

Williams v Nicholson
2015 NY Slip Op 30988(U)
May 15, 2015
Supreme Court, Bronx County
Docket Number: 304214/2014
Judge: Howard H. Sherman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX - Part 4

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Charles Williams

Plaintiff

Index No. 304214/2014

Decision and Order

-against-

Laponda G. Nicholson

Defendant

Howard H. Sherman
J.S.C.

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The following papers numbered 1-3 read on this motion for leave to amend the complaint and cross-motion for an order dismissing the complaint

Notice of Motion , Affidavit , Exhibits	1	
Notice of Cross-Motion , Affidavit, Exhibits	2	
Affidavit of Latavia Polidore	3	

Upon the forgoing papers this motion by plaintiff to amend his complaint is denied , and the cross-motion to dismiss the complaint is also denied. On the court's own motion the case is removed to the Civil Court of the City of New York.

Facts and Procedural Background

Plaintiff Charles Williams ("Williams ") commenced this action for fraudulent representation and unjust enrichment seeking monetary damages and the return of an engagement ring given by Williams to defendant Laponda Nicholson ("Nicholson") in 2013, as well as monetary damages for certain other purchases of personal property.

Motion /Cross-Motion

Williams seeks an order granting leave to amend the complaint to add a third cause of action for breach of contract alleging with respect thereto the purchase of the engagement ring and defendant's acceptance of the ring, and her subsequent breaking off of the engagement [Verified Complaint ¶ 1-2]. It is further alleged that defendant returned the ring to plaintiff in February 2013 , and two months later, he "gave the ring back to her " when the "engagement started up again."

Nicholson cross-moves for an order dismissing the complaint with prejudice and denying plaintiff's motion .

Discussion and Conclusions

It is clear that the gravamen of plaintiff's action concerns the return of a ring given to defendant in contemplation of marriage. To the extent that the proposed amendment seeks to duplicate the Civil Right Law § 80-b claim already interposed , the court finds no basis to grant the relief requested.

The clear purpose of section 80 b is to return the parties to the position they were in prior to their becoming engaged, without rewarding or punishing either party for the fact that the marriage failed to materialize"; *Gagliardo v Clemente*, 180 AD2d 551, 580 NYS2d 278 [1992] "Whether plaintiff was at fault for the breakup of the engagement is wholly irrelevant to his right to recover possession of an engagement ring").

It is also clear that the issue central to the resolution of the claim is difficult of dispositive determination as a result of the disputed circumstances under which

plaintiff returned the ring to defendant after she had given it back when terminating the engagement.

As such, the cross-motion seeking to dismiss the complaint is also denied as there are issues of fact as to the circumstances of the second "gifting" of the ring that involve an assessment of the credibility of the parties, an issue more properly reserved for the triers of fact.

Finally, on the court's own motion, and pursuant to the authority of CPLR 325 (d), and Rule 202.13 of the Uniform Civil Rules for the Supreme Court and the County Court, this case is removed to the Civil Court of the City of New York, Bronx County as the damages sought herein, \$17,009.00, fall within the jurisdictional limit of that court.

Accordingly, it is

ORDERED that the motion and the cross-motion be and hereby are denied.

It appearing that the Civil Court of the City of New York has jurisdiction of the parties to this action and pursuant to Rule 202.13(a) of the Uniform Rules for the Supreme Court and the County Court, it is

ORDERED that this case bearing Index Number 304214-2014 be, and it is removed from this court and transferred to the Civil Court of the City of New York, Bronx County, and it is further

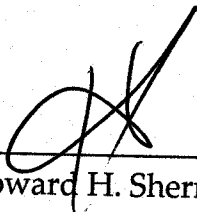
ORDERED that the Clerk of Bronx County shall transfer to the Clerk of the Civil Court, Bronx County, all papers in this action now in his possession, upon payment of

the proper fees, if any, and the Clerk of the Civil Court of the City of New York , Bronx County, upon service of a certified copy of this decision and order upon her and upon delivery of the papers of this action to her by the Clerk of the County, shall issue to this action a Civil Court Index Number without the payment of any additional fees , and it is further

ORDERED that the above-entitled case be, and hereby is transferred to said Court to be heard and determined as if originally brought therein but subject to the provisions of CPLR 325(d).

This constitutes the decision and order of this court.

Dated : May 15, 2015



Howard H. Sherman