

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

HUBERT G. NEUMANN,

Plaintiff,

-against-

SOTHEBY'S, INC., and ESTATE OF DOLORES
O. NEUMANN, by BELINDA NEUMANN
DONNELLY, Preliminary Executor,

Defendants.

Index No. 652170/2018

FIRST AMENDED COMPLAINT

Hubert G. Neumann, by his attorneys Emery Celli Brinckerhoff & Abady LLP, alleges as follows for his complaint:

PRELIMINARY STATEMENT

1. This is a case about a broken promise, a family disagreement, and an art masterpiece that has been sold at auction over the objection of the people who love it.

2. Hubert G. Neumann is the steward of one of the greatest private collections of modern and contemporary art in the world—the Neumann Family Collection. In March 2015, Sotheby's, Inc.—the world famous auction house—eager to win future consignments from the Neumann Family Collection, made a promise to this renowned collector: in exchange for the right to auction off certain art works from the Family Collection, it would afford Mr. Neumann and his family highly favorable pricing and other terms on future sales, and it would afford Mr. Neumann himself the right to oversee and approve the marketing of all works consigned to Sotheby's from the Family Collection. Sotheby's has broken this promise—in spectacular fashion, and with lasting consequences.

3. In September 2016, Hubert Neumann's wife of 62 years, Dolores Ormandy Neumann, passed away. The couple's middle daughter, Belinda, was appointed preliminary executor of her mother's Estate under a purported will that distributed the vast majority of the Estate to herself, leaving only modest shares to the couple's other daughters, Melissa and Kristina, and nothing at all to Hubert.¹ The Estate's most prized asset is a monumental 12-foot-by-12-foot painting called "Flesh and Spirit," by the acclaimed "graffiti artist" Jean-Michel Basquiat. A proceeding in Surrogate's Court ensued.

4. The Estate, upon information and belief, aware of the Mr. Neumann's agreement with Sotheby's, approached Sotheby's to sell "Flesh and Spirit," while cutting off Mr. Neumann's rights to control the marketing of the work. Shamelessly willing to capitalize on this difficult family situation in pursuit of a commission, and anxious for the prestige associated with the sale of a great treasure of American art, Sotheby's entered into a consignment agreement to auction off "Flesh and Spirit" at the May 16, 2018 evening sale in New York. And

5. Sotheby's and the Estate did all of this in absolute secrecy—not breathing a word of it to Mr. Neumann—and in direct contravention of its express promise to afford Mr. Neumann approval over "all matters" concerning the marketing of works from the Family Collection. And, when Mr. Neumann learned of this scheme and confronted Sotheby's, the auction house haughtily refused to discuss the matter.

6. Worse yet, Sotheby's has thoroughly botched the marketing of "Flesh and Spirit." Among a host of other missteps, Sotheby's has publicized a depressed price estimate for the work. It has failed to highlight, or in some cases even *mention*, the work's many unique characteristics, including its hinged construction, multi-panel composition, profound complexity,

¹ New York law forbids the disinheritance of a surviving spouse. Mr. Neumann has a statutory right to one-third of his wife's Estate, which he has elected.

delphic iconography, and deep art-historical significance. It has inexplicably declined to make use of important archival materials, including notes of the owner and video of the artist, that were maintained along with the piece. And it has grossly mischaracterized—to the point of caricature—the role of the work’s owner, Dolores Neumann, in the history of graffiti art. Had he been afforded his marketing approval rights as promised, Mr. Neumann would never have let any of this happen.

7. Sotheby’s collusion with the Estate and Sotheby’s miserable job in marketing this masterpiece has had real consequences—for the value of “Flesh and Spirit,” and for the Neumann Family Collection as a whole (including three *more* Basquiat paintings from the same critical period). This suit seeks to salvage what still can be salvaged in this deeply unfortunate situation.

PARTIES

8. Plaintiff Hubert G. Neumann, the 86 year old patriarch of the Neumann family, is a resident of New York County.

9. Defendant Sotheby’s Inc. (“Sotheby’s”) is a corporation incorporated under the laws of Delaware with its principal place of business at 1334 York Avenue, New York, New York.

10. Defendant Estate of Dolores O. Neumann (“Estate”) was, until May 16, 2018, the owner of “Flesh and Spirit” by Jean-Michel Basquiat. Dolores O. Neumann acquired the painting in 1983. She died on September 23, 2016. The Surrogate’s Court of the State of New York, New York County, on November 28, 2016, issued preliminary letters of testamentary to Belinda Neumann Donnelly, one of the daughters of Hubert and Dolores Neumann, to manage the Estate. These preliminary letters of testamentary remain in effect as of the date of this Complaint.

VENUE

11. Plaintiff designates New York County as the place of trial under CPLR 503 and 509.

FACTS

The Neumann Family Collection

12. In the mid-20th Century, Morton and Rose Neumann established the Neumann Family Collection (the “Family Collection”), widely regarded as one of the world’s finest private collections of modern and contemporary art.

13. The Family Collection comprises hundreds of works by modern masters, including Pablo Picasso, Francis Picabia, Andy Warhol, Roy Lichtenstein, Claes Oldenberg, and many more. It regularly loans works to museums and galleries for important exhibitions in the United States around the world.

14. Plaintiff Hubert G. Neumann is heir to the Family Collection and the family’s oldest surviving member. He is a collector and art expert in his own right, and he is the Family Collection’s steward.

15. While the works in the collection are technically owned by a variety of persons and entities, including two family trusts of which Mr. Neumann is the sole trustee, all works owned by family members or entities associated with them are considered part of the Family Collection.

The Contract Between Mr. Neumann and Sotheby’s

16. Sotheby’s is one of the world’s largest and most famous auction houses, specializing in fine art.

17. In his role as steward of the Family Collection, over the last many years, Mr. Neumann has developed a business relationship with Sotheby's, which has included consigning work from the Family Collection to Sotheby's for sale, taking out loans from Sotheby's against works in the Family Collection, and purchasing works for the Family Collection at Sotheby's auctions.

18. In March 2015, Mr. Neumann and Sotheby's entered into an agreement (the "Weitman-Billaut Agreement") governing the overarching terms of their relationship.

19. It was memorialized in an email exchange between Mr. Neumann and Sotheby's North American Chairman Warren Weitzman and later confirmed and extended in an email exchange between Mr. Neumann and Sotheby's Senior Vice President Gregoire Billaut.

20. The Weitmann-Billaut Agreement provides:

-----Forwarded message-----

From: **Weitman, Warren** <Warren.Weitman@sothebys.com>

Date: Tue, Mar 24, 2015 at 7:34 PM

Subject: Financial Considerations

To: "hughie.bb24@gmail.com" <hughie.bb24@gmail.com>

Dear Hubert, Working with you and your family is very important to me and the Sotheby's. Thank you for inviting us to provide you with the following financial considerations. First, these terms will apply for a period of three years beginning April 1, 2015. There will not be any charges or expenses for anything associated with any consignment, including packing and shipping, insurance, conservation, marketing and promotion, travelling exhibitions, etc. I propose the following commission structure: 1) for sales up to and including a total of \$5,000,000, Sotheby's will pay you 104 percent of each sold hammer price and 2) for sales above an aggregate sold hammer of \$5,000,000, we will pay you 108 percent of each sold hammer price. If you want an advance, we will provide an interest-free advance of 50 percent of our low auction estimate. We will make the experience efficient and rewarding. We are energetic and creative and will access bidders from around the world. We will place the property in the best sale venues and in the right context. We will exhibit the property ideally with excellent lighting and positioning. We will place the property in the best spot for it in each auction as we take very seriously the architecture of each auction. We will seek your approval on all matters relating to cataloguing, placement, and exhibiting each and every work consigned. We will essentially be your partner as we share the same

community of interests. I look forward to your response and to seeing the works you may wish to sell. All the best, Warren

* * * * *

-----Forwarded message-----

From: **Billault, Grégoire** <Gregoire.Billault@sothebys.com>

Date: Thu, Mar 17, 2016 at 10:14 PM

Subject: Re: Sotheby's Consignment Agreement

To: Hubert Neumann <hughie.bb24@gmail.com>

Dear Hub[e]rt,

Sorry for this late answer. My days feel far too short at the moment.

I confirm that Sothby's will extend the 3 years contract to April 2019 under the conditions agreed on march 2015 for the Klein Sale and for the Burri on march 2016.

Reachable anytime shall you have questions.

Best,

Gregorie Billault

21. The Weitmann-Billaut Agreement has three critical terms.
22. *First*, the Price and Loan Guarantees. Sotheby's agreed that, for sales of 5 million or less, it would pay Mr. Neumann 104 percent of the "hammer price," i.e., the price at which the work sold at auction. For sales exceeding \$5 million, Sotheby's would pay Mr. Neumann 108 percent of the hammer price. For any work, if a loan was needed, Sotheby's would provide an interest-free advance of 50 percent of the low auction estimate.
23. *Second*, the No Cost Guarantee. Sotheby's agreed that it would not charge for any expenses associated with any consignment, including insurance, shipping, marketing, or travel.
24. *Third*, and most relevant here, the Marketing Approval Rights granting Mr. Neumann control over the marketing of any work sold from the Family Collection. Sotheby's promised to put works up for auction in the best sales venue, and, most important, to seek Mr.

Neumann's "approval *on all matters* relating to cataloguing, placement, and exhibiting each and every work consigned."

25. The Marketing Approval Rights give Mr. Neumann the right to control the light, the venue, where in the auction order the work is sold, and how the works is described and priced in promotional materials. All of these factors have a significant effect on the work's market value, and on the way potential buyers view the work itself and other holdings in the Family Collection.

26. These terms are exceedingly favorable and exceedingly rare. Only a savvy and experienced collector with substantial holdings, whose business was very important to Sotheby's, would be able to negotiate these kinds of terms.

27. Having reached agreement with Sotheby's on the general terms under which they would do business, Mr. Neumann agreed to consign two works from the Family Collection to Sotheby's: the Yves Klein work referenced in the text of the agreement, and a work by the artist Alberto Burri a year later.

28. While the parties entered into separate, transaction-specific agreements for those two consignments, the transactions were carried out pursuant to the Weitman-Billaut Agreement. Mr. Neumann received the full benefit of the Weitman-Billaut Agreement in the Klein and Burri consignments, and he was accorded and he exercised his Marketing Approval Rights to control the marketing of those works.

29. The Weitman-Billaut Agreement applies to all works in the Neumann Family Collection without regard to their formal ownership. For example, the Klein and Burri works consigned to Sotheby's pursuant to the Weitman-Billaut Agreement were not owned by Mr.

Neumann personally, but by certain Neumann family trusts. Nonetheless, Mr. Neumann exercised the Marketing Approval Rights with respect to both of those works.

30. The Weitman-Billaut Agreement was extended, as memorialized in Mr. Billaut's March 17, 2016, email, and it remains in effect today.

31. Upon information and belief, the Estate, through Belinda as its preliminary executor, knew of Mr. Neumann's Agreement with Sotheby's for these marketing rights for works that are part of the Neumann Family Collection prior to the Estate consigning "Flesh and Spirit" to Sotheby's.

Basquiat's "Flesh and Spirit"

32. Among the works in the Neumann Family Collection is Jean-Michel Basquiat's masterpiece "Flesh and Spirit." Flesh and Spirit is one of four early and significant Basquiat paintings in the Family Collection. The others are: "Untitled (Tyranny)" (1982) (64 inches x 96 inches); "Untitled" (1982) (77.25 inches x 125 inches); and "Mitchell Crew" (1983) (triptych; 71.5 inches x 137.75 inches). See "Basquiat" by Tony Shafrazi (1999), pp. 100, 102-03, and 190-91.

33. In the late 1970s and early 1980s, Mr. Neumann began collecting the works of so-called graffiti artists active in New York, the most accomplished of whom was Basquiat. Mr. Neumann became familiar with Basquiat through his gallery representatives, Anina Nosei and Tony Shafrazi, with whom Mr. Neumann maintained a friendship, and it was through these relationships that Mr. Neumann acquired three significant Basquiat works.

34. Mr. Neumann also introduced his wife, Dolores Ormandy Neumann, to Mr. Shafrazi and to the work of Jean-Michel Basquiat. Dolores also developed a personal relationship with the artist himself.

35. Dolores acquired “Flesh and Spirit” in 1983. The painting is considered an integral part of the Neumann Family Collection and is one of four Basquiat paintings in the Family Collection.

36. “Flesh and Spirit,” painted in 1982-83, is one of Basquiat’s largest, most complex, and most significant works. Indeed, it is an irreplaceable work by one of the greatest American artists of the 20th century—a genuine masterpiece.

The Will of Dolores Ormondy Neumann

37. Dolores Ormandy Neumann passed away in September 2016. She and Mr. Neumann were married for sixty-two years and have three adult daughters, Kristina, Melissa, and Belinda.

38. Basquiat’s “Flesh and Spirit” is the principal asset of Dolores’s Estate.

39. Shortly before her death, Dolores executed a will that attempted to disinherit her husband—which cannot be done as a matter of law—and provided that their daughter Belinda receive the vast majority of her property, with Melissa and Kristina receiving only very modest shares. The will was executed while Dolores was receiving serious medical treatment and was uncharacteristic of her relationship with her daughters.

40. The will is, upon information and belief, the product of undue influence, is invalid, and is currently the subject of proceedings in Surrogate’s Court.

41. Regardless of the outcome of the proceedings in Surrogate’s Court, Mr. Neumann is entitled to one-third of Dolores’s Estate as a matter of law.

The Impending Sale of “Flesh and Spirit” Through Sotheby’s

42. On April 2, 2018, Mr. Neumann learned that Belinda, acting as preliminary executor of Dolores’s Estate, had consigned “Flesh and Spirit” to Sotheby’s for sale at an auction

on May 16, 2018. The Estate did not notify Mr. Neumann or give him the opportunity to his enforce his rights under the Weitman-Billaut Agreement. Instead, it entered into an agreement with Sotheby's that completely prevented Mr. Neumann from exercising any control over the marketing of the work. Belinda, as preliminary executor, wanted that power for herself and for her personal gallery business—Neumann Wolfson Art.

43. After learning of the impending sale, Mr. Neumann contacted Sotheby's to obtain information about the consignment of "Flesh and Spirit." Sotheby's officials refused to provide a copy of the consignment agreement and refused to provide information sufficient for Mr. Neumann to determine whether the Estate was enjoying the benefit of the No-Cost Guarantee and the Price Guarantee contained in the Weitman-Billaut Agreement.

Sotheby's Denial of Mr. Neumann's Marketing Approval Rights and the Injury to Mr. Neumann

44. Sotheby's marketed "Flesh and Spirit" for the May 16 auction in an amateurish and ahistorical fashion that prioritizes garish salesmanship and cheap gimmicks over artistic and historical substance. This approach failed to maximize the work's market value, and Mr. Neumann never would have approved it, had he been allowed to exercise his Marketing Approval Rights under the Weitman-Billaut Agreement.

45. For example, Sotheby's set far too low an estimate of the value of the work—approximately \$30 million—and improperly publicized that estimate.

46. A \$30 million estimate is simply too low in light of the \$110 million auction price for "Skull," a smaller Basquiat work, just a year ago, and the strong appetite for Basquiat works in the international market, including from Japanese collector Yusaku Maezawa. Mr. Maezawa purchased Basquiat's "Skull" for \$110 million last year. Mr. Neumann would never have agreed to the discussion of *any* estimate in the press, let alone an estimate of \$30 million.

47. Sotheby's has also botched the promotional materials for "Flesh and Spirit."

48. Sotheby's' promotional presentation of "Flesh and Spirit" was entirely divorced from art-historical context and from the features of the painting itself, cheapening the work and reflecting poorly on the Family Collection. Sotheby's promotional webpage for the work (the "Promotional Page")² failed even to emphasize that "Flesh and Spirit" was painted from early 1982 through late 1983—perhaps *the* seminal developmental period for Basquiat, and it is also the same time period in which Basquiat painted "Skull."

49. Sotheby's Promotional Page also failed to even mention the singular characteristic of the work: its arrangement of 12 canvases in four sections, a compositional breakthrough for Basquiat and an essential component of the painting's meaning. It also did not discuss the influence the seminal medical text, "Gray's Anatomy," had on the artist and how that is reflected in the iconography of the painting in the many anatomical parts that appear in "Flesh and Spirit."

50. Nor did Sotheby's do justice to the complex and mysterious features of this work. The complexity in this piece is greater than anything Basquiat had done before—from the three-panel design of each of the four sections, to the anatomical drawings morphing into objects, the words used in the painting, the selective use of color, and the historical references in the piece. Sotheby's overlooked *all* of this. There is much to be studied and described to potential buyers, none of which Sotheby's even attempted here.

51. Instead, Sotheby's chose to rely on a clichéd narrative portraying Dolores as a "visionary" uptown collector who "discovered" Basquiat as a struggling downtown artist—a narrative that serious observers would recognize as inaccurate. Even as far as it goes, the narrative was inadequately presented: it failed to make use of Dolores's extensive

² The Promotional Page is different from Sotheby's May 16th auction catalogue, which also discusses "Flesh and Spirit." The catalogue, however, is extremely difficult to find online and not directly linked to Sotheby's promotional webpage on the piece—the webpage buyers are directed to first encounter.

contemporaneous notes on the work or any of the video footage from the showings and symposia of graffiti artists' work that she organized. Such archival material would help buyers differentiate "Flesh and Spirit" from other Basquiat works and understand its significance. Once again, Sotheby's chose marketing gimmickry over art-historical substance.

52. The Promotional Page did not even show the entire piece on any reasonable scale. It failed to have readily-identifiable links to important information about the work—such as size, provenance, and the catalogue entry; it failed to describe critical influences and iconography of the work; and it relied instead on a recycled 51-second, un-narrated video montage of Basquiat's *other* works, not "Flesh and Spirit."

53. In a lame effort to court the Asian market, Sotheby's also included irrelevant matter in its promotional materials about a trip that Dolores's famous uncle once made to China with his orchestra. Such a gimmick wrongly suggested that the work cannot stand on its own merits.

54. And Sotheby's, troublingly, allowed Belinda's gallery, Neumann Wolfson Art, to participate in the marketing of the work. Neumann Wolfson Art would not handle a work of this significance and its involvement wrongly suggests that the work is not saleable and needs to be hawked by members of the collector's family.

55. All of these deficiencies in the marketing and presentation of the work, and Defendants' breach and interference with Mr. Neuman's rights under the Weitman-Billaut Agreement, depressed its market value. As a result, at the May 16 auction, "Flesh and Spirit" sold for a hammer price of just \$27 million, far below its worth and value.

FIRST CAUSE OF ACTION

Breach of Contract Against Defendant Sotheby's

56. Plaintiff repeats and realleges all of the foregoing as if fully set forth here.

57. The Weitman-Billaut Agreement is a binding contract between Mr. Neumann and Sotheby's.

58. It gives Mr. Neumann the right to control all aspects of the marketing of works consigned to Sotheby's from the Neumann Family Collection.

59. "Flesh and Spirit" is a work from the Neumann Family Collection that has been consigned to Sotheby's for auction on May 16, 2018.

60. Mr. Neumann performed the consideration for the Weitman-Billaut Agreement by consigning two works to Sotheby's.

61. Sotheby's has breached the Weitman-Billaut agreement by refusing to allow Mr. Neumann to exercise his Marketing Approval Rights thereunder with respect to the May 16 sale.

62. Sotheby's may have also breached other terms of the Weitman-Billaut Agreement, including the No Cost Guarantee and the Price and Loan Guarantees, although Mr. Neumann does not know because Sotheby's has refused to provide the consignment agreement.

63. Mr. Neumann has been injured by the breach of his contractual rights.

SECOND CAUSE OF ACTION

Promissory Estoppel against Defendant Sotheby's

64. Plaintiff repeats and realleges all of the foregoing as if fully set forth here.

65. In the alternative, to the extent a contract does not exist, Sotheby's promised Mr. Neumann that he would have control over the marketing of works consigned to Sotheby's from the Neumann Family Collection regardless of their formal ownership.

66. Mr. Neumann reasonably relied on Sotheby's promise by consigning works from the Neumann Family Collection to Sotheby's.

67. Mr. Neumann also reasonably relied on Sotheby's promise by not making additional arrangements for works in the Neumann Family Collection with different ownership structures. Sotheby's led Mr. Neumann to believe that its promises applied to all works from the Neumann Family Collection.

68. Mr. Neumann has been injured by his reliance on Sotheby's promises.

THIRD CAUSE OF ACTION

Tortious Interference with Contract against the Estate of Dolores O. Neumann

69. Plaintiff repeats and realleges all of the foregoing as if fully set forth here.

70. The Weitman-Billaut Agreement is a binding contract between Mr. Neumann and Sotheby's.

71. The Estate of Dolores O. Neumann, through its preliminary executor Belinda Neumann, knew of the existence of this contract, which applied to all works in the Neumann Family Collection, including "Flesh and Spirit."

72. By entering into a consignment agreement with Sotheby's that precluded Mr. Neumann from exercising his Marketing Approval Rights under the Agreement, the Estate acted with purpose to induce Sotheby's to breach its contract with Mr. Neumann.

73. The Estate's conduct was intended to and did result in the breach of the Weitman-Billaut Agreement by Sotheby's.

74. Mr. Neumann has been injured by the breach of his contractual rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court grant him the following relief:

- A. An award of compensatory damages in an amount to be determined at trial;
- B. Pre-judgment and post-judgment interest on the damages incurred;
- C. An award of attorneys' fees and costs incurred in this action to the fullest extent permitted by law; and/or
- D. Such other and further relief as the Court deems just and proper.

Dated: May 25, 2018
New York, New York

EMERY CELLI BRINCKERHOFF
& ABADY LLP

/s/

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