SPANIERMAN GALLERY v. MERRITT

2004 | Cited 0 times | S.D. New York | August 9, 2004

MEMORANDUM OPINION

On June 30, 2004, by leave of the Court, Defendant Mary Merrittamended her Answers in these consolidated declaratory judgmentand interpleader actions, to assert counter- and cross-claimsagainst Spanierman Gallery, for a declaratory judgment that shepossesses superior title to Arthur Wesley Dow's painting, the"Grand Canyon" ("the painting"), and, in turn, for an orderrequiring the return of the painting.[1] PlaintiffSpanierman Gallery ("Plaintiff" or "Spanierman") has moved for summaryjudgment on these claims, pursuant to Fed.R.Civ.P. 56, on thegrounds that: (1) Merritt's claims are barred by the statute oflimitations; and (2) Merritt released all claims against thirdparties, including Spanierman Gallery, relating to the painting,in a "Settlement Agreement" between Merritt and Timothy Fagan,executed on September 14, 1999.

The parties have consented to trial before this Court pursuantto 28 U.S.C. § 636(c). For the following reasons, Plaintiff'smotion for summary judgment is denied.

BACKGROUND

The Court recites only those facts relevant to the instantmotion,[2] and, unless otherwise noted, the following factsare undisputed. On February 16, 1998, Merritt invited a local artand antiques dealer, Timothy Fagan, to her home to assist her inpreparing to move into a smaller residence. Merritt's niece,Katra Showah, was also present. At the end of that visit, Faganleft Merritt's home with, among other items, the painting. At thecenter of this dispute is whether Merritt sold the painting toFagan, as Spanierman Gallery contends, or whether Merritt, as shecontends, merely permitted Fagan to take the painting for thelimited purpose of having it appraised.

Approximately three months later, in May 1998, Fagan sold thepainting to Spanierman Gallery through Craftsman Auctions, inPittsfield, Massachusetts, for $150,000. Merritt claims to havebeen unaware of this sale until September 1999. (Affidavit ofMary Merritt, dated Sept. 6, 2000 ("Merritt Aff."), ¶ 11,attached as Ex. A to Affirmation of Elisabeth Seieroe Maurer,Esq., dated July 20, 2004 ("Maurer Affirm.").) Merritt furtherclaims that Fagan failed to respond to her inquiries about thepainting between February 1998 and September 1999, and that shetherefore sought the assistance of an attorney, John Bonee III,Esq. (See id. ¶¶ 12-13.)

On September 14, 1999, Merritt, Showah, and her attorney,Bonee, met with Fagan and his counsel regarding the painting, atwhich time attorney Bonee handwrote, and Merritt and Fagan bothsigned,

a "Settlement Agreement" ("the Agreement"), under whichFagan promised to, among other things (1) pay Merritt a total of$40,000 over time; (2) provide certain information to Merrittconcerning the painting's sale, such as the auction catalogue;and (3) to assist in verifying information about the sale,including the sale price and buyer. In return, Merritt was to release anyclaims against Fagan, and not to pursue claims against any thirdparty. There are factual disputes with regard to Fagan'scompliance with the Agreement's terms, including whether Merrittprevented Fagan's compliance. At the meeting, and subsequentthereto. Fagan provided Merritt with some information regardingthe sale of the painting, but he did not make any payments underthe Agreement.

Merritt commenced an action against Fagan in November 1999, inConnecticut state court, alleging, inter alia, conversion. InJanuary 2000, Merritt retained her current counsel, ElisabethSeieroe Maurer, Esq., to represent her in the Connecticut action.Upon her retention, Maurer contacted the FBI to report Merritt'sloss of the painting. The FBI conducted an investigation, andseized the painting in January 2000. Ultimately, the UnitedStates Attorney's Office commenced the instant interpleaderaction, naming Spanierman and Merritt as Defendants.

On August 2, 2000, Spanierman Gallery commenced the instantdeclaratory judgment action, claiming that it is the painting'srightful titleholder. Shortly thereafter, Merritt moved todismiss the action, asserting, inter alia, that her claimsagainst Fagan in the Connecticut court action would bedispositive of Spanierman's claims to the painting's title. Faganhad defaulted in the liability phase of the Connecticut action,and in May 2002, the Connecticut Superior Court for the JudicialDistrict of Danbury entered judgment in Merritt's favor on her conversion and relatedclaims. See Merritt v. Fagan, No. CV990337866S, 2002 WL1331839 (Conn. Super. Ct. May 17, 2002) (unpublished opinion). Inan Opinion and Order dated February 6, 2003, the Court (Swain,J.) denied Merritt's motion to dismiss, and held that theConnecticut action had no preclusive effect in this action. SeeSpanierman Gallery, 2003 WL 289704, at **3-5.

A trial in this action is scheduled to commence on August 10,2004. In the course of preparing for the trial. Spanierman madeknown its position that Merritt has never asserted an actualclaim to the painting in either of these actions. The Courtgranted Merritt leave to amend her Answers to assert such claims.Plaintiff's summary judgment motion followed. The motion seeks topreclude Merritt from asserting her replevin claims on thegrounds that they are barred by the statute of limitations and/orthe general release provision contained in the SettlementAgreement between Fagan and Merritt.

DISCUSSION

I. The Summary Judgment Standard

Summary judgment is appropriate only when the submissions ofthe parties, taken together, "show that there is no genuine issueas to any material fact and that the moving party is entitled toa

judgment as a matter of law." Fed.R.Civ.P. 56(c). Indeciding a motion for summary judgment, the Court "must view theevidence in the light most favorable to the non-moving party and draw allreasonable inferences in its favor." Am. Cas. Co. of Reading,Pa. v. Nordic Leasing, Inc., 42 F.3d 725, 728 (2d Cir. 1994)(quoting Consarc Corp. v. Marine Midland Bank, N.A.,996 F.2d 568, 572 (2d Cir. 1993)); see also Reeves v. SandersonPlumbing Prods., Inc., 530 U.S. 133, 150, 120 S.Ct. 2097, 2110(2000) ("Credibility determinations, the weighing of theevidence, and the drawing of legitimate inferences from the factsare jury functions, not those of a judge.") (quoting Anderson v.Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S.Ct. 2505, 2513(1986)); Hayut v. State Univ. of New York, 352 F.3d 733, 743(2d Cir. 2003). The moving party must "inform[] the districtcourt of the basis for its motion" and identify the matter that"it believes demonstrate[s] the absence of a genuine issue ofmaterial fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323,106 S.Ct. 2548, 2553 (1986). If the moving party meets thisburden, the burden shifts to the nonmoving party to come forwardwith "specific facts showing that there is a genuine issue fortrial." Fed.R.Civ.P. 56(e).

A party opposing a motion for summary judgment "may not rest onthe pleadings but must further set forth specific facts in theaffidavits, depositions, answers to interrogatories, oradmissions showing a genuine issue exists for trial." Cifarelliv. Village of Babylon, 93 F.3d 47, 51 (2d Cir. 1996); see alsoFed.R.Civ.P. 56(c), (e); Celotex, 477 U.S. at 324, 106 So.Ct. at 2553. "[T]here is no issue for trial unless there is sufficient evidencefavoring the nonmoving party for a jury to return a verdict forthat party." Anderson, 477 U.S. at 249, 106 S.Ct. at 2511; seealso Hayut, 352 F.3d at 743. The nonmoving party may not relyon conclusory allegations or speculation to create disputedfactual issues. See D'Amico v. City of New York,132 F.3d 145, 149 (2d Cir.), cert. denied, 524 U.S. 911, 118 S.Ct. 2075(1998); Lipton v. Nature Co., 71 F.3d 464, 469 (2d Cir. 1995)."If the evidence is merely colorable, or is not significantlyprobative, summary judgment may be granted." Anderson, 477 U.S.at 249-50, 106 S.Ct. at 2511 (citations omitted).

II. The Timeliness of Merritt's Claims

Spanierman Gallery argues that the counter- and cross-claimsasserted by Merritt in her June 30, 2004 Amended Answers areuntimely. Plaintiff contends that, under New York choice of lawrules, the Massachusetts statute of limitations governs Merritt'sreplevin claims, and, under Massachusetts law, the claims arebarred by the governing statute of limitations. Alternatively,Plaintiff argues that the claims are untimely under thelimitations periods of Connecticut and New York, aswell.[3] (See Pl.'s Mem. of Law in Support of Pl.'s Mot.for Summ. J. on Def.'s Counterclaims and Crossclaims ("Pl.'sMem.") at 6-14; Pl.'s Statement of Material Facts ¶ 4.) Merritt rejoins that New York law governs herreplevin claims, because she first demanded that Spaniermanreturn the painting in New York (i.e., by way of asserting hercounter- and cross-claims in this action on June 30, 2004), andthat her claims are timely under New York's statute oflimitations. (See Def.'s Mem. in Opp'n to Pl.'s Mot. for Summ.J. ("Def.'s Mem.") at 3-4.)

A. Choice of Law

SPANIERMAN GALLERY v. MERRITT

2004 | Cited 0 times | S.D. New York | August 9, 2004

A federal court sitting in diversity applies the choice of lawrules of the forum state in which it sits, and thus, the Courtapplies New York's choice of law rules. See Klaxon Co. v.Stentor Elec. Mfg. Co., 313 U.S. 487, 496, 61 S.Ct. 1020, 1021(1941); Hoelzer v. City of Stamford, 933 F.2d 1131, 1135-36 (2dCir. 1991).

Spanierman correctly argues that, under New York's choice oflaw rules, "questions relating to the validity of a transfer ofpersonal property are governed by the law of the state where theproperty is located at the time of the transfer." Wertheimer v.Cirker's Hayes Storage Warehouse, Inc., 2001 WL 1657237, 2001N.Y. Slip. Op. 40445(U) (N.Y.Sup.Ct. Sept. 28, 2001) (replevinaction) (citing Kunstsammlungen Zu Weimar v. Elicofon,536 F. Supp. 829, 845-46 (E.D.N.Y. 1981) and The Greek OrthodoxPatriarchate of Jerusalem v. Christie's, Inc., No. 98 Civ. 7664(KMW), 1999 WL 673347, at *4 (S.D.N.Y. Aug. 30, 1999)); seealso Wyatt v. Fulrath, 16 N.Y.2d 169, 264 N.Y.S.2d 233 (1965).Spanierman contends that the relevant transfer of title occurredin Massachusetts, where it purchased the painting, in May 1998, from Craftsman Auction, andthus, the Massachusetts statute of limitations governs Merritt'sreplevin claims.[4]

The question of which substantive law governs the replevinclaims, however, differs from the question of which statute oflimitations applies. In New York, "[s]tatutes of limitations areusually characterized as procedural, not substantive," and NewYork courts apply local procedural rules, even when applying thesubstantive law of another state. Wertheimer, 2001 WL 1657237(replevin claim governed by Arizona substantive law and New Yorkstatute of limitations). "New York courts generally apply NewYork's statutes of limitations, even when the injury giving riseto the action occurred outside New York . . . subject to atraditional statutory exception, New York's `borrowing' statute,C.P.L.R. § 202." Stuart v. American Cyanamid Co., 158 F.3d 622,627 (2d Cir. 1998). Under New York's "borrowing" statute, if acause of action accrues outside of New York in favor of anon-resident, courts must apply the shorter limitations period ofeither the state where the cause of action accrued or New York.[5] See N.Y.C.P.L.R.§ 202; Dugan v. Schering Corp., 86 N.Y.2d 857, 859,635 N.Y.S.2d 164, 165 (1995); Stuart, 158 F.3d at 627; Hoelzer,933 F.2d at 1136.

Spanierman does not address which statute of limitationsapplies under New York's borrowing statute. Rather, Spaniermanappears to argue that because the relevant transaction took placein Massachusetts, Merritt's replevin cause of action accruedthere, and thus the Massachusetts limitations period applies.(See Pl.'s Mem. at 7.) Merritt rejoins that her cause of actionaccrued in New York, because she "made a demand to SpaniermanGallery — in New York, for return of the painting, which demandwas refused by Spanierman Gallery in New York. Thus, New York lawgoverns the time that Defendant Mary Merritt has to assert hercounterclaims." (Def.'s Mem. at 3-4.)

For the reasons that follow, regardless of whether theMassachusetts or New York limitations period applies, the Courtconcludes that Merritt's replevin claims are timely. B. Merritt's Replevin Claims are Timely

Massachusetts and New York both have three year limitationperiods for replevin claims, see, e.g., Mass. Gen. Laws ch.260, § 2a; N.Y.C.P.L.R. § 214(3), but the accrual point forreplevin claims differs between the states. In Massachusetts,replevin "claims are subject to the so-called `discovery rule,'under which a cause of action which `is based on an inherentlyunknowable wrong' only accrues `when the injured person knows, orin the exercise of reasonable diligence should know of the factsgiving rise to the cause of action." The Republic of Turkey v.OKS Partners, 797 F. Supp. 64, 69 (D. Mass. 1992) (quotingDinsky v. Town of Framingham, 386 Mass. 801, 803 (1982)); seealso MacCleave v. Merchant, No. 010859, 2002 WL 31480307, at*2 (Mass. Super. Oct. 1, 2002) (citing Hendrickson v. Sears,365 Mass. 83, 89-90 (1974)) ("A cause of action accrues on thehappening of the event likely to put the plaintiff on notice.").Whereas, under New York law, "a cause of action for replevinagainst the good-faith purchaser of a stolen chattel accrues whenthe true owner makes demand for return of the chattel and theperson in possession of the chattel refuses to return it."Solomon R. Guggenheim Foundation v. Lubell, 77 N.Y.2d 311,317-18, 567 N.Y.S.2d 623, 626 (1991); see also Hoelzer, 933F.2d at 1136.

Spanierman argues that Merritt knew, or reasonably should haveknown, "by the end of 1999," that it had purchased the painting, because her niece, Katra Showah, saw the painting featured in aSpanierman Gallery advertisement, and within a few months ofmid-September 1999, had told Merritt and Merritt's formerattorney, "I know who bought the painting." (Pl.'s Mem. at 6;Deposition of Katra Showah, dated July 9, 2003 ("Showah Depo."),at 86-87, attached as Ex. H to Affidavit of Andrew B. Bittens,Esq., dated July 12, 2004 ("Bittens Aff.").) Merritt claims thatshe did not learn of the painting's whereabouts "until January2000[,] when Showah saw an advertisement in Architectural Digestfor Spanierman's auction." (Merritt Aff. ¶ 16.)

Whether Merritt discovered in late 1999 or January 2000 thatSpanierman possessed the painting is immaterial to the timelinessissue. Under Massachusetts law, based on the dates by which theparties contend Merritt discovered Spanierman's possession of thepainting, Merritt had until either late 2002 or January 2003 toassert her replevin claims.

Under New York law, Merritt's replevin claims had to beasserted within three years from the date of Spanierman's"refusal" of her demand that it relinquish its claim to thepainting. As the New York courts have explained, the so-called"demand rule" is not a literal one: A demand consists of an assertion that one is the owner of the property and that the one upon whom the demand is made has no rights in it other than allowed by the demander. By the same reasoning, a refusal need not use the specific word `refuse' so long as it clearly conveys an intent to interfere with the demander's possession or use of his property.Feld v. Feld, 279 A.D.2d 393, 395-96, 720 N.Y.S.2d 35, 37(1st Dep't 2001) (citations omitted). The Court rejects Merritt'sspecious argument that her replevin claims did not accrue untilshe amended her Answers, in June 2004, to include them.[6]The record before the Court demonstrates that Merritt made herclaim to the painting known to Spanierman no later than September2000, when she moved to dismiss this action on various grounds,including the ground that her conversion action against Fagan inthe Connecticut Superior Court would "resolve the ownership

ofthe painting, which is the basis of Spanierman's complaintherein." (Def.'s Mem. of Law in Supp. of Def.'s Mot. to Dismissat 9.) Spanierman's response, and cross-motion for summaryjudgment seeking declaratory judgment with respect to its title to the painting, filed onSeptember 27, 2000, surely "convey[ed] an intent to interferewith" Merritt's "possession or use of" the painting, and therebyactivated the statute of limitations. Feld, 279 A.D.2d at 396,720 N.Y.S.2d at 37. Thus, under the New York law, Merritt wasrequired to bring her replevin claims by no later than September27, 2003.

In Spanierman Gallery, Profit Sharing Plan v. Merritt, 00Civ. 5712, Merritt filed her Answer on June 14, 2002; in theinterpleader action, United States of America v. SpaniermanGallery, PSP and Merritt, 02 Civ. 1082, Merritt filed her Answeron May 9, 2002. The Answers, however, were not amended to includeMerritt's counter- and cross-claims until June 30, 2004. UnderMassachusetts and New York law, this was more than three yearsafter the replevin claim accrued. Nevertheless, because the Courtconcludes that Merritt's amended pleadings relate back to theoriginal pleadings, see Fed.R.Civ.P. 15(c), they are timely.

C. Relation Back of the Amendments

While federal courts sitting in diversity apply state law todetermine whether an action is barred by the statute of limitations, "most courts considering the issue have held thatthe federal rule as to relation back applies even in a diversitycase, since the question of relation back . . . is properly amatter of practice and procedure that is specifically dealt within the Federal Rules of Civil Procedure." Contemporary Mission,Inc. v. The New York Times Co., 665 F. Supp. 248, 255 (S.D.N.Y.1987) (quotation marks and citations omitted), aff'd,842 F.2d 612, 616 (2d Cir. 1988); see also Jewell v. CapitalCities/ABC, Inc., No. 97 Civ. 5617 (LAP), 1998 WL 702286, at *1(S.D.N.Y. Oct. 7, 1998); cf. Schiavone v. Fortune,477 U.S. 21, 29-30, 106 S.Ct. 2379, 2384-85 (1986) (without discussion,applying Fed.R.Civ.P. 15(c) in diversity action); Nettis v.Levitt, 241 F.3d 186, 192-93 (2d Cir. 2001) (same); Datskow v.Teledyne, Inc., 899 F.2d 1298, 1305 (2d Cir. 1990) (same).

Pursuant to Rule 15: An amendment of a pleading relates back to the date of the original pleading when . . . the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading . . .Fed.R.Civ.P. 15(c)(2). The critical requirement for relationback is that the opposing party has been given adequate notice ofthe claim in the amendment. Here, Merritt's replevin claimclearly arises out of the same conduct, transactions, andoccurrences set forth in the Complaints and her original Answers— the circumstances under which Fagan came to possess thepainting. For instance, in her Answer to Spanierman's Complaint in thedeclaratory judgment action, Merritt asserted "that Fagan tookthe painting from her home with the authorization to have itappraised and then returned to her with the appraisal." (Answer ¶23.) Similarly, in her Answer to the interpleader action, Merrittasserted that she "is entitled to legal and actual title andpossession of the" painting. (Answer, Prayer for Relief.)Moreover, as the Court reasoned in its recent Order grantingMerritt leave to amend, "the

factual and legal issues relating tolawful title and possession of the painting have been at thecenter of this litigation since its inception" and Spaniermanitself has sought "a determination as to who holds proper titleto the painting. (See Compl. ¶ 45.) Thus, Plaintiff cannotclaim to be too surprised that Defendant seeks to lodge a formalclaim to title and possession in this action." SpaniermanGallery, 2004 WL 1488118, at *1 & n. 2.

The Court therefore holds that Merritt's amendments relate backto her original Answers, and thus, her replevin claims are timelyunder both the Massachusetts and New York statutes oflimitations. The Massachusetts limitations period expired at somepoint between late 2002 and January 2003. The New York statute oflimitations expired at the end of September 2003. The Answer inthe declaratory judgment action, 00 Civ. 5712, was filed on June14, 2002, and the Answer in the interpleader action, 02 Civ. 1082 was filed on May 9, 2002.

Accordingly, Plaintiff is not entitled to summary judgment onstatute of limitations grounds.

III. The Agreement

On September 14, 1999, Merritt, her niece Katra Showah, and herattorney, John Bonee III, Esq., met with Timothy Fagan and hisattorney in an effort to settle their dispute regarding thepainting. (See, e.g., Merritt Aff. ¶ 14.) After a full day ofnegotiations, Merritt's attorney wrote, and Merritt and Faganboth signed, the following Agreement: Settlement Agreement Timothy Fagan of Newtown Connecticut and Mary Merritt of Danbury Connecticut hereby agree as follows — 1) Timothy Fagan shall pay Mary Merritt — 10,000 on or by 10/15/99 and 30,000 in quarterly installments w/o interest beginning January 1, 2000 ending October 1, 2003, being a total of $40,000. 2) Timothy Fagan shall give a second mortgage and promissory note both with customary statutory provisions on 12 Georgia Hill Road for $30,000 to Mary Merritt. 3) Upon signing this agreement Timothy Fagan shall immediately reveal the Auction Catalogue of the painting of Mary Merritt of the Grand Canyon which sold for $150,000 and will cooperate in all respects with respect to verification of buyer, artist, date and price of sale, $15,000 payment to auction house and amount paid to advisor of $10,000. 4) Timothy Fagan will deliver to Katra Showah the "Butler's Secretary" and the "Boot Scraps." 5) Mary Merritt to provide a General Release to Timothy Fagan for all claims upon receipt of partial payment and delivery of Note and Mortgage. 6) If verification information regarding the painting is true, Mary Merritt will not pursue claims against any other third party for it. So agreed this 14th day of September, 1999. s/ s/ Timothy Fagan Mary Merritt

(Agreement, attached as Ex. 1 to Maurer Affirm. & Ex. E toBittens Aff.)

Plaintiff argues that it is entitled to summary judgment onMerritt's replevin claims because Merritt has "effectivelysettled any claims to title of the painting she might have had"by entering this Agreement. (Bittens Aff. ¶ 15.) Plaintiffcontends that the Agreement: (1) "had the effect of finallyclearing title to Mr. Fagan so that subsequent title holderswould not be burdened by [Merritt's]

future claims of title," and(2) released Merritt's claims against "any third parties." (Pl.'sMem. at 15.) Plaintiff further argues that, even if Fagan failedto make payment under the Agreement, he did provide the requiredinformation about the sale of the painting and, thus, Spaniermanis entitled to enforce the severable provision of the Agreementin which Merritt agreed not to pursue claims for the paintingagainst third parties.

Merritt responds that she and Fagan never reached a "meeting ofthe minds" and thus a binding agreement never came into existence. Alternatively, Merritt argues that Fagan failed todischarge his obligations under the Agreement, and thus, therewas never an accord and satisfaction. Merritt further contendsthat Spanierman is barred from litigating issues relating to theAgreement because a Connecticut court concluded that theAgreement was not binding. Given a second opportunity by theCourt to respond to Spanierman's arguments with respect to theAgreement, Merritt now argues that she is excused fromperformance by Fagan's failure to make payments under theAgreement and to provide her with the promised verificationinformation, and, in any event, that the Agreement isindivisible. (See Letter from Elisabeth Seieroe Maurer, Esq.,to Magistrate Judge Katz, dated Aug. 5, 2004 ("Maurer Ltr."), at1-5.) Finally, Merritt contends that Spanierman is not anintended third party beneficiary of the Agreement. (See id.at 5-7.)

A. Collateral Estoppel, Res Judicata, & TheRooker-Feldman Doctrine

As a threshold matter, the Court considers whether theConnecticut trial court's determination that the Agreement wasnot binding, because there was no mutual assent or meeting of theminds, should be accorded preclusive effect. See Merritt v.Fagan, No. CV990337866S, 2002 WL 1331839, at *6 (Conn. Super.Ct. May 17, 2002), aff'd, 78 Conn. App. 590 (2003). Earlier inthis litigation, Merritt moved to dismiss Spanierman's claimsbased on res judicata, collateral estoppel, and/or theRooker-Feldman doctrine, on the ground that the Connecticut Superior Court forthe Judicial District of Danbury rendered a decision in her favoron her conversion and other claims against Fagan. See id. TheCourt (Swain, J.) held that none of these doctrines appliedbecause (1) the Connecticut trial court's judgment was renderedon default, and (2) Spanierman was not a party to the litigation,and was not in privity with Fagan. See Spanierman Gallery,2003 WL 289704, at **3-5.

Judge Swain's Opinion and Order is fully applicable toSpanierman's recently-asserted claims under the Agreement, andtherefore, neither res judicata, collateral estoppel, nor theRooker-Feldman doctrine bar Spanierman from asserting theAgreement's general release provision as an affirmative defenseto Merritt's replevin claims.

The doctrine of res judicata, or claim preclusion, preventsparties or their privies from relitigating issues that were, orcould have been, raised in an action between them where a finaljudgment on the merits has been reached.[7] See, e.g.,Efthimiou v. Smith, 268 Conn. 499, 506 (2004); Carnemolla v.Walsh, 75 Conn. App. 319, 327 (Conn. App. Ct. 2003).

SPANIERMAN GALLERY v. MERRITT

2004 | Cited 0 times | S.D. New York | August 9, 2004

"Collateral estoppel, or issue preclusion, . . . prohibits therelitigation of an issue when that issue was actually litigatedand necessarily determined in a prior action between the sameparties" or their privies. R&R Pool & Patio, Inc. v. Zoning Bd.of Appeals of the Town of Ridgefield, 257 Conn. 456, 466 (2001)(quoting Virgo v. Lyons, 209 Conn. 497, 501 (1988)) (internalquotation marks omitted). For collateral estoppel to apply, theissue "must have been fully and fairly litigated in the firstaction[,] . . . actually decided and the decision must have beennecessary to the judgment. . . ." Id. (internal quotation marksand citations omitted).

In essence, the Rooker-Feldman doctrine provides that thelower federal courts lack "subject matter jurisdiction over casesthat effectively seek review of judgments of state courts. . . ."Moccio v. New York State Office of Court Admin., 95 F.3d 195,197 (2d Cir. 1996); see also Rooker v. Fidelity Trust Co.,263 U.S. 413, 44 S.Ct. 149 (1923); District of Columbia Courtof Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303 (1983);Bridgewater Operating Corp. v. Feldstein, 346 F.3d 27, 29-30(2d Cir. 2003); Hachamovitch v. DeBuono, 159 F.3d 687, 693 (2dCir. 1998). The Rooker-Feldman doctrine bars federal courtsfrom considering claims that are "inextricably intertwined" witha prior state court determination. Hachamovitch, 159 F.3d at694 (citing Feldman, 460 U.S. at 482 n. 16, 103 S.Ct. at 1315 n. 16). A claim is"inextricably intertwined with the state court judgment if thefederal claim succeeds only to the extent that the state courtwrongly decided the issues before it." Id. at 694-95 (quotingPennzoil Co. v. Texaco, Inc., 481 U.S. 1, 25, 107 S.Ct. 1519,1533 (1987) (Marshall, J., concurring)). The Second Circuit hasalso interpreted "inextricably intertwined" to mean, "at aminimum, that where a federal [party] had an opportunity tolitigate a claim in a state proceeding . . . subsequentlitigation of the claim will be barred under the Rooker-Feldmandoctrine if it would be barred under the principles ofpreclusion." Moccio, 95 F.3d at 199-200; see alsoHachamovitch, 159 F.3d at 695.

As Judge Swain explained in denying Defendant's Motion toDismiss, "[a]n issue is not actually litigated if there has beena default. Thus, the Connecticut decision was not actuallylitigated for purposes of preclusion and the relatedconsideration of application of the Rooker-Feldman doctrine."Spanierman Gallery, 2003 WL 289704, at *3 (citing Willard v.Travelers Ins. Co., 247 Conn. 331, 332 (1998)). Moreover, thetrial court's conclusions concerning the Agreement were notnecessary to its ultimate decision regarding Fagan's liabilityfor conversion and violation of the Connecticut Unfair TradePractices Act — i.e., those findings appear to be dicta — andthus could not have preclusive effect or implicate theRooker-Feldman doctrine. See, e.g., R&R Pool & Patio, 257 Conn. at 466 ("An issue is necessarilydetermined if, in the absence of a determination of the issue,the judgment could not have been validly rendered. . . . If anissue has been determined, but the judgment is not dependent uponthe determination of the issue, the parties may relitigate theissue in a subsequent action.") (quotation marks and citationsomitted).

Furthermore, Judge Swain also determined that there is noprivity between Spanierman Gallery and Fagan for collateralestoppel or res judicata purposes, see SpaniermanGallery, 2003 WL 289704, at *3, and that conclusion remains thelaw of the case.

For the foregoing reasons, the Connecticut state court decisiondoes not preclude Plaintiff from asserting claims under theAgreement.

B. Is the Agreement a Valid Contract?

Merritt contends that the Agreement is not binding becausethere was no mutual assent, and she points to post-Agreementdiscussions between Merritt's then-attorney and Fagan's attorneywhich indicate that they "were on the verge of an agreement," but"do not . . . have an agreement." (Def.'s Mem. at 6 (quotingLetter from Donald A. Mitchell, Esq., dated Nov. 19, 1999,attached as Ex. 18 to Maurer Affirm.); see also Letter fromJohn L. Bonee III, Esq., dated Oct. 21, 1999 (asking Fagan'sattorney, "Do we have an agreement on the $40,000 or not? Is yourclient willing to accept a release from Mary Merritt plus a copyof the appraisal or not? Please answer these questions by Friday, or as we havestated previously, we shall have to seek the remedies to which weare entitled"), attached as Ex. 17 to Maurer Affirm.).

1. Applicable Law

As discussed, the Court looks to New York choice of law rulesto determine what law to apply to the parties' substantiveclaims. See Klaxon Co., 313 U.S. at 496-97, 61 S.Ct. at1021-22. In contract cases, New York courts "apply a `center ofgravity' or `grouping of contacts' approach" to decide choice oflaw questions, under which "courts may consider a spectrum ofsignificant contacts, including the place of contracting, theplaces of negotiation and performance, the location of thesubject matter, and the domicile or place of business of thecontracting parties." Lazard Freres & Co. v. Protective LifeIns. Co., 108 F.3d 1531, 1539 (2d Cir. 1997) (citing In reAllstate Ins. Co. & Stolarz, 81 N.Y.2d 219, 227, 597 N.Y.S.2d 904,908 (1993)). The significant contacts in this case were allin Connecticut. Merritt and Fagan were both Connecticutdomiciliaries, and Fagan's business was located there. TheAgreement was negotiated and executed in Connecticut, andconcerned events that transpired in Connecticut. Further, theAgreement contemplated performance in Connecticut. Accordingly,the Court applies Connecticut contract law.

2. Application of Connecticut Law

"Settlement agreements are contracts and must therefore be construed according to general principles of contract law." RedBall Interior Demolition Corp. v. Palmadessa, 173 F.3d 481, 484(2d Cir. 1999); see also MacDonald v. Dragone Classic MotorCars, No. 395CV499(JBA), 2003 WL 22056626, at *6 (D. Conn. Apr.29, 2003) ("once reached, a settlement agreement constitutes acontract that is binding and conclusive"). "To form a valid andbinding contract in Connecticut, there must be a mutualunderstanding of the terms that are definite and certain betweenthe parties. . . . If the minds of the parties have not trulymet, no enforceable contract exists." L&R Realty v. ConnecticutNat'l Bank, 53 Conn. App. 524, 534-35 (Conn. App. Ct. 1999);see also Sicaras v. City of Hartford, 44 Conn. App. 771, 784(Conn. App. Ct. 1997) ("Meeting of the minds . . . refers tofundamental

misunderstandings between the parties as to what arethe essential elements or subjects of the contract. It refers tothe terms of the contract, not to the power of one party toexecute a contract. . . ."). Courts look to objectivemanifestations of mutual assent, and not to the parties'subjective intentions. See Chambers v. Manning, 169 F.R.D. 5,7 (D. Conn. 1996) ("Mutual assent is determined from the parties'acts and words, not from their subjective intentions."); seealso Sever v. Glickman, 298 F. Supp.2d 267, 272 & n. 1 (D.Conn. 2004) ("Generally, courts look to the basic elements of theoffer and the acceptance to determine whether there is anobjective meeting of the minds sufficient to give rise to abinding and enforceable contract.") (applying New York law, but noting that"there appears to be no substantive distinction between New Yorkand Connecticut law as it relates" to contract formation).

Whether a contract has been formed "is ultimately a question ofthe intention of the parties." Otto Contracting Co. v. S.Schinella & Son, Inc., 179 Conn. 704, 709 (1980). Ordinarily,the trier-of-fact decides questions of contract interpretation,including questions of the parties' intent. See, e.g., Shortv. Connecticut Bank & Trust Co., 60 Conn. App. 362, 367 (Conn.App. Ct. 2000). "[W]here there is definitive contract language,"however, "the determination of what the parties intended by theircontractual commitments is a question of law." Levine v.Massey, 232 Conn. 272, 277-78 (1995) (quotation marks andcitation omitted); see also Gateway Co. v. DiNoia,232 Conn. 223, 232 (1995) ("Although ordinarily the question of contractualintent presents a question of fact for the ultimate fact finder,where the language is clear and unambiguous it becomes a questionof law for the court") (citations omitted). "The question is notwhat intention existed in the minds of the parties but whatintention is expressed in the language used," Leonard ConcretePipe Co. v. C.W. Blakeslee & Sons, Inc., 178 Conn. 594, 598(1979), and if "the language of the contract is clear andunambiguous, the contract is to be given effect according to itsterms." F&W Welding Serv., Inc. v. ADL Contracting Corp.,217 Conn. 507, 517 (1991). Here, the Agreement is "definite and certain as to its termsand requirements." L&R Realty, 53 Conn. App. at 535; see alsoLevine, 232 Conn. at 279 ("The court will not torture words toimpart ambiguity where ordinary meaning leaves no room forambiguity.") (quotation marks and citation omitted); Sicaras,44 Conn. App. at 784 & n. 9 (finding mutual assent and definingambiguity as "[d]uplicity, indistinctness, or uncertainty ofmeaning of an expression used in a written instrument. . . .Language in contract is `ambiguous' when it is reasonably capableof being understood in more than one sense") (citations omitted).Indeed, Merritt does not claim that the terms of the Agreementare indefinite, incomplete, or ambiguous, nor does she point toany specific aspect of the Agreement as indicative of a lack ofmutual assent, or the presence of confusion or mistake. Moreover,Merritt acknowledges that she read and understood the Agreement,discussed it with her attorney, and that she signed it in theabsence of duress. Cf. Petrosino v. Westland Properties,Inc., No. CV00378729S, 2003 WL 21958435, at *2 (Conn. Super. Ct.July 23, 2003) (unpublished opinion)[8] (plaintiff signedthe agreement, but attested that he was not permitted to read itbefore signing it, and did not have an attorney, thus creatinggenuine issue of material fact as to mutual assent); SKC PalmHoldings v. Gottlieb Family, No. CV980078029, 2001 WL 204189, at *2 (Conn. Super.Ct. Feb. 13, 2001) (unpublished opinion) (finding on summaryjudgment that there was no mutual assent where the contract wasnot signed and lacked an essential term).

Merritt merely points to post-Agreement discussions betweenMerritt's and Fagan's attorneys to indicate that they were "stillnegotiating the terms of the settlement." (Def.'s Mem. at 6.) Thepost-Agreement discussions to which Merritt refers merelyindicate that Merritt and Fagan experienced a change of heartwith respect to the settlement terms, but do not address theissue of whether a contract was formed. See MacDonald, 2003WL 22056626, at *6 ("the parties are bound to the terms of thecontract even if a party has a change of heart between the timeof the agreement to the terms of the settlement and the time itis reduced to writing"); cf. D'Andrea Bros. Realty v. Planning &Zoning Comm'n of the Town of Greenwich, No. D.N.CV93 0128894,1994 WL 75826, at *5 (Conn. Super. Ct. Mar. 3, 1994) (unpublishedopinion) ("Plaintiff claims that the subsequent conduct of theparties is strong presumptive evidence of their intention as toconstruction but offers the Court no authority for thisassertion. However, this claim can be disposed of by theapplication of the rule that parol evidence is not to be examinedwhen the parties' intention can be determined from the agreementitself. The parties subsequent actions would more properly beevaluated in a court's examination of whether a modification of [the agreement] was consummated.") (quotingWelch v. Arthur A. Fogarty, Inc., 157 Conn. 538, 547 (1969)).

Thus, the Court concludes as a matter of law that the Agreementis a valid contract.[9] However, for the reasons discussedbelow, the Court cannot conclude as a matter of law that thethird party waiver provision in the Agreement may be enforced bySpanierman.

C. Is Spanierman a Third Party Beneficiary of the Agreement?

Spanierman argues that it is a third party beneficiary of theAgreement and is therefore entitled to enforce the Agreement'sgeneral release as to third parties to defeat Merritt's replevinclaims.

"It is well settled that one who [is] neither a party to a contract nor a contemplated beneficiary thereof cannot sue toenforce the promises of the contract." Tomlinson v. Bd. of Educ.of City of Bristol, 226 Conn. 704, 718 (1993) (quotation marksand citations omitted). Whether Spanierman is an intended thirdparty beneficiary of the Agreement may be decided on summaryjudgment as a matter of law. See Delacroix v. Lublin Graphics,Inc., 993 F. Supp. 74, 83-84 (D. Conn. 1997); Gazo v. City ofStamford, 255 Conn. 245, 262 (2001); Gateway Co., 232 Conn. at232.

Under Connecticut law, [t]he ultimate test to be applied [in determining whether a person has a right of action as a third party beneficiary] is whether the intent of the parties to the contract was that the promisor should assume a direct obligation to the third party [beneficiary] and . . . that intent is to be determined from the terms of the contract read in the light of the circumstances attending its making, including the motives and purposes of the parties.Knapp v. New Haven Road Constr. Co., 150 Conn. 321, 325(1963) (quotation marks and citations omitted); see also Dow &Condon, Inc. v. Brookfield Devel. Corp., 266 Conn. 572, 580(2003) (quoting Knapp, 150 Conn. at 325). So long as theparties to the contract intend for the promisor to assume adirect obligation toward the third party, the third partybeneficiary need not be identified by name in the contract. See,e.g., Gateway

Co., 232 Conn. at 231-32; see also Dow &Condon, Inc., 266 Conn. at 581 ("[E]ach party to a contract isentitled to know the scope of his or her obligations thereunder.That necessarily includes the range of potential third persons who may enforce the terms of thecontract. Rooting the range of potential third parties in theintention of both parties, rather than in the intent of just oneof the parties, is a sensible way of minimizing the risk that acontracting party will be held liable to one whom he neitherknew, nor legitimately could be held to know, would ultimately behis contract obligee.").

Here, it is apparent that the "third party" against whomMerritt promised not to bring claims was the painting'spurchaser. Merritt's argument that the scope of her obligationwas not clearly defined because she did not know the purchaser'sidentity at the time is unavailing. Although Merritt may not haveknown the identity of the gallery at the time she and Faganentered the Agreement, it is clear that she was aware that thepainting had been purchased at auction. (See Agreement ¶ 3.)The information that she sought from Fagan pertained to thebuyer, date, and price of sale, and thus, it is apparent that, inpromising to "not pursue claims against any other third partyfor" the painting "[i]f the verification information regardingthe painting [turned out to be] true," Merritt and Fagan intendedthat she would not pursue claims against the purchaser, i.e.,Spanierman. Furthermore, considering the Agreement's surroundingcircumstances, it is apparent that the general release provisionwas intended to eliminate Fagan's potential liability to thesubsequent purchaser, by eliminating the possibility of Merritt pursuing claims against the subsequentpurchaser. See Huertas v. East River Housing Corp.,992 F.2d 1263, 1266-67 (2d Cir. 1993) ("Settlement agreements are to bediscerned within the four corners of the agreement," but courtsmay look to "the circumstances surrounding a settlementagreement's formation . . . when construing it for enforcementpurposes."). Thus, it is abundantly clear that Merritt and Faganintended that Merritt would be bound by the general releaseprovision with respect to whatever claims she might have broughtagainst the painting's purchaser. That Fagan would also benefitfrom this general release does not militate against theconclusion that Merritt undertook an obligation to the thirdparty purchaser.

The Court therefore concludes as a matter of law thatSpanierman Gallery is an intended third party beneficiary of theAgreement.

D. Did the Agreement Clear Title in Favor of Fagan?

Spanierman contends that the Agreement "effectuate[d] atransfer of title to Mr. Fagan by virtue of the `second' sale ofthe painting to Mr. Fagan. . . ." (Bittens Aff. ¶ 16; see alsoPl.'s Mem. at 15.) The argument assumes too much, specifically,that Merritt sold the painting to Fagan in February 1998. Indeed,as both parties agree, whether Merritt sold the painting to Faganis to be decided by the jury at the upcoming trial. Moreover,Spanierman has offered no case law support for the dubious proposition that Merritt transferred title to the painting by wayof entering this Agreement. In fact, the Agreement specificallystates that Merritt would waive her claims against Fagan onlyafter she received her first payment. (See Agreement ¶¶ 1, 5.)This condition appears to be premised on Merritt's contentionthat the painting was rightfully hers. Therefore, the Agreementitself contradicts

Spanierman's assertion that Merritttransferred title of the painting to Fagan by executing theAgreement.

For these reasons, Spanierman is not entitled to summaryjudgment on the grounds that the Agreement effectuated atitle-clearing sale.

E. Is the Agreement Whole or Divisible?

The parties do not dispute that Fagan failed to make anypayments under the Agreement, although they disagree on thereasons why Fagan failed to perform. However, Spanierman hasproffered evidence that Fagan provided Merritt with "verificationinformation" described in the Agreement, and argues that theAgreement is a divisible contract, under which Fagan's provisionof this information was separate consideration for Merritt'spromise to not pursue claims against third parties. (See Pl.'sMem. at 20; Reply at 11-13.) Initially, Merritt had asserted noargument, and presented no relevant contract law, in response toSpanierman's contention that Fagan's non-performance with respectto payment is irrelevant to her obligations under the Agreementto waive claims against third parties. At the request of the Court, overPlaintiff's objection, on August 5, 2004, Merritt submitted aletter arguing for the first time that the Agreement isindivisible because it does not contain corresponding pairs ofpart performances, and because Fagan's provision of verificationinformation, standing alone, was not an "agreed equivalent" ofMerritt's promise to forego claims against third parties. (SeeMaurer Ltr. at 1-4.) Merritt further argues that, while Faganprovided her with certain information about the painting's sale,he never told her the name of the purchaser.

Spanierman asks the Court to decide as a matter of law that theAgreement is severable, and thus, that Fagan's failure to tenderpayment to Merritt is irrelevant to Merritt's obligation torelease her claims against the gallery. Under Connecticut law: A contract is divisible where by its terms, [1] performance of each party is divided into two or more parts, and [2] the number of parts due from each party is the same, and [3] the performance of each part by one party is the agreed exchange for a corresponding part by the other party.Kunian v. Dev. Corp. of Am., 165 Conn. 300, 309 (1973) (quotingRestatement 1 Contracts § 266) (installment contract). They keyinquiry is "whether the contract's parts and its considerationare common to each other or independent of one another." VenturePartners, Ltd. v. Synapse Techs. Inc., 42 Conn. App. 109, 118(Conn. App. Ct. 1996) (quotation marks and citations omitted)("The duties imposed on the plaintiff and the consideration theplaintiff would receive in return under part two [of the contract] areindependent from the duties and consideration found under partfour [of the contract]."). Connecticut courts also apply theRestatement's criteria for determining whether a contract isdivisible: If the performances to be exchanged under an exchange of promises can be apportioned into corresponding pairs of part performances so that the parts of each pair are properly regarded as agreed equivalents, a party's performance of his part of such a pair has the same effect on the other's duties to render performance of the agreed equivalent as it would have if only that pair of performances had been promised.Carmel Homes, Inc. v. Bednar, No. CV990079393S, 2001 WL1249810, at *2 (Conn. Super. Ct. Oct. 1, 2001)

(quoting 2Restatement (Second) § 240) (unpublished opinion).

"The singleness or apportionability of the considerationrendered is a principal test in judging severability, and if theconsideration is not expressly or by necessary implicationapportioned, the contract will be construed as entire." TimelyProds., Inc. v. Costanzo, 465 F. Supp. 91, 97 n. 6 (D. Conn.1979) (citing Haller Testing Labs., Inc. v. A. Lurie, Inc.,24 Conn. Sup. 1, 3-4 (Conn. Cir. Ct. 1962)); see alsoHartford-Connecticut Trust Co. v. Cambell, 111 A. 864, 867(1920) (where "substantial parts of the agreement areinterdependent and common to each other" the contract is notdivisible).

In deciding whether "a contract shall be treated as severableor as an entirety the intention of the parties will control and . . this intention must be determined by a fair construction ofthe terms and provisions of the contract itself." Haller TestingLabs., 24 Conn. Sup. at 3. The intent of the parties "isdetermined from the language used interpreted in light of thesituation of the parties and the circumstances connected with thetransaction." Short, 60 Conn. App. at 367 (quotation marks andcitations omitted). Yet, "[t]he circumstances surrounding themaking of the contract, the purposes which the parties sought toaccomplish and their motives cannot prove an intent contrary tothe plain meaning of the language used." Sturman v. Socha,191 Conn. 1, 12 (1983).

Courts have observed that determining severability is adifficult task, see, e.g., Haller Testing Labs. Inc., 24Conn. Sup. at 3, and this case confirms that difficulty. Here,the Agreement literally pairs Merritt's promise to not pursueclaims against third parties with Fagan's providing truthfulinformation about the painting (see Agreement ¶¶ 3, 6), andpairs Merritt's promise to release claims against Fagan withFagan's rendering partial payment and security for futurepayments. (See id. ¶¶ 1-2, 5.) Thus, the Court reject'sMerritt's argument that the performances were not divided intocorresponding parts. (See Maurer Ltr. at 3-4.)

Nevertheless, while the Agreement clearly imposes two separateduties on Fagan in exchange for two corresponding separatepromises from Merritt, the Court is unable to conclude as a matter of lawthat the parties intended Fagan's payments and provision ofinformation about the painting to be truly independent forms ofconsideration. Merritt argues that the forms of consideration areinter-related, "because the value of that [verification]information is nothing unless it is joined with the conditionprecedent of payment and security from Fagan." (Maurer Ltr. at4.) Evidence proffered by Spanierman, however, strongly suggeststhat Merritt highly valued the information regarding the paintingand, indeed, that obtaining the information was the driving forcebehind her entering the Agreement. (See Hearing Testimony ofMary Merritt ("Merritt Test."), attached as Ex. A to Affirmationof Andrew B. Bittens, dated Aug. 5, 2004.)[10]

Yet, that the provision of information about the painting toMerritt was of value, does not answer the question of whetherreceipt of that information alone, in the absence of Fagan's payment for the painting, was the only consideration sought forMerritt's giving up her claim to the painting. The Court does notintend to suggest that it was not, and there are plausiblearguments which can be made

to support the proposition. Forexample, the real value to Merritt of information about thepainting, including the identity of the painter, the fact of itssale, and sale price, may have been to assure that Fagan'srepresentations, and the premise for the monetary settlement theynegotiated, were accurate. If Fagan's representations were foundto be inaccurate, Merritt would have been free to repudiate themonetary portion of the Agreement. Although Merritt might havebeen prepared to forego claiming the painting, she would retainher right to assert claims against Fagan for, for example,conversion, and confirmation of the value of the painting wouldbe of value in establishing her damages. In fact, Merritt pursuedprecisely that course in the Connecticut courts.

By contrast, however, Merritt may be able to demonstrate thatthe real value of the information was to permit her to seekreturn of the painting should Fagan have breached his obligationsunder the Agreement, specifically the payment of monetaryconsideration. Indeed, Merritt may argue and demonstrate that thewhole premise of her willingness to resolve all claims to thepainting was Fagan's payment of $40,000, assuming that what herepresented the value of the painting to be was confirmed.[11]

Although the language of the Agreement surely suggests twoindependent exchanges of obligations, the Court cannot concludeas a matter of law that they are not inter-related. As furtherexample, one can question whether, had Fagan failed to providethe verification information, Merritt would still have beenobligated to proceed with accepting payment of $40,000, and towaive her claims against Fagan. Based on Spanierman'sconstruction of the Agreement, the answer would be in theaffirmative, since the corresponding obligation for Fagan'sprovision of the information was simply Merritt's waiver ofclaims against third parties. Yet, this construction does strainlogic.

In short, the Court is unable to conclude, as a matter of law,that Fagan's performance with respect to partial payment anddelivery of a note and mortgage is severable from his obligationto immediately reveal the auction catalogue and cooperate inverifying information about the painting. These are all matterswhich turn on the parties' intent, and are thus for the jury toresolve. See, e.g., Levine, 232 Conn. at 277; Carmel Homes,Inc., 2001 WL 1249810, at **2-3 (evidence presented at trial andsupplemental evidentiary hearing on question of parties' intent, at the timeof contract, with respect to contract divisibility).

Finally, even assuming the provisions of the Agreement wereseverable, there is a factual dispute as to whether Fagancomplied with his obligation to provide information about thesale of the painting, since Merritt claims that he neveridentified the purchaser. Spanierman responds that, at the time,Fagan did not know the purchaser, and therefore, he did notbreach his obligation to assist Merritt with verification of thesale information. Spanierman asserts that Fagan provided all ofthe information required of him, and that Merritt failed toverify the information provided to her.[12] These factualdisputes cannot be resolved by the Court.

CONCLUSION

SPANIERMAN GALLERY v. MERRITT

2004 | Cited 0 times | S.D. New York | August 9, 2004

For the foregoing reasons, Plaintiff's motion for summaryjudgment is denied in its entirety.

First, Merritt's claims are not barred by the statute oflimitations.

Second, while the Court concludes that the Agreement is a valid contract to which Spanierman Gallery is a third partybeneficiary, the Court cannot conclude as a matter of law thatthe Agreement precludes Merritt's claims against SpaniermanGallery.

The trial of this action will commence on August 10, 2004.

SO ORDERED.

1. Merritt asserted counterclaims in Spanierman Gallery,Profit Sharing Plan v. Merritt, 00 Civ. 5712, and identicalcross-claims in the interpleader action, United States ofAmerica v. Spanierman Gallery, PSP, and Merritt, 02 Civ. 1082.These actions were consolidated in May 2002. Although the Court'sOrder, dated June 29, 2004, granted Merritt leave to amend theAnswer in the lead action, 00 Civ. 5712, the premise of the Orderapplies equally to the interpleader action, and therefore, willbe deemed to apply to the interpleader action, nunc protunc. See Spanierman Gallery v. Merritt, No. 00 Civ.5712(THK), 2004 WL 1488118 (S.D.N.Y. June 30, 2004). For convenience, Spanierman Gallery is referred to at all timesherein as Plaintiff, and Merritt as Defendant.

2. The Court presumes familiarity with the underlying facts,which are set forth in more detail at Spanierman Gallery, ProfitSharing Plan v. Merritt, No. 00 Civ. 5712 (LTS) (THK), 2003 WL289704 (S.D.N.Y. Feb. 6, 2003).

3. Although Massachusetts, Connecticut, and New York each havea three year limitations period for replevin claims, their lawsdiffer with respect to when such claims accrue.

4. In the alternative, Spanierman argues that the Connecticutstatute of limitations applies, because "that is where [Merritt]relinquished possession of the painting to Timothy Fagan, i.e.,the state `where the property [was] located at the time of thetransfer.'" (Pl.'s Mem. at 8 (quoting Wertheimer, 2001 WL1657237).) While the Court recognizes that any transfer of titlewould have first occurred in Connecticut, where the painting cameinto Fagan's possession, the relevant transaction here occurredin Massachusetts, where Spanierman acquired the painting atauction.

5. N.Y.C.P.L.R. § 202 provides: An action based upon a cause of action accruing without the state cannot be commenced after the expiration of the time limited by the laws of either the state or the place without the state where the cause of action accrued, except that where the cause of action accrued in favor of a resident of the state the time limited by the laws of the state shall apply.

6. Merritt argues that her counter- and cross-claimsconstituted the relevant "demand," and that Spanierman's failureto acquiesce, at some point after June 30, 2004, gave rise to hercause of action. The argument is absurd for several reasons.First, given that Merritt reported the painting stolen to the FBIin January 2000, thereby precipitating its seizure, and sought toprevent Spanierman from establishing its right to title of thepainting by way of a motion to dismiss the

action in September2000, she cannot now assert that her first "demand" was lodgedone month ago. Further, as counsel is well aware, the Courtpermitted Merritt leave to amend her Answer to assert thereplevin claim because it had been patently clear from the outsetof this litigation that she had been asserting her right to titleand possession of the painting. See Spanierman Gallery, 2004WL 1488118, at *1; Spanierman Gallery, 2003 WL 289704, at *7("Here, Defendant . . . asserts a right to the painting in theGovernment's interpleader action."). (See also Answer, 02 Civ.1082, Prayer For Relief (seeking "an order declaring [that]Defendant Merritt is entitled to legal and actual title andpossession of the Arthur Wesley Dow painting.").)[EDITORS' NOTE: THE MARKER FOR FOOTNOTE 7 IS OMITTED FROM THE OFFICIALCOPY OF THIS DOCUMENT, THEREFORE THE MARKER IS NOT DISPLAYED IN THEONLINE VERSION.][fn7] Spanierman contends that Merritt, by waiting until June 30,2004, to amend her Answers, unreasonably delayed asserting herreplevin claims. While New York law may require an owner to bringa replevin claim without "unreasonable delay" upon learning wherethe property is located, see Lubell, 77 N.Y.2d at 319, 567N.Y.S.2d at 627, in light of the Court's conclusion that Merrittasserted a "demand" no later than in her September 2000 Motion toDismiss, Spanierman's argument is unavailing.

7. Under 28 U.S.C. § 1738, the Court applies Connecticut lawin determining the preclusive effect of the Connecticut SuperiorCourt's decision. See, e.g., Migra v. Warren City School Dist.Bd. of Educ., 465 U.S. 75, 81, 104 S.Ct. 892, 896 (1984) ("Itis now settled that a federal court must give to a state-courtjudgment the same preclusive effect as would be given thatjudgment under the law of the State in which the judgment wasrendered.") (discussing 28 U.S.C. § 1738).

8. Connecticut courts appear to permit citation to unpublishedopinions. See Conn. Rules Super. Ct. Gen. § 5.9.

9. The Court rejects Merritt's contention that, because Fagannever paid Merritt the $40,000 promised under the Agreement,there was never an "accord and satisfaction," and thus Merritt'sclaims are not discharged. Merritt's reliance on the "accord andsatisfaction" framework is misguided. "An accord is a contractunder which an obligee promises to accept a stated performance insatisfaction of the obligor's existing duty. Performance of theaccord discharges the original duty." Tolland Enters. v.Scan-Code, Inc., 239 Conn. 326, 333 (1996) (quotation marks andcitations omitted); see also Herbert S. Newman & Partners,P.C. v. CFC Constr. Ltd., 236 Conn. 750, 764 (1996) (quotingW.H. McCune, Inc. v. Revzon, 151 Conn. 107, 109 (1963)) ("Anaccord is a contract between creditor and debtor for thesettlement of a claim by some performance other than that whichis due. Satisfaction takes place when the accord is executed.");Barber v. Hafez & Hafez Co., No. CV000340305S, 2002 WL 853846,at *8 (Conn. Super. Ct. Apr. 9, 2002) (unpublished opinion) ("Theaccord must be a new agreement based on new consideration.")Simply put, the Agreement between Merritt and Fagan was not anaccord, because when they agreed to resolve their dispute, therewas no pre-existing performance due.

10. For example, at the damages hearing in Merritt'sConnecticut court action against Fagan, she testified that sheand her niece "tried to get [the painting's] location. We wantedto know where it was," but that Fagan would not disclose thisinformation "until money was discussed, until a settlement wasdiscussed. Then [the information] was offered." (Merritt Test. at33.) For further example, at her deposition, Merritt's niecetestified that the purpose of their meeting with Fagan onSeptember 14, 1999 "was to find out who the artist was and whathappened to the painting. . . . We were basically told thatunless Mary [Merritt] came to an agreement, that they [Fagan]weren't going, that we wouldn't know any information about thepainting and that she would never see the painting. . . .[Merritt] knew she had to sign the agreement to find out theinformation." (Showah Depo. at 88-89.)

11. Merritt is reminded, however, that "a retrospectiveconditional view [] as to what [she] now say[s] [she] would nothave agreed to, does not establish whether in fact the partiesthen actually contemplated or agreed to divisibility ornon-divisibility of the contract." Carmel Homes, Inc., 2001 WL1249810, at *3 n. 3.

12. Spanierman might also demonstrate that Fagan complied withhis obligation to assist with verifying the information about thepainting's sale, but was prevented by Merritt from completingperformance with respect to making the payments owed under theAgreement. If that is the case, the question of severabilityperhaps might need not be reached. The parties have not addressedquestions of whether Merritt or Fagan breached the Agreement, andthe consequences of any such breach.