

**FIRST JUDICIAL DISTRICT COURT  
COUNTY OF SANTA FE  
STATE OF NEW MEXICO**

**THE PETERS FAMILY ART FOUNDATION,  
a New Mexico nonprofit corporation,**

**PLAINTIFF,**

**v.**

**CASE NO. D-101-CV-2016-02867**

Case assigned to Ortiz, Raymond Z.

**JASON MCCOY, an individual,  
JASON MCCOY GALLERY, a New York corporation, and  
JASON MCCOY INC., a New York corporation,**

**DEFENDANTS.**

**COMPLAINT FOR BREACH OF CONTRACT  
AND MONEY DUE**

COMES NOW, Plaintiff, The Peters Family Art Foundation, a New Mexico nonprofit corporation, by and through its undersigned counsel, C. Mott Woolley, and for its Complaint against Defendants, Jason McCoy, an individual, Jason McCoy Gallery, a New York corporation, and Jason McCoy Inc., a New York corporation, states as follows:

**THE PARTIES JURISDICTION AND VENUE**

1. Plaintiff, The Peters Family Art Foundation (“PFAF”), is a New Mexico nonprofit corporation, with its principal place of business in Santa Fe, New Mexico;
2. Defendant, Jason McCoy (“McCoy”), upon information and belief, is a resident of New York, New York, and is the President and Chief Executive Officer of Jason McCoy Gallery (“McCoy Gallery”) and Jason McCoy Inc. (“McCoy Inc.”);

3. Defendant McCoy Gallery, upon information and belief, is a corporation duly formed and existing under the laws of the State of New York, with its principal place of business in New York, New York;

4. Defendant McCoy Inc., upon information and belief, is a corporation duly formed and existing under the laws of the State of New York, with its principal place of business in New York, New York;

5. Defendants McCoy, McCoy Gallery, and McCoy Inc., at all times material hereto, conducted business in New Mexico with Plaintiff, PFAF;

6. This Court has personal jurisdiction over all parties to this Complaint, subject matter jurisdiction and venue;

7. All conditions precedent to this action have been performed by Plaintiff.

### **BACKGROUND**

8. Plaintiff, PFAF, is a New Mexico nonprofit corporation, and at all times material hereto, conducted business from its office in Santa Fe, New Mexico;

9. Defendant, McCoy Gallery, is a contemporary art gallery, and at all times material hereto, conducted business in New Mexico with Plaintiff;

10. On or about November 4, 2015, Plaintiff, PFAF, and Defendant, McCoy Gallery, entered into a Consignment Agreement (“Consignment Agreement”) to define the Parties duties and responsibilities with regard to “Consigned Work of Art”. A true and correct copy of the Consignment Agreement is attached hereto and incorporated fully herein by reference as **Exhibit A**;

11. On December 11, 2015, Plaintiff, PFAF, submitted its invoice to Defendant McCoy Gallery for the sale of a work of art, more particularly described as a Jackson Pollock, Seascape oil on canvas (“JP Seascape”), for a subtotal of \$425,000.00, with regard to the terms and conditions of the November 2015 Consignment Agreement;

12. On behalf of Defendant McCoy Gallery, Defendant McCoy signed and acknowledged Plaintiff PFAF’s invoice of December 11, 2015, which acknowledged the receipt of Plaintiff’s invoice and the terms and conditions of payment;

13. With regard to the sale of the JP Seascape, Plaintiff PFAF’s invoice of December 11, 2015, specifically stated “Title will not pass until payment is received in full”;

14. Plaintiff, PFAF, received from Defendant McCoy Inc., Check No. 1025, dated January 11, 2016, made payable to Plaintiff, PFAF, in the amount of \$425,000.00;

15. Thus, On March 2, 2016, Check No. 1025, in the amount of \$425,000.00, was deposited at Century Bank, Santa Fe, New Mexico;

16. On March 7, 2016, a Century Bank representative provided notice that a “stop payment” was placed on Check No. 1025;

17. The Executive Director of Plaintiff, PFAF, was immediately notified of the stop payment on Check No. 1025 and, therefore, the \$425,000.00 remained due to Plaintiff;

18. In or about March 10, 2016, Plaintiff, PFAF, received a partial payment from Defendant McCoy Gallery in the amount of \$250,000.00;

19. On March 29, 2016, Defendant, McCoy, stated in an email to the Executive Director of Plaintiff PFAF that Defendant McCoy was aware of the remaining balance due and he would wire the remaining amount due as soon as he could;

20. On April 15, 2016, Plaintiff, PFAF's Executive Director, sent a follow up email to Defendant McCoy, requesting status of payment on the remaining amount owed to Plaintiff PFAF, with regard to the sale of the JP Seascope;

21. Then again, on April 22, 2016, Plaintiff PFAF's Executive Director sent an email to both, Defendant McCoy and the Director of Defendant McCoy Gallery, demanding payment for the remaining balance owed to Plaintiff PFAF with regard to the sale of the JP Seascope;

22. Subsequently, on April 22, 2016, Defendant, McCoy, responded via email to the Executive Director of Plaintiff PFAF's demand for payment and stated that he would send funds within thirty (30) days;

23. Defendant McCoy failed to deliver payment within thirty (30) days of his April 22, 2016 email response to the Executive Director of Plaintiff, PFAF;

24. On June 21, 2016, a demand letter for payment was submitted to Defendants McCoy and McCoy Gallery via email and certified mail. A true and correct copy of Plaintiff PFAF's demand letter dated June 21, 2016, is attached hereto and incorporated fully herein by reference as Plaintiff PFAF's **Exhibit B**;

25. On or about July 21, 2016, Plaintiff, PFAF, received a partial payment of \$75,000.00;

26. On October 11, 2016, Plaintiff, PFAF, submitted another demand letter to Defendants McCoy and McCoy Gallery, which acknowledged the partial payment of \$75,000.00 to Plaintiff PFAF, and further stated that Defendants failed to satisfy the terms of Plaintiff PFAF's demand letter dated June 21, 2016, which stated full payment was to be submitted no later than July 5, 2016;

27. After repeated demands for payment, Defendants McCoy and McCoy Gallery have failed to pay the remaining balance owed to Plaintiff PFAF for the sale of the JP Seascape;

28. The total amount due from Defendant McCoy Gallery to Plaintiff PFAF through October 7, 2016 is \$118,993.15, which includes interest; the daily interest accrual amount is \$27.40 on the balance due thereafter.

#### **COUNT I: BREACH OF CONTRACT**

29. Plaintiff, PFAF, re-alleges and incorporates herein by reference each of the above Paragraphs of this Complaint, as if fully set forth herein;

30. Defendants McCoy and McCoy Gallery breached the terms of the November 2015 Consignment Agreement and have failed to remit payment for the remaining balanced owed to Plaintiff PFAF for the sale of the JP Seascape;

31. Plaintiff, PFAF, reasonably relied to its detriment on the representations made by Defendants McCoy and McCoy Gallery;

32. Due to Defendants McCoy and McCoy Gallery breach of contract, misrepresentations and failure to satisfy their obligations under the November 2015 Consignment Agreement and Terms and Conditions of payment, Plaintiff, PFAF, has suffered damages and losses in an amount not less than \$118,993.15 and in a further amount in excess of \$118,993.15 as of the date of judgment in this cause to be proved at trial.

#### **COUNT II: MONEY DUE**

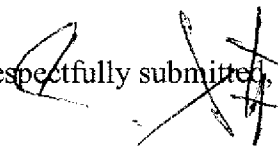
33. Plaintiff, PFAF, re-alleges and incorporates herein by reference each of the above Paragraphs of this Complaint, as if fully set forth herein;

34. Plaintiff, PFAF, was not paid for the sale of a work of art, JP Seascape, which was acknowledged and agreed upon by Defendants McCoy and McCoy Gallery;

35. Plaintiff, PFAF, is entitled to payment for the remaining balanced owed to Plaintiff PFAF from Defendant McCoy Gallery, plus interest.

WHEREFORE, for the reasons stated above, Plaintiff, The Peters Family Art Foundation, respectfully requests that the Court award its relief sought, including but not limited to:

- A. Full compensation for all its damages and losses in an amount to be proved at trial;
- B. Full payment for the sale of the work of art, JP Seascape;
- C. Pretrial and post-trial interest;
- D. Expenses, fees and costs; and all such further monies contemplated by the Consignment Agreement;
- E. Such other and further relief as the Court deems meet and proper.

  
Respectfully submitted,

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C. Mott Woolley  
*Attorney for Plaintiff*  
P.O. Box 908  
Santa Fe, NM 87504-0908  
(505) 231-5087  
[cmwoolley@peterscorp.com](mailto:cmwoolley@peterscorp.com)

# Peters Family Art Foundation

POST OFFICE BOX 2437 | SANTA FE, NEW MEXICO | 87504

## CONSIGNMENT AGREEMENT

1. This Consignment Agreement is entered into by Jason McCoy Gallery ("Consignee," located at 41 East 57<sup>th</sup> Street, #11, New York, NY 10022), and the Peters Family Art Foundation, Inc., a New Mexico 501 (c)(3) Nonprofit Corporation ("Consignor"), on November 4, 2015 for the period November 10, 2015 to November 17, 2015, unless return is requested sooner.

2. The "Consigned Work of Art," which may be in the possession of Jason McCoy Gallery, is as follows:

Jackson Pollock (American, 1912-1956)  
*Seascape*, 1934  
Oil on canvas  
12 x 16 inches  
13 1/4 x 17 1/4 x 2 inches (framed)  
\$500,000.00 net proceeds due Consignor

3. The above Consigned Work of Art is consigned to Consignee with nets to the Consignor at the respective net proceeds due Consignor. This consignment is at the Consignee's sole risk against all loss, including fire, theft, vandalism, water/smoke or other damage and breakage, and the Consigned Work of Art shall be insured under Consignee's "all risk" fine arts policy of insurance while in the Consignee's possession and until the Consigned Work of Art shall have been returned to Consignor or sold and Consignor has been paid in full. Consignee accepts full responsibility for any loss or damage and agrees that in the event of any loss of or damage to the Consigned Work of Art, Consignee is responsible for payment of the above net proceeds to Consignor, without regard to partial or percentage of loss or damage. Consignee will name The Peters Family Art Foundation as an additional loss payee on its insurance to the extent of the above net proceeds and will provide Consignor with a copy of such certificate of insurance. Once the Certificate of Insurance has been received by the Consignor, the Consigned Work of Art will be shipped to the consignee. The Consignee agrees to take all reasonable precautions to assure the safety, protection and care of the Consigned Work of Art. The Consignor reserves the right to request that the Consigned Work of Art be returned at any time. Upon request by Consignor, Consignee agrees to crate and ship the Consigned Work of Art to Consignor within five (5) business days following Consignor's request for return. Consignee shall pay the cost of shipping the Consigned Art from Consignor to Consignee and, should the Consigned Art be returned to Consignor, Consignee shall pay the return shipping costs.

4. The Consigned Work of Art constitutes security for payment of the net due Consignor and title will not transfer until Consignor has been paid in full. Consignee agrees that the provisions of UCC section 9-319(a) shall not apply and acknowledges that Consignee does not have the rights or title of Consignor with respect to the Consigned Work of Art. Consignee acknowledges that Consignor may file appropriate UCC financing documents with the Secretary of State or other applicable government office of any applicable jurisdiction as Consignor may deem necessary or desirable to protect or perfect Consignor's security interest in the Consigned Work of Art. Consignee acknowledges that Consignee's possession of the Consigned Work of Art shall not be construed as evidence of ownership until Consignor shall have received the net proceeds due Consignor.

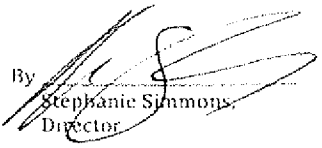
5. Consignee may not reproduce the Consigned Work of Art for any purpose without Consignor's express written permission. All reproduction rights are reserved to Consignor. Title to the Consigned Work of Art will remain with the Consignor until a sale has been completed and



payment of the net proceeds due Consignor has been made in full. Consignee warrants that the Consigned Work of Art will not be subject to claims or liens, if any, that may be asserted against Consignee. There shall be no restoration, conservation or framing of the Consigned Work of Art without prior written approval from the Consignor. Consignee may not assign its rights under this Consignment Agreement.

CONSIGNEE:


Jason McCoy Gallery

By   
Stephanie Simmons  
Director

Date 11/6/15

CONSIGNOR:

Peters Family Art Foundation, Inc.  
a New Mexico 501 (c)(3) Nonprofit Corporation

By   
Elizabeth Hubbard  
Executive Director

Date 11/5/15



# THE PETERS GP CORPORATION

C. MOTT WOOLLEY  
GENERAL COUNSEL

June 21, 2016

VIA EMAIL: [jason@jasonmccoyinc.com](mailto:jason@jasonmccoyinc.com)  
& CERTIFIED US MAIL

Jason McCoy  
Jason McCoy Gallery  
41 East 57th Street  
New York, NY 10022  
212-319-1996

**Re: *The Peters Family Art Foundation / JP Seascape***

Dear Mr. McCoy:

Your file has been turned over to me with instructions to collect money owing from you and your gallery to The Peters Family Art Foundation.

The file indicates you had promised to pay \$175,000.00 on May 22, 2016. It is now June 20, 2016 and no payment has been received.

By this letter, I am constrained to advise that a lawsuit will be filed against you and your gallery if payment in full is not received on or before July 5, 2016.

Very truly yours,



C. Mott Woolley  
General Counsel

CMW/tr

cc: Elizabeth Hook

OFFICE: 420 SUITE A, OLD SANTA FE TRAIL, SANTA FE, NEW MEXICO 87501  
MAILING: POST OFFICE BOX 908, SANTA FE, NEW MEXICO 87504-0908  
TELEPHONE: 505 983-8323 CELL: 505 231-5087



**SENDER: COMPLETE THIS SECTION** **COMPLETE THIS SECTION ON DELIVERY**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

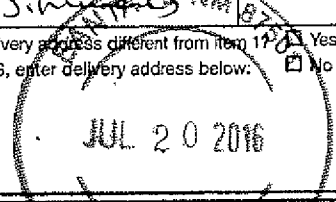
1. Article Addressed to:

Jason McCoy  
 Jason McCoy Gallery  
 41 East 5th Street  
 11th Floor  
 New York, NY 10022

A. Signature:   Agent  
 Address

B. Received by (Printed Name): S. Simpson C. Date of Delivery: JUL 20 2016

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No



3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  G.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number (Transfer from service label) 7012 3050 0000 6838 8201