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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

J. DARIUS BIKOFF,

Plaintiff,

-against-

JAMES DOWLING and PASTIME,

Defendants.

16-cv-5478

**COMPLAINT
(ECF CASE)**

Plaintiff J. Darius Bikoff (“Bikoff”), by and through his attorneys, Davis & Gilbert LLP, for his Complaint against Defendants James Dowling (“Dowling”) and Pastime (collectively, the “Defendants”), alleges as follows:

NATURE OF ACTION

1. This action arises out of intentional and fraudulent misrepresentations made by Dowling, a watch dealer known in the trade, to Bikoff regarding the purchase of certain watches from Pastime, Dowling’s United Kingdom entity engaged in the resale of rare and collectible watches.

2. In particular, with respect to at least two watches Pastime sold to Bikoff, Dowling made misrepresentations regarding the watches' value, provenance, and authenticity which Dowling knew to be false at the time he made them.

3. With respect to three other watches Pastime sold to Bikoff, Dowling made misrepresentations about the value of the watches, based on his extensive experience in the trade, which he knew to be grossly inflated at the time he made the misrepresentations and at the time of the sale.

4. Dowling has refused to provide a full refund and to make Bikoff whole with respect to the five watches.

5. Further, Bikoff has reason to believe that Defendants are engaged in a broader scheme to defraud purchasers of rare and collectible watches.

6. Plaintiff is entitled to damages and punitive damages because of Defendants' fraudulent conduct and refusals to make Plaintiff whole.

PARTIES

7. Plaintiff J. Darius Bikoff is a citizen of the State of New York, domiciled in New York County, New York.

8. Defendant Pastime is an unincorporated United Kingdom entity with its principal place of business in London, England, and a mailing address of P.O. Box 874, London, U.K. NW3 5TT.

9. Defendant James Dowling is a citizen of the United Kingdom, domiciled in Greater London County, England.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332(a)(2) because Plaintiff is a citizen of New York, and Defendants are citizens of the United Kingdom, and the matter in controversy exceeds \$75,000 exclusive of interests and costs.

11. This Court has personal jurisdiction over Defendants pursuant to N.Y. CPLR § 302(a) because Defendants transact business within the state of New York and within this District and Plaintiff's claims arise from and are related to such transaction of business, and Defendants have committed tortious acts within the state of New York (or if they were committed without the state, they caused injury to Plaintiff within the state, and within the state Defendants engaged in a persistent course of conduct, derived substantial revenue from services rendered, should have reasonably expected their acts to have consequences in, and derived substantial revenue from interstate commerce). Plaintiff's claims arise from and are related to Defendants' contacts with the state of New York.

12. Venue in this judicial district is proper pursuant to 28 U.S.C. § 1391(b)(2) because this civil action is founded on diversity jurisdiction and this is the district in which a substantial part of the events giving rise to the claims occurred, and pursuant to 28 U.S.C. § 1391(c)(3) because Defendants are not resident in the United States. Venue in this judicial district is also proper pursuant to 28 U.S.C. § 1391(a) because this civil action is founded on diversity jurisdiction and Defendants reside in this district due to their being subject to personal jurisdiction pursuant to their transaction of business in the district.

FACTS

Background and Introduction of the Parties

13. Dowling is a collector and dealer of fine watches, and upon information and belief, maintains the website www.ukwatches.com to promote himself and list watches Defendants have available for sale.

14. According to the website, Dowling “first became interested in watches over a quarter century ago and began to buy and sell them about twenty years ago”.

15. Dowling claims to have co-authored “the book ‘Best of Time: Rolex Wristwatches’, now in its third edition and [to] have also written on watches for magazines in the US, the UK, Australia and Japan.”

16. Dowling further states that he is one “of the most respected authorities in the business” of wristwatches, and provides on the website images of magazine articles written by or discussing him.

17. Dowling goes on to say that “[w]hilst I buy and sell a lot of watches, it is important to realise that I am a collector at heart, which means that I tend only to buy watches which have something special about them, not run of the mill pieces and they tend to be between 15 and 90 years old.”

18. Accordingly, Dowling has positioned himself as an authority on rare and collectible watches, who can supposedly be trusted to provide truthful and accurate information.

19. Currently, Dowling has approximately 46 watches listed on the website as being available for sale.

20. In 2011, Bikoff became interested in purchasing Rolex watches and asked his friend, an avid watch collector, to introduce him to someone who would have access to rare Rolex sport and military watches.

21. Shortly thereafter, the friend brought Bikoff to a watch fair in New York City that was part of the International Watch Show, where he introduced Bikoff to Dowling.

22. Dowling claimed to have an extensive collection of rare and collectible watches, including watches that might be of interest to Bikoff.

Dowling's Sales to Bikoff and New York Contacts

23. On April 24, 2011, Dowling met with Bikoff in New York City.

24. At the April 24, 2011 meeting in New York, Dowling showed Bikoff various watches, and made his first sale of watches to Bikoff.

25. Dowling's first sale was for four Rolex watches for a total sale price of £147,964 (to be paid by bank transfer of \$240,000). (*See* Invoice 2005081 attached as Exhibit A).

26. Included in the first sale was a Rolex 6538 Submariner (the "Rolex Submariner Watch"), which was purchased by Bikoff for £56,808.39 (the list price of £65,000 less a discount applied to the entire sale, the representative share of which is £8,191.61, *see* Exhibit A).

27. Dowling represented, at the time of sale, that the Rolex Submariner Watch had a "stunning 'Explorer' style" dial and "the original gilt hour & minute hands." (*See* Rolex Submariner Watch Marketing Materials, attached as Exhibit B).

28. In August 2012, Dowling made another sale of watches to Bikoff, after again meeting with Bikoff in New York and showing him various watches.

29. The second sale involved three watches being delivered to Bikoff and the trade-in of one of the watches purchased in the first sale. (*See* Invoice 2005088 attached as Exhibit C).

30. Included in the second sale was an IWC Ocean 2000 Bund (the "IWC Bund Watch"), which was purchased by Bikoff for £49,500 (the list price of £55,000 less a discount applied to the entire sale, the representative share of which is £5,500, *see* Exhibit C).

31. Dowling represented, at the time of the sale, that the IWC Bund Watch was worth at least \$80,000.

32. Dowling continued to deal in watches with Bikoff in 2013.

33. On or about August 10, 2013 Dowling again met with Bikoff in New York City.

34. At the August 2013 meeting, Dowling made another sale of watches to Bikoff.

35. Dowling's August 2013 sale involved three watches being delivered to Bikoff and the trade-in of four of the watches previously purchased. (*See* Invoice 2005092 attached as Exhibit D).

36. Included in the August 2013 sale was a Rolex Tektite GEV Sea Dweller (the "Rolex Tektite GEV Watch"), which was purchased by Bikoff for \$395,000. (Exhibit D).

37. Dowling represented, at the time of sale, that the Rolex Tektite GEV Watch was in "excellent original condition." (*See* Rolex Tektite GEV Watch Marketing Materials, attached as Exhibit E).

38. Also included in the August 2013 sale was a Rolex 16660 COMEX 'Ludion' Sea Dweller (the "Rolex Ludion Watch"), which was purchased by Bikoff for \$200,000. (Exhibit D).

39. Dowling represented, at the time of the sale, that the Rolex Ludion Watch was worth at least \$200,000.

40. Finally, the third watch included in the August 2013 sale was a Tudor Shayetet Submariner (the "Tudor Shayetet Watch"), which was purchased by Bikoff for \$70,000 (the list price of \$71,500 less a discount of \$1,500, *see* Exhibit D).

41. Dowling represented, at the time of the sale, that the Tudor Shayetet Watch was worth at least \$70,000.

42. Dowling made fraudulent misrepresentations regarding, and personally showed, each of the Rolex Tektite GEV Watch, the Rolex Submariner Watch, the IWC Bund Watch, the Rolex Ludion Watch, and the Tudor Shayetet Watch (collectively, the “Subject Watches”) to Bikoff during their meetings in New York.

Discovery of Dowling’s Fraud

43. In the summer of 2015, Bikoff considered selling some of the watches purchased from Dowling, and contacted a well-known watch dealer in Miami, Florida, to determine their value.

44. The Miami watch dealer expressed concerns about the authenticity of certain of the watches, including the Rolex Tektite GEV Watch, the Rolex Submariner Watch, and the Rolex Ludion Watch, as well the generally inflated prices at which Dowling sold many of his watches to Bikoff.

45. The Miami watch dealer refused to assign a value to either of the Rolex Tektite GEV Watch or the Rolex Submariner Watch due to its concerns about the authenticity of those watches.

46. The Miami watch dealer valued each of the IWC Bund Watch, the Rolex Ludion Watch, and the Tudor Shayetet Watch at significantly less than the amounts paid by Bikoff to Dowling.

47. The Miami watch dealer valued the IWC Bund Watch at \$15,000, compared to the £49,500 (approximately \$77,000 as of the date of the sale, and approximately \$72,000 at present) paid by Bikoff to Dowling.

48. The Miami watch dealer valued the Rolex Ludion Watch at \$35,000, compared to the \$200,000 paid by Bikoff to Dowling.

49. The Miami watch dealer valued the Tudor Shayetet Watch at \$10,000, compared to the \$70,000 paid by Bikoff to Dowling.

Attempts to Reconcile with Dowling

50. In light of the concerns raised by the Miami watch dealer, Bikoff's representatives attempted to have Dowling repurchase all the watches sold to Bikoff.

51. Dowling, in a further effort to deceive Bikoff, continued to insist that all of the watches Defendants sold to Bikoff were authentic (and had actually *appreciated* in value).

52. Even after being notified of Bikoff's concerns, Dowling was unrepentant and attempted to perpetuate his fraud by claiming that he could broker the sale of certain of the remaining watches or that Bikoff would be able to resell them at a profit.

53. However, despite his statements that the watches had appreciated in value, Dowling refused to provide Bikoff a full refund on the Subject Watches, and ultimately became unresponsive, going so far as to cut off contact with Bikoff for periods of time, even as Dowling continued to make regular visits to New York City.

Further Evidence of Dowling's Fraud

54. In early 2016, Bikoff submitted the Rolex Tektite GEV Watch for inspection and potential auction scheduled to take place in May 2016 at Phillips Watch Auction ("Phillips") in Geneva, Switzerland.

55. World-renowned watch expert Aurel Bacs inspected the Rolex Tektite GEV Watch on behalf of Phillips as part of the pre-auction inspection process.

56. Phillips, based upon Bacs' inspection and expert opinion, rejected the Rolex Tektite GEV Watch for auction due to significant irregularities which called the watch's authenticity into question.

57. Among other irregularities found by Bacs, the Rolex Tektite GEV Watch's inside case back serial number was not present, the outer engravings appeared to be crude, the thickness of the case did not match those of other Tektites from the same time period, and the dial of the watch (from which a watch derives much of its value) "is believed [by Bacs] to be completely incorrect and possibly made much more recently than 1967." (*See* March 13, 2016 email correspondence, attached as Exhibit F).

58. After learning that Dowling had fraudulently misrepresented the quality, value and authenticity of the Rolex Tektite GEV Watch, Bikoff engaged third-party Rolex expert Charles Tearle to inspect the Rolex Submariner Watch to assess its authenticity.

59. Tearle prepared a comprehensive report on the watch. (Tearle Report attached as Exhibit G).

60. In his report, Tearle concluded that he can "confirm with certainty" that the Submariner's dial is a "counterfeit and not of original Rolex production" and that it otherwise "appears to have been artificially aged to appear older (a forgery)." (*Id.*)

61. Tearle further concluded that the "hour and minute hand are not genuine Rolex to the model" and that they have been "aged to appear older." (*Id.*)

62. Tearle also concluded that the "bezel insert is later production and possibly not Rolex production." (*Id.*)

63. In sum, Tearle concluded that the watch is a "clear and obvious counterfeit made to look original" and that it was "incorrectly advertised/sold as a very rare genuine Rolex product." (*Id.*)

64. Tearle estimates the Rolex Submariner Watch's value to be no higher than \$20,000, compared to the £56,808.39 (approximately \$94,000 as of the date of the sale, and approximately \$82,000 at present) paid by Bikoff to Dowling. (*See id.*)

65. In sum, Bikoff has been defrauded by Defendants in excess of \$700,000 related to the Subject Watches.

66. Upon information and belief, Defendants have made the same or substantially similar fraudulent misrepresentations to other potential and actual purchasers of rare and collectible watches, both in and out of New York.

FIRST CAUSE OF ACTION
(Common Law Fraud – as to the Rolex Submariner Watch)

67. Plaintiff repeats and realleges the allegations stated in paragraphs 1 through 66 of the Complaint as if set forth fully herein.

68. Defendants made representations regarding the Rolex Submariner Watch at or before the time of sale to Plaintiff.

69. Certain of Defendants' representations regarding the Rolex Submariner Watch have proven to be false and were false at the time they were made.

70. Defendants intended to deceive Plaintiff with respect to the Rolex Submariner Watch.

71. Plaintiff reasonably relied on Defendants' representations regarding the Rolex Submariner Watch, in part due to Defendants' standing and reputation in the watch trade.

72. Plaintiff was injured as a result of his reliance upon Defendants' representations regarding the Rolex Submariner Watch, in an amount to be determined.

SECOND CAUSE OF ACTION
(Common Law Fraud – as to the IWC Bund Watch)

73. Plaintiff repeats and realleges the allegations stated in paragraphs 1 through 66 of the Complaint as if set forth fully herein.

74. Defendants made representations regarding the IWC Bund Watch at or before the time of sale to Plaintiff.

75. Certain of Defendants' representations regarding the IWC Bund Watch have proven to be false and were false at the time they were made.

76. Defendants intended to deceive Plaintiff with respect to the IWC Bund Watch.

77. Plaintiff reasonably relied on Defendants' representations regarding the IWC Bund Watch, in part due to Defendants' standing and reputation in the watch trade.

78. Plaintiff was injured as a result of his reliance upon Defendants' representations regarding the IWC Bund Watch, in an amount to be determined.

THIRD CAUSE OF ACTION
(Common Law Fraud – as to the Rolex Tektite GEV Watch)

79. Plaintiff repeats and realleges the allegations stated in paragraphs 1 through 66 of the Complaint as if set forth fully herein.

80. Defendants made representations regarding the Rolex Tektite GEV Watch at or before the time of sale to Plaintiff.

81. Certain of Defendants' representations regarding the Rolex Tektite GEV Watch have proven to be false and were false at the time they were made.

82. Defendants intended to deceive Plaintiff with respect to the Rolex Tektite GEV Watch.

83. Plaintiff reasonably relied on Defendants' representations regarding the Rolex Tektite GEV Watch, in part due to Defendants' standing and reputation in the watch trade.

84. Plaintiff was injured as a result of his reliance upon Defendants' representations regarding the Rolex Tektite GEV Watch, in an amount to be determined.

FOURTH CAUSE OF ACTION
(Common Law Fraud – as to the Rolex Ludion Watch)

85. Plaintiff repeats and realleges the allegations stated in paragraphs 1 through 66 of the Complaint as if set forth fully herein.

86. Defendants made representations regarding the Rolex Ludion Watch at or before the time of sale to Plaintiff.

87. Certain of Defendants' representations regarding the Rolex Ludion Watch have proven to be false and were false at the time they were made.

88. Defendants intended to deceive Plaintiff with respect to the Rolex Ludion Watch.

89. Plaintiff reasonably relied on Defendants' representations regarding the Rolex Ludion Watch, in part due to Defendants' standing and reputation in the watch trade.

90. Plaintiff was injured as a result of his reliance upon Defendants' representations regarding the Rolex Ludion Watch, in an amount to be determined.

FIFTH CAUSE OF ACTION
(Common Law Fraud – as to the Tudor Shayetet Watch)

91. Plaintiff repeats and realleges the allegations stated in paragraphs 1 through 66 of the Complaint as if set forth fully herein.

92. Defendants made representations regarding the Tudor Shayetet Watch at or before the time of sale to Plaintiff.

93. Certain of Defendants' representations regarding the Tudor Shayetet Watch have proven to be false and were false at the time they were made.

94. Defendants intended to deceive Plaintiff with respect to the Tudor Shayetet Watch.

95. Plaintiff reasonably relied on Defendants' representations regarding the Tudor Shayetet Watch, in part due to Defendants' standing and reputation in the watch trade.

96. Plaintiff was injured as a result of his reliance upon Defendants' representations regarding the Tudor Shayetet Watch, in an amount to be determined.

SIXTH CAUSE OF ACTION
(Violation of New York General Business Law § 349)

97. Plaintiff repeats and realleges the allegations stated in paragraphs 1 through 66 of the Complaint as if set forth fully herein.

98. Defendants' conduct of business and representations with respect to each of the Subject Watches was oriented towards consumers, including Plaintiff and other potential consumers in the State of New York.

99. Defendants' actions and practices with respect to making misrepresentations about the provenance and authenticity of the Subject Watches were misleading in a material respect.

100. Plaintiff was injured as a result of Defendants' deceptive actions and practices.

WHEREFORE, Plaintiff prays for judgment to be entered in his favor and against Defendants as follows:

A. An award of damages that Plaintiff has sustained due to Defendants' fraudulent misrepresentations, with respect to each of the Subject Watches, in an amount to be determined at trial;

B. An award of damages that Plaintiff has sustained due to Defendants' deceptive acts and practices in violation of New York General Business Law § 349, in an amount to be determined at trial, but no less than \$700,000;

C. An award of punitive damages due to Defendants' intentional and egregious fraudulent misrepresentations, with respect to each of the Subject Watches, in an amount to be determined at trial, but no less than \$1,000,000;

D. An award of attorney's fees incurred by Plaintiff in attempts to recover damages from Defendants, in an amount to be determined; and,

E. Such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all claims and issues so triable.

Dated: July 8, 2016

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