

SUPREME COURT OF THE STATE OF NEW YORK

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NORMAN WAITT,

Plaintiff,

-against-

GERALD PETERS GALLERY and GERALD
PETERS,

Defendants.
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Index No.: **00602488**

Date Purchased:

Plaintiff designates New York County as
the place of trial.

The basis of the venue is Defendants'
residence

FILED
AUG 12 2009
COUNTY CLERK'S OFFICE
NEW YORK


SUMMONS

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the Plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: August 12, 2009

McLAUGHLIN & STERN, LLP

By: 

PETER R. STERN
JON PAUL ROBBINS

Attorneys for Plaintiff
Norman Waitt
260 Madison Avenue
New York, New York 10016
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DEFENDANTS' ADDRESS:

Gerald Peters Gallery
24 East 78th Street
New York, New York 10075

SUPREME COURT: NEW YORK COUNTY

NORMAN WAITT,

Plaintiff,

Index No. /2009

-against-

COMPLAINT

GERALD PETERS GALLERY and
GERALD PETERS,

Defendants.

09602488

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NEW YORK

Plaintiff Norman Waitt ("Waitt") for his complaint states:

The Parties

1. Waitt is an individual and art collector, who is a citizen of South Dakota.
2. Defendant Gerald Peters Gallery (the "Gallery") is a dealer which engages in the purchase and sales of works of art. The Gallery has a place of business at 24 East 78th Street, New York, New York 10075.
3. Gerald Peters ("Peters") is the principal of the Gallery.

**FIRST CAUSE OF ACTION
(BREACH OF CONTRACT, AGAINST THE GALLERY)**

4. From August 1996 and continuing through April 2008 (the "relevant period"), Waitt purchased a number of works of art from the Gallery, and paid the Gallery in excess of \$10,000,000.00 for said works of art. During the relevant period, Waitt came to trust Peters and relied on Peters' expertise and what Waitt believed to be Peters' integrity.

5. Waitt and the Gallery established a course of dealing over the relevant period, pursuant to which they agreed that Waitt would pay for and take delivery of a particular work,

and then, after "living with" the work for a period of time, Waitt would decide whether he desired to keep the work. If Waitt decided that he did not desire to keep a particular work, he would return it and the Gallery either would issue a refund of the purchase price, or would, subject to Waitt's approval, deliver another work of art of equivalent value to the work that had been returned.

6. The parties followed this course of dealing throughout the relevant period.

7. On or about April 16, 2007, Waitt and the Gallery entered into an agreement pursuant to which Waitt purchased a work of art by Thomas Moran (the "First Moran"). Waitt paid \$1,100,000.00 for the First Moran.

8. The agreement pursuant to which Waitt purchased of the First Moran included and was subject to the course of dealing set forth in paragraph 5.

9. On or about September 13, 2007, Waitt and the Gallery entered into an agreement pursuant to which Waitt purchased a second work of art by Moran (the "Second Moran"). Waitt paid \$1,200,000.00 for the Second Moran.

10. The agreement pursuant to which Waitt purchased the Second Moran included and was subject to the course of dealing set forth in paragraph 5.

11. On or about February 26, 2008, Waitt and the Gallery entered into an agreement pursuant to which Waitt purchased a work of art by Samuel Seymour (the "Seymour"). Waitt paid \$1,200,000.00 for the Seymour.

12. The agreement pursuant to which Waitt purchased the Seymour included and was subject to the course of dealing set forth in paragraph 5.

13. Waitt decided that he did not desire to keep the Morans or the Seymour. In

accordance with the course of dealing, Waitt demanded a refund of the purchase price of each of the Morans and the Seymour, or, subject to Waitt's approval, an exchange of works of equivalent value to the Morans and the Seymour.

14. The Gallery refused to refund the purchase price of the Morans or the Seymour, and also refused to propose works equivalent in value in exchange for the Morans and the Seymour.

15. By reason thereof, the Gallery breached the agreements entered into by the parties.

16. By reason thereof, Waitt has been damaged in the amount of \$3,500,000.00.

17. By reason thereof there is due and owing from the Gallery to Waitt the sum of \$3,500,000.00.

**SECOND CAUSE OF ACTION
(NEGLIGENT MISREPRESENTATION, AGAINST BOTH DEFENDANTS)**

18. Plaintiff repeats and realleges the allegations of the prior paragraphs of this complaint.

19. Peters possesses specialized expertise in the field of art and enjoyed a special relationship of confidence and trust with Waitt.

20. By reason thereof, Peters had a duty, acting on behalf of the Gallery and individually, to speak with care to Waitt with respect to works of art that the Gallery sold to Waitt.

21. At the time of the purchase of the Seymour, Peters told Waitt that the price Waitt was paying for the Seymour was a fair market price.

22. In fact, at the time of the purchase of the Seymour, its fair market price was not

more than \$200,000.00.

23. Peters breached his duty to speak with care when he represented to Waitt that the Seymour had a fair market value of \$1,200,000.00, when in fact it had a fair market value of not more than \$200,000.00.

24. Waitt relied upon Peters' representation as to the fair market value of the Seymour, and he was justified in so relying.

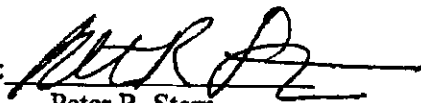
25. By reason thereof, Waitt has been damaged in an amount to be determined at trial but not less than \$1,000,000.00.

WHEREFORE, Waitt demands judgment against defendants as follows:

- (a) on the first cause of action, damages in the amount of \$3,500,000;
- (b) on the second cause of action, damages in an amount to be proved at trial, but not less than \$1,000,000.00; and
- (d) interest, costs, disbursements, and such other and further relief as to the Court seems just and proper.

August 12, 2009

McLaughlin & Stern, LLP

By: 

Peter R. Stern

Jon Paul Robbins

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