

**Angiolillo v Christie's, Inc.**

2019 NY Slip Op 33106(U)

October 17, 2019

Supreme Court, New York County

Docket Number: 650871/2015

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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AMEDEO ANGIOLILLO, RENATO ANGIOLILLO, LUIGI ANGIOLILLO, OLGA ANGIOLILLO, PATRIZIA ANGIOLILLO,

Plaintiff,

- v -

CHRISTIE'S, INC., DIAMFIELD, LTD., A BRITISH VIRGIN ISLANDS COMPANY, HERVE FONTAINE, PELHAM HOLDINGS, LLC, GUY BENNETT, INVESTEL FINANCE, LTD, ISHAIA TRADING CORP, ISHAIA GOL, DAVID GOL

Defendant.

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INDEX NO. 650871/2015
MOTION DATE 07/02/2019
MOTION SEQ. NO. 017

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 017) 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER .

Plaintiffs move (1) for leave to renew, pursuant to CPLR 2221(e), that portion of their motion for partial summary judgment seeking a determination that there is no dispute of material fact that Senator Renato Angiolillo (the Senator) once owned the Princie Diamond (defined below) based on defendant Christie's, Inc.'s (Christie's) recently produced documents pursuant to this court's April 26, 2019 Decision and Order (the Prior Decision), or, (2) in the alternative, pursuant to CPLR 3126, for an order precluding the defendants from contesting that the Senator once owned the Princie Diamond at trial due to defendants' willful refusal to disclose certain discovery and their related misrepresentations to this Court regarding the results of Christie's investigation (the 2013 Investigation) into 34.65 carat pink diamond known as the Princie Diamond. For the

reasons set forth below, the branch of the motion seeking renewal is granted and that branch of the motion seeking a preclusion order is denied.

Familiarity with the underlying facts is presumed. A detailed recitation of the facts may be found in the court's Prior Decision (NYSCEF 488, pp. 3-14). As relevant to the instant motion, in the Prior Decision the court determined that:

With respect to that aspect of the Plaintiffs' motion seeking an order that the Senator owned the Princie Diamond, factual issues exist that preclude the Court from issuing such a declaration. The insurance policy, dated March 16, 1973, upon which the Plaintiffs rely, is not conclusive proof of the Senator's ownership of the Princie Diamond (Kelly Affirm., Ex. 13). That policy, entitled "Jewelry All Risks Policy No. 9.008.775" names the "Senator and Mrs. Renato Angiolillo" as the Insured, and provides that it is "intended to cover the jewels ... and fur coats ... in the course of travel effectuated by Mrs. Angiolillo in the U.S.A. in the period from October 24, 1972 to and including November 24, 1972." The cover notice attached to the policy addressed to the Senator refers to the insured property as the "jewelry and fur coats of your esteemed spouse" (*id.*). Another policy entitled "Lloyd's Policy," dated December 21, 1970, lists just the Senator, without Ms. Angiolillo, and includes an endorsement listing "one pink diamond ring 34 carats, Van Cleef & Arpels" (Kelly Affirm., Ex. 14). Although this second policy only names the Senator as the insured, in the face of the other contradictory evidence it simply is not sufficient to establish that there are no triable issues of fact that the Senator owned the Princie Diamond.

The Princie Diamond is also not listed in the Senator's Will. The Defendants argue that because the Senator's Will does not expressly mention the Princie Diamond or any of the Other Valuable Jewelry, it follows that the Plaintiffs could not have inherited the Princie Diamond. This, however, is not dispositive. The Senator's Will did not list many of the items that devolved to his heirs by law, including but not limited to, e.g., jewelry, apartments, land, and shares in his newspaper *Il Tempo* (*see* Kelly Affirm., Ex. 24). To the extent that the Senator's Will named specific assets and sought to clarify the assets that belonged to Ms. Angiolillo either because the Senator bequeathed such assets to her or because she obtained the items on her own, this was required under Italian law. Indeed, the Senator's Will references a letter that he had signed, allegedly in 1961, which carefully catalogued and identified certain property that belonged to Ms. Angiolillo (Kelly Supp. Affirm., Ex. 32). The Princie Diamond is not included in that letter.

Based on the record here, the Court cannot decide as a matter of law that the failure to specifically reference the Princie Diamond in the Senator's Will means either that the Princie Diamond was a part of the Senator's estate and passed to the Plaintiffs or that it belonged to Ms. Angiolillo.

Likewise, the remainder of the "proof" cited by both sides is insufficient to entitle either side to summary judgment. Both sides rely on contradictory third-party testimony that supports their theory of the case. For the avoidance of doubt, certain letters written periodically by Gaetano Angiolillo to Ms. Angiolillo from 1975 to 1991 (and relied upon by the defendants) concerning the "fate of the family jewels" as evidence of Ms. Angiolillo's ownership are inconclusive and are not dispositive evidence of Ms. Angiolillo's hostility to the Plaintiffs' claim of ownership, as the defendants suggest.

\* \* \*

In other words, given all of the contradictory evidence submitted by the parties, the questions surrounding the ownership of the Princie Diamond necessarily cannot be resolved by summary judgment but must be instead be answered by the trier of fact.

(*id.*, pp. 15-18).

In its Prior Decision, the Court also granted the plaintiffs' motion to compel production of documents relating to Christie's 2013 Investigation because Christie's argued in support of its cross motion for summary judgment that, *inter alia*, it relied on the 2013 Investigation in good faith in going ahead with the auction of the Princie Diamond in April of 2013 (*id.* at 32). The court explained that, "Christie's cannot selectively invoke the investigation without turning over the communications concerning said investigation. Having done so, it has placed the contents of the communications at issue in this action" and must, therefore, turn over the documents to the plaintiffs.

## DISCUSSION

A motion for leave to renew must be "based upon new facts not offered on the prior motion that would change the prior determination," and must set forth a "reasonable justification for the

failure to present such facts on the prior motion” (CPLR 2221[e]). Here, the plaintiffs have clearly set forth a “reasonable justification” for their failure to present the results of Christie’s 2013 Investigation on their prior motion as Christie’s did not turn over the documents relating to its 2013 Investigation until ordered to do so by this court in the Prior Decision. The critical issue, thus, is whether the new documents produced by Christie’s (Kelly Affirm., Ex. B) require a different conclusion from the one previously reached by this court. In other words, does anything contained in the documents require the conclusion that the Senator once owned the Princie Diamond. By Christie’s own admission, the answer is necessarily yes. Whereas previously Christie’s disputed even the fact that Van Cleef & Arpels sold the Princie Diamond “to a collector” in 1960 (Counter Statement of Undisputed Facts [CSUF], ¶ 15, NYSCEF Doc. No. 363), the 2013 Investigation documents reveal that, among other things:

- Christie’s outside counsel at Schillings, Raffaella de Santis, confirmed in email dated March 24, 2013 (the **March 24, 2014 Email**) that, “from what we’ve been able to unearth, *Renato Angiollilo snr did indeed purchase the diamond from Van Cleef & Arpels* (emphasis added) although the precise date is still unknown, as are details of the precise branch of Van Cleef” (Kelly Affirm., Ex. B, NYSCEF Doc. No. 508; Christies Bates No. 020663).
- The March 24, 2013 email was in response to email of the same date from Christie’s counsel at Skadden, Shannon Lazzarini, asking, “do we know if the Senator purchased the diamond from Van Cleef or somewhere else, and when in 1960?” (*id.*).
- Ms. Lazzarini responded to Ms. Santis’s email by writing, “Understood” (*id.*)

- In an email dated March 15, 2013 (the **March 15, 2013 Email**), under the heading “*Whether it can be said that the title has been ‘cleaned’ at any step of the chain,*” Christie’s outside counsel at Trevisan & Cuonzo, Francesca Ferrero wrote, “it is our view that *it could not be said that the title [to the Princie Diamond] has been cleaned* (emphasis added), considering (i) the relatively short chain of transfer of the goods; (ii) the duty to [] carry out all the ascertainties on the origin of the goods; (iii) the high level of competence expected; and (iv) the existence of press releases and articles in the public domain” (*id.*; Christie’s Bates No. 020787).
- A report (the **Lalive Report**), dated 19 March 2013 from Lalive, further sets forth the facts in this matter as follows: “**In 1960, Mr. Renato Angiolillo (‘Renato Snr’) purchased from Van Cleef & Arpels a 34.65 carats diamond . . .** (emphasis added)” (*id.*; Christie’s Bates No. 020790). The “facts” – which are “based on information provided” to Lalive by Christie’s and/or its outside counsel, go to on to state that “Renato Snr gave [the Princie Diamond] to his second wife, Maria Girani (‘**Maria**’) whom he married in 1960 as well” and that “Before her death, Maria gave the Diamond to her son from a previous relation, Marco Bianchi Milella. . . .” (*id.*).
- Finally, the “Executive Summary” of a document entitled “IN THE MATTER OF A 35-CARAT PINK DIAMOND CONFIDENTIAL SUBMISSION ON BEHALF OF CHRISTIE’S, INC.,” provides that the Princie Diamond “was acquired by Mrs. Maria Girani Angiolillo in 1960, *as a gift from her husband, Senator Renato Angiolillo, Sr.* (emphases added)” – i.e., if Mrs. Angiolillo

received the Princie Diamond “as a gift from her husband,” then by Christie’s own admission, the Senator necessarily had to have owned it at some point in time before the gift could be made.

Based on the foregoing, it is unupportable for Christie’s to continue to dispute that the Senator purchased the Princie Diamond, as it did on the prior motion and cross motion for summary judgment. The motion for leave to renew is, therefore, granted and, upon renewal, the court finds that the Senator did purchase the Princie Diamond. The remainder of the issues with respect to the Princie Diamond are reserved for the trier of fact at trial. In light of the foregoing, the court does not need to address the motion to preclude the defendants from disputing the Senator’s ownership at trial pursuant to CPLR 3126, nor address the position taken by Christie’s that it “properly instructed Ms. Cobden during her deposition in *October 2017* (emphasis added) not to answer certain questions pertaining to ... the pre-auction investigation” based upon Hon. Charles Ramos’s prior evidentiary rulings in *March of 2017* (Def. Opp. Memo., p. 6, NYSCEF Doc. No. 519). For purposes of the record, however, and putting aside whether Ms. Cobden’s refusal to answer questions was appropriate, the court notes that Ms. Cobden’s deposition took place in October of *2016*, i.e., some six months prior to any ruling by Hon. Ramos and, therefore, Christie’s counsel could not have relied on such ruling issued six months later in instructing Ms. Cobden not to answer certain questions.

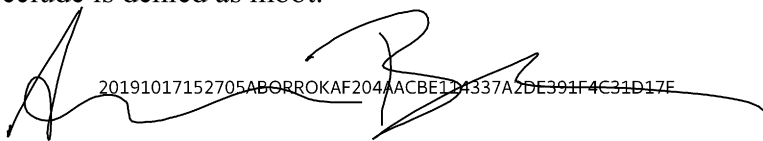
Accordingly, it is

ORDERED that the branch of the motion to renew is granted, and it is further

ORDERED that, upon renewal, plaintiffs' motion for partial summary judgment is granted to the extent that the court finds that Senator Renato Angiolillo Sr. purchased the Princie Diamond; and it is further

ORDERED that that portion of the decision of this court dated April 26, 2019 which denied this aspect of plaintiffs' partial summary judgment motion (mtn. seq. no. 011) is hereby granted, and it is further

ORDERED that the branch of this motion to preclude is denied as moot.



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10/17/2019  
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE