

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART 53

Justice

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THE PEOPLE OF THE STATE OF NEW YORK, BY
LETITIA JAMES, ATTORNEY GENERAL OF THE STATE
OF NEW YORK

Plaintiff,

- v -

SOTHEBY'S, INC.,

Defendant.

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INDEX NO. 452192/2020

MOTION DATE 12/18/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14

were read on this motion to/for DISMISS

The motion to dismiss must be denied because it is predicated on the mistake that Sotheby's, Inc. (Sotheby's) would not face liability under the False Claim Act (the FCA; State Finance Law, Art. 13 § 188[3][a][ii]) when it allegedly not only willfully turned a blind eye to whether an auctioned item was purchased for resale by bifurcating the Client Accounting Department (which reviewed the resale certificates and was not in a position to know if the resale certificates were accurate) from other Sotheby's employees who had the client relationships and possessed actual knowledge (State Finance Law, Art. 13, §§ 188[3][i] and [ii]) that the resale certificates were, in fact, false but also by actively conspiring with the collector to knowingly conceal or knowingly and improperly avoid and decrease the obligation to pay or transmit money to the State through the use of false resale certificates:

[A]ny person who:

(h) knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state or a local government, or *conspires to do the same*;

(FSA, § 189[1][h] [emphasis added]).

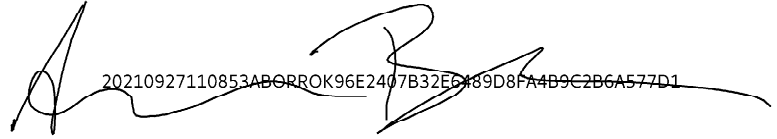
To wit, among other things, the well pled complaint alleges that certain Sotheby's employees recommended the use of and "even partially completed" resale certificates for their clients and requested that Client Accounting "zero out" sales tax from all invoices associated with the purchases with these false resale certificates (NYSCEF Doc. No. 1, ¶¶ 56, 64-66, 110-112). It is of no moment that the tax statute may also impose penalties because, on the record before the court, nothing suggests that liability for the presentation of false resale certificates in connection with the failure to collect certain sales tax was limited to liability under the tax law. In addition, it is unequivocal that Sotheby's has an obligation to collect sales tax unless a proper resale certificate is presented. Moreover, Sotheby's cannot disclaim liability merely because only 29 of its over 1000 employees are alleged to have had actual knowledge of the conceit, particularly because it is the Key Client Manager and the Senior Specialist who would have had, and, as alleged, did have, actual knowledge of the false resale certificates, as, among other facts alleged in the complaint, they viewed the collector's purchases on display for personal use at his apartment (*id.*, ¶¶ 139-140). Finally, the complaint sufficiently alleges that Sotheby's taxable sales were falsely stated because they excluded sales with the false resale certificates (*id.*, ¶¶ 156-57). The court has considered Sotheby's remaining arguments and considers them unavailing.

Accordingly, it is

ORDERED that the motion to dismiss is denied; and it is further

ORDERED that the defendant is directed to file an answer within 20 days of this decision and order; and
it is further

ORDERED that the parties appear for a preliminary conference in Part 53, by remote means, on October
26, 2021 at 11:30 AM.



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9/27/2021
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE