SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

Michael P. Schulhof, as Executor of the Estate of Hannelore B. Schulhof v. Lisa Jacobs, individually and doing business as Lisa Jacobs Fine Art

Schulhof v. Jacobs, 2018 N.Y. Slip Op. 00528 (App. Div. 2018) · No. 157797/13; 595402/14 · Decided January 30, 2018

SUMMARY

The Appellate Division, First Department unanimously affirmed a judgment awarding the plaintiff $1,555,185.21 against the defendant and dismissed related appeals as subsumed in the appeal from the judgment. The court held that the parol evidence rule barred testimony varying a written agreement, found a fiduciary relationship between the defendant and the decedent, and upheld summary judgment on fraud and faithless servant claims. The court declined to award punitive damages, sanctions, or attorneys’ fees.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Friedman, J.P.; Gische, J.; Mazzarelli, J.; Kern, J.; Singh, J.
JURISDICTION	New York
DECIDED	January 30, 2018
DOCKET	157797/13; 595402/14
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment entered after summary judgment was granted to plaintiff, and plaintiff cross-appealed from the denial of punitive damages and sanctions. The parties also appealed from an order that was subsumed in the appeal from the judgment.
STANDARD OF REVIEW	De novo review of summary judgment determinations; abuse-of-discretion review of the denial of punitive damages and sanctions.
PRECEDENTIAL VALUE	published and precedential New York Appellate Division opinion
PARTIES	Lisa Jacobs, individually and doing business as Lisa Jacobs Fine Art v. Michael P. Schulhof, as Executor of the Estate of Hannelore B.

Schulhof

TOPICS

commercial litigation · evidence · parol evidence rule · remedies · appellate procedure

PRACTICE AREAS

commercial litigation · contract law · evidence · fraud · fiduciary duties · remedies · appellate procedure

QUESTIONS PRESENTED

1. Whether CPLR 4519 barred defendant's testimony concerning conversations with decedent on summary judgment.
2. Whether the parol evidence rule barred defendant's testimony about an alleged oral agreement that preceded and varied from the October 25, 2011 written agreement.
3. Whether defendant had a fiduciary relationship with decedent based on her agency relationship.
4. Whether plaintiff was entitled to summary judgment on his fraud claim, including the issue of reasonable reliance.
5. Whether the faithless servant doctrine applied to defendant's conduct.
6. Whether the court properly denied punitive damages, sanctions, and attorneys' fees.
7. Whether plaintiff's contract claim required adjudication after summary judgment was granted on the other claims.

HOLDINGS

1. CPLR 4519 did not preclude defendant's testimony on summary judgment about her conversations with decedent.
2. The parol evidence rule, together with the October 25, 2011 written agreement, barred defendant's testimony that she had reached an earlier oral agreement with decedent that preceded and varied from the written agreement.
3. Defendant had a fiduciary relationship with decedent as a matter of law because the principal-agent relationship is fiduciary and defendant's agreement with the purchaser identified her as agent for decedent, an undisclosed principal.
4. Summary judgment for plaintiff on the fraud claim was proper because the evidence established reasonable reliance notwithstanding plaintiff's business experience and defendant's statement that the buyer wished to remain anonymous.
5. The faithless servant doctrine applied because defendant occupied a fiduciary relationship with decedent, and summary judgment for plaintiff on that claim was proper.
6. The issue of whether plaintiff's contract claim should have been dismissed was academic in light of the court's resolution of the other claims.

7. The motion court properly declined to award punitive damages and sanctions, and plaintiff was not entitled to attorneys' fees.

KEY QUOTATIONS

> *"However, the parol evidence rule, coupled with the October 25, 2011 written agreement between the parties, bars defendant's testimony that she reached an oral agreement with decedent that precedes and varies from the written agreement"* (*1)

> *"The relationship between principal and agent is a fiduciary one"* (*1)

> *"Given the existence of a fiduciary relationship, the faithless servant doctrine applies"* (*1)

FACTUAL BACKGROUND

Defendant dealt with artwork as an agent for an undisclosed principal, decedent Hannelore Schulhof, and represented to plaintiff that the eventual buyer wished to remain anonymous. The parties had an October 25, 2011 written agreement, while defendant claimed that she had reached an earlier oral agreement with decedent that varied from the writing. Plaintiff asserted fraud and faithless-servant claims arising from defendant's conduct in connection with the artwork transaction.

PROCEDURAL HISTORY

Supreme Court, New York County, entered a March 17, 2017 judgment against defendant and in plaintiff's favor for $1,555,185.21. The Appellate Division unanimously affirmed the judgment, dismissed the appeals from the March 1, 2017 order as subsumed in the judgment appeal, and upheld the denial of punitive damages, sanctions, and attorneys' fees.

DISPOSITION

affirmed

CASES CITED

- Phillips v. Kantor & Co., 31 N.Y.2d 307 (1972)
- SAA-A, Inc. v. Morgan Stanley Dean Witter & Co., 281 A.D.2d 201, 203 (1st Dep't 2001)
- Laskey v. Rubel Corp., 303 N.Y. 69, 71 (1951)
- TPL Assoc. v. Helmsley-Spear, Inc., 146 A.D.2d 468, 470-471 (1st Dep't 1989)
- Murray v. Beard, 102 N.Y. 505, 508 (1886)
- Global Mins. & Metals Corp. v. Holme, 35 A.D.3d 93, 99 (1st Dep't 2006), lv. denied, 8 N.Y.3d 804 (2007)
- Whittemore v. Yeo, 117 A.D.3d 544, 545 (1st Dep't 2014)
- Frame v. Maynard, 83 A.D.3d 599, 603 (1st Dep't 2011)
- SS & J Morris v. Mahoney Cohen & Co., 264 A.D.2d 343, 343 (1st Dep't 1999)
- Feiger v. Iral Jewelry, 41 N.Y.2d 928 (1977)
- Matter of Birnbaum v. Birnbaum, 157 A.D.2d 177, 192-193 (4th Dep't 1990)

- Matter of Flanigan v. Smyth, 148 A.D.3d 1249, 1251 (3d Dep't 2017), lv. dismissed in part and denied in part, 29 N.Y.3d 1046 (2017)
- Schneidman v. Tollman, 261 A.D.2d 289, 290 (1st Dep't 1999), lv. denied, 94 N.Y.2d 756 (1999)

OPINION

PER CURIAM.

Schulhof v Jacobs (2018 NY Slip Op 00528) Schulhof v Jacobs 2018 NY Slip Op 00528 Decided on January 30, 2018 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on January 30, 2018 Friedman, J.P., Gische, Mazzarelli, Kern, Singh, JJ. 157797/13 5561 595402/14 5560 [*1]Michael P. Schulhof, as Executor of the Estate of Hannelore B. Schulhof, Plaintiff-Respondent-Appellant, vLisa Jacobs, individually and doing business as Lisa Jacobs Fine Art, Defendant-Appellant-Respondent.

[And A Third-Party Action] Nicholas Goodman & Associates, PLLC, New York (H. Nicholas Goodman of counsel), for appellant-respondent. Warshaw Burstein, LLP, New York (Robert Fryd of counsel), for respondent-appellant. Judgment, Supreme Court, New York County (Charles E. Ramos, J.), entered March 17, 2017, against defendant and in plaintiff's favor in the amount of $1,555,185.21, unanimously affirmed, without costs.

Appeals from order, same court and Justice, entered March 1, 2017, unanimously dismissed, without costs, as subsumed in the appeal from the judgment. CPLR 4519 does not preclude, on summary judgment, defendant's testimony about her conversations with decedent Hannelore Schulhof (see Phillips v Kantor & Co., 31 NY2d 307 [1972]).

However, the parol evidence rule, coupled with the October 25, 2011 written agreement between the parties, bars defendant's testimony that she reached an oral agreement with decedent that precedes and varies from the written agreement (see SAA-A, Inc. v Morgan Stanley Dean Witter & Co., 281 AD2d 201, 203 [1st Dept 2001]; see also Laskey v Rubel Corp., 303 NY 69, 71 [1951]).

The motion court correctly found, as a matter of law, that defendant had a fiduciary relationship with decedent. The contract between defendant and the eventual purchaser of the artwork at issue states that defendant is acting as agent for an undisclosed principal — i.e., for decedent.

The relationship between principal and agent is a fiduciary one (see TPL Assoc. v Helmsley-Spear, Inc., 146 AD2d 468, 470 [1st Dept 1989]; see also Murray v Beard, 102 NY 505, 508 [1886]). The motion court also correctly granted summary judgment to plaintiff on his fraud claim.

The issue of reasonable reliance can be resolved on a summary judgment motion (see Global Mins. & Metals Corp. v Holme, 35 AD3d 93, 99 [1st Dept 2006], lv denied 8 NY3d 804 [2007]).

Further, plaintiff's success as a businessman does not preclude a finding of reliance (see Whittemore v Yeo, 117 AD3d 544, 545 [1st Dept 2014]; see also Frame v Maynard, 83 AD3d 599, 603 [1st Dept 2011]).

Defendant told plaintiff that the buyer of the art wished to remain anonymous, which prevented plaintiff from conducting due diligence by, for example, contacting the buyer (see SS & J Morris v Mahoney Cohen & Co., 264 AD2d 343, 343 [1st Dept 1999]). Since defendant had a fiduciary relationship with decedent, plaintiff was not required to obtain the kinds of representations and warranties that defendant suggests in her reply brief (see TPL, 146 AD2d at 470-471).

Given the existence of a fiduciary relationship, the faithless servant doctrine applies, and the motion court correctly granted plaintiff summary judgment on that claim (see e.g. Feiger v Iral Jewelry, 41 NY2d 928 [1977]). Given the foregoing, the issue of whether the motion court should have dismissed [*2]plaintiff's contract claim is academic.

The motion court providently exercised its discretion in declining to award plaintiff punitive damages and sanctions (see Matter of Birnbaum v Birnbaum, 157 AD2d 177, 192-193 [4th Dept 1990][punitive damages]; Matter of Flanigan v Smyth, 148 AD3d 1249, 1251 [3d Dept 2017] [sanctions], lv dismissed in part and denied in part 29 NY3d 1046 [2017]). Plaintiff is not entitled to attorneys' fees (see Schneidman v Tollman, 261 AD2d 289, 290 [1st Dept 1999], lv denied 94 NY2d 756 [1999]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: JANUARY 30, 2018 CLERK