

Gemeaux Ltd. v William Doyle Galleries Inc.
2021 NY Slip Op 32854(U)
December 7, 2021
Supreme Court, New York County
Docket Number: 157251/2021
Judge: Laurence L. Love
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTYPRESENT: HON. LAURENCE LOVE

PART

63M

Justice

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INDEX NO. 157251/2021

GEMEAUX LTD., PEGGY NESTOR, MARIANNE CASSINI

MOTION DATE 10/15/2021

Plaintiffs,

MOTION SEQ. NO. 001

- v -

WILLIAM DOYLE GALLERIES INC.,

DECISION + ORDER ON
MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28

were read on this motion to/for

DISMISS

Upon the foregoing documents, it is

The following read on defendant's motion to dismiss the complaint, CPLR 3211(a)(1) – a defense is founded upon documentary evidence; or in the alternative, to remove this action to the Surrogate's Court for Nassau County, per CPLR 325; and to award sanctions against plaintiffs and their attorneys per 22 NYCRR 130-1.1.

A summons and complaint were filed on or about August 4, 2021. Plaintiff Gemeaux Ltd., is a corporation organized and existing under New York Law since its incorporation in October, 1973.

Oleg Cassini died on March 17, 2006. Plaintiff's Marianne and Peggy are sisters and the only principals of plaintiff Gemeaux. Marianne, decedent's surviving spouse, was a nominated executor and Peggy was a nominated successor executor (see NYSCEF Doc. No. 5 Pars. 8, 9).

Defendant William Doyle Galleries Inc. ("Doyle") is a corporation organized and existing under New York Law with a principal office at 125 East 87th Street, NY, NY 10128.

Defendant submitted this pre-answer motion to dismiss on September 3, 2021.

The complaint states a cause of action for the tort of conversion per “Section 48 of the New York Jurisprudence article on Auction and Auctioneers, ... in an amount believed to be in excess of \$25 million dollars” (see NYSCEF Doc. No. 2 Par. 14, 18).

Per the complaint,

“On June 27, 2019, Doyle sold at auction to various persons and/or entities a substantial number of items of property owned by one or more of the plaintiffs, which property had been wrongfully removed from a townhouse owned by Marianne, located at 135 E. 19th St. in New York County, and from Gemeaux’s place of business at 15 E. 63rd St. in New York County. On June 27, 2019, Doyle sold at auction to various persons or entities a substantial number of items of property owned by one or more of the plaintiffs, which included property located at 313 McCoun’s Lane in Oyster Bay, Long Island. The foregoing auction included of 755 lots of personal property, the bulk of which was owned by one or more of the plaintiffs” (see NYSCEF Doc. No. 2 Pars. 6 – 7).

Defendant submits the affidavit of Rosalia Baiamonte, esq.,

“I am the court-appointed Receiver of Oleg Cassini, Inc. (“OCI”) and Cassini Parfums, Ltd. (“CPL”). By orders dated May 30, 2018 and November 1, 2018, the Surrogate’s Court authorized me to sell certain property, which the Surrogate’s Court expressly found that the Company Items ‘belong to the Companies of the Estate, including without limitation artwork, antiques, furniture, OCI and CPL merchandise, personal property, automobiles and other items of value (the ‘Company Items’).’ The Surrogate’s Court’s orders ... set forth a specific procedure for challenging my determination as to whether any particular Company Items belong to the Estate. I retained Doyle to auction the Company Items. On March 6, 2019, I sent all interested parties ... an email notifying them that I had completed my review of Marianne and Peggy’s objections and ‘determined that the objections do not present with any evidence ... to challenge my conclusions that the inventoried items belong to the Companies.’ Neither Marianne, Peggy nor their company, Gemeaux, filed any challenge to my determination that none of the Company Items belonged to any of them. After the Company Items were sold, Plaintiffs never claimed that any of the Company Items belonged to any of them, never claimed that the Surrogate’s Court’s May 30, 2018 order settling the sale procedure was invalid, and never claimed that Doyle had ‘converted’ the Company Items until

they brought this action two years after the auction” (see NYSCEF Doc. No. 5 Pars. 1, 19 – 21, 25, 26, 31).

Defendant submits the Nassau County Surrogate’s Orders of May 30, 2018 Order and November 1, 2018 (see NYSCEF Doc. No. 6, 7).

Further, defendant submits a stipulation and order stating, “Marianne Cassini shall not interfere in any manner with the efforts of Doyle Galleries to exhibit and auction the saleable items” (see NYSCEF Doc. No. 18).

Plaintiff Marianne Nestor Cassini submits an affidavit stating in part, “startling conflict of interest wherein defendant’s law firm ... represent the interests of both the defendant Doyle Galleries and, at the same time, Rosalia Baiamonte. Many of these rulings [Surrogate Court Orders] were declared to be unlawful by the Appellate Division, Second Department, in February 2020. Perhaps the most heinous example of the harsh and unfair treatment Surrogate Reilly has displayed toward me is the fact that on two separate occasions she ordered me to be held in the Nassau County Correctional Facility for a total of 8 months” (see NYSCEF Doc. No. 26 Pars. 4, 7, 14).

A review of the Appellate Division: Second Judicial Department decrees, “[a]ppeals by the petitioner, Marianne Nestor Cassini ... from three orders of the Surrogate’s Court (Margaret C. Reilly, S.), dated March 6, 2017, November 14, 2017, and December 21, 2017 ... and an amended order of the same court dated November 13, 2017, all entered in Nassau County. The order dated March 6, 2017, denied the petitioner’s motion to vacate a prior order of the same court. The order dated November 14, 2017, ... granted the receiver’s motion to hold the petitioner in contempt for failure to comply with an order of the same court. The order dated December 21, 2017, inter alia, directed that a warrant of arrest and commitment issue” (see NYSCEF Doc. No. 11 P. 1).

A claim must be dismissed “where the documentary evidence presented conclusively establishes a defense to the plaintiff’s claims as a matter of law” (see *Dixon v. 105 West 75th Street LLC*, 148 A.D.3d 623 [1st Dept 2017]).

This Court notes defendant attorney’s submission of an Affirmation in Support to Dismiss (see NYSCEF Doc. No. 19), a Memorandum of Law in Support to Dismiss (see NYSCEF Doc. No. 23), and a Memorandum of Law in Reply (see NYSCEF Doc. No. 28).

The Court also takes note of what Plaintiffs response is lacking – no other plaintiff joins in and plaintiff’s attorney failed to even submit a memorandum of law and supporting affirmation. The silence is deafening.

Through a review of all the documents submitted this court finds documentary evidence to warrant dismissal of this action. However, the actions of counsel do not reach the level where sanctions are warranted.

ORDERED that the motion of defendant WILLIAM DOYLE GALLERIES, INC. to dismiss the complaint herein is GRANTED and the complaint is dismissed in its entirety as against said defendant, with costs and disbursements to said defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of said defendant; and it is further

ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on*

Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

<u>12/7/2021</u> DATE	 LAURENCE LOVE, J.S.C.			
CHECK ONE:	☒	CASE DISPOSED	☐	NON-FINAL DISPOSITION
	☒	GRANTED	☐ DENIED	☐ GRANTED IN PART
APPLICATION:	☐	SETTLE ORDER	☐	☐ OTHER
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN	☐	☐ FIDUCIARY APPOINTMENT
				☐ REFERENCE