

ORLEANS PARISH CIVIL DISTRICT COURT

STATE OF LOUISIANA

NO.: 2012-11416 SECTION "___"

FILED
2012 JUN 14 P 3 55
CIVIL DISTRICT COURT
DIVISION "I-14"

DAVID V. ADLER, TRUSTEE OF THE
NEW ORLEANS AUCTION GALLERIES, INC. LITIGATION TRUST

versus

JEAN R. VIDOS, TESSA STEINKAMP, CAMILLE P. HOROS
AND FEDERAL INSURANCE COMPANY

FILED: _____

DEPUTY CLERK

PETITION FOR DAMAGES

NOW INTO COURT, through undersigned counsel, comes Plaintiff, DAVID V. ADLER, Trustee of the New Orleans Auction Galleries, Inc. Litigation Trust, who respectfully files this Petition for Damages against defendants JEAN R. VIDOS, TESSA STEINKAMP, CAMILLE P. HOROS and FEDERAL INSURANCE COMPANY (collectively, "Defendants") upon representing as follows:

I.

PARTIES

1. Plaintiff DAVID V. ADLER, is the duly appointed and acting Trustee of the New Orleans Auction Galleries, Inc. Litigation Trust established pursuant to the June 1, 2012 Order Confirming Debtor's Sixth Amended Plan of Reorganization ("Confirmation Order") entered by the United States Bankruptcy Court for the Eastern District of Louisiana (the "Bankruptcy Court"). The Confirmation Order confirmed the Sixth Amended Plan of Reorganization for New Orleans Auction Galleries, Inc., as modified by the First and Second Immaterial Modifications (together, the "Plan"). Plaintiff Adler is a natural person of the full age of majority, a citizen and resident of the State of Louisiana.

2. Defendant JEAN VIDOS is a natural person of the full age of majority, a citizen of the State of Louisiana and a resident of the city of New Orleans, Parish of Orleans. Ms. Vidos was the President and sole shareholder of New Orleans Auction Galleries, Inc. ("NOAG") from its founding in 1991 through 2012.

3. Defendant TESSA STEINKAMP is a natural person of the full age of majority, a citizen of the State of Louisiana and a resident of the city of Slidell, Parish of St. Tammany. Upon information and belief, Ms. Steinkamp was the Vice President, Secretary and Treasurer of NOAG at all times relevant hereto.

4. Defendant CAMILLE P. HOROS is a natural person of the full age of majority, a citizen of the State of Louisiana and a resident of the city of Kenner, Parish of Jefferson. Ms. Horos was an employee of NOAG at all times relevant hereto.

5. Defendant FEDERAL INSURANCE COMPANY is an insurance company domiciled in the State of Indiana with its principal place of business in Warren, New Jersey that is registered to do business in the State of Louisiana with the Louisiana Department of Insurance and issued that certain insurance policy to NOAG with an effective date of December 9, 2011.

II.

JURISDICTION AND VENUE

6. Venue is proper in this Court under Article 74 of the Louisiana Code of Civil Procedure because the wrongful conduct at issue in this petition, and the damages sustained, occurred in this Parish.

7. NOAG was at all relevant times operating in this Parish with its principal place of business located in this Parish.

III.

FACTUAL BACKGROUND

8. Plaintiff alleges claims under state law for breach of fiduciary duty and negligence as a result of the errors and omissions committed by the former officers, directors and employees of NOAG. These errors and omissions diminished the value of NOAG and left it unable to pay its creditors.

9. NOAG was founded by Ms. Vidos and others in 1991. NOAG conducted auctions of antique furniture, fine porcelain, vintage and antique jewelry, and other rare and decorative objects from private collections and noted estates throughout the region and across the country. NOAG maintained a gallery in the Central Business District of New Orleans at 801 Magazine Street.

10. In 1996, an affiliate entity of NOAG, New Orleans Auction - St. Charles Gallery, Inc. (“St. Charles Gallery”) was established. St. Charles Gallery operated a substantially similar auction business out of a separate location in the Garden District. The St. Charles Gallery closed and terminated its business operations prior to July of 2011.

11. NOAG conducted approximately six (6) auctions per year and obtained the goods sold at its auctions through relationships with consignors, including individual collectors and dealers, with whom NOAG maintained ongoing consignment agreements. The consignors would provide goods for NOAG to sell at its auctions. Upon the sale, a percentage of the sale price, known as the “Hammer Price,” between 10 and 25%, would be kept by NOAG as a commission, and the remainder would go to the consignor. NOAG also purchased a small amount of inventory to include in its auctions.

12. Auctioneers, such as NOAG, are required to maintain separate escrow accounts for the Hammer Prices from its sales of consigned goods and those funds may not be commingled with any other funds of the auctioneer. The only permitted use of such escrow accounts is to pay consignors and the commissions to the auctioneer.

13. Beginning in 2003 and continuing through 2011, Ms. Vidos and Ms. Steinkamp served as the sole officers and directors of NOAG. During this same time period, Ms. Vidos and Ms. Steinkamp served as auctioneers and managed the relationships with consignors while Ms. Horos served as NOAG’s bookkeeper and accountant.

14. Throughout Ms. Horos’ employment, Ms. Vidos and Ms. Steinkamp failed to properly supervise Ms. Horos.

15. Ms. Vidos, Ms. Steinkamp, and Ms. Horos failed to maintain proper financial books and records and to observe corporate formalities, such as conducting regularly scheduled Board meetings and keeping minutes of Board meetings.

16. In 2008, the global recession and tightened credit markets caused a decline in NOAG’s sales and revenues. In April 2008, NOAG and St. Charles Gallery entered into a written agreement with Susan Krohn to purchase furniture and other items in Europe in order to sell them at NOAG and St. Charles Gallery with the parties splitting the profits (the “Agreement”).

Under the Agreement, Ms. Krohn provided two million dollars in cash; NOAG and St. Charles Gallery agreed to forego their commission; and profits from the sales would be split evenly between Ms. Krohn and NOAG/St. Charles Gallery.

17. Ms. Vidos did not deposit the two million dollars received from Ms. Krohn into the corporate account of NOAG. While some of those funds were used for the benefit of NOAG, the entirety of the two million dollars has not been accounted for.

18. Beginning in 2010, Ms. Vidos, Ms. Steinkamp and Ms. Horos caused sale proceeds that belonged to consignors to be used for operating and other expenses of NOAG. Upon information and belief, Ms. Vidos also used funds belonging to NOAG and consignors to pay personal expenses unrelated to the operations of NOAG.

19. In early 2011, Ms. Vidos suffered from a serious medical condition and took an extended leave of absence from NOAG.

20. During this time, Ms. Steinkamp assumed control over the operations of NOAG and conducted an auction in January 2011. Ms. Steinkamp caused the sale proceeds from the January auction to be used for purposes other than paying those consignors whose goods were sold at that auction. Upon information and belief, Ms. Horos assisted her with these actions.

21. This misappropriation of consignor funds was discovered, in part, in March 2011 and on April 1, 2011, NOAG filed a petition for Chapter 11 bankruptcy protection in the Bankruptcy Court. Immediately upon the filing, NOAG was forced to seek emergency financing in order to pay those consignors who were owed proceeds from the sales of their items at the January 2011 auction. That loan in the amount of \$300,000.00 was at an interest rate of 12% and an initial 3% fee.

22. Neither Ms. Vidos nor Ms. Steinkamp properly supervised Ms. Horos during this time period and on the eve of NOAG's Chapter 11 filing, Ms. Horos caused a payment to be made to Southern Electronics in the amount of \$260,000.00 which was clearly a preferential payment under the Bankruptcy Code.

23. As a result of the mismanagement of NOAG by Defendants, and the acts and omissions outlined above, the value of NOAG was substantially diminished. In addition, its

reputation as a first-class auction house was sullied, both in the eyes of customers and in the eyes of others who might be interested in purchasing the company.

24. Ultimately, the assets, name and goodwill of NOAG were sold through the bankruptcy process at a value far lower than what would have been received through a sale outside of the bankruptcy process. This resulted in losses to creditors of NOAG totaling several million dollars.

25. The Bankruptcy Court entered the Confirmation Order on June 1, 2012.

IV.

FIRST CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY **(Jean Vidos and Tessa Steinkamp)**

26. Plaintiff adopts by reference and incorporates all previous allegations in all preceding paragraphs as if fully set forth herein.

27. Ms. Vidos and Ms. Steinkamp were officers and directors who owed fiduciary duties to NOAG.

28. Ms. Vidos and Ms. Steinkamp breached their duties to NOAG by *inter alia*:

- a. failing to maintain proper financial books and records;
- b. failing to observe corporate formalities, including conducting regularly scheduled Board meetings and keeping minutes of Board meetings;
- c. failing to properly supervise NOAG's employees, including Ms. Horos;
- d. failing to properly account for funds belonging to consignors;
- e. failing to timely pay consignors; and
- f. causing funds belonging to consignors to be used for other purposes.

29. Ms. Vidos also breached her duties to NOAG by converting funds of NOAG for her personal use.

30. These actions and inactions of Ms. Vidos and Ms. Steinkamp caused damage to NOAG by diminishing the value of NOAG and further by causing losses to creditors totaling several million dollars.

V.

SECOND CAUSE OF ACTION

NEGLIGENCE

(Jean Vidos, Tessa Steinkamp and Camille Horos)

31. Plaintiff adopts by reference and incorporates all previous allegations in all preceding paragraphs as if fully set forth herein.

32. Ms. Vidos, Ms. Steinkamp and Ms. Horos were negligent in their management and operation of NOAG including *inter alia*:

- a. failing to maintain proper financial books and records;
- b. failing to observe corporate formalities, including conducting regularly scheduled Board meetings and keeping minutes of Board meetings;
- c. failing to properly supervise NOAG's employees, including Ms. Horos;
- d. failing to properly account for funds belonging to consignors;
- e. failing to timely pay consignors;
- f. causing funds belonging to consignors to be used for other purposes; and
- g. issuing payments to certain creditors in preference to others and when NOAG lacked sufficient funds to maintain its operations.

33. These actions and inactions by the Defendants caused damage to NOAG by diminishing the value of NOAG and by causing losses to creditors totaling several million dollars.

34. Pursuant to Section 108(a) of the United States Bankruptcy Code, Plaintiff may commence an action on behalf of NOAG within the period allowed by state law for such an action or within two years after the order for relief, whichever is later. *See* 11 U.S.C. § 108(a). Thus, this cause of action is timely because this filing is made within the two year period following entry of the Confirmation Order on June 1, 2012.

VI.

THIRD CAUSE OF ACTION

DIRECT ACTION

(National Insurance Company)

35. Plaintiff adopts by reference and incorporates all previous allegations in all preceding paragraphs as if fully set forth herein.

36. Louisiana Revised Statute section 22:1269(B)(1) provides:

[An] injured person...at their option, shall have a right of direct action against the insurer within the terms and limits of the policy; and, such action may be brought against the insurer alone, or against both the insured and insurer jointly and in solido, in the parish in which the accident or injury occurred or in the parish in which an action could be brought against either the insured or the insurer under the general rules of venue prescribed by Code of Civil Procedure Art. 42 only...

37. The claims set forth herein against Ms. Vidos, Ms. Steinkamp, and Ms. Horos are covered claims under Insuring Clause I(A) of that certain insurance policy issued by Federal Insurance Company to NOAG with an effective date of December 9, 2011 (the "Policy"), which provides, in pertinent part:

The **Company** shall pay **Loss** on behalf of the **Insured Persons** resulting from any **D&O Claim** first made against such **Insured Persons** during the **Policy Period**, or any applicable Extended Reporting Period, for **Wrongful Acts** to the extent the **Insured Organization** does not indemnify the **Insured Persons** for such **Loss**.

Policy, Directors & Officers Liability Coverage Section, p. 2, Clause I(A) (emphasis in original).

This coverage is not subject to any of the exclusions set forth in the Policy.

38. The Policy defines "Loss" as "the total amount which any **Insured** becomes legally obligated to pay as a result of any **Claim** made against any **Insured** for **Wrongful Acts**...." *Id.*, p. 4, Clause II(L) (emphasis in original).

39. Ms. Vidos, Ms. Steinkamp, and Ms. Horos are Insured Persons under the Policy. The Policy defines "Insured Persons" as "any past, present or future **Executive** or **Employee** of the Insured Organization." *Id.*, p. 4, Clause II(J). The Policy's definition of "Executive" includes, among other persons, any duly elected or appointed directors or officers of the Insured Organization. *Id.*, p. 3, Clause II(F)(1). The Policy defines "Employee" as "any natural person whose labor or service is engaged by and directed by the **Insured Organization**..." *Id.*, p. 3, Clause II(E) (emphasis in original).

40. NOAG is the Insured Organization under the Policy.

41. This claim is being made against Ms. Vidos, Ms. Steinkamp, and Ms. Horos during the Policy Period. The Policy Period is December 9, 2011 to December 9, 2012. Policy, General Terms and Conditions Section, p. 1, Declarations, Item 2 and p. 4, Clause II(N).

42. This suit constitutes a D&O Claim covered under the Policy. The Policy's definition of "D&O Claim" includes, among other claims, "a civil proceeding commenced by the service of a complaint or similar pleading... against an **Insured Person** for a **Wrongful Act**[".]” *Id.*, p. 3, Clause II(D) (emphasis in original).

43. The acts by Ms. Vidos, Ms. Steinkamp, and Ms. Horos set forth in Sections III, IV, and V herein constitute Wrongful Acts under the Policy. For purposes of claims brought against Insured Persons, the Policy defines "Wrongful Act" as "any error, misstatement, misleading statement, act, omission, neglect, or breach of duty committed, attempted, or allegedly committed or attempted by... any **Insured Person** in his or her capacity as such, or any matter claimed against any **Insured Person** solely by reason of his or her status as such" or "any **Outside Capacity Wrongful Act**." *Id.*, pp. 5-6, Clause II(U)(1) (emphasis in original).

VII.

JURY DEMAND

Plaintiff demands a trial by jury on all causes of action herein and all remedies requested herein.

VIII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff DAVID V. ADLER, Trustee of the New Orleans Auction Galleries, Inc. Litigation Trust requests that this Petition be filed and served on all parties and that, after due proceedings are had, there be judgment rendered herein in Plaintiff's favor and against the defendants, declaring that the defendants are to be liable and indebted unto the Plaintiff, jointly and *in solido*, for:

- a. all damages as are just and reasonable under the circumstances,
- b. judicial interest from the date of judicial demand; and

- c. the award of costs, expenses and reasonable attorneys' fees in favor of Plaintiff and against the defendants to the fullest extent authorized by law; and
- d. such other and further relief which the Court deems necessary and proper at law and in equity and that may be just and reasonable under the circumstances of this matter.

Respectfully submitted,



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