

**Heritage Auctioneers & Galleries, Inc. v Christie's
Inc.**

2017 NY Slip Op 30226(U)

February 3, 2017

Supreme Court, New York County

Docket Number: 651806/2014

Judge: Jeffrey K. Oing

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 48

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HERITAGE AUCTIONEERS & GALLERIES, INC.
D/B/A HERITAGE AUCTIONS,

Plaintiff,

-against-

CHRISTIE'S INC., MATTHEW RUBINGER,
RACHEL KOFFSKY and CAITLIN DONOVAN,

Defendants.

Index No.: 651806/2014

Mtn Seq. No. 004

DECISION AND ORDER

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JEFFREY K. OING, J.:

Defendants, Christie's Inc. ("Christie's"), Matthew Rubinger, Rachel Koffsky and Caitlin Donovan, move for the following reliefs: (1) for leave to renew and reargue, pursuant to CPLR 2221, this Court's order dated July 28, 2016, which granted plaintiff Heritage Auctioneers & Galleries Inc. d/b/a Heritage Auctions' ("Heritage Auctions") motion to amend the complaint to add an additional plaintiff, Heritage Art & Collectibles, Inc. ("Heritage Art"), and (2) for an order, in the alternative, pursuant to CPLR 3101, shifting the cost of additional discovery to plaintiffs in the event that the motion to renew and reargue is denied.

Motion to Reargue

To prevail on a motion for leave to reargue, the movant must show that the Court overlooked or misapprehended the relevant facts or applicable law in deciding the prior motion (CPLR

Index No. : 651806/2014
Mtn Seq. No. 004

Page 2 of 4

2221[d])). In support of their motion to reargue, defendants take issue with the fact that the Court reached "its determination that 'certainly the amendment is not palpably improper or insufficient' without citation to any case law," and that, in essence, the amended complaint added claims that failed as a matter of law (Def. Supp. Memo of Law, pp. 9-10). In making this argument, defendants erroneously treat the motion to amend as one to dismiss. No evidentiary showing of merit is required for a motion to amend a pleading; rather, the Court only needs to determine whether a proposed amended pleading is palpably insufficient or clearly devoid of merit (CPLR 3025[b]); (Higgins v City of New York, 144 AD3d 511 [1st Dept 2016]; Lucido v Mancuso, 49 AD3d 220 [2d Dept 2008])). Contrary to defendants' contention, the amended complaint was neither palpably insufficient nor patently devoid of merit, and, importantly, defendants failed to establish that they were either prejudiced or surprised by the proposed amendment as the plaintiffs theory of the case did not change with the amendment.

Accordingly, that branch of the motion seeking leave to reargue is denied.

Motion to Renew

To prevail on a motion for leave to renew, the movant must put forth "new facts not offered on the prior motion that would

Index No.: 651806/2014
Mtn Seq. No. 004

Page 3 of 4

change the prior determination," along with a "reasonable justification for the failure to present such facts on the prior motion" (Assevero v Rihan, 144 AD3d 1061, 1062 [2d Dept 2016] [citation and quotation omitted]).

Here, in support of renewal, defendants' claim that "new facts adduced during the expert depositions should change the Court's determination that adding [Heritage Art] as a plaintiff would not be prejudicial to Defendants" (Def. Supp. Memo of Law, p. 9). As an initial matter, defendants made - and the Court rejected -- a substantially similar prejudice argument on the prior motion. To the extent that expert depositions have further demonstrated the need for additional discovery, defendants fail to demonstrate that this could not have been established on the prior motion (Morrison v Rosenberg, 278 AD2d 392 [2d Dept 2000]). In any event, as noted, supra, defendants fail to establish any resulting prejudice.

Accordingly, that branch of the motion seeking renewal is denied.

Motion to Shift Costs

That branch of defendants' motion to shift costs and expenses is denied. The well-established general rule is that "during the course of the action, each party should bear the expenses it incurs" in discovery (Clarendon Nat. Ins. Co. v

Index No.: 651806/2014
Mtn Seq. No. 004

Page 4 of 4

Atlantic Risk Management, Inc., 59 AD3d 284 [1st Dept 2009].

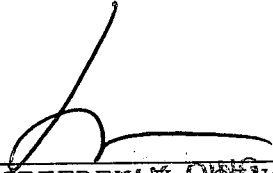
Defendants have put forward no persuasive argument to deviate from that general rule. To the extent that defendants argue that Heritage Auctions unreasonably delayed moving to amend, this assertion is not borne out by the record. It moved to amend shortly after defendants raised the issue of Heritage Art being a necessary party. Insofar as defendants suggest that Heritage Auctions' decision to wait until discovery was nearly complete to add Heritage Art as a party was based on strategic considerations, an equal argument can likewise be made that defendants were the ones who waited until the eleventh hour to raise this issue for their own strategic purposes.

Accordingly, it is

ORDERED that defendants' motion for leave to renew and reargue, and, alternatively, to shift discovery costs and expenses, is denied in its entirety.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 2/3/17


HON. JEFFREY K. ONG, J.S.C.