

Stuart-Curtis Family Trust v Ross

2004 NY Slip Op 30219(U)

April 23, 2004

Supreme Court, New York County

Docket Number: 0603550/2003

Judge: Herman Cahn

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: CAHN
Justice

PART 49M

~~THE~~ STUART-CORD'S FAMILY TRUST
Jill by Jill STUART LTD - FKA-Jill LTD -
AND
VICKY ROSS, RICHARD KRAMER &
RICHARD FAREN

INDEX NO. 603550/03
MOTION DATE 11/24/03
MOTION SEQ. NO. 001
MOTION CAL. NO. 9

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits	_____
Replying Affidavits	_____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

FILED
MAY 04 2004
NEW YORK
COUNTY CLERK'S OFFICE

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION IN MOTION SEQUENCE**

Dated: 01 23 / 04 Alan Cal
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 49

THE STUART-CURTIS FAMILY TRUST and
JILL BY JILL STUART LTD. f/k/a JILL LTD.
Plaintiffs,

Index No. 603550/03

-against-

JS LICENSING (JAPAN) LLC, JILL STUART
(JAPAN) LLC, JILL STUART INTERNATIONAL
LTD., JS RETAILING, INC.,
Necessary Parties/Plaintiffs

-against-

VICKY ROSS, RICHARD KRAMEK and
RICHARD FARREN,
Defendants.

_____x

FILED
MAY 04 2004
NEW YORK
COUNTY CLERK'S OFFICE

CAHN, J.:

Motion sequence numbers 001 and 002 are consolidated for disposition.

In motion #001, plaintiffs, the Stuart-Curtis Family Trust (the "Trust") and Jill by JillStuart Ltd. f/k/a JillLtd. ("Jill Ltd.") move for a preliminary injunction enjoining defendants from participating in an arbitration proceeding scheduled for the day following plaintiffs' application (made by order to show cause) was made CPLR 6301.¹ The motion

¹ The Trust and Jill Ltd. list in detail the preliminary injunctive reliefsought, including, among other things, an order enjoining defendants from participating in any arbitration proceedings, the purpose of which is to determine: (a) whether the Trust's agreement with Sanei constitutes a sale of the trademark or a license agreement; (b) the extent the "Sanei" sale transferred rights in covered products, rights in excluded or otherwise non-covered products, and/or rights and interests which were not previously held by IFS; (c) the extent to which payments for rights transferred under the Sanei sale transaction accrue to the Trust on or before February 28, 2005; (d) whether the line of clothing manufactured by PEG under the JeansLicense is an excluded "diffusion" line; and (e) determine the extent, if any, to which defendants are entitled to receive compensation based upon amounts paid by PEG to Jill Ltd., and additionally enjoining defendants from

is denied as moot since the arbitration which plaintiffs sought to stay was conducted and completed after the court refused plaintiffs' application for a temporary restraining order.

In motion #002, defendants Vicky Ross and Richard Kramer (collectively, "RK"), move *to* dismiss the second cause of action of the complaint, CPLK 321 1(a)(5), on the ground that this cause of action has already been determined and resolved by the arbitration award issued by defendant Richard Farren, Esq. ("Arbitrator Farren"), dated December 24, 2002, and the decision and order of this court, dated October 10, 2003, denying the application to vacate said arbitration award in the related action entitled Vicki Ross and Richard Kramer v IS Licensing (Japan) LLC, Jill Stuart International, Ltd., JS Retailing, Inc. and Jill Stuart NY, Ltd. (Supreme Court, NY County, Index No. 600567/98 [hereinafter, the "Prior Action"]).

Additionally, RK requests that sanctions be imposed against plaintiffs.

BACKGROUND

In 1998, KK commenced the Prior Action against the four parties denominated "Necessary Parties/ Plaintiffs" in the instant lawsuit's caption, to wit, JS Licensing (Japan) LLC, Jill Stuart (Japan) LLC, Jill Stuart International Ltd., and JS Retailing, Inc. (collectively, the "Jill Stuart Parties"). In the Prior Action, RK sought to recover damages for the Jill Stuart Parties' breach of a written licensing agreement wherein KK agreed to locate prospective licensees for the Jill Stuart Parties' fashion lines. In particular, RK asserted that it was entitled to fees and commissions on various sums received by the

participating in any arbitration proceedings, the outcome of which will affect any of the rights or interests of the Trust or any of the rights or interests of Jill Ltd.

Jill Stuart Parties in connection with the licensing of the Jill Stuart trademark to Itochu Fashion System Co. Ltd. ("Itochu") in Japan.

After substantial litigation, RK and the Jill Stuart Parties settled the Prior Action, entering into a written settlement agreement, dated May 22, 2001. Kon Curtis, a director or principal of each of the Jill Stuart Parties, executed the Settlement Agreement on behalf of each said entity. Curtis is also the president of Jill Ltd., and the sole trustee of the Trust, the plaintiffs in this action.

The Settlement Agreement provides for payments to be made to KK based upon revenues received by the Jill Stuart Parties on account of the manufacture, distribution and/or sale of certain Jill Stuart brand products in Japan through February 28, 2005. It delineates certain categories of products that are covered and others that are not covered,

Under the terms of the Settlement Agreement, Arbitrator Farren was appointed by the parties to mediate any further disputes between them, with full authority to make decisions as if he were an arbitrator. Paragraph 6 of the Settlement Agreement states:

In the event of any dispute concerning the interpretation of this Settlement Agreement . . . the aggrieved party shall petition the Mediator for a hearing. The Mediator shall thereupon have all of the authority of an arbitrator and may convene a hearing or may cause the parties to settle the dispute informally, in the manner of a mediator, but with the authority of an arbitrator. The determination of the Mediator shall be final and binding upon the parties, and the award of the mediator may be enforced in a court of competent jurisdiction.

The parties to the Settlement Agreement were represented by counsel

when they negotiated and executed it.

Neither Jill Ltd., nor the Trust are signatories to the Settlement Agreement.

The parties now dispute whether Jill Ltd. and the Trust, although non-signatories, are nevertheless bound by the terms of the Settlement Agreement (and the mediation arbitration provision contained therein), as “successors or assigns” under paragraph 1(f) of the Settlement Agreement, which includes within its scope “ . . . any trust or other entity in which Curtis or Jill Stuart or any member of the family each has an interest. . . .”² and paragraph 8(c), which provides that the Settlement Agreement is “binding upon each of the parties hereto and upon their respective heirs and assigns.”

Various disputes under the Settlement Agreement subsequently arose, and a hearing was held by Arbitrator Farren, on November 12, 2002. He rendered an arbitration award, dated December 24, 2002 (the December 24, 2002 award, together with Arbitrator Farren’s letter, dated March 7, 2003, in response to the JillStuart Parties’ application to modify the December 24, 2002 award, are collectively referred to herein as the “2002 Arbitration Award”). In his March 7, 2003 letter, Arbitrator Farren stated, among other things, that “[t]o the extent that Jill Ltd. has become a successor and assign by reason of the

² Paragraph (1)(f) reads: “Successors and assigns” shall mean with respect to the Jill Stuart Parties (i) any business entity organized by Curtis or by Jill Stuart, individually, or by any member of the family of Curtis or Jill Stuart, or by any trust or other entity in which Curtis or Jill Stuart or any member of the family of each has an interest, or by any other person under the direct or indirect control of Curtis or Jill Stuart, individually, (ii) in which . . . Curtis or Jill Stuart or any member of the family of either of them has a direct or indirect interest . . . ; (iii) which succeeds to the interests of any one or more of the Jill Stuart Parties in any one or more of the Licensing Agreements by assignment, . . . or by any other means. . . .

permission granted to it to permit sales in Japan, it is bound by the Settlement Agreement. The Settlement Agreement broadly construed the *Jill* Stuart parties to include any entity in which Ron Curtis has an interest." Thereafter, The *Jill* Stuart Parties moved, in the Prior Action, to vacate the 2002 Arbitration Award. By order, dated October 10, 2003, the motion to vacate was denied.

More disputes ensued. These related primarily to a sale, by the Trust and the *Jill* Stuart Parties in October 2002, of Itochu's rights and interest in the subject licensing agreements in Japan, together with other rights and interest, to Sanei International Company, Ltd.

Once again, RK petitioned Arbitrator Farren for his assistance.

By letter dated August 5, 2003, Arbitrator Farren advised the parties that an arbitration would commence on November 11, 2003, and outlined the issues to be addressed at the hearing. On the eve of the scheduled arbitration hearing, plaintiffs commenced this action for declaratory and injunctive relief.³ The Complaint asserts three causes of action: (a) declaratory judgment as to the respective rights and interests of the Trust and RK with respect to certain monies paid and to be paid by Sanei to the Trust (first cause of action); (2) declaratory judgment as to the respective rights and interests of the Trust and *Jill* Ltd. with respect to certain moneys to be paid by P.E.G. International Design,

³ Interestingly enough, shortly before the within action was commenced, the *Jill* Stuart parties' counsel had sought an adjournment of the arbitration hearing, because Curtis "unexpectedly had to schedule a trip to Japan." The e-mail seeking the adjournment was silent about any claim of lack of jurisdiction over plaintiffs herein. Ex. J to Affid. Of Michael Fischman, dated December 23, 2003.

Ltd. to Jill Ltd. (second cause of action); and (3) an injunction, enjoining RK and Arbitrator Farren from proceeding with the mediation arbitration (which has since been conducted and completed) (third cause of action).

Plaintiffs allege that the Trust is the registered owner of the “JillStuart” trademark, which it licenses to others. They further assert that the Trust is maintained for the benefit of the children of the Trust’s grantor and trustee, Ron Curtis. With respect to Jill Ltd., plaintiffs allege that it was formed in 1996 for the purpose of licensing the trademark in North America.

On November 10, 2003, the day before the arbitration was to begin, plaintiffs applied for a temporary restraining order to prevent it from taking place. In support of their application, they argued that neither of them is a Jill Stuart Party, as defined in the parties’ underlying licensing agreement, and that neither the Trust nor Jill Ltd. is a party or signatory to the Settlement Agreement. RK opposed the application arguing that Jill Ltd. and the Trust are “successors or assigns” of Jill Stuart Parties within the meaning of the Settlement Agreement, and are therefore bound by the mediation arbitration provision therein.

The court refused to restrain the arbitration proceeding, and the parties proceeded to arbitration the following day.

On November 11, 2003, Arbitrator Farren denied plaintiffs’ request for an adjournment. He then made various rulings regarding the parties, including the following:

I find that Jill by Jill Stuart Ltd. and the Curtis Family Trust are assignees of certain rights under the licensing agreements and are therefore bound by the obligation to arbitrate and indeed I go one step further and I direct arbitration

forthwith .

There is no prejudice because all of these entities are controlled by Ron Curtis. Ron Curtis is fully familiar with all of the facts.

To the extent as you have conceded that the Jill Stuart Trust may have some obligations hereunder, they are in essence a party. They are to be bound by this arbitration proceeding.

Arbitrator Farren subsequently rendered an award determining the issues before him.

DISCUSSION

In support of its motion, RK argues that the claims in the second cause of action have already been fully resolved by the 2002 Arbitration Award and the October 2003 court Order denying plaintiffs' motion to vacate the 2002 Arbitration Award.

RK maintains that the issues purportedly raised in this action, i.e., whether transactions involving the Trust or Jill Ltd. are covered under the Settlement Agreement, and whether those plaintiffs can be compelled to arbitrate disputes that arise under that agreement, have already been determined by Arbitrator Farren in the 2002 Arbitration Award, and by the court, in the October 2003 Order.

RK contends that Arbitrator Farren, in the 2002 Arbitration Award, clearly determined that Jill Ltd. is covered by the Settlement Agreement, and that sales in Japan under the very license agreement referred to in the Complaint represent transactions for which payments are due to RK under the Settlement Agreement. RK further claims that the current action is merely another attempt by plaintiffs to avoid their financial obligations under the settlement Agreement.

RK submits that application of the doctrines of “arbitration and award,” “res judicata” and/or “collateral estoppel” is warranted because Arbitrator Farren, in the 2002 Arbitration Award, already determined that Jill Ltd. and the Trust are “successors” or “assigns” under the Settlement Agreement, and are therefore bound by the arbitration provision.

Plaintiffs dispute each of these arguments. They assert that, since Jill Ltd. and the Trust are not parties to the underlying licensing agreements and are not signatories to the Settlement Agreement, neither of them are bound by its arbitration provision in the Settlement Agreement.

It is well settled that “parties to a commercial transaction will generally not be compelled to arbitrate in the absence of an express, unequivocal agreement to that effect . . .” (Matter of Smullyan (Sibjet S.A.), 201 AD2d 335, 335-336 [1st Dept 1994] citing Matter of Marlene Inds. Corp. [Carnac Textiles], 45 NY2d 327, 333 [1978]).

Here, although Arbitrator Farren’s ruling that Jill Ltd. and the Trust are “successors” and/or “assigns” of the Jill Stuart Parties under the Settlement Agreement is indeed correct and well-founded, the determination of whether a non-signatory is bound by an arbitration provision is one to be adjudicated by the court, not by the arbitrator (see, Primavera Laboratories, Inc. v Avon Products, Inc., 297 AD2d 505, 505 -506 [1st Dept 2002]). Thus, it is for the court to decide whether the parties hereto agreed to submit their disputes to mediation arbitration and, if so, whether the particular dispute comes within the scope of their agreement (id.).

Therefore, collateral estoppel and/or res judicata treatment will not be

afforded to this aspect of Arbitrator Farren's rulings. However, it is quite clear that the plaintiffs are bound by the Settlement Agreement. The court notes that the Agreement was executed by Curtis, the trustee of the Trust. Further, paragraph 1 (b) of the Settlement Agreement specifically includes plaintiffs as "successors and assigns" bound by it. Further, the Jill Stuart parties' actions have, until the commencement of this action, never indicated that any of them did not have full authority to enter into and carry out the Settlement Agreement on behalf of all of them. Curtis himself signed that agreement. He will not be heard now to claim that in signing it, he was not acting for all necessary parties. Also, neither the complaint or the other papers submitted by plaintiff contain factual allegations, as contrasted to mere conclusory allegations, relating to the alleged rights of the plaintiffs.

As to that branch of the motion to strike the second cause of action, on the grounds that the issues raised therein have been previously resolved by a decision of the court affirming a prior arbitration award, it is granted.

That branch of defendants' motion seeking to recover their attorneys' fees, is held in abeyance.

CONCLUSION

It is ORDERED that plaintiffs' motion for a preliminary injunction is denied as moot; and it is further

ORDERED that the complaint's second cause of action *is* dismissed; and it is further

ORDERED that defendants' application to recover attorneys' fees on the ground that the action is frivolous, is held in abeyance.

Counsel for defendants have submitted, for in camera inspection, a fully executed copy of the "Confidential Settlement Agreement" in the Prior Action. They may remove it from the court file upon issuing a receipt therefor to the New York County Clerk.

Dated: April 23, 2004

ENTER:



J.S.C.

FILED

11/23/04 2004

11/23/04 2004