SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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AMES RAY

Plaintiff,

- v -

CHRISTINA RAY,

Defendant.

INDEX NO. 604381/1998

MOTION DATE N/A, N/A

MOTION SEQ. NO. 018 019

DECISION + ORDER ON MOTION

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 018) 86, 87, 88, 89, 90, 91, 92, 93, 94, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 146, 147, 148, 149

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

The following e-filed documents, listed by NYSCEF document number (Motion 019) 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 137, 138, 139, 140, 141, 142, 143, 144, 145, 150, 151, 152, 153, 154, 155, 156, 157, 158

were read on this motion to/for SANCTIONS.

Upon the foregoing documents and as set forth on the record (12.1.23), the Plaintiff's motion (Mtn. Seq. No. 018) to set aside the jury verdict is denied.

A motion to set aside a jury verdict may be granted where the verdict is contrary to the weight of the evidence or in the interest of justice (CPLR 4404; *McDermott v Coffee Beanery, Ltd.*, 9 AD3d 195, 205-206 [1st Dept 2004]). A jury verdict should be granted great deference (*Cruz v New York City Transit Authority*, 31 AD3d 688, 690 [2d Dept 2006]) and should be set aside only where there is no valid line of reasoning and permissible inferences which could lead rational people to the conclusion reached by the jury on the basis of the evidence presented at trial (*Gneco v City of New York*, 25 AD3d 355, 357 [1st Dept 2006]). In making that

determination, the court must accord deference to the jury's assessment of the witnesses' credibility (*Galeano v Giambrone*, 218 AD3d 745, 747 [2d Dept 2023]).

Reference is made to the Appellate Division's decision remanding this case for a second trial (*Ray v Ray*, 180 AD3d 472 [1st Dept 2020], *lv denied* 35 NY3d 1007) (the **Appellate Division Decision**) pursuant to which the Appellate Division held:

> ***a question of fact existed as to whether the parties came to an agreement in June 1993, upon which defendant continued to trade on the commodity account, and then defendant signed the agreement in September 1993 merely as "recognition on her part that she had so agreed"*** (*Ray*, 61 AD3d at 446). In presuming an "effective date" of the parties' agreement, the trial court usurped the jury's fact-finding function, and had a substantial influence on the result of the trial (*see Nineteen Eighty-Nine, LLC*; *Sadhwani*)

(*id.*, at 473-474).

As relevant to the below, additionally, the Appellate Division held that the court erred in sanctioning the Plaintiff:

> Finally, we find that the court erred in imposing sanctions against plaintiff under 22 NYCRR 130-1.1 for "frivolous conduct," because plaintiff did not manifest the "extreme behavior" usually required to sustain the award of sanctions (*Hunts Point Term. Produce Coop. Assn., Inc. v New York City Economic Dev. Corp.*, 54 AD3d 296, 296 [1st Dept 2008]). Contrary to defendant's contention, plaintiff did not knowingly assert false material statements at trial, but rather maintained that he retained legal title to the Sagaponock house and transferred equitable title to plaintiff (*compare Sanders v Copley*, 194 AD2d 85, 86-87 [1st Dept 1993]), an issue that the court allowed to be submitted to the jury for determination, indicating that plaintiff's position was not "completely without merit" (*see Kremen v Benedict P. Morelli & Assoc., P.C.*, 80 AD3d 521, 523 [1st Dept 2011]). Accordingly, we vacate the award of sanctions

(*id.*, at 474).

The first question of the verdict sheet (**which was reviewed and accepted by the Plaintiff in this trial by counsel to the Plaintiff affixing his signature to the verdict sheet**) queried: "Did

Ames Ray prove by a preponderance of the evidence the existence of an agreement to cover losses?" The unanimous verdict of the jury was "No."

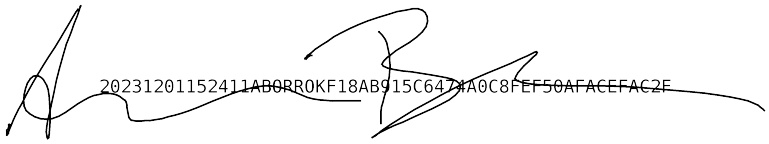
As discussed on the record (12.1.23), there are plenty of reasons and permissible inferences which could lead rational people to the conclusion reached by the jury on the basis of the evidence presented at trial, the least of which was that Ames Ray, the Plaintiff's sole witness, falsely testified under oath. For example, Ames Ray lied as to whether he was in New York (the notary indicates he was in New York) presumably to support the fiction that he and Christina Ray were not in an intimate relationship. He also lied as to monies he said he was making (which alleged monies were not reported to the Internal Revenue Service on his tax returns) presumably in an attempt to distort the fact that he treated monies made by Christina Ray as their money, any money made by him as his money, and any expenses of Christina Ray (including getting a manicure for work) as money she owed him against that money that she earned. As such, the jury was entitled to completely disregard his testimony (PJI 1:28).

The Defendant's motion (Mtn. Seq. No. 019) for costs and sanctions is denied **solely in deference to the Appellate Division Decision** discussed above. Pursuant to New York Court Rules § 130-1.1(a), the court may award costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorneys' fees resulting from frivolous conduct. But for the Appellate Division Decision discussed above, there is no question that Christina Ray should be awarded reasonable attorneys' fees in defending this otherwise entirely frivolous lawsuit.

New York Court Rules § 130-1.1(c) defines conduct as frivolous if it (i) is completely without merit in law and can not be supported by a reasonable argument for an extension, modification, or reversal of existing law, (ii) is undertaken primarily to delay or prolong the resolution of litigation or to harass or maliciously injure another, or (iii) asserts material factual statements that are false. The decision to impose costs and/or sanctions is left to the court's discretion (*Grozea v Lagoutova*, 67 AD3d 611, 611 [1st Dept 2009]). As discussed on the record (12.1.23), the record at trial firmly establishes that the Plaintiff in this case has violated New York Court Rules § 130-1.1(c)(ii) and (iii). As discussed above and on the record, among other things, Ames Ray lied to the jury about his whereabouts in an attempt to bolster the fiction that he and Christina Ray were no longer together in an intimate relationship and in attempt to discredit her fallback argument that if there was an agreement (which she contested) that it was the product of undue influence and their confidential relationship. His move to Florida was to avoid tax. Nothing more. The relationship continued. When Ames Ray came to New York, he stayed with and slept in the same bed as Christina Ray. Indeed, far from meeting his burden at trial to prove the existence of an agreement as to losses, the evidence firmly established that Ames Ray commenced this action to do what he has done during the course of their relationship – harass Christina Ray by charging her for expenses and losses that he was never entitled to (as he had done on the "ledger") as part of a decades-long pattern of abuse and control. The jury saw right through this farce and correctly found that there was no "agreement" to cover his losses. The losses had already occurred when the paper in question was signed and there was no ratification of any prior agreed upon obligation. This litigation was entirely frivolous and reasonable attorneys' fees should be awarded on this record (which record is different than the record in the first trial). However, solely in deference to the Appellate Division Decision, where the Appellate

Division reversed the trial court (Ramos, J.) for imposing sanctions, the Court must decline to do so here.

Accordingly, it is hereby ORDERED that the motions are denied.



12/1/2023
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	X	**CASE DISPOSED**			**NON-FINAL DISPOSITION**		
		GRANTED		**DENIED**	X	**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**		**REFERENCE**