SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 32

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EDWARD KOLLER,

Plaintiff,

Index No. 153221/2017
Motion Seq: 001

-against-

PAUL STAMATI GALLERIES, PAUL STAMATI, GALLO & DARMANIAN, NICHOLAS ANTHONY GALLO III, and DENISE DARMANIAN,

Defendants.

DECISION & ORDER
ARLENE P. BLUTH, JSC

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The motion by defendants Paul Stamati and Paul Stamati Galleries (collectively "moving defendants") to dismiss the complaint is granted.

Background

This case is about a piece of art sold by the moving defendants to plaintiff in November 2007. Plaintiff alleges that he was told the artwork was completed by well-known artist Edgar Brandt. Plaintiff paid $80,000 for the piece.

Plaintiff alleges that he later discovered that the value of the artwork was artificially inflated by his interior designer, Alexander Fradkoff, who received a commission for facilitating the purchase. Plaintiff contends that the actual value of the Brandt piece was about $40,000 and that Fradkoff increased the price so that his commission would be higher.

In September 2009, plaintiff's counsel contacted defendant Darmanian (an attorney for the moving defendants) to help facilitate a potential settlement regarding the purportedly overvalued art. This dispute eventually settled when moving defendants paid $15,000 to plaintiff

and the parties exchanged general releases. Plaintiff maintains that he relied on a letter from Darmanian in which she stated that a leading authority on works by Brandt, Joan Kahr, was going to include a photo of the piece in an upcoming edition about Brandt's life.

In 2015, plaintiff decided to sell the art, and after having trouble with an auction house accepting it, plaintiff contacted Joan Kahr and asked her to look at the subject artwork. Kahr responded in April 2015 and allegedly denied that she had ever looked at the piece before and said that she could not authenticate it because it did not have Brandt's signature.

Plaintiff claims that he would not have settled his dispute for $15,000 if Darmanian had not falsely represented that Kahr had inspected the piece and was going to include it in her treatise about Brandt. Plaintiff claims that the value of the art is significantly less because Kahr could not authenticate it as a Brandt piece.[1]

The moving defendants seek dismissal of the complaint on the ground that they entered into a settlement agreement regarding the sale of this artwork on November 25, 2009 and received a general release. The moving defendants argue that this general release bars the instant lawsuit.

In opposition, plaintiff argues that the dispute in 2009 was about the value of the piece relating to a purported fraudulent scheme to increase Fradkoff's commission. Plaintiff insists that the dispute here is about the authenticity of the art (whether it is a Brandt) rather than its value. Plaintiff acknowledges that both claims deal with fraud, but that the instant complaint

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[1]Plaintiff never alleges that it is not a Brandt, he just alleges that it could not be authenticated. Obviously, however, it would be worth more if it could be authenticated as a genuine Brandt.

focuses on a different fraud claim– that the moving defendants represented the art was authentic when they knew the art was not a Brandt.

Plaintiff emphasizes that to the extent that the moving defendants insist that the art is an authentic Brandt piece, then there was a mutual mistake regarding the general release– both parties thought they were reaching a settlement about an authentic Brandt.

In reply, the moving defendants claim that authenticity and value are interrelated; therefore, the general release applies to the instant complaint. The moving defendants also claim that there was no mutual mistake and that plaintiff was put on notice of material facts prior to signing the release. The moving defendants insist that plaintiff did not conduct the proper due diligence prior to signing the general release and did not seek to include conditional language in the general lease that might have permitted the instant claims.

Discussion

"On a motion to dismiss pursuant to CPLR 3211, the pleading is to be afforded a liberal construction. We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88, 614 NYS2d 972 [1994] [citations omitted]).

"A release may [not] be treated lightly. It is a jural act of high significance without which the settlement of disputes would be rendered all but impossible. It should never be converted into a starting point for renewed litigation except under circumstances and under rules which would render any other result a grave injustice. It is for this reason that the traditional bases for setting aside written agreements, namely duress, illegality, fraud or mutual mistake, must be

established or else the release stands. In the instance of mutual mistake, the burden of persuasion is on the one who would set the release aside" (*Mangini v McClurg*, 24 NY2d 556, 563, 301 NYS2d 508 [1969]).

"A party cannot overturn the settlement of a dispute as to a particular matter . . . on the ground that it reasonably relied upon a representation by its adversary in the settlement negotiations, as to that exact point. In other words, when a party releases a claim for fraud, it can later challenge that release for fraudulent inducement only by identifying a separate and distinct fraud from that contemplated by the agreement" (*Centro Empresarial Cempresa S.A. v America Movil, S.A.B. de C.V.*, 76 AD3d 310, 317-18, 901 NYS2d 618 [1st Dept 2010] [internal quotations and citations omitted]).

The instant release states that:

> "Edward R. Koller as Releasor, in consideration of the sum of one dollar and other good and valuable consideration received from Paul Stamati and Paul Stamati Gallery, as Releasees, receipt whereof is hereby acknowledged, releases and discharges Releasees, Releasees' heirs . . . assigns, affiliates, officers and directors from all actions, causes of action, suits debts, dues, sums of money, accounts, reckonings, bonds, bills specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses . . . claims, and demands whatsoever, in law, admiralty or equity, which against the Releasees, the Releasor, Releasor's heirs, executors, administrators, successors and assigns ever had, now have or hereafter can, shall or may, have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this Release. . . . This Release may not be changed orally" (NYSCEF Doc. No. 7 at 4).

The Court finds that this general release bars the instant complaint. Plaintiff executed a release that discharged any claims he had or might have in the future with the moving defendants. Although plaintiff tries to characterize his instant causes of action as somehow

separate and distinct from the claims discharged in the release, the language included in the release does not contemplate specific disputes. It releases all claims.

Plaintiff should have included conditional language in the release if he wanted to narrow its scope. As the First Department held in *Centro*, "if plaintiffs did not wish to forego suing on a fraud claim they might discover in the future, these sophisticated and well-counseled entities should have insisted that the release be conditioned on the truth of the financial information provided by defendants . . . on which plaintiffs were relying" (*Centro*, 76 AD at 320). Here, plaintiff could have, for example, insisted that language be included stating that the release did not apply to claims which plaintiff did not know about or suspect to exist at the time he signed the release (*see e.g., Gosmile, Inc. v Levine,* 81 AD3d 77, 83, 915 NYS2d 521 [1st Dept 2010] [noting that plaintiffs had included an express warranty as to the veracity of information provided]). Plaintiff could also have included language stating that the piece was an authentic Brandt. And plaintiff could have tried to limit the release to all claims regarding excess commissions, but he did not.

Plaintiff may not avoid his obligations under the general release because he failed to exercise proper due diligence. "But where, as here, a party has been put on notice of the existence of material facts which have not been documented and he nevertheless proceeds with a transaction without securing the available documentation or inserting appropriate language in the agreement for his protection, he may truly be said to have willingly assumed the business risk that the facts may not be as represented. Succinctly put, a party will not be heard to complain that he has been defrauded when it is his own evident lack of due care which is responsible for his predicament" (*Rodas v Manitaras*, 159 AD2d 341, 343, 552 NYS2d 618 [1st Dept 1990]).

Here, plaintiff alleges that he relied upon Darmanian's purportedly false assurance that Kahr (the Brandt expert) would include the piece in her upcoming book. According to plaintiff, this letter was dated July 23, 2009 and the dispute settled on November 25, 2009. For some reason, plaintiff did not make any effort to contact Kahr (or anyone else) to confirm that representation or ascertain the value of the art. The fact is that in 2009 plaintiff complained that he overpaid for the artwork - in order to know *how much* he overpaid, due diligence would require getting the artwork appraised. Instead, plaintiff waited until 6 years after signing the general release to contact Kahr even though he knew that Kahr was an expert and available before he signed the release. If plaintiff had reached out to an expert prior to signing the agreement, that person would have inevitably considered the authenticity of the piece– undoubtedly the most crucial aspect in determining artwork's value.

Moreover, the basis for plaintiff's doubts about the authenticity of the piece– the absence of Brandt's signature– was a fact in existence when plaintiff bought the art and signed the release. Again, plaintiff did not conduct the necessary due diligence before signing the subject release. Plaintiff cannot now avoid the release because he neglected to have the artwork valued before he agreed to release defendants in exchange for a refund.

Summary

In 2009, plaintiff claimed he overpaid for the artwork because of an inflated commission. He claims he paid $80,000 for artwork that was worth $40,000 - how did he come up with the $40,000 figure? Whoever gave him that $40,000 assessment led him to negotiate a refund from defendants. Certainly, he could not have relied upon the representations of the moving

defendants or their attorneys - he must have had some investigation to give him that value, but now he claims that it was not even worth $40,000; that assertion is not based on representations from the moving defendants or their attorneys. If plaintiff relied on someone who told him it was worth $40,000, and it was not, then he may have a claim against that person, but not against the released parties.

If no one told him it was worth $40,000 and he made that figure up, then it was plaintiff's obligation, before settling that claim and executing a general release, to find out how much the artwork was actually worth. Even though he knew of an expert on the artist , he neglected to seek her opinion, or anyone else's opinion (such as an auction house's opinion), as to the value of the art.

Besides, it makes no sense that, after accusing defendants of cheating him by making him pay too much in the first place, he decided to believe them that an expert was going to put the piece in her book - without hearing from the expert or trying to contact the expert in the months after being told of her book and before signing the release.

Moreover, plaintiff now complains that the artwork is not signed – but it has never been signed, and that information was not concealed by the moving defendants.

General releases cannot be ignored simply because a releasor later regrets foregoing all claims (past, present or future) relating to a dispute. Releases must have finality if they are to have any meaning or effectiveness in settling cases. Plaintiff's efforts to draw a distinction between the dispute over the value of the painting in 2009 and its authenticity does not provide a ground to permit the instant action to proceed. To embrace plaintiff's contention would require this Court to insert a provision into the subject release conditioning it on the fact that the art was

authentic, or limiting it to the commissions. The Court cannot add additional language to an agreement negotiated by parties represented by counsel.

Plaintiff had a chance to investigate the value of the art, including the authenticity, before purchasing it in 2007 or at any time until the general release was signed in November 2009. Plaintiff cannot seek to renegotiate the terms of his settlement with the moving defendants because he finally got around to speaking with an expert.

Accordingly, it is hereby

ORDERED that the motion to dismiss by defendants Paul Stamati and Paul Stamati Galleries is granted and all claims against these defendants are severed and dismissed.

This is the Decision and Order of the Court.

The remaining parties are directed to appear for a preliminary conference on February 8, 2018 at 2:15 p.m.

Dated: January 24, 2018
New York, New York

ARLENE P. BLUTH, JSC