

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No.:
Date of Purchase:

=====X

LIO MALCA

SUMMONS
Plaintiff designates
NEW YORK
County as place of trial

10600292

Plaintiff,

-against-

The basis of venue is:
Plaintiff's Residence

YOSHII GALLERY and KATZUHITO YOSHII,

Defendants.


=====X

To the above named defendant(s):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's Attorneys within 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 herein.

Dated: Mineola, New York
February 3, 2010

KRAMER & POLLACK, LLP

BY: 
LARRY J. KRAMER, ESQ.
Attorneys for Plaintiff
143 Willis Avenue, Suite 2
Mineola, New York 11501
(516)742-8897

Defendants' Address:

Yoshii Gallery
980 Madison Avenue
3rd Floor
New York, New York 10075

Katzuhito Yoshii
980 Madison Avenue
3rd Floor
New York, New York 10075

FILED
FEB. 04 2010
COUNTY CLERK'S OFFICE
NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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LIO MALCA,

Plaintiff(s),

-against-

YOSHII GALLERY and KATZUHITO YOSHII,

Defendant(s).
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VERIFIED COMPLAINT

10600292

Plaintiff by attorneys, KRAMER & POLLACK, LLP, as and for a cause of action alleges upon information and belief as follows:

1. At all times herein mentioned, plaintiff was and still is a resident of New York County and the State of New York.
2. That at all times herein mentioned, defendants were and still are residents of New York County and the State of New York.
3. That one or more of the exceptions of §1602 of the Civil Practice Law and Rules do apply to the within action.
4. At all times herein mentioned, defendant, YOSHII GALLERY, is a domestic corporation duly licensed under the laws of the State of New York.
5. At all times herein mentioned, defendant, YOSHII GALLERY, is a foreign corporation duly licensed under the laws of the State of New York.
6. At all times herein mentioned, defendant, YOSHII GALLERY, is a domestic partnership duly licensed under the laws of the State of New York.
7. At all times herein mentioned, defendant, YOSHII GALLERY, is a foreign partnership duly licensed under the laws of the State of New York.

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8. At all times herein mentioned, defendant, YOSHII GALLERY, is a domestic sole proprietorship duly licensed under the laws of the State of New York.

9. At all times herein mentioned, defendant, YOSHII GALLERY, is a foreign proprietorship duly licensed under the laws of the State of New York.

10. At all times herein mentioned, defendant, YOSHII GALLERY's, principal place of business is located at 980 Madison Avenue, 3rd Floor, New York, New York 10075

STATEMENT OF FACTS

11. On or about December 2, 2009, plaintiff entered into a bailment with defendant, KATZUHITO YOSHII, pertaining to a piece of artwork known as "Untitled (Football Helmet)", 1981, Jean-Michel Basquiat. Plaintiff did not relinquish title to the piece. Defendant, KATZUHITO YOSHII, represented to plaintiff that he wanted to show the piece to his family.

12. The piece was not subject to any written agreements other than a receipt referencing the transfer of possession. The piece was not consigned to defendants. The piece was not offered as collateral against any debts. Plaintiff retains title of the piece and he is the sole lawful owner.

13. On or about December 2, 2010, plaintiff offered to sell the piece to defendants for \$300,000.00. On January 20, 2010 and on January 26, 2010, defendants rejected the offer and made counter-offers of \$269,000.00, \$280,000.00 and/or \$285,000.00. On January 29, 2010, plaintiff rejected defendants' counter-offer and informed defendants that the piece had been sold for an amount in excess of \$300,000.00. On January 29, 2010, defendants refused to return the piece to plaintiff.

14. On January 30, 2010, defendants requested that plaintiff provide an invoice for \$300,000.00 to confirm the deal for the sale of the Basquiat. Plaintiff advised defendants that

there was no deal for the sale of the piece for \$300,000.00 and that the piece must be returned to plaintiff.

15. On or about February 2, 2010, plaintiff was notified that defendants, without title, had sold the piece without plaintiff's permission or consent. Plaintiff demanded that defendants return the artwork immediately. Defendants failed to return the piece.

AS AND FOR A FIRST CAUSE OF ACTION FOR BREACH OF DUTY AS BAILEE AND FOR CONVERSION

16. Plaintiff repeats, reiterates and realleges each and every allegation set forth in paragraphs numbered "1" through "15", inclusive, with the same force and effect as if more fully set forth herein at length:

17. Upon information and belief, defendants, as bailees of the property, had a duty to return the artwork to plaintiff upon his demand for same.

18. Upon information and belief, defendants breached their duty to plaintiff by failing to return the artwork upon plaintiff's demand for same.

19. Upon information and belief, defendants wrongfully took possession of the aforementioned unique and original work of art under the guise of a bailment with the intent to substantially interfere with plaintiff's possession and use of the property.

20. Upon information and belief, defendants exercised unauthorized dominion and control over the property.

21. Upon information and belief, defendants' wrongful and unauthorized actions interfered with plaintiff's rights to possess and use the property.

22. As a result of the foregoing, plaintiff has been physically and economically deprived of the ownership, possession, access, and use of the artwork.

23. Based upon the foregoing, plaintiff has been damaged in an amount exceeding \$500,000.00.

AS AND FOR A SECOND CAUSE OF ACTION FOR FRAUD

24. Plaintiff repeats, reiterates and realleges each and every allegation set forth in paragraphs numbered "1" through "23", inclusive, with the same force and effect as if more fully set forth herein at length:

25. Upon information and belief, on December 2, 2009 through January 30, 2010, defendants, by and through their principals, agents, employees, and representatives misrepresented their promises with a present, but undisclosed intent not to perform, i.e., to return the piece upon showing it to defendant, KATZUHITO YOSHII's, family, for the sole purpose of deceiving and misleading the plaintiff.

26. Upon information and belief, on December 2, 2009 through January 30, 2010, defendants, by and through their principals, agents, employees, and representatives made misrepresentations that consisted of false statements about the aforesaid bailment and the return of the piece.

27. Upon information and belief the statements were false and were made with the intent to induce the plaintiff to dispose plaintiff's property.

28. Upon information and belief, all of the defendants' representations were false and plaintiff relied upon those misrepresentations all to plaintiff's detriment.

29. Upon information and belief, defendants' conduct was willful, wanton, and intentional.

30. Upon information and belief, defendants wrongfully took possession of the aforementioned unique and original work of art under the guise of a bailment with the intent to

defraud plaintiff of the property and to profit therefrom.

31. As a result of the fraudulent conduct of the defendants, plaintiff has been physically and economically deprived of the ownership, use, possession, enjoyment and access to the property.

32. As a result of the fraudulent conduct of the defendants, plaintiff has incurred excessive and unnecessary economic loss including the legal fees and costs associated with this cause of action.

33. Based upon the foregoing, plaintiff has been damaged in an amount exceeding \$500,000.00.

AS AND FOR A THIRD CAUSE OF ACTION FOR ECONOMIC DURESS

34. Plaintiff repeats, reiterates and realleges each and every allegation set forth in paragraphs numbered "1" through "33", inclusive, with the same force and effect as if more fully set forth herein at length:

35. Upon information and belief, defendants intended to defraud plaintiff of the possession and ownership of the aforementioned artwork.

36. Upon information and belief, defendants manufactured and communicated a fictional story in order to fraudulently procure the property.

37. Upon information and belief, defendants thereafter wrongfully sold the piece.

38. Upon information and belief, defendants' actions were designed solely to deprive plaintiff of its exercise of free will over the ownership, possession, access, enjoyment and use of the artwork.

39. As a result of the foregoing, plaintiff has been physically and economically deprived of the ownership, possession, access, and use of the artwork.

37. Based upon the foregoing, plaintiff has been damaged in an amount exceeding \$500,000.00.

WHEREFORE, the plaintiff demands judgment against the defendants, the return of the artwork or if the piece is no longer in the possession of defendants, the sum of \$500,000.00 (the actual value of the piece), attorneys fees and the costs and disbursements of this action.

Dated: Mineola, New York
February 3, 2010

Yours, etc.



Larry J. Kramer