

Markov v Spectrum Group Intl., Inc.

2015 NY Slip Op 30054(U)

January 14, 2015

Supreme Court, New York County

Docket Number: 650033/14

Judge: Charles E. Ramos

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

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DIMITRY MARKOV,

Plaintiff,

-against-

Index No. 650033/14

SPECTRUM GROUP INTERNATIONAL, INC.,
BOWERS & MERENA AUCTIONS, LLC,
STACK'S-BOWERS NUMISMATICS, LLC,
STACK'S BOWERS GALLERIES,
STACKS, LLC, HSL STACK'S RARE COINS, LLC,
CHRISTINE KARSTEDT, VICKEN YEGPARIAN, and
JOHN DOE (fictitious name)

Defendants.

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Hon. Charles E. Ramos, J.S.C.:

In motion sequence 001, the plaintiff Dimitry Markov (Markov) moves for default judgment against the defendants Spectrum Group International, Inc. (Spectrum), Bowers & Merena Auctions, LLC (BMA), Stack's-Bowers Numismatic, LLC (SBN), Stack's Bowers Galleries (SBG), Stack's, LLC (Stack's DE), HSL Stack's Rare Coins, LLC (HSL), Christine Karstedt (Karstedt), and Vicken Yegparian (Yegparian) pursuant to CPLR 3020.

Additionally, the defendants cross-move for summary judgment pursuant to CPLR 3212 to dismiss Markov's amended complaint.

The Parties

In 1995, Harvey Stack, Susan Stack, and Larry Stack (the Stack Family) formed HSL Stack's LLC, a New York limited liability company (Stack's NY). The Stack Family wholly owned Stack's NY until 2006, when the Stack Family sold their

controlling interest in the company to the Anderson Family (Trans., July 31, 2014, 24:3-25:26). In 2006, after the Stack Family sold their controlling interest in Stack's NY, they renamed the underlying entity to HSL Stack's Rare Coins, LLC (HSL) (Stack Aff., ¶ 7).

In 2006, the Anderson Family formed a Delaware limited liability company named Stack's, LLC in order to continue using the "Stack's" name (Stack's DE) (*id.* at ¶ 8). Stack's DE also acquired SBG when they purchased the Stack Family's controlling interest. HSL does not own or manage Stack's DE (*id.* at ¶ 6).

On October 17, 2006, Stack's DE was granted a license to conduct business in New York as a foreign limited liability company (Lederman Aff., Ex. H). Hence, Stack's DE and HSL were operating their respective businesses in New York from 2006 to 2012. In October 2012, Stack's DE surrendered its license to operate in New York (*id.*).

In December 2010, SBN was formed in Delaware (Trans., July 31, 2014, 27:20-24). Thereafter, SBN purchased the controlling interest in Stack's DE in 2011, which it now owns and operates (*id.*).

Spectrum, is a publically traded holding company based in Irving, California and the sole owner of BMA, a Delaware limited liability company (Trans., July 31, 2014, 26:22-26). BMA is currently the sole owner of SBN and the current operator of the

storefront SBG (*id.*).

Karstedt was the president of Stack's DE in 2008 and is currently the executive vice president of SBN (Karstedt Aff., ¶ 1). Yegparian was an employee of Stack's DE in 2008 and is currently the vice president of SBN (Yegparian Aff., ¶ 1).

Background

On January 14, 2008, Stack's DE held the Kroisos Collection auction (the Auction) through their storefront SBG.

Markov attended the Auction, which was organized by Stack's DE through its storefront SBG. Markov, is a collector and seller of antiquities such as coins, medals, and military orders (Trans., July 31, 2014, 2:18-19). Markov attended the Auction to purchase what he believed was a diamond encrusted rare Russian Military Order - the Order of St. Alexander-Nevsky (the Order) (Complaint, ¶ 20). The Order was issued in several versions, some with diamonds and some without. The version of the Order containing diamonds is extremely rare and of the two, of greater historical significance (*id.*).

Prior to attending the Auction, Markov consulted the Auction catalogue that Stack's DE prepared. The Order was listed and described as "framed in Brilliants" with an estimated auction price of \$5,000.00 to \$6,000.00 (Lederman Aff., Ex. D). After the bidding period finished, Markov successfully purchased The Order for \$600,000 plus a \$90,000 buyer's fee (Trans., July 31,

2014, 21:3-6). Markov alleges that the term "brilliants" is synonymous with diamonds in the auction industry.

All purchases from the Auction were subject to the terms of Stack's DE's sale agreement (the Sale Agreement), printed on the back of the Auction catalogue (Lederman Aff., Ex. E).

After the purchase, Markov discovered that the Order was actually encrusted with glass or lead crystals instead of diamonds (Complaint, ¶ 22).

In January 2013, Markov contacted SBG officers, Karstedt and Yegparian, via email advising them of what he characterized as a misrepresentation and seeking a refund (Complaint, ¶ 23). Markov alleges that they stated that they would resolve the issue, but no resolution was ever reached.

On January 3, 2014, Markov commenced this action seeking \$2 million in damages and asserting causes of action for fraud, breach of contract, negligence, conversion, and unjust enrichment against Spectrum, BMA, SBN, SBG, Yegparian, and Karstedt (*id.*).

On January 24, 2014, Markov amended the Complaint to include HSL as a party to this action.

On July 31, 2014, during oral argument, the Court denied the motion for default judgment finding that the verification of the answer was sufficient (Trans., July 31, 2014, 13:9-20). The Court also dismissed the Complaint as against the individual defendants Karstedt and Yegparian, and awarded each of them sanctions in the

amount of \$2,500 against Markov and his counsel (34:23-35:20). Lastly, Stack's DE was added as party to this action (40:12-26).

DISCUSSION

Markov alleges that he was fraudulently induced into purchasing the Order by Stack's DE's misrepresentation that the Order was encrusted in diamonds.

The defendants seek summary judgment dismissing the Complaint in its entirety. They argue that not only should the Complaint be asserted against Stack's DE only, but that it also fails to state a viable cause of action against any other defendant.

"To obtain summary judgment it is necessary that the movant establish his cause of action or defense 'sufficiently to warrant the court as a matter of law in directing judgment' in his favor, and he must do so by tender of evidentiary proof in admissible form" (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980] [internal citations omitted]). "On the other hand, to defeat a motion for summary judgment the opposing party must 'show facts sufficient to require a trial of any issue of fact'" (*id.*).

The crux of Markov's Complaint is that the term "Brilliants" is synonymous with diamonds. In support of his argument, Markov submits a press release by Stack's DE recounting the major transactions from the Auction (the Press Release) and articles from the internet that allegedly establish that the term

"brilliants" is synonymous with diamonds in the auction industry (the Articles). The defendants deny that the terms diamonds and "Brilliants" are synonymous.

The Press Release, which describes the Order as "[a] Very Rare Russian Order of Saint Alexander-Nevsky Sash Badge with diamond brilliants...", does establish an inconsistency in Stack's DE's description of the Order. However, it should be clear that the Press Release cannot serve as the basis of Markov's cause of action for fraud because it was published after Markov purchased the Order. As a result, Markov cannot claim that he justifiably relied on the Press Release in his decision to purchase the Order.

The defendants have not submitted any evidence that would refute Markov's contention of a misrepresentation or of reasonable reliance, as a matter of law. This Court cannot hold, on this record, that there was no misrepresentation on the basis of the definition of "Brilliants."

However, summary judgment dismissing the causes of action for negligence, conversion, and unjust enrichment are appropriate for the reasons stated below.

Markov's cause of action for negligence must be dismissed because this action was commenced after the three year statute of limitations has expired (CPLR 214 [4]).

Furthermore, the cause of action for conversion is dismissed

because Markov fails to allege "a specific, identifiable fund and an obligation to return or otherwise treat in a particular manner the specific fund in question" (*Thys v. Fortis Sec. LLC*, 74 AD3d 546, 547 [1st Dept 2010]).

And, dismissal of Markov's cause of action for unjust enrichment is warranted because the Sale Agreement governs the transaction between Markov and Stack's DE.

"The theory of unjust enrichment lies as a quasi-contract claim. It is an obligation the law creates in the absence of any agreement" (*Goldman v. Metro. Life Ins. Co.*, 5 NY3d 561, 572 [2005]). "The existence of a valid and enforceable written contract governing a particular subject matter ordinarily precludes recovery in quasi contract for events arising out of the same subject matter" (*Clark-Fitzpatrick, Inc. v. Long Island R. Co.*, 70 NY2d 382, 388 [1987]).

Lastly, this Court finds that the caption is replete with unnecessary parties that did not have any role in this litigation. The defendants, through counsel, have represented that Stack's DE is the appropriate party to this action as it was the party that received the buyer's fee in connection with the sale of the Order (*Lederman Aff.*, ¶ 33). Furthermore, Karstedt (*Karstedt Aff.*, ¶ 6) and Yegparian (*Yegparian Aff.*, ¶¶ 1, 5, 6) have submitted affidavits testifying that Stack's DE was the party that conducted the Auction. Moreover, there is ample

evidence that demonstrates that SBN was not in existence until 2010, well after the sale (Lederman Aff., Ex. I).

Markov has not submitted any evidence to rebut these contentions. Therefore, dismissal of this action against all the parties except Stack's DE is warranted.

Accordingly, it is

ORDERED that the plaintiff's motion for default judgment is denied, and it is further

ORDERED that the defendants' motion for summary judgment is granted in part, to the extent of dismissing the third cause of action for conversion, the fourth cause of action for negligence, the fifth cause of action for unjust enrichment, and all defendants except Stack's LLC (Delaware) without prejudice, and it is further

ORDERED that the parties contact Trial Support (Room 148) to amend the caption.

Settle order on notice.

DATE: January 14, 2015



J.S.C.

HON. CHARLES E. RAMOS