

Amicucci v American Lamprecht Transp. Inc.

2010 NY Slip Op 34108(U)

June 15, 2010

Supreme Court, New York County

Docket Number: 114653/09

Judge: Barbara R. Kapnick

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IA PART 39

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JOHN AMICUCCI,

Plaintiff,

-against-

AMERICAN LAMPRECHT TRANSPORT INC.,
LAMPRECHT TRANSPORT AG,
LAMPRECHT TRANSPORT, LTD., and
ANTIQUES AND ARTS TRADING CONSULTANTS,
INC.,

Defendant.

-----X
BARBARA R. KAPNICK, J.:

DECISION/ORDER
Index No. 114653/09
Motions Seq. Nos.
001 and 002

This action arises out of the alleged purchase of a firearm, a Colt Belt Model Patterson circa 1840, Serial No. 549 (the "Patterson 549"), by plaintiff John Amicucci "Amicucci") from defendants American Lamprecht Transport Inc., Lamprecht Transport AGt, Lamprecht Transport, Ltd. (collectively, the "Lamprecht defendants") and/or their alleged agent, defendant Antiques and Arts Trading Consultants, Inc. ("AATC"), for approximately \$500,000.00.

Defendant AATC claims that the Patterson 549 was sold and shipped to Robert L. Wilson, not plaintiff, in January 2000, and that plaintiff, in turn, purchased the firearm from Mr. Wilson and Martin Lane in 2000.

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On or about January 17, 2007, AATC entered into a Settlement Agreement with Martin Lane and Martin Lane Historical Americana in a prior action in this Court entitled Antiques & Arts Trading Consultants, Inc. v Martin Lane, Index No. 100115/07, which provides, *inter alia*, as follows:

6. AATC hereby represents that it had full authorization to sell the item that is the subject matter of this dispute (the "549") and convey lawful title of the 549 to Amicucci and, provided that all the Settlement Payments are paid in full in accordance with this agreement, AATC makes no further claim on the 549 and agrees that Mr. Amicucci received lawful title to the 549.

7. AATC shall write a letter to Mr. Kaufmann requesting a release of AATC, Lisa de Mondesir ("de Mondesir") and any agents, brokers and consignors, except Robert L. Wilson, relating to the sale of the 549 and if such a release is obtained a copy shall be provided to Lane's counsel.

Plaintiff argues, in essence, that he is a third-party beneficiary of the Settlement Agreement because all parties understood that the Settlement Agreement was intended for his use and benefit.

Plaintiff further claims that although AATC received the settlement payments referenced in Paragraph "6" of the Settlement Agreement, that Lamprecht and AATC have failed to provide the documents which would certify that Amicucci has clear title and a

lineage of provenance commensurate with the historical importance of the Patterson 549.

Specifically, plaintiff seeks: (a) the receipt for payment made to Lamprecht from AATC and the related cancelled checks; (b) all title documents to the Patterson 549; (c) the identity of the owner; (d) the original passport; and (e) the bill of sale from the previous owner to the plaintiff.

The Complaint alleges that the Lamprecht defendants and AATC breached the Settlement Agreement (first and second causes of action), and seeks a judgment: (i) ordering AATC to specifically perform Paragraphs "6" and "7" of the Settlement Agreement, as they apply to plaintiff, and to provide the title documentation set forth in the Settlement Agreement and in correspondence allegedly issued on behalf of plaintiff dated May 7, 2009 and June 16, 2009, and (ii) ordering the Lamprecht defendants to provide the same title documentation.

The Lamprecht defendants now move, under motion sequence number 001, for an order:

(1) dismissing the Complaint against them on the grounds, *inter alia*, that: (a) pursuant to CPLR § 3211(a)(5), plaintiff's claim against them is barred by the applicable Statute of

Limitations, since this action was commenced more than 6 years after the 2000 sale; (b) pursuant to CPLR § 3211(a)(7), the Complaint fails to state a cause of action upon which relief can be granted, because the Lamprecht defendants were not parties to the Settlement Agreement; and (c) pursuant to CPLR § 3211(a)(8), this Court lacks personal jurisdiction over defendant Lamprecht Transport, because it is a Swiss corporation which does not maintain minimum contacts with New York; and

(2) awarding sanctions and attorneys' fees for frivolous conduct, pursuant to 22 NYCRR § 130-1.1.

Moreover, the Lamprecht defendants represent that they do not possess any of the documents sought.

Defendant AATC moves, under motion sequence number 002, for an order:

(1) pursuant to CPLR §§ 3211(a)(1), (5) and (7), dismissing the first cause of action of the Complaint with prejudice on the grounds that:

(a) plaintiff's claim is barred by a release exchanged in another lawsuit, Antiques & Arts Trading Consultants, Inc. v. John Amicucci, United States District Court for the Southern District of New York, 05 CV 0885, in which AATC sought to recover the firearm. That action was discontinued pursuant to Stipulation of

Discontinuance With Prejudice, so-ordered by the Hon. Barbara S. Jones on May 29, 2007, which provided that "each party [is] fully releasing each other party from any and all claims of any kind that were or could have been asserted in this litigation"; (b) the claim is barred by the applicable six-year Statute of Limitations; (c) Amicucci already possesses two of the documents he seeks, i.e., the original passport and bill of sale; and (d) AATC never agreed to provide plaintiff with any of the other documents;

(2) pursuant to CPLR § 3024(b), striking the confidential Settlement Agreement from the record; and

(3) awarding sanctions in the form of attorneys' fees and expenses, pursuant to 22 NYCRR § 130-1.1.

Moreover, AATC represents that it is not in possession of any of the documents sought.

Based on the papers submitted and the oral argument held on the record on April 21, 2010, the motion by the Lamprecht defendants to dismiss the Complaint is granted since said defendants were not parties to the Settlement Agreement upon which plaintiff's claim for breach of contract is based.¹

¹ Plaintiff's request on the record for leave to serve an Amended Complaint to allege a claim for replevin is denied, since plaintiff first made the demand for the production of documents by the Lamprecht defendants more than six years after the 2000 sale, and thus, it is time barred.

The motion by defendant AATC is also granted, as this Court finds that plaintiff's claim against AATC could have been asserted in the federal litigation and is thus barred by the terms of the mutual release.


Those portions of defendants' motions seeking sanctions and attorneys' fees are denied in the discretion of the Court.

That portion of defendant AATC's motion seeking to strike the confidential Settlement Agreement from the record is granted. Defendant AATC may settle an order providing for that relief.

The Clerk may enter judgment dismissing plaintiff's Complaint with prejudice and without costs or disbursements.

This constitutes the decision and order of this Court.

Date: June 15, 2010


Barbara R. Kapnick
J.S.C.
BARBARA R. KAPNICK
J.S.C.