

Sotheby's, Inc. v August Uribe Fine Art, LLC

2023 NY Slip Op 34233(U)

November 21, 2023

Supreme Court, New York County

Docket Number: Index No. 651350/2023

Judge: Joel M. Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

-----X

SOTHEBY'S, INC.,	INDEX NO.	<u>651350/2023</u>
Plaintiff,	MOTION DATE	<u>11/03/2023</u>
- v -	MOTION SEQ. NO.	<u>001</u>
AUGUST URIBE FINE ART, LLC,		
Defendant.	DECISION + ORDER ON MOTION	

-----X

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19, 21, 22

were read on this motion to INTERVENE.

This action involves a Purchase Agreement dated August 24, 2021 between Plaintiff Sotheby's, Inc. ("Sotheby's") and Defendant August Uribe Fine Art, LLC ("Uribe Fine Art"), whereby Sotheby's agreed to sell, and Uribe Fine Art agreed to purchase, an oil painting by Pablo Picasso entitled *Le Peintre* (1967), for a price of \$5.5 million. Proposed Intervenor-Plaintiff Maria Iride Crippa ("Ms. Crippa"), the alleged owner of the Artwork and the undisclosed principal in the transaction between Sotheby's and Uribe Fine Art, moves pursuant to CPLR § 1012(a)(2) to intervene in this action as a matter of right or, alternatively, pursuant to CPLR § 1013 to intervene by permission of this Court, and to amend the caption accordingly.

According to Ms. Crippa, she engaged Sotheby's to sell her painting and pay her full price. However, pursuant to a provision in the Purchase Agreement, which provides that title to the Artwork will not pass to Uribe Fine Art unless and until Sotheby's receives full payment of the Purchase Price in cleared funds (the "Retention Clause"), Sotheby's "temporarily loaned" the

artwork to Uribe Fine Art prior to paying the full purchase price and Uribe Fine Art has since lost control over the painting to a third party.¹ Ms. Crippa now moves to intervene to assert her own claim against Uribe Fine Art, but also to assert claims against Sotheby's for breach of contract, fraudulent inducement, negligent misrepresentation, and a statutory claim for deceptive trade practices. Sotheby's opposes this motion. For the following reasons, Ms. Crippa's motion is granted.

CPLR 1012 (a)(3) provide for intervention as of right "when the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the person may be affected adversely by the judgment." (CPLR 1012 [a] [3]). In addition, leave to intervene may be granted as a matter of discretion under CPLR 1013 when, among other circumstances, "the person's claim or defense and the main action have a common question of law or fact" (CPLR 1013). "In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party." (*id.*).

Here, even if Sotheby's is correct that Ms. Crippa cannot intervene as a matter of right because her interests are adequately represented by Sotheby's, "[w]hether intervention is sought as a matter of right under CPLR 1012 (a), or as a matter of discretion under CPLR 1013, is of little practical significance since a timely motion for leave to intervene should be granted, in either event, where the intervenor has a real and substantial interest in the outcome of the proceedings" (*Am. Home Mortg. Servicing, Inc. v Sharrocks*, 92 AD3d 620, 621 [2d Dept 2012]);

¹ According to Sotheby's and Ms. Crippa, that dispute is subject to litigation in New Jersey brought by Uribe Fine Art against various third parties arising from Uribe Fine Art's attempt to resell the painting (*August Uribe Fine Art, LLC v. DART MILANO SRD, et al.*, Civil Case No. 22-03104 (KM)(JBC) (D.N.J.)).

see also Yuppie Puppy Pet Products, Inc. v St. Smart Realty, LLC, 77 AD3d 197, 201 [1st Dept 2010] [“Distinctions between intervention as of right and discretionary intervention are no longer sharply applied” ... Rather, “[i]ntervention is liberally allowed by courts, permitting persons to intervene in actions where they have a bona fide interest in an issue involved in that action”]).

Here, Ms. Crippa demonstrated that there are common questions of law and fact as the same transaction underlies both Sotheby’s and Ms. Crippa’s claims, and the issue raised is whether the title to *Le Peintre* was reserved in Ms. Crippa or passed to Uribe Fine Art at delivery. Ms. Crippa has also demonstrated that she has a “real and substantial interest in the outcome of the proceeding.” Ms. Crippa argues that the Retention Clause in the Purchase Agreement may be void under New York’s Uniform Commercial Code (UCC) § 2-401(1)—which provides that reservation of title to goods shipped or delivered to a buyer is limited in effect to only the reservation of a security interest—and thus Sotheby’s may have effectively forfeited Ms. Crippa’s title to the painting. In sum, Ms. Crippa has demonstrated a bona fide interest in the issues involved in this action.

Moreover, the intervention will not “unduly delay the determination of the action or prejudice the substantial rights of any party.” No dispositive motions have been filed, and the parties are still in the early stages of discovery.

Accordingly, it is

ORDERED that the motion to intervene is **GRANTED** and that Maria Iride Crippa is permitted to intervene in the above-entitled action as a party plaintiff; it is further

ORDERED that the caption in the above-entitled action be amended by adding Maria Iride Crippa as a party plaintiff with claims against Sotheby’s and Uribe Fine Art; it is further

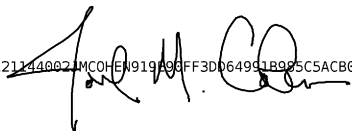
ORDERED that Intervenor-Plaintiff may file the proposed Intervenor Complaint that accompanied the motion within five (5) days of the date of this Order, and upon filing, the Intervenor Complaint will be deemed to have been served upon service of a copy of this order with notice of entry; and it is further

ORDERED that the attorney for the intervenor shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk’s Office, who are directed to amend their records to reflect such change in the caption herein; 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)]; and it is further

ORDERED that counsel are directed to meet and confer and submit a joint proposed preliminary conference order within two (2) weeks of the date of this Order; the parties may request an additional conference if necessary.

This constitutes the Decision and Order of the Court.

20231121144002 JCOHEN91980FF3DD64991B985C5ACB0309A83


JOEL M. COHEN, J.S.C.

11/21/2023

DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: