

**Heritage Auctioneers & Galleries, Inc. v Christie's
Inc.**

2018 NY Slip Op 32003(U)

August 15, 2018

Supreme Court, New York County

Docket Number: 651806/2014

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL PART 48----- X
HERITAGE AUCTIONEERS & GALLERIES, INC.
d/b/a HERITAGE AUCTIONS and HERITAGE ART
& COLLECTIBLES, INC.,

Plaintiffs,

Index No. 651806/2014

- against -

Decision and Order

CHRISTIE'S INC., MATTHEW RUBINGER,
RACHEL KOFFSKY and CAITLIN DONOVAN,Defendants.
----- X**MASLEY, J.:**

This is an action concerning the sale of rare, high-end, luxury handbags. In its complaint, dated June 13, 2014, plaintiffs Heritage Auctioneers & Galleries, Inc. and Heritage Art & Collectibles, Inc. (collectively, Heritage) declare that it created this lucrative, specialized market category for handbags filed on Heritage alleges that defendant Christie's Inc. (Christie's), the largest auction house in the world, "launched a corporate raid to misappropriate Heritage's creation." (Heritage's Complaint [compl.] ¶ 1.) Specifically, Heritage alleges that its former director and department head of Heritage's Luxury Accessories Business, defendant Matthew Rubinger, and two key members of Heritage's staff, defendants Rachel Koffsky and Caitlin Donovan, were induced by Christie's to breach their respective employment contracts and engage in unfair business practices. Issue was joined when defendants filed an answer on July 22, 2014 and an amended answer August 22, 2016.

In motion sequence number 015, defendants move to preclude evidence concerning Koffsky's and Donovan's alleged breaches of contract. In motion sequence number 019, defendants move—after nearly four years of discovery—to amend their answer, pursuant to CPLR 3025, to add affirmative defenses of waiver and release.

Both motions arise from defendants' recent discovery of Heritage's mandatory arbitration provision contained in a 52-page employee handbook. Defendants claim that, while they were preparing for the bench trial, scheduled to begin September 6, 2018, they came upon the provision, which provides:

"The arbitration must be brought within one hundred-eighty (180) days after the initiating party learns of the adverse decision or action giving rise to the claim. If arbitration is not requested within that period, the claims shall be deemed waived and the non-moving part [sic] or its personnel are released from liability."

Heritage asserts that it produced these documents to defendants in November 2014. Defendants do not deny that they have been in possession of the documents for close to four years; rather, defendants assert that Heritage has had notice of their intention to file this motion since May 15, 2018.

Heritage argues that defendants' delay thwarted Heritage's ability to engage in discovery; specifically, Heritage claims that it would have deposed the individual defendants as to why they delayed in raising the arbitration agreement. Accordingly, Heritage insists that it was denied the opportunity to use the discovery for summary judgment. Heritage further argues that the delay thwarted it from developing arguments for non-enforcement of the arbitration provision or non-applicability of the waiver or release defenses as a result of defendants' inequitable conduct. Finally, Heritage objects to the millions of dollars in attorneys' fees and costs it has expended to prosecute its claims outside of arbitration which Heritage, without any proof, asserts would have been cheaper than this litigation.

While the court is disturbed by defendants' delay, it is compelled to grant the motion to amend. CPLR 3025(c) provides: "[t]he court may permit pleadings to be amended before or after judgment to conform them to the evidence, upon such terms

as may be just including the granting of costs and continuances.” Lateness alone is not sufficient to deny a motion to amend; it “must be . . . coupled with significant prejudice to the other side.” (*Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 959 [1983] [granting leave to amend answer to plead affirmative defenses of waiver and release 6.5 years after the action was filed].) The amount of time alone is not sufficient to deny a motion to amend. (*See Lennard v Mendik Realty Corp.*, 2014 NY Slip Op 31838[U], 2014 Misc LEXIS 3152, at *8 [Sup Ct, New York County 2014].)

Heritage fails to identify any significant prejudice. Having drafted the arbitration provision, Heritage cannot argue it was unaware of it. Heritage fails to state what it would have asked defendants had they timely asserted their defenses of waiver and release in their July 22, 2014 answer or August 22, 2016 amended answer. Further, inquiries as to the delay in amending is likely to violate the individual defendants’ attorney-client privileges; accordingly, the cases cited by Heritage which demonstrate new areas of inquiry for discovery are not applicable here. As to the difference in cost of litigation versus arbitration, it was Heritage’s decision not to initiate arbitration. In any event, Heritage fails to provide any evidentiary support for its contention that arbitration would have actually been cheaper, and does not explain how the delay caused it to incur greater costs. Accordingly, defendants’ motion to amend their answer is granted.

Defendants’ motion in limine to preclude evidence at trial concerning the alleged contractual breaches by defendants Koffsky and Donovan, on the grounds that the breaches were waived and released, is denied. Having failed to timely raise the waiver and release provision, defendants must now present it at trial. Otherwise, defendants’ motion sequence number 015 would effectively be one for summary judgment—to dispose of plaintiffs’ contract claims against Koffsky and Donovan as a matter of law—a

motion that was required to be made, at the absolute latest, within 120 days of the filing of the note of issue under CPLR 3212.

To be clear, defendants are not seeking to enforce the arbitration provision, but seek to rely on the waiver and release set forth in a contract they claimed to be unreasonable and unconscionable, and, thus, not enforceable. Denial of motion sequence number 015 also affords Heritage the opportunity to assert at trial any defenses it may have to the provision at issue. Accordingly, Heritage is not thwarted from developing and presenting its arguments for non-enforcement of the arbitration provision or non-applicability of the waiver or release defenses based on defendants' inequitable conduct.

Accordingly, it is

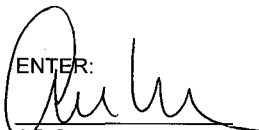
ORDERED that the motion in limine of defendants CHRISTIE'S INC., MATTHEW RUBINGER, RACHEL KOFFSKY and CAITLIN DONOVAN (mot. seq. no. 015) to exclude certain evidence at trial is denied; and it is further

ORDERED that defendants' motion to amend their answer (mot. seq. no. 019) is granted, and the answer in the proposed form annexed to the moving papers shall be designated the second amended answer and deemed served upon service of a copy of this order with notice of entry.

Dated: _____

8/15/18

ENTER: _____



J.S.C.

HON. ANDREA MASLEY