

American Red Cross v Karas

2007 NY Slip Op 32036(U)

June 25, 2007

Supreme Court, New York County

Docket Number: 0114942/2005

Judge: Louis B. York

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

PRESENT: _____ PART _____

Justice

Index Number : 114942/2005

AMERICAN RED CROSS

NO. _____

vs

KARAS, MICHAEL

IN DATE _____

Sequence Number : 003

IN SEQ. NO. _____

PARTIAL SUMMARY JUDGMENT

IN CAL. NO. _____

The f _____ i 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

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION.

FILED
JUL 11 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 6/25/07

Lley
LOUIS B. YORK J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

Supreme Court of the State of New York
County of New York

Index No. 114942/2005

Part 2

AMERICAN RED CROSS,

Plaintiff,

- against -

MICHAEL KARAS,

Defendant.

Decision/Order

Present:
Hon. Louis B. York
Justice, Supreme Court

FILED
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Louis B. York, J:

After the September 11, 2001 attacks, Plaintiff, the American Red Cross, established a plan to compensate people living in the affected area for their losses. Defendant received \$20,280 in these funds based on his statement that he lived in the affected area at 21 South End Avenue Apartment 424. Of this money, \$11,700 covered the alleged expense of subletting another apartment while his residence was uninhabitable. Based on Defendant's representations, he received the money. Later Plaintiff discovered that he did not sublet another apartment for any period of time.

Plaintiff instituted this lawsuit to recover the entire amount of funds given to Defendant, plus punitive damages. Plaintiff currently moves for partial summary judgment on its claims for conversion, fraud, and fraudulent misrepresentation; the motion relates only to the \$11,700 given in sublet aid. It also requests interest starting February 1, 2002, which was the date Plaintiff

gave this money to Defendant. This motion does not include the second cause of action for the remaining \$8,580 given for various other expenses, plus punitive damages and costs. For the following reasons, the motion is granted.

Defendant has defaulted on this motion, therefore, in order for Plaintiff to receive damages, it needs to prove a prima facie case for its claims. To establish its right to summary judgment on the conversion claim, Plaintiff must show unauthorized possession of its goods by Defendant. See Vigilant Ins. Co. of Am. v. Hous. Auth., 87 N.Y.2d 36, 44, 637 N.Y.S.2d 342, 347 (1995). Plaintiff notes that in Defendant's Examination Before Trial ("EBT") he acknowledged that his statement to Plaintiff that he had subleased an apartment for three months was false. He also conceded that there was no reason why he should not have to return the money to Plaintiff. Plaintiff has successfully used Defendant's statements to demonstrate that he did not qualify to receive these funds. Defendant is liable for conversion since he did not have legal ownership of this money.

Plaintiff also moves for summary judgment on its fraud and fraudulent misrepresentation claims. However, these claims are based on the same facts as the conversion claim. They are also legally equivalent to the conversion claim with regard to the relief Plaintiff seeks. Accordingly, the Court denies relief based on these two claims. See Duane Reade v. SL Green Operating Partnership, LP, 30 A.D.3d 189, 190, 817 N.Y.S.2d 230, 231 (1st Dept. 2006).

Finally, the Court turns to Plaintiff's request for interest. Plaintiff is entitled to prejudgment interest based on CPLR § 5001(a), at the statutory rate of 9 percent. CPLR § 5001(c) allows the court to fix the date from which interest accrues by looking to the date at which damage was incurred by Plaintiff. However, the Court does not know the date at which Plaintiff first demanded funds to be returned by Defendant. When the date is unknown, it is a

matter of conjecture for the court to determine the start date. Using the date at which the action began is appropriate. See Webster v. Culver Roadways, Inc., 79 Misc.2d 256, 258, 359 N.Y.S.2d 863, 866 (Sup. Ct. Monroe Co. 1974). Assigning interest is intended to make the damaged party whole. Its purpose is not to provide the damaged party with an exorbitant amount of money. Id. at 258, 359 N.Y.S.^{2d} at 865, Allied Leather Corp. V. Interco, Inc., 1993 U.S. Dist. LEXIS 9526, 1-2 (D.N.Y. 1993). For these reasons, the court finds that it is appropriate under the circumstances to award interest from the date of the complaint, which is October 26, 2005. Therefore, it is

ORDERED that the motion for partial summary judgment is granted and the Clerk of the Court is directed to enter judgment in favor of Plaintiff and against Defendant in the amount of \$11,700, together with interest at the statutory rate of 9% per annum from the date of October 26, 2005 until the date of entry of judgment, as calculated by the Clerk, and thereafter at the statutory rate, together with cost and disbursement to be taxed by the Clerk upon submission of the appropriate bill of costs; and it is further

ORDERED that the action shall continue as to the second cause of action.

Dated: 6/25/07

FILED
 JUL 11 2007
 NEW YORK
 COUNTY CLERK'S OFFICE

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 Louis B. York, J.S.C.

LOUIS B. YORK
J.S.C.