuant to CPLR 3211(a)(1), (7), and (10), to dismiss the Complaint. In the alternative, Mr. Castellanos moves to dismiss, pursuant to CPLR 327, on the ground that California is a more appropriate forum to resolve this dispute. In addition, Mr. Castellanos seeks an order directing defendant Christie's Inc. ("Christie's") to remit to him the net proceeds from the sale of the Andy Warhol Prints.

BACKGROUND

Plaintiff, Annemerie Donoghue ("Ms. Donoghue"), commenced this action seeking, among other things, declaratory and injunctive relief regarding ownership rights to the Andy Warhol Prints. The Complaint includes the following factual allegations.

Ms. Donoghue was the owner of the Andy Warhol Prints. In January 2011, in preparation for her move to New York City,

Ms. Donoghue stored certain of her property, including the prints, at the Extra Space self-storage facility in North Hollywood, California ("Extra Space"). In May 2011, Extra Space invoked its rights under the California Self-Storage Facility Act (California Business and Professional Code, Division 8, Chapter 10, §§21700 et seq.) to obtain a lien and sell the property, purportedly based on Ms. Donoghue's delinquency in paying the required storage fees. Ms. Donoghue denies any delinquency in payment, asserting instead that she enrolled in an automatic payment arrangement with Extra Space for payment of the storage fees by credit card. In any event, Extra Space authorized J. Michael's Auction, Inc., a California company, to conduct the lien auction for the stored property on the premises of Extra Space.

Non-party Dinael Rivas ("Mr. Rivas") reportedly purchased the stored property, including the Andy Warhol Prints, at the lien auction for \$4,200. He later sold the Andy Warhol Prints to Mr. Castellanos for \$1,000.

On July 19, 2011, pursuant to a consignment agreement, Mr. Castellanos arranged for Christie's to sell the Andy Warhol Prints at an auction at its facility at 20 Rockefeller Plaza in Manhattan. Christie's included the Andy Warhol Prints in the catalogue for an auction on October 26, 2011.

Ms. Donoghue commenced this action against Christie's seeking, among other things, a declaration regarding ownership

rights to the Andy Warhol Prints and injunctive relief. The Complaint alleges causes of action for title to and possession of the Andy Warhol Prints (first and third cause of action), and title to and possession of certain other stored property (second and fourth causes of action).

This Court granted Ms. Donoghue's request for a temporary restraining order ("TRO"), enjoining the sale of the Andy Warhol Prints (Order to Show Cause with TRO, entered October 20, 2011, Russ Affirm, Exh A).¹ The Court also ordered Ms. Donoghue to post a \$200,000 bond, and ordered Christie's to disclose to Ms. Donoghue the name of the consignor, Mr. Costellanos (*id.*).

By Stipulation, dated October 25, 2011, Ms. Donoghue (1) agreed to withdraw her request for injunctive relief; (2) consented to the vacatur of the TRO; and (3) agreed to be bound by the terms of the consignment agreement between Christie's and Mr. Castellanos (Stipulation, Russ Affirm, Exh B). In addition, Ms. Donoghue and Mr. Castellanos (1) authorized Christie's to proceed with the sale of the Andy Warhol Prints, pursuant to the terms of the consignment agreement; (2) authorized Christie's to collect and keep all fees, commissions and other sums due under the consignment agreement; and (3) authorized Christie's to retain the net

¹The TRO was silent as to the other stored property.

proceeds from the sale of the Andy Warhol Prints as stakeholder for the benefit of Ms. Donoghue or Mr. Castellanos, pending the conclusion of this action (*id.*). Christie's agreed to remit the net proceeds from the sale of the Andy Warhol Prints to either Ms. Donoghue or Mr. Castellanos in accordance with the determination of this Court upon the conclusion of this action (*id.*). The Stipulation further states:

If this action is dismissed by this Court for jurisdictional reasons, Christie's shall continue to hold the net proceeds as a stakeholder for ninety (90) days to allow Donoghue to commence a new action in a court of competent jurisdiction to resolve the ownership and title issues raised in the instant action. If Donoghue fails to file a new action within ninety (90) days of the dismissal of this action then Christie's shall distribute the proceeds to Castellanos without any further obligation to Donoghue.

(*id.*). The Stipulation was "so ordered" by this Court (Singh, J.).

Christie's sold the Andy Warhol Prints at auction on October 26, 2011, and is currently holding the net proceeds from the sale as stakeholder.

Thereafter, Ms. Donoghue filed an amended Complaint, naming Mr. Castellanos as a defendant, and seeking, among other things, judgment (1) declaring that Ms. Donoghue is the owner of the Andy Warhol Prints and, as such, is entitled to

the net proceeds from the October 26, 2011 sale; (2) declaring that Mr. Castellanos has no ownership interest in the Andy Warhol Prints; and (3) directing Christie's to remit to Ms. Donoghue the net proceeds from the sale of the Andy Warhol Prints.

Mr. Castellanos now seeks to dismiss the amended Complaint on various grounds, including (1) failure to join indispensable parties; (2) forum non conveniens; (3) failure to state a cause of action; and (4) documentary evidence. Mr. Castellanos also seeks to recover the net proceeds from the sale of the Andy Warhol Prints.

DISCUSSION

The general rule is that "[p]ersons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action shall be made plaintiffs or defendants" (CPLR 1001(a); *Nagavi v Newcomb*, 305 AD2d 904, 905-906 [3d Dept 2003]). CPLR 3211(a)(10) permits a dismissal when it is shown that a person or entity indispensable to the action has not been, and cannot be, made a party.

Mr. Castellanos asserts that the Complaint should be dismissed since Mr. Rivas, who sold the Andy Warhol Prints to him, Extra Space, and J. Michael Auction, Inc., which auctioned the property for Extra Space, are necessary parties

to this action. Specifically, Mr. Castellanos argues that Extra Space, J. Michael Auction, Inc., and Mr. Rivas are relevant with respect to Ms. Donoghue's claim for the net proceeds from the sale of the Andy Warhol Prints.

Contrary to Mr. Castellanos' position, the Court finds that Mr. Rivas, Extra Space, and J. Michael Auction, Inc. are not necessary parties to this action. As stated, Ms. Donoghue seeks to recover the net proceeds from the sale of the Andy Warhol Prints, which can be fully obtained from defendants. Although this action cannot settle any dispute Mr. Castellanos may have with Mr. Rivas, Extra Space, and J. Michael Auction, Inc. regarding the propriety of the lien auction that led to Mr. Castellanos obtaining possession of the prints, complete relief as between the parties herein is possible (see *Nagavi v Newcomb, supra*, at 906).

Furthermore, Mr. Rivas, Extra Space, and J. Michael Auction, Inc. will not be inequitably affected by a judgment in the action since none of them have any present interest in the Andy Warhol Prints. The fact that Mr. Castellanos may have a claim against them is unavailing, as he offers no compelling legal support for the proposition that Ms. Donoghue has an obligation to take steps to preserve his rights (see *id.*).

Mr. Castellanos also argues that the action should be dismissed on the grounds of forum non conveniens. The common

law doctrine of forum non conveniens permits a court to stay or dismiss any action where it is determined that the action, although jurisdictionally sound, would be better adjudicated elsewhere (see CPLR 327; *Islamic Republic of Iran v Pahlavi*, 62 NY2d 474, 478-479 [1984]). The burden rests upon the defendant challenging the forum to demonstrate relevant public or private interest factors which militate against accepting the litigation (*Islamic Republic of Iran v Pahlavi, supra*, at 479). The Court may consider several factors, including the burden on the New York courts, the potential hardship to the defendant, and the availability of an alternate forum in which plaintiff may bring suit (*id.*). The Court may also consider whether the parties are residents of New York and whether the transaction out of which the cause of action arose occurred primarily in a foreign jurisdiction (*id.*). No single factor is controlling (*id.*). The Court, after considering and balancing the various competing factors, must determine in the exercise of its sound discretion whether to retain jurisdiction (*id.*).

Here, Mr. Castellanos contends that California is a more appropriate forum since the lien auction took place there. He also argues that the potential burden on New York is not justifiable, and the potential hardship to him is extreme, since all of the relevant persons and entities are California

residents, and the records and other evidence are located in California. He further asserts that California law governs the title issue presented herein.

The Court finds that this is hardly the type of case to impose an undue burden on New York Courts. The relatively simple issue before the Court is whether Ms. Donoghue or Mr. Castellanos is entitled to the net proceeds from the sale of the Andy Warhol Prints. Thus, while California may present an alternate forum, this Court is well-equipped to adjudicate the matter.

Furthermore, Mr. Castellanos' claim of extreme hardship from having to litigate this action in New York is disingenuous given that he voluntarily entered into the consignment agreement with Christie's to sell the Andy Warhol prints here. Moreover the consignment agreement is governed by the laws of New York and, upon entering into it, Mr. Castellanos consented to arbitration in New York (Consignment Agreement §19[h], Russ Affirm, Exh B). Thus, the branch of the motion that seeks to dismiss the Complaint on the ground of forum non conveniens is denied.

Mr. Castellanos further argues that the pleading must be dismissed since Ms. Donoghue fails to allege that she was the owner of the Andy Warhol Prints at the time of their consignment and sale and, in any event, documentary evidence exists to establish that he acquired the prints from a bona

fide purchaser at a lien auction. Mr. Castellanos submits, among other things, the bill of sale given to Mr. Rivas at the lien auction of the stored property.

It is well established that on a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction (see CPLR 3026; *Leon v Martinez*, 84 NY2d 83, 87 [1994]). The Court must accept the facts alleged in the complaint as true, accord the plaintiff the benefit of every favorable inference, and determine whether the facts as alleged fit within any cognizable legal theory (*Leon v Martinez, supra*).

Under CPLR 3211(a)(1), "dismissal is warranted only if the documentary evidence submitted conclusively establishes a defense to the asserted claim as a matter of law" (*id.*). In asserting a motion under CPLR 3211(a)(7), however, the Court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint, and "the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one" (*id.*, quoting *Guggenheimer v Ginsburg*, 43 NY2d 268 [1977]).

Construed in the light most favorable to plaintiff, the pleadings sufficiently allege that Ms. Donoghue is the owner of the Andy Warhol Prints; that the prints were wrongfully removed from the storage unit and sold at a lien auction; and

that the purchaser at the lien auction has no legal right, title, or interest in the Andy Warhol Prints, so as to state a viable claim for the net proceeds from the sale of said prints. Furthermore, the submissions by Mr. Castellanos do not conclusively establish his entitlement to the proceeds from the sale of the Andy Warhol Prints, as Ms. Donoghue also offers documentary proof to support her assertion that she enrolled in for automatic payment arrangement with Extra Space for payment of the storage fees by credit card (see Autopay Card, Rowan Affid, Exh 2). Thus, the branch of the motion that seeks to dismiss the Complaint for failure to state a cause of action and based on documentary evidence is also denied.

Accordingly, it is

ORDERED that the motion to dismiss is denied in its entirety; and it is further

ORDERED that defendant Henry Castellanos is directed to serve an answer to the amended Complaint within 20 days of service of a copy of this order with notice of entry.

Dated:

7/13/12

ENTER:



Anil C. Singh
HON. ANIL C. SINGH
SUPREME COURT JUSTICE