

AXA Art Ins. Corp. v Fortress Fine Art Stor.
2018 NY Slip Op 31205(U)
June 14, 2018
Supreme Court, New York County
Docket Number: 152982/13
Judge: Jennifer G. Schechter
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

-----x
AXA ART INSURANCE CORPORATION a/s/o
RICHARD AVEDON FOUNDATION,

Plaintiff,

-against-

FORTRESS FINE ART STORAGE a/k/a
FORTRESS NEW YORK HOLDINGS, INC.,
Defendant.

-----x
JENNIFER G. SCHECTER, J.:

Index No.152982/13

DECISION & ORDER

In September 2016, defendant served a subpoena duces tecum on non-party The Richard Avedon Foundation (Foundation), which is plaintiff's insured. The subpoena demanded production of nine categories of documents. A Foundation representative, Laura Avedon, was deposed in February 2017. She did not bring any documents to the deposition. Plaintiff's counsel, which represented the Foundation at the deposition, stated that all of the documents requested had already been produced. Defendant moved to compel compliance with the subpoena (Motion Sequence Number 005) and made this motion to vacate the note of issue based on outstanding discovery (Motion Sequence Number 006).

By decision and order dated August 15, 2017, this court ordered, among other things, that Ms. Avedon provide an affidavit that responsive documents were provided and that the Foundation produce a copy of the Representation Agreement (RA)

AXA Art Ins. Corp. v Fortress Fine Art Storage

Index No. 152982/13

Page 2

with section headings so that defendant could broadly see what the RA dealt with. Defendant was then provided with an opportunity to conference with the court to discuss what, if any, sections that were withheld "are material and necessary to the defense of this action" (NYSCEF Doc. No. 148 at 2).

Plaintiff produced the redacted RA and later affidavits from Ms. Avedon stating that all documents, initially disclosed in June 2016, are "all the responsive documents" (NYSCEF Doc. No. 180 at ¶ 2).

A conference was held with the parties. Defense counsel stated then, as it did in motion sequence number 005 and repeated through letter correspondence, that the RA is "clearly necessary to defendant's defense of this action" and that the entire agreement should be produced (except for sections 7-11) because it is "impossible for the defendant to know what the terms and conditions . . . are when almost the entire document has been redacted" (Letter to Court dated September 27, 2017; Letter to Court dated April 30, 2018). It also seeks a condition report for "each work consigned" to the Gagosian Gallery (Gallery) to determine the value of the consigned works prior to the loss, all certificates of insurance covering the photograph from December 1, 2011,

AXA Art Ins. Corp. v Fortress Fine Art Storage

Index No. 152982/13

Page 3

through December 1, 2012 and any writing from the Foundation to the Gallery indicating that no claim was being made against the Gallery.

Plaintiff urges that the evidence submitted prior to and after the motions were filed indicates that the photograph at issue was not consigned to the Gallery until the consignment agreement was signed in April 2012, which was after the date of loss. It further contends that the photograph was therefore not insured by the Gallery on the date of loss. Additionally, plaintiff asserts that the RA, which was demanded by the defendant and was the subject of motion sequence number 005, is irrelevant as it post-dates the loss (AXA Letter to Court dated January 10, 2018).

Defendant has not established why the entirety of the RA is material and necessary in this negligence action and what, if any, sections would indicate that the Foundation was the subrogee of the Gallery (see Affirmation in Support 005 at ¶ 18). Through correspondence, defendant has established that all certificates of insurance covering the date of loss, any condition reports pre-dating the loss and any claim letters to the Gallery related to the photograph are material and necessary for the defense of this action. In light of the

AXA Art Ins. Corp. v Fortress Fine Art Storage

Index No. 152982/13

Page 4

very limited outstanding discovery that has now been clarified and ordered produced, the motion to vacate the note of issue is denied.

Accordingly, it is

ORDERED that defendant's motion to vacate the note of issue is denied; it is further

ORDERED that within 20 days of the date of the e-filing of this decision and order plaintiff must produce: (1) all certificates of insurance covering the date of loss for the photograph, (2) any condition reports related to the photograph pre-dating the loss and (3) any claim letter(s) to the Gallery related to the photograph; it is further

ORDERED that if plaintiff does not have documents responsive to the above or if all of the responsive documents have already been produced, then within 20 days of the date of the e-filing of this decision and order, plaintiff must provide defendant with an affidavit specifically stating that it has no responsive documents in its possession or control or that all of the documents ordered to be produced that are in plaintiff's possession or control have already been produced; it is further

AXA Art Ins. Corp. v Fortress Fine Art Storage

Index No. 152982/13

Page 5

ORDERED that the time to file a motion for summary judgment is extended to 45 days from the date of the e-filing of this decision and order.

This is the decision and order of the court.

Dated: June 14, 2018



HON. JENNIFER G. SCHECTER