

Life Prod. Clearing LLC v Teren

2010 NY Slip Op 32203(U)

August 10, 2010

Supreme Court, New York County

Docket Number: 114755/2008

Judge: Milton A. Tingling

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

PRESENT: Milton A. Tingling
Justice

PART 44

Life Product Clearing
- v -
Elliott Green

INDEX NO. 114755/08
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

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

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

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

See attached Decision

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

Dated: 8/10/10

mat
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

-----X
Life Product Clearing LLC,

Index No.: 114755/2008

Plaintiff,

DECISION

-against-

Elliott Teren,

Defendant.

-----X

The defendant moves for an order dismissing the action pursuant to CPLR 3211 (a) (8) lack of personal jurisdiction.

The plaintiff opposes on the grounds that defendant consented to the jurisdiction of New York over the person and if not defendant is subject to personal jurisdiction in New York pursuant to CPLR sect 302 (a) (1).

The transaction involved the execution of the Trust Agreement Jack Teren Insurance Trust ("Trust"), dated March 20, 2006, the Beneficial Interest Transfer Agreement ("BIT"), dated May 2, 2006, and the Acknowledgments and Consents Relating to Sale of Beneficial Interest ("Acknowledgments and Consents Form"), dated May 2, 2006. The Trust was signed by Jack Teren as depositor, Bob Desch as trustee of the Trust, and defendant Elliott Teren as the initial beneficiary of the trust.

The Trust involved the transfer of Jack Teren's life insurance trust to LPC in exchange for \$600,000.00 which would be sent to defendant Elliott Teren. The Trust also established that the principal office of the Trust, where the defendant agreed to be the initial beneficiary, was 75 Rockefeller Plaza, New York, New York 10019.

On April 27, 2006, the Trust obtained two life insurance policies on the life of Jack Teren for \$10,000,000.00 from Jefferson Pilot Life America Insurance Company, the predecessor of the Lincoln Life and Annuity Company of New York. The owner and the beneficiary of the life insurance policies was the trust.

Martin Fleisher is the managing member of the Trust. On May 2, 2006, the BIT, which expressly referenced the Trust, was signed by Fleisher (representing the plaintiff Life Product Clearing) and the defendant. The BIT also stated that it would be governed by the laws of the State of New York.

On May 2, 2006, the Acknowledgments and Consents Form was signed by Fleisher, Jack Teren, and defendant Elliott Teren. This also referenced the Trust and stated that the defendant was selling and assigning all of his beneficial interest in the Trust to LPC for \$600,000.00.

On May 16, 2006, Fleisher sent a cover letter and check for \$600,000.00 to the defendant's office. The cover letter contained the plaintiff's New York address and was addressed to the defendant's office in California. The cover letter was signed by Fleisher and described the transaction in regards to the Trust, BIT and Acknowledgments and consents Form. The check was received, accepted, endorsed, negotiated by, and paid to the defendant. The defendant never contacted the plaintiff regarding the cover letter or the agreements.

In the summer of 2008, Fleisher contacted the defendant in connection with the voiding of the life insurance policies by the life insurance company and requested the return of the \$600,000.00 payment. During this telephone call, the defendant claimed his signatures were forged.

Defendant in support of the Motion to dismiss denies that he ever executed the Trust and that the signature contained to the agreement is not his. Since he did not sign the Trust consenting to

New York jurisdiction and there is no other basis of New York to assert jurisdiction over Teren, the action should be dismissed.

On January 15, 2010, the Court ordered a Traverse hearing. Fleisher read into evidence portions of Teren's deposition testimony in connection with an action in California by Lincoln Life and Annuity Company of New York ("Lincoln Life") against Jack Teren and Jonathan Berck ("Berck") as trustee of the Jack Teren Trust to rescind the life insurance policy issued on the life of Jack Teren and held by the trust for LPC as beneficiary ("California Decision").

An action was commenced in the Superior Court of The State of California for the County of San Diego, Case No. 37-2008-83905. That action was entitled: **"THE LINCOLN LIFE AND ANNUITY COMPANY OF NEW YORK, Plaintiff vs. JACK TEREN and JONATHAN S. BERCK, as Trustee of the Jack Teren Insurance Trust dated March 20, 2006, Defendants and JONATHAN S. BERCK, AS TRUSTEE OF THE JACK TEREN INSURANCE TRUST DATED MARCH 20, 2006, cross complainant vs. THE LINCOLN LIFE AND ANNUITY COMPANY OF NEW YORK AND JACK TEREN.**

"Lincoln" sought to rescind or void two insurance policies issued in the face amount of \$20 million dollars issued on the life of Jack Teren without any refund of premiums. Lincoln alleged fraud in the procurement of said policies in violation of public policy and insurable interest laws. The trust asserted a cross claim against Jack Teren that if the policies were rescinded and if the Trust does not receive all of the premiums paid upon rescension; that Jack Teren should pay the Teren Trust the difference of that premiums windfall.

The California Court found fraud throughout the entire deal and made the following rulings. 1) That Plaintiff was entitled to rescension and the life insurance policies issued on the

life of Jack Teren were void ab initio; 2) That before the Trust was formed or the application for the Term Policies was submitted to Lincoln, LPC , the plaintiff here was soliciting investors and directing investors to send in their checks for the investment in the beneficial interest in the Teren Trust along with other insurance trusts known as "Group V"; 3) That the Application for the Teren Policies and the establishment of the Teren Trust occurred without the involvement of either Jack Teren or the defendant herein Elliott Teren and although a signature space appears in the March 20, 2006 Trust Agreement for the Teren Trust and the May 2, 2006 Beneficial Interest Transfers Agreement for Elliott Teren's signature, **his signature was forged.**

The ruling of the California Court that Elliott Teren's signature on the Beneficial Interest Transfer Agreement is a forgery may not be collaterally attached in this New York Court. Therefore; the clause contained therein consenting to jurisdiction in New York is not a basis for jurisdiction over the defendant.

The plaintiff has not set forth sufficient evidence to establish a transactional basis for jurisdiction under CPLR sect 302(a)(1). Plaintiff does set forth one last ground to deny the defendant's motion to dismiss. The ground is a ratification. Plaintiff asserts that by recovering, accepting, endorsing, cashing and using the proceeds of the \$600,000.00 check given in consideration of the defendant transferring his beneficial interest defendant has ratified the unsigned agreement. Plaintiff cites the case of National American Corporation vs. Federal Republic of Nigeria et al; 448 F. Supp. 622 and Restatement (Second) of Agency s. These cites conclude that where a principal, with full knowledge of the terms of an agreement, not only fails to repudiate it but accepts its benefits, ratification results. The rule applies even where knowledge is gained after the receipt of the benefits.

There is no doubt that the defendant accepted the benefits of the agreement. However, this court fails to see where there exists an issue of principal and agent in this matter. Also the evidence propounded in support of the issue of knowledge of the defendant was offered only in the form of an unsigned, uncertified transcript. No evidence was offered to explain it's attempted use pursuant to CPLR sect 3116 (a) (b) or CPLR sect 3117.

In light of the prior finding of the Court the motion to dismiss is granted.

Settle order on notice.

8/10/10
Date

mat
J. S. C.
Judge Milton A. Tingling