

**Eliazarov Reuven & Sons Diamond, Ltd. v Raineri  
Jewelers, Inc.**

2015 NY Slip Op 30092(U)

January 21, 2015

Supreme Court, New York County

Docket Number: 651172/14

Judge: Cynthia S. Kern

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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: Part 55

-----X  
ELIAZAROV REUVEN & SONS DIAMOND, LTD,

Plaintiff,

Index No. 651172/14

**DECISION/ORDER**

-against-

RAINERI JEWELERS, INC. and JOHN DOES 1-10,

Defendants.

-----X  
HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : \_\_\_\_\_

| Papers   | Numbered |
|--|----------|
| Notice of Motion and Affidavits Annexed.....       | <u>1</u> |
| Notice of Cross-Motion and Affidavits Annexed..... | <u>2</u> |
| Affidavits in Reply.....                           | <u>3</u> |
| Exhibits.....                                      | <u>4</u> |

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Plaintiff Eliazarov Reuven & Sons Diamond, Ltd. (“Eliazarov”) commenced the instant action against defendants Raineri Jewelers, Inc. (“Raineri”) and John Does 1-10 seeking a declaratory judgment and alleging causes of action for conversion and conspiracy to convert based on its claim that it is the rightful owner of a certain diamond which ended up in Raineri’s possession. Raineri now moves for an Order pursuant to CPLR §§ 3211(a)(5) and (10) dismissing plaintiff’s complaint on the grounds that plaintiff’s claims are time-barred and that plaintiff failed to join a necessary party. Plaintiff cross-moves for an Order pursuant to CPLR § 3025 granting it leave to amend its complaint. At the oral argument on the instant motions, Raineri agreed to withdraw its motion to dismiss. Thus, the court will only address plaintiff’s cross-motion. For the reasons set forth below, plaintiff’s cross-motion is granted in part and

denied in part.

The relevant facts are as follows. Plaintiff is a New York corporation in the business of importing and exporting diamonds. Defendant Raineri is the owner and operator of a retail jewelry store located at 82 Broadway, New York, New York. Additionally, according to the complaint, Loudoun Jewelers Inc. ("Loudoun") is a party with whom plaintiff has "a longstanding contractual business relationship dating back to 1996." Plaintiff alleges that in or around December 2000, plaintiff sold a certain 5.50 carat diamond to Loudoun for the price of \$70,000.00 (the "Diamond"). Plaintiff alleges that when Loudoun received the diamond, it issued a series of three checks, payable to plaintiff, in the amounts of \$20,000, \$25,000 and \$25,000. Plaintiff alleges that Loudoun's first check, dated January 10, 2000, was returned and marked as account closed and/or insufficient funds. Plaintiff allegedly offered Loudoun the option to make additional payments to cover the bounced check or to return the Diamond to plaintiff in lieu of making payment. Plaintiff alleges that Loudoun never paid plaintiff the full amount and never returned the Diamond. Thus, in or around January 2001, plaintiff reported to the Gemological Institute of America ("GIA") that the Diamond had been stolen.

At some point after January 2001, Raineri purchased or otherwise obtained the Diamond either from Loudoun or another entity. In or around November 2013, Raineri submitted the Diamond to the GIA and, as a result of the "stolen report" to GIA made by plaintiff, GIA notified plaintiff that GIA had possession of the Diamond. In or around April 2014, plaintiff commenced the instant action by Summons with Notice and in June 2014, it filed its complaint seeking a declaration that it is the true owner of the Diamond and alleging claims for conversion and conspiracy to convert and seeking monetary damages.

Pursuant to CPLR § 3025(b), “[m]otions for leave to amend pleadings should be freely granted, absent prejudice or surprise resulting therefrom, unless the proposed amendment is palpably insufficient or patently devoid of merit.” *MBIA Ins. Corp. v. Greystone & Co., Inc.*, 74 A.D.3d 499, 499-500 (1<sup>st</sup> Dept 2010) (internal citations omitted). Moreover, on a motion for leave to amend, the movant is not required to establish the merit of the proposed new allegations “but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit.” *Id.*

As an initial matter, that portion of plaintiff’s cross-motion for an Order pursuant to CPLR § 3025 for leave to amend its complaint to add Loudoun as a party to assert a claim for conversion against it is denied as such amendment is clearly devoid of merit. It is well-settled that the statute of limitations for a conversion claim is three years and begins to run when the plaintiff becomes aware that its agent’s possession is hostile. *See D’Amico v. First Union Natl. Bank*, 285 A.D.2d 166 (1<sup>st</sup> Dept 2001). Here, plaintiff has alleged that it became aware that Loudoun’s possession of the Diamond was hostile in January 2001 when Loudoun refused to return the Diamond to plaintiff. Thus, a claim against Loudoun for conversion would have expired in January 2004 and is now time-barred.

However, that portion of plaintiff’s cross-motion for an Order pursuant to CPLR § 3025 for leave to amend its complaint to add Roy Raineri, owner and/or president of Raineri, as a defendant in the instant action is granted as such amendment is not palpably insufficient or clearly devoid of merit. “The rule is clear that, to establish a cause of action in conversion, the plaintiff must show legal ownership or an immediate superior right of possession to a specific identifiable thing and must show that the defendant exercised an unauthorized dominion over the

thing in question...to the exclusion of the plaintiff's rights." *Fiorenti v. Central Emergency Physicians*, 305 A.D.2d 453, 454 (2d Dept 2003), citing *Independence Discount Corp. v. Bressner*, 47 A.D.2d 756, 757 (2d Dept 1975). Additionally, "[w]hile 'accrual [normally] runs from the date the conversion takes place and not from discovery or the exercise of diligence to discover,' it is well settled that, where the original possession is lawful, a conversion does not occur until after a demand and refusal to return the property." *D'Amico*, 285 A.D.2d at 172 (internal citations omitted). Plaintiff's proposed amended complaint alleges that plaintiff is the true owner of the Diamond, that Raineri obtained possession of the Diamond, either lawfully or illegally, that plaintiff demanded return of the Diamond from Raineri and that Raineri refused to return the Diamond to plaintiff.

Defendant Raineri's assertion that Mr. Raineri should not be added as a defendant because "it is unclear how Mr. Raineri, acting in his capacity as President and owner of Defendant should be held personally liable for acts taken within this capacity as an officer of the Corporation" is without merit. It is well-settled that "[o]fficers and agents of corporations are personally liable for their own acts which bring about a conversion of a third party's property, and it is no defense to personal liability that the officer or agent may have been acting on behalf of a corporate principal." *Ingram v. Machel and Jr. Auto Repair, Inc.*, 148 A.D.2d 324 (1<sup>st</sup> Dept 1989).

Finally, that portion of plaintiff's motion for an Order pursuant to CPLR § 3025 for leave to amend its complaint to add a claim against defendants for replevin is granted without opposition as such amendment is not palpably insufficient or clearly devoid of merit.

Accordingly, it is hereby

ORDERED that Raineri's motion to dismiss the complaint is withdrawn by the movant;

and it is further

ORDERED that plaintiff's cross-motion for an Order pursuant to CPLR § 3025 for leave to amend its complaint is granted to the extent stated herein; and it is further

ORDERED that plaintiff shall serve defendant Raineri with an amended complaint, which conforms with this court's decision, within twenty days of the e-filing of this decision; and it is further

ORDERED that defendant Raineri shall answer or otherwise appear within twenty days of its receipt of the amended complaint; and it is further

ORDERED that a supplemental summons and the amended complaint, in the form served upon defendant Raineri, shall be served, in accordance with the CPLR, upon the additional party in this action within thirty days after service of a copy of this order with notice of entry; and it is further

ORDERED that the action shall bear the following caption:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 55

-----X  
ELIAZAROV REUVEN & SONS DIAMOND, LTD,

Plaintiff,

-against-

RAINERI JEWELERS, INC., ROY RAINERI and  
JOHN DOES 1-10,

Defendants.  
-----X

And it is further

