



Addison Thompson, Appellant, v The Andy Warhol Foundation for the Visual Arts, Inc., et al., Respondents, et al., Defendants.

9312, 104819/11

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

103 A.D.3d 528; 959 N.Y.S.2d 436; 2013 N.Y. App. Div. LEXIS 1099; 2013 NY Slip Op 1159

February 21, 2013, Decided

February 21, 2013, Entered

SUBSEQUENT HISTORY: Leave to appeal denied by *Thompson v. Andy Warhol Found. for the Visual Arts, Inc.*, 21 N.Y.3d 861, 993 N.E.2d 1274, 2013 N.Y. LEXIS 1770, 971 N.Y.S.2d 252 (2013)

PRIOR HISTORY: *Thompson v. Andy Warhol Found. for the Visual Arts, Inc.*, 33 Misc. 3d 1221(A), 943 N.Y.S.2d 795, 2011 N.Y. Misc. LEXIS 5393 (2011)

HEADNOTES

Contracts--Contractual Limitation of Liability--ovenants Not to Sue--Bar to Breach of Contract and Negligence Claims

Torts--Actionable Wrong--Lack of Special Relationship

COUNSEL: [***1] Steptoe & Johnson LLP, New York (Michael D. Rips of counsel), for appellant.

Boies Schiller & Flexner LLP, Albany (Luke Nikas of counsel), for respondents.

JUDGES: Concur--Friedman, J.P., Sweeny, Renwick, Freedman and Román, JJ.

OPINION

[*529] [**436] Order, Supreme Court, New York County (Carol R. Edmead, J.), entered November 14, 2011, which, insofar as appealed from as limited by the briefs, granted the motion of defendants The Andy Warhol Foundation for the Visual Arts, Inc. and The Andy Warhol Authentication Board, Inc. to dismiss the complaint as against them, unanimously affirmed, without costs.

The covenants not to sue in the letter agreements that plaintiff signed bar his claims for breach of contract and gross or ordinary negligence, to the extent such a cause of action can be gleaned from the pro se pleadings (*see e.g. Colnaghi, U.S.A. v Jewelers Protection Servs.*, 81 NY2d 821, 823, 611 NE2d 282, 595 NYS2d 381 [1993]). Plaintiff's claims must be dismissed, as defendants' only duty to plaintiff was that undertaken by the letter agreements. There was no special relationship between the parties that would give rise to a tort claim (*see Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 944 NE2d 1104, 919 NYS2d 465 [2011]), and as this court previously observed, the market place is the [***2] appropriate place to resolve authentication disputes (*Thome v Alexander & Louisa Calder Found.*, 70 AD3d 88, 890 NYS2d 16 [2009], *lv denied* 15 NY3d 703, 933 NE2d 216, 906 NYS2d 817 [2010]).

Contrary to the parties' arguments, neither side has

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engaged in conduct that warrants the imposition of sanctions. Concur--Friedman, J.P., Sweeny, Renwick, Freedman and Román, JJ. [**Prior Case History: 33 Misc 3d 1221(A), 943 NYS2d 795, 2011 NY Slip Op 52046(U).**]