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| Shchukin House Ou v Iseev |
| 2017 NY Slip Op 30421(U) |
| March 2, 2017 |
| Supreme Court, New York County |
| Docket Number: 155936/2016 |
| Judge: Erika M. Edwards |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SHCHUKIN HOUSE OU,

Index No.: 155936/2016

Plaintiff,

DECISION/ORDER

-against-

RUSTAM ISEEV,

Defendant.

RUSTAM ISEEV,

Third Party Plaintiff,

-against-

NIKOLAY SCHUKIN and PAVEL ABRAMOV,

Third Party Defendants.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

| Papers | Numbered |
|---|---------------|
| Notice of Motion and Affidavits/Affirmations/ Memos of Law annexed | <u>1</u> |
| Notice of Cross-Motion and Affidavits/ Affirmations/Memos of Law annexed | <u>2</u> |
| Opposition to Cross-Motion and Reply | <u> </u> |

ERIKA M. EDWARDS, J.:

Plaintiff Shchukin House Ou (“Plaintiff”) brought this action against Defendant Rustam Iseev (“Defendant”) seeking to recover damages in excess of \$60 Million, the return of five works of art allegedly provided to Defendant pursuant to a proposed consignment agreement and an accounting for Defendant’s alleged unlawful conversion, breach of fiduciary duty, breach of a proposed contract, unjust enrichment and prima facie tort.

Plaintiff now moves for summary judgment in its favor as against Defendant and for an order, pursuant to CPLR 2701, requiring Defendant Rustam Iseev to return to Plaintiff the five works of art or in the alternative requiring Defendant Rustam Iseev to post a bond; a default judgment and/or assessment of damages for \$60 Million, costs and attorney's fees and reasonable attorney's fees and sanctions for "frivolous conduct." For the reasons set forth herein, Plaintiff's motion for summary judgment is DENIED with prejudice as Plaintiff failed to establish his entitlement to judgment in his favor as a matter of law.

Plaintiff has previously filed multiple orders to show cause seeking court orders requiring Defendant to return the works of art, but has been unsuccessful in obtaining such court order. Now, Plaintiff argues in substance that it is entitled to summary judgment in its favor because it has demonstrated ownership of the works of art, a right to possess the works of art, that Defendant has no standing to claim possession of the works of art and that Defendants improperly continue to refuse to return the works of art.

Defendant Rustam Iseev opposes Plaintiff's summary judgment motion and argues in substance that Plaintiff fails to establish its entitlement to judgment in its favor, fails to demonstrate ownership or a superior right to possess the works of art, there was no contractual relationship as the proposed consignment agreement between the parties was never signed and Defendant owes no fiduciary duty to Plaintiff.

To prevail on a motion for summary judgment, the movant must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient admissible evidence to demonstrate the absence of any material issues of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Jacobsen v New York City Health and Hospitals Corp.*, 22 NY3d 824, 833 [2014]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). The submission of

evidentiary proof must be in admissible form (*Friends of Animals v Associated Fur Mfrs.*, 46 NY2d 1065, 1067-68 [1979]). The movant's initial burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party (*Jacobsen*, 22 NY3d at 833; *William J. Jenack Estate Appraisers and Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013]).

If the moving party fails to make such prima facie showing, then the court is required to deny the motion, regardless of the sufficiency of the non-movant's papers (*Winegrad v New York Univ. Med. Center*, 4 NY2d 851, 853 [1985]). However, if the moving party meets its burden, then the burden shifts to the party opposing the motion to establish by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure to do so (*Zuckerman*, 49 NY2d at 560; *Jacobsen*, 22 NY3d at 833; *Vega v Restani Construction Corp.*, 18 NY3d 499, 503 [2012]).

Upon considering the admissible evidence submitted, the court finds that Plaintiff failed to demonstrate a prima facie showing of its entitlement to judgment as a matter of law or the absence of any material issues of fact. To the contrary, Defendant has demonstrated sufficient facts to contradict Plaintiff's arguments regarding Plaintiff's alleged ownership and entitlement to possession of the works of art and for any of Plaintiff's requested relief. As such, Plaintiff's motion for summary judgment is denied in its entirety with prejudice.

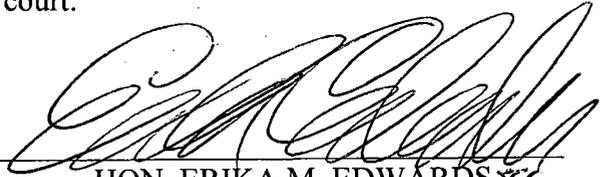
Accordingly, it is hereby

ORDERED that Plaintiff's summary judgment motion is denied in its entirety with prejudice and without costs to either side; and it is further

ORDERED that the parties must appear for a compliance conference on April 20, 2017, at 9:30 a.m., at the Supreme Court of the State of New York, Civil Term, in Part 47, Room 320, at 80 Centre Street, New York, New York.

This constitutes the decision and order of the court.

Dated: March 2, 2017



HON. ERIKA M. EDWARDS, JSC