

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

BARBARA BERKOWITZ, an individual,
TIMOTHY MENDELSON, an individual, and
QUINN TIVEY, and individual, as Co-Trustees
for The Sothern Trust

Plaintiff,

-against-

CHRISTIE’S INC., a New York corporation,
and DOES 1 through 10, inclusive,

Defendants.

Index No. _____

COMPLAINT

Plaintiffs Barbara Berkowitz, Timothy Mendelson, and Quinn Tivey, as Co-Trustees for The Sothern Trust (collectively the “Trust”), for their Complaint against Defendant Christie’s Inc. (“Christie’s”), allege as follows:

NATURE OF THE CASE

1. This action arises out of the wrongful conduct of Christie’s auction house in connection with the sale by auction of certain possessions belonging to legendary actress and philanthropist Elizabeth Taylor. Upon Ms. Taylor’s death in 2011, Christie’s was entrusted with the task of selling some of Ms. Taylor’s most prized and valuable possessions, including the bulk of her famous jewelry collection, items from her iconic fashion wardrobe, and her art collection. The terms and conditions under which Christie’s was to sell Ms. Taylor’s possessions were contained in a Consignment Agreement dated July 20, 2011 (the “Consignment Agreement”).

2. The auctions, which were held in New York and London, attracted buyers from around the globe and were very successful. Proceeds from the exhibition ticket sales, along with specialty catalogs boxed with Ms. Taylor’s book, *Elizabeth Taylor: My Love Affair With Jewelry*, were earmarked and publicized to benefit The Elizabeth Taylor AIDS Foundation (“ETAF”). Twenty-seven (27) copies of Ms. Taylor’s book, which had been pre-

signed by Ms. Taylor, were sold as well. All proceeds from the sales of the pre-signed books were also to benefit ETAF.

3. Following the auctions, however, and despite receiving and retaining substantial commissions from sales of Ms. Taylor's property, Christie's failed to abide by its contractual obligations under the Consignment Agreement and blatantly disregarded its fiduciary duties to the Trust. Among other conduct, Christie's unreasonably, and in violation of its own policies, cancelled the sales of certain auction items (without notice or discussion with the Trust), failed or refused to return cancelled sale items to the Trust, failed to market and/or advertise certain items for sale accurately, and failed to remit to the Trust payment for items sold at auction, including a Bulgari emerald and diamond ring worth nearly \$3 million (the "Bulgari Ring"). As the Trust's agent, Christie's had a duty to act with the utmost care, loyalty, and good faith in the interest of the Trust, but breached those duties as set forth herein.

4. The primary dispute between the Trust and Christie's concerns a world-famous Indian diamond known as the "Taj Mahal" diamond (the "Diamond"), which was purchased from Cartier and given to Ms. Taylor by her husband, actor Richard Burton. Christie's sold the Diamond at auction for over \$8 million to an anonymous buyer who, on information and belief, is an important customer of Christie's. Months after the conclusion of the auction, however, the buyer allegedly demanded that Christie's cancel the sale of the Diamond and return the purchase price. Upon information and belief, the buyer's demand was based solely on his contention that the Diamond did not previously belong to Shah Jahan, thereby raising doubts about the Diamond's provenance.

5. Based upon its own research before marketing the Diamond, Christie's intentionally never warranted or guaranteed the age of the Diamond in the catalogue prepared and distributed for the auctions. Instead, Christie's very carefully warranted only that the Diamond was an "Indian" diamond, a statement which, upon information and belief, the buyer did not dispute. Accordingly, the conditions of sale that governed the auction, to which

both Christie's and the buyer were contractually bound, did not require Christie's to rescind the sale.

6. Elsewhere, however, Christie's representatives independently, and without the Trust, made public appearances in which they went beyond the language of the catalogue in discussing the history of the Diamond. Although these additional representations did not change the binding nature of the conditions of sale, they did provide additional information to the public that was both outside the warranted information in the catalogue and outside the control of the Trust.

7. In the past, Christie's has consistently (and successfully), as a matter of policy, taken the legal position that if a buyer's claim falls outside the scope of Christie's warranty, there has been no violation of the conditions of the sale and no obligation by Christie's to rescind. Moreover, pursuant to the Consignment Agreement, Christie's had an obligation to the Trust not to cancel the sale of any property, including the Diamond, unless it *reasonably* believed that the sale had subjected, or would subject, Christie's or the Trust to liability. Despite facing no credible threat of legal liability, Christie's nonetheless rescinded the sale of the Diamond. In doing so, Christie's not only deviated from its usual business practices and its own established policies, but it violated its obligations to the Trust, all in an effort to appease the buyer, an important client of Christie's.

8. After Christie's unilaterally cancelled the sale, it demanded that the Trust return to Christie's all proceeds paid to the Trust for the Diamond. Christie's took no responsibility for its role in causing the cancellation of the sale. The Trust has declined to refund the money to Christie's on the ground that Christie's cancellation of the sale was objectively unreasonable and, therefore, unwarranted under the terms of the Consignment Agreement.

9. In addition to the Diamond, Christie's has failed to account for at least five (5) other items belonging to Ms. Taylor that Christie's allegedly sold at auction, but for which Christie's has not remitted any payments to the Trust. These items include:

- a. necklace and ear clips, by Ciner;
- b. silver-plated Girandole ear clips;
- c. a pink layered tulle evening gown with silver beading and sequins throughout;
- d. a Vicky Tiel navy cotton voile caftan with silvered paillettes; and
- e. a brown evening bag with purple and pink beading and fringing, by Valentino.

In addition to the foregoing items, Christie's sold at auction in London a Bela Kadar painting, which sold for £7000 in London (lot 325, Sale 850), but the sale was later cancelled without explanation from Christie's and the painting was returned to the Trust.

10. Finally, Christie's never fully remitted either to the Trust or to ETAF the proceeds from the sale of the exhibition tickets, the specialty catalogs or the originally signed books, which proceeds were designated for donation to ETAF, which Christie's advertised would be donated to ETAF, and which Christie's agreed with the Trust would be so donated. The Trust is informed and believes, and thereon alleges, that Christie's cancelled the art sale without explanation, and failed and refused to return to the Trust the unsold auction items.

11. As part of its ongoing efforts to strong-arm the Trust into returning the proceeds from the sale of the Diamond, Christie's also refused to remit to the Trust the amount that it was owed from the sale of the Bulgari Ring, *i.e.*, \$2,900,000. After misleading the Trust for months about the status of the Bulgari Ring, Christie's finally admitted that it had received payment for the sale of the Bulgari Ring, \$2,900,000 of which was owed the Trust. Christie's, however, refused to pay the Trust's share from the sale of the Bulgari Ring unless the Trust refunded the proceeds from the sale of the Diamond.

12. By this action, the Trust seeks redress for Christie's breaches of its agreement with the Trust and for other bad faith conduct. In particular, the Trust seeks a declaration of the parties' respective rights and obligations under the Consignment Agreement, including that the Trust is not obligated to return to Christie's the proceeds received from the sale of the Diamond. Indeed, requiring the Trust to return the proceeds to Christie's (for a sale that Christie's voluntarily cancelled to appease one of its VIP customers) would be especially

damaging to the Trust because the items were sold at record prices under unique circumstances that cannot be re-created.

13. In addition to the Diamond, the Trust seeks an accounting of the cancelled sales and either the return of the five (5) unaccounted for items, for which the Trust did not receive any sales proceeds, or compensation in full for the full amount of the alleged sales thereof. In addition, the Trust is entitled to payment for the Bulgari Ring in the amount of \$2,900,000, plus interest. The Trust further seeks to recover all amounts that Christie's has wrongfully retained from the exhibition tickets, sales of the specialty catalogs and the originally signed books, so that such proceeds can be directed to ETAF. The Trust also seeks indemnification for all losses arising out of Christie's willful misconduct or, at a minimum, gross negligence, related to Christie's marketing and promotion of the Diamond, both before and during the auctions.

THE PARTIES

14. Plaintiffs Barbara Berkowitz, Timothy Mendelson, and Quinn Tivey are currently Co-Trustees of The Sothern Trust. The Trust is formed under the laws of the State of California. Ms. Berkowitz and Mr. Mendelson were at all times alleged herein acting in their capacity as trustees and are residents of the State of California. Mr. Tivey is a resident of the State of New York.

15. The Trust is informed and believes, and based thereon alleges, that Defendant Christie's is a New York Corporation with its principal place of business in New York, New York, which is engaged in, among other things, the business of conducting auctions and private sales of fine art.

16. The Trust is informed and believes, and based thereon alleges, that the defendants sued herein as Does 1 through 10, inclusive, are high-level executives, managers, or officers of Defendant Christie's that were involved with the consignment and sale of the Trust's property at issue in this complaint. The Trust does not know the true names and capacities of the defendants sued herein as Does 1 through 10, inclusive, and therefore sues

these defendants by such fictitious names. The Trust will seek leave to amend its complaint to allege their true names and capacities when ascertained. The Trust is informed and believes, and thereon alleges, that each of the fictitiously-named defendants is responsible in some manner for the occurrences, injuries, and other damages alleged herein.

17. The Trust is informed and believes, and thereon alleges, that each defendant named herein, including those defendants named as Does, is and at all times relevant hereto was the agent of each of the other defendants, and at all relevant times was acting in the course and scope of such agency and with the authorization, knowledge, permission, consent and ratification of each of the other defendants.

JURISDICTION

18. This court has jurisdiction over Christie's pursuant to CPLR § 301 in that Christie's is a New York corporation that regularly transacts business in the State of New York.

19. The Trust is informed and believes, and based thereon alleges, that this Court has jurisdiction over Does 1 through 10, who are believed to be employees of Christie's and residents of the State of New York.

GENERAL ALLEGATIONS

A. Christie's Is Entrusted With The Sale Of Elizabeth Taylor's Valuable Jewelry, Wardrobe And Art Collections

20. Elizabeth Taylor was one of the greatest film and television actresses of all time. Over her 69-year career, she amassed nearly 70 acting credits and garnered countless awards for her performances.

21. A devoted humanitarian, Ms. Taylor was a pioneer in HIV/AIDS-related fundraising and advocacy efforts. She co-founded amfAR (also known as the American Foundation for AIDS Research), and in 1991, Ms. Taylor established ETAF to raise funds and awareness to fight the spread of HIV/AIDS, and to provide direct service assistance to those living with HIV/AIDS.

22. Ms. Taylor had a well-known passion for jewelry, with which she had a self-proclaimed “love affair.” As detailed in her book, *Elizabeth Taylor: My Love Affair With Jewelry*, Ms. Taylor’s jewelry collection included both personal keepsakes as well as a number of world-famous and historically significant gems.

23. Ms. Taylor passed away in Los Angeles, California, on March 23, 2011. Ms. Taylor made arrangements to sell some of her possessions, including her jewelry collection, upon her death.

24. In accordance with Ms. Taylor’s wishes, on or about July 20, 2011, the Trust entered into a Consignment Agreement with Christie’s for the sale of Ms. Taylor’s vast jewelry collection, clothing and accessory items from her iconic wardrobe, and pieces of artwork. The various items were to be sold at Christie’s New York auction of The Collection of Elizabeth Taylor, which took place in December 2011, and Christie’s London auction of Impressionist/Modern Art On Paper, which took place on February 8, 2012 (the “Auctions”). Among the items to be sold at the Auctions were:

- a. the Diamond, a heart-shaped, table-cut Indian diamond, commonly known as the “Taj Mahal,” which Richard Burton acquired from world-renowned jeweler Cartier for Ms. Taylor’s fortieth birthday in 1972;
- b. an emerald and diamond ring by BVLGARI, *i.e.*, the Bulgari Ring;
- c. a necklace and ear clips, by Ciner (the “Ciner Necklace Set”);
- d. silver-plated Girandole ear clips (the “Girandole Ear Clips”);
- e. a pink layered tulle evening gown with silver beading and sequins throughout (the “Tulle Evening Gown”);
- f. a Vicky Tiel navy cotton voile caftan with silvered paillettes (the “Vicky Tiel Caftan”); and
- g. a brown fur evening bag with purple and pink beading and fringing, by Valentino (the “Valentino Bag”).

B. Christie’s Rights And Obligations Under The Auctions’ Conditions Of Sale And The Consignment Agreement

25. All sales that took place at the Auctions were governed by certain Conditions of Sale. The Conditions of Sale, which contained all the terms on which Christie’s and the seller of property contract with the buyer, were set forth in the Auction Catalogue that was distributed to all prospective buyers (the “Catalogue”). By bidding at the Auctions, each buyer agreed to be bound by the Conditions of Sale, whether or not he or she actually read those conditions.

26. The Trust is informed and believes, and thereon alleges, that the Conditions of Sale that applied to the Auctions were the same, or substantially the same, as the conditions of sale that Christie’s uses for all of its auctions.

27. Among other things, the Conditions of Sale govern buyers’ payment obligations to Christie’s, acting as the Trust’s agent, with respect to successful bids and purchases. Specifically, the Conditions of Sale set forth Christie’s expectation that buyers “make payment for purchases immediately after the auction,” and expressly require that the buyer “pay the full amount due . . . not later than 4:30 pm on the seventh calendar day following the sale.” Thus, subject to very narrow exceptions, all successful bids resulted in a final sale that could not be rescinded or cancelled.

28. The Conditions of Sale also set forth the scope of Christie’s guarantee to the buyers in relation to the nature of property sold at the Auction. Specifically, Paragraph 2 of the Conditions of Sale provides, in pertinent part:

Neither Christie’s nor the seller provides any guarantee in relation to the nature of the property apart from the Limited Warranty in paragraph 6 below. The property is otherwise sold “as is.”

....

All statements by us in the catalogue entry for the property or in the condition report, or made orally or in writing elsewhere, are statements of opinion and are not to be relied on as statements of fact. Such statements do not constitute a representation, warranty, or assumption of liability by us of any kind.

....

Except as stated in the Limited Warranty in paragraph 6 below, all property is sold “as is” without any representation or warranty of any kind by Christie’s or the seller. Buyers are responsible for satisfying themselves concerning the condition of the property and the matters referenced in the catalogue entry.

29. Paragraph 6 of the Conditions of Sale, entitled “Limited Warranty,” further states:

6. LIMITED WARRANTY

Subject to the terms and conditions of this paragraph, Christie’s warrants for a period of five years from the date of the sale that any property described in headings printed in UPPER CASE TYPE (i.e. headings having all capital-letter type) in this catalogue (as such description may be amended by any saleroom notice or announcement) which is stated without qualification to be the work of a named author or authorship, is authentic and not a forgery. The term “author” or “authorship” refers to the creator of the property or to the period, culture, source or origin, as the case may be, with which the creation of such property is identified in the UPPER CASE description of the property in this catalogue. **Only UPPER CASE TYPE headings of lots in this catalogue indicate what is being warranted by Christie’s. Christie’s warranty does not apply to the supplemental material which appears below the UPPER CASE TYPE headings of each lot and Christie’s is not responsible for error or omissions in such material.** (emphasis added)

30. Paragraph 5 of the Conditions of Sale, entitled “Extent of Christie’s Liability,” further emphasizes that Christie’s agrees to refund the purchase price of property sold at the Auction only in the circumstances of the Limited Warranty:

5. EXTENT OF CHRISTIE’S LIABILITY

We agree to refund the purchase price in the circumstances of the Limited Warranty set out in paragraph 6 below. Apart from that, neither the seller nor we, nor any of our officers, employees or agents, are responsible for the correctness of any statement of whatever kind concerning any lot, whether written or oral, nor for any other errors or omissions in description or for any faults or defects in any lot. Except as stated in paragraph 6 below, neither the seller, ourselves, our officers, employees or agents, give any representation warranty or guarantee or assume any liability of any kind in respect of any lot with regard to merchantability, fitness for a particular purpose, description, size, quality, condition, attribution, authenticity, rarity, importance, medium, provenance, exhibition history, literature or historical relevance. Except as required by local law any warranty of any kind whatsoever is excluded by this paragraph. (emphasis added)

31. Christie's obligations to the Trust are set forth in the Consignment Agreement, which details the terms and conditions under which Christie's was to sell Ms. Taylor's possessions.

32. The Consignment Agreement identifies one circumstance (other than for non-payment for an item by a buyer) in which Christie's is authorized to accept the return and rescind the sale of any property sold. This circumstance is set forth in a provision entitled "Rescission of Sale" (the "Rescission Provision"), which provides, in relevant part:

13. RESCISSION OF SALE: Christie's, as Seller's agent, is authorized to accept the return and rescind the sale of any Property at any time if Christie's in our reasonable judgment determines that the offering for sale of any Property has subjected or may subject Christie's and/or Seller to any liability, including liability under warranty of authenticity or title. In such event, Christie's is further authorized to refund or credit to the buyer the purchase price of such returned Property. If Christie's has already remitted to Seller any proceeds of the rescinded sale, Seller forthwith shall pay Christie's upon request an amount equal to the remitted proceeds[.]

33. The Consignment Agreement also specifies how Christie's is to treat unsold property. Paragraph 15 of the Consignment Agreement provides:

15. UNSOLD PROPERTY: For each lot offered but not sold, there will be no service charge. Any Property remaining unsold following the expiration of the thirty-day period referred to in paragraph 14 above shall be returned to Seller at Christie's expense.¹

34. Paragraph 10 of the Consignment Agreement also specifies that Christie's may withdraw property prior to the auctions if it doubts the item's attribution or authenticity: "Christie's reserves the right to withdraw any Property at any time before sale if in Christie's sole judgment . . . there is doubt as to its attribution or authenticity."

35. Finally, the Consignment Agreement specifies the extent to which Christie's is required to indemnify the Trust. Paragraph 17 (the "Indemnification Provision") of the Consignment Agreement provides:

¹ Paragraph 14 of the Consignment Agreement provides, in relevant part: "If any lot is bought-in pursuant to paragraph 8 above, Christie's, as Seller's exclusive agent, is authorized for a period of thirty days following the auction to sell the lot privately for a price that will result in payment to Seller of an amount at least equal to the amount, after deduction of Christie's commissions and reimbursable expenses, that Seller would have received if the lot had been sold at the reserve, or for such lesser amount as Christie's and Seller shall agree."

17. INDEMNIFICATION: . . . Christie's shall defend, indemnify and hold harmless Seller from any and all losses, damages, liabilities and claims, and all fees, costs and expenses of any kind related thereto (including, without limitation, reasonable attorneys' fees), arising out of, based upon or resulting from Christie's acting with gross negligence or willful misconduct.

C. Christie's Markets Items For The Auctions, Prepares The Catalogue Descriptions Of The Items, And Offers The Items For Sale At The Auctions

36. The Trust is informed and believes, and based thereon alleges, that Christie's thoroughly examines all property to be sold at its auctions prior to preparing the Catalogue descriptions and other promotional materials that accompany the sale of that property. The Trust is informed and believes, and based thereon alleges, that Christie's thoroughly examined all of Ms. Taylor's belongings prior to offering them for sale at the Auctions, and prepared the accompanying Catalogue descriptions and promotional materials in accordance with its examination and findings.

37. With regard to the Diamond in particular, the Trust is informed and believes, and thereon alleges, that Christie's solicited opinions from its own internal experts and consultants, including its Head of Jewelry for the Americas & Switzerland, the Director of its jewelry department in London, and its Director and head of Islamic Art. Christie's also sought and obtained a description of the Diamond from world-renowned jeweler Cartier, which originally sold the Diamond to Burton.

38. The Trust is informed and believes, and based thereon alleges, that Christie's, as a result of its research and the solicited opinions of its experts and consultants, had some doubts about the Diamond's age and supposed ownership by Shah Jahan well in advance of the Auctions. The Trust is further informed and believes, and based thereon alleges, that despite Christie's doubts regarding the provenance of the Diamond, Christie's marketing and promotion of the Diamond outside the bounds of the Catalogue nevertheless identified the Diamond as having belonged to Shah Jahan. By way of example, the Trust is informed and believes, and based thereon alleges, that, without the Trust, Christie's representatives went on television to promote the Auctions and – despite Christie's doubts as to the Diamond's age and provenance – described the Diamond as

having belonged to Shah Jahan during the Mughal period. Christie's, fully informed of the internally communicated opinions of its experts, nevertheless made the decision to promote the Diamond as having belonged to Shah Jahan and being of a particular age.

39. Based on its research, Christie's prepared materials both for inclusion in the Catalogue, as well as for use in connection with promotional efforts relating to the sale of the jewelry collection and the Diamond. The Catalogue's upper case heading described the Diamond as: "AN INDIAN DIAMOND AND JADE PENDANT NECKLACE RUBY AND GOLD CHAIN BY CARTIER." The upper case lot description did not include, or make any reference to, either the date of the Diamond or of its alleged origins.

40. In addition to the upper case heading, Christie's also prepared supplemental materials regarding the Diamond for inclusion in the Catalogue.

41. The Trust is informed and believes, and based thereon alleges, that during the Auctions, Christie's auctioneer promoted the Diamond as having belonged to Shah Jahan, a famous Mughal royal.

42. Ultimately, Christie's sold the Diamond to an anonymous buyer (the "Diamond Buyer") for \$8,818,500 (including the commission that would be paid to Christie's). The Trust is informed and believes, and thereon alleges, that the Diamond Buyer is an ongoing, highly valued customer of Christie's. Christie's remitted payment for the Diamond to the Trust – an amount totaling \$7.8 Million. The Trust is further informed and believes, and thereon alleges, that Christie's representative was (or representatives were) with the Diamond Buyer during the auction and advised the Diamond Buyer of Christie's concerns regarding the Diamond's origins and provenance.

43. In addition to the Diamond, auction sales included the Bulgari Ring, another high-profile piece in Ms. Taylor's jewelry collection that ultimately sold for \$2,900,000, the Ciner Necklace Set, the Girandole Ear Clips, the Tulle Evening Gown, the Vicky Tiel Caftan, and the Valentino Bag.

D. Christie's Unreasonably Cancels The Sale Of The Diamond, And Fails To Remit The Sale Proceeds For Other Items Sold

44. The Auctions were an undeniable success. Unfortunately for the Trust, however, that success has been diminished by Christie's unreasonable, bad faith, and self-serving conduct following the sales.

45. Several months after the sale of the Diamond, Christie's informed the Trust that it had unilaterally cancelled the sale of the Diamond (without first consulting the Trust), and Christie's demanded that the Trust return all proceeds that it received on account of the sale. Christie's took no responsibility for the buyer's decision to cancel the sale or its own role in causing the buyer's alleged dissatisfaction.

46. The Trust is informed and believes, and based thereon alleges, that the Diamond Buyer's demand was based solely on his contention that the Diamond had not belonged to Shah Jahan, despite the fact that (i) Christie's never warranted the age of the Diamond or that it had previously belonged to Shah Jahan in the Catalogue and (ii) on information and belief, Christie's informed the Diamond Buyer, prior to his purchase of the Diamond, that it had doubts regarding the Diamond's age and provenance. Notwithstanding that the Diamond Buyer's claim fell outside of the scope of the Limited Warranty, Christie's deviated from its usual policy and practice (which policy and practice it has successfully litigated many times in the past), and agreed with the Diamond Buyer to cancel the sale of the Diamond without regard to the Conditions of Sale and without any further investigation into the Diamond Buyer's allegations. Christie's did not apprise the Trust of its actions until after the purported rescission.

47. Accordingly, the Trust is informed and believes, and thereon alleges, that Christie's cancelled the sale of the Diamond to appease an ongoing VIP customer of Christie's, and not because it reasonably believed that the Diamond Buyer's claims would subject it, or the Trust, to any liability. The Trust is further informed and believes, and based thereon alleges, that the VIP customer refused to bid in other upcoming Christie's sales until he had confirmation in writing that the Diamond purchase was cancelled. Upon information and belief, Christie's

acquiesced to the demands of this VIP client, to the detriment of the Trust, and unilaterally cancelled the sale – refunding the purchase price of the Diamond to the Diamond Buyer.

48. The Trust has declined to return to Christie's the proceeds it received from the sale of the Diamond because Christie's decision to cancel the sale was unreasonable, and because the Diamond Buyer's alleged demands did not reasonably subject either Christie's or the Trust to liability. Christie's acted in its own self-interest and in the interest of its VIP customer, and to the detriment of the Trust.

49. In response to the Trust's refusal to return to Christie's the proceeds that it rightfully received and retained from the sale of the Diamond, Christie's has refused to remit to the Trust the proceeds from the sale of the Bulgari Ring, which sold for \$2,900,000. Initially, and repeatedly, Christie's told the Trust that the buyer had not completed payment for the Bulgari Ring, and it was unclear to the Trust whether the Bulgari Ring was in the possession of the buyer or still with Christie's. Accordingly, the Trust demanded that Christie's return the Bulgari Ring. Over two (2) years after the date of the Auction, Christie's finally admitted that all payments had been made and the Bulgari Ring had been transferred to the new owner. Rather than remit payment for the Bulgari Ring to the Trust as required under the Consignment Agreement (and as demanded by the Trust), however, Christie's has intentionally and inappropriately held hostage the money owed to the Trust for the Bulgari Ring in an effort to increase its leverage in the dispute over the Diamond. Christie's has declined all requests by the Trust to make payment on this item.

50. Since the Auctions, the Trust also became aware of other property that was offered for sale at the Auctions, but for which the Trust did not receive any payment. Specifically, the Trust has not received payment for the Ciner Necklace Set, the Girandole Ear Clips, the Tulle Evening Gown, the Vicky Tiel Caftan, and the Valentino Bag. Despite repeated requests, Christie's has not provided a reasonable explanation as to why it has not compensated the Trust for the remaining items, provided status as to the location of the items, or returned them. The Trust is

informed and believes that the aforementioned items remain in Christie's possession. The sale of the Bela Kadar painting was also unilaterally cancelled without notice or explanation to the Trust.

51. Finally, compounding the wrongful conduct detailed above, Christie's has not properly remitted payment to the Trust or ETAF for the proceeds specifically earmarked for ETAF. In particular, Christie's has not remitted to the Trust or ETAF: (1) certain proceeds from the sale of all twenty-seven (27) copies of *Elizabeth Taylor: My Love Affair With Jewelry*, which bear Ms. Taylor's original signature and which sold for \$2,500 apiece (the "Books"); (2) certain proceeds from the sale of two thousand (2000) copies of a box set of books that includes both a copy of *Elizabeth Taylor: My Love Affair With Jewelry* and a special catalog of Ms. Taylor's jewelry collection, which sold for \$600 apiece (the "Box Sets"); or (3) certain proceeds from the exhibition tickets.

FIRST CAUSE OF ACTION

(Declaratory Judgment Pursuant To CPLR § 3001)

52. The Trust incorporates by reference the allegations contained in Paragraphs 1 through 51, as though set forth fully herein.

53. A justiciable controversy has arisen and now exists between the Trust and Christie's, regarding the scope of the parties' rights and obligations under the Consignment Agreement.

54. The Trust contends that the Rescission Provision does not obligate the Trust to pay Christie's the proceeds it received from Christie's sale of the Diamond because Christie's did not exercise "reasonable judgment" in making the decision to rescind the sale of the Diamond on the grounds that the sale would subject Christie's and/or the Trust to liability.

55. The Trust further contends that, pursuant to the Consignment Agreement's Indemnification Provision, Christie's is required to defend, indemnify, and hold harmless the Trust for any losses arising out of Christie's gross negligence or willful misconduct.

56. Despite representing to the Trust that the Diamond Buyer relied only on the Catalogue when purchasing the Diamond, Christie's has at other times asserted that it was

susceptible to legal liability due to its marketing and promotion of the Diamond before and during the Auctions. The Trust is informed and believes that Christie's was fully aware of its concerns regarding the age and origins of the Diamond well before the Auctions, yet nevertheless marketed and promoted the Diamond – both prior to and during the Auctions – as having belonged to Shah Jahan.

57. Christie's misconduct was willful or, at a minimum, constitutes gross negligence, giving rise to Christie's obligations under the Consignment Agreement to indemnify the Trust for any losses arising out of the sale of the Diamond.

58. The Trust is informed and believes, and on that basis alleges, that Christie's disputes the above-alleged contentions.

59. The Trust seeks a declaration (i) of the rights and obligations of the parties under the Rescission Provision of the Consignment Agreement and specifically seeks an adjudication that the Trust is not obligated to pay Christie's the proceeds it received from the sale of the Diamond because Christie's decision to rescind the sale was unreasonable, and (ii) that Christie's is required to indemnify the Trust for any losses arising out of Christie's willful misconduct and/or gross negligence with respect to the marketing and promotion of the Diamond.

SECOND CAUSE OF ACTION

(Breach of Contract)

60. The Trust incorporates by reference the allegations contained in Paragraphs 1 through 59, as though set forth fully herein.

61. For good and valuable consideration, the Trust entered into the Consignment Agreement with Christie's, pursuant to which Christie's agreed to remit a specified portion of the proceeds from the sale of Ms. Taylor's jewelry, wardrobe, and art collection, and related items.

62. The Trust has performed all covenants and conditions required of it under the Consignment Agreement.

63. Christie's has breached its contractual duties to the Trust by, among other things, failing to adhere to its own policies concerning warranties made in connection with the sale of

auctioned items, failing to pay to the Trust and/or ETAF (as appropriate) the proceeds from the sale of the Bulgari Ring, the Ciner Necklace Set, the Girandole Ear Clips, the Tulle Evening Gown, the Vicky Tiel Caftan, the Valentino Bag, and proceeds from the exhibition ticket sales, the signed Books, and the Box Sets.

64. As a direct and proximate result of Christie's breaches of the Consignment Agreement as set forth herein, the Trust has suffered general and consequential damages in an amount to be determined at trial.

THIRD CAUSE OF ACTION

(Breach of Fiduciary Duty)

65. The Trust incorporates by reference the allegations contained in Paragraphs 1 through 64, as though set forth fully herein.

66. By virtue of the Trust having placed confidence in the fidelity and integrity of Christie's by entrusting Christie's with the sale of Ms. Taylor's jewelry, wardrobe, art collection, and related items, for which Christie's received substantial commissions, Christie's, as consignor and agent of the Trust, at all times relevant and referenced herein, had a duty to act with the utmost care and good faith in the best interests of the Trust. As the Trust's consignor-auctioneer, Christie's owed a fiduciary duty to the Trust independent of the Consignment Agreement. This fiduciary duty required Christie's, among other things, to provide the Trust with a true and accurate statement of all of the amounts that Christie's owes the Trust as a result of the sales that took place at the Auctions and the status of any unsold items or cancelled sales, to advertise and/or market the items sold at the Auctions honestly and accurately, to exercise its discretion to rescind or cancel the sale of consigned property only in good faith, and to take all reasonable steps to protect the Trust's rights with respect to buyers of the consigned property, including by remitting to the Trust the sale proceeds of the consigned property or by otherwise returning the consigned property to the Trust.

67. Despite having voluntarily solicited and accepted the trust and confidence of the Trust, and in violation of this relationship of care, trust and confidence, Christie's breached its

duty of care and abused the trust and confidence of the Trust by: (1) failing to report the amounts that Christie's owes the Trust as a result of the sales that took place at the Auctions and the status of any unaccounted for items, including the Ciner Necklace Set, the Girandole Ear Clips, the Tulle Evening Gown, the Vicky Tiel Caftan, and the Valentino Bag; (2) promoting the Diamond as having belonged to Shah Jahan on television before the Auctions and when describing the Diamond during the Auctions despite Christie's pre-existing doubts concerning the Diamond's provenance; (3) cancelling the sale of the Bela Kadar painting without providing any notice or explanation to the Trust; (4) unreasonably cancelling the sale of the Diamond (without first advising or consulting with the Trust), in violation of its own policies and the Conditions of Sale, and placing its own financial interests over those of the Trust; (5) subordinating the Trust's interests to those of the Diamond Buyer, who, upon information and belief, Christie's viewed as the client, rather than the Trust; (6) delaying in requiring payment by the buyer of the Bulgari Ring; and (7) intentionally holding hostage payment for the Bulgari Ring and other items for the purpose of extorting from the Trust the proceeds that the Trust rightfully received from the sale of the Diamond.

68. By committing the foregoing acts, Christie's acted in bad faith, in breach of the fiduciary duties owed to the Trust, in a manner contrary and directly hostile to the Trust's interests.

69. As a direct and proximate result of Christie's breaches of its fiduciary duties, as set forth herein, the Trust has suffered general and consequential damages in an amount to be determined at trial.

70. Moreover, Christie's breach of its fiduciary duties described above was intended by Christie's to cause injury to the Trust and constituted despicable conduct carried on by Christie's in willful and conscious disregard of the Trust's rights such as to constitute malice, oppression or fraud. The Trust therefore is entitled to punitive and exemplary damages against Christie's in an amount sufficient to punish Christie's and deter it and others from engaging in similar, unlawful conduct in the future.

FOURTH CAUSE OF ACTION

(Conversion)

71. The Trust incorporates by reference the allegations contained in Paragraphs 1 through 70, as though set forth fully herein.

72. Under the Consignment Agreement, Christie's was entrusted with selling Ms. Taylor's jewelry, wardrobe, art collection, and related items on behalf of the Trust. The Trust was to receive the proceeds from the sales, subject to an agreed-upon commission that Christie's retained. The Consignment Agreement further provided that, in the event that consigned property is unsold, then Christie's is obligated to return the property to the Trust at Christie's expense.

73. Christie's has failed to remit to the Trust the proceeds from the sales of the Bulgari Ring, the Ciner Necklace Set, the Girandole Ear Clips, the Tulle Evening Gown, the Vicky Tiel Caftan, and the Valentino Bag, all of which Christie's agreed to offer for sale (and/or did sell) pursuant to the Consignment Agreement. Christie's also has not returned the aforementioned items to the Trust.

74. As a result, Christie's has wrongfully assumed control over, and converted for its own use, the Bulgari Ring, the Ciner Necklace Set, the Girandole Ear Clips, the Tulle Evening Gown, the Vicky Tiel Caftan, and the Valentino Bag and/or the proceeds from the auction sales of the same.

75. As a direct and proximate result of Christie's conduct, as set forth above, the Trust has suffered general and consequential damages in an amount to be determined at trial.

76. Moreover, Christie's conduct described above was intended by Christie's to cause injury to the Trust and constituted despicable conduct carried on by Christie's in willful and conscious disregard of the Trust's rights such as to constitute malice, oppression or fraud. The Trust therefore is entitled to punitive and exemplary damages against Christie's in an amount sufficient to punish Christie's and deter it and others from engaging in similar, unlawful conduct in the future.

FIFTH CAUSE OF ACTION

(Accounting)

77. The Trust incorporates by reference the allegations contained in Paragraphs 1 through 76, as though set forth fully herein.

78. Christie's, in its capacity as auction house, owes a fiduciary duty to its consignors, including the Trust.

79. Consistent with its obligations, Christie's has a duty to act in the utmost good faith and in the interest of the Trust, its principal, throughout their relationship, including by providing the Trust with a true and accurate accounting of all unsold items, as well as of the amounts that Christie's owes the Trust as a result of the sales that took place at the Auctions.

80. The Trust is informed and believes, and thereon alleges, that Christie's has wrongfully withheld proceeds from the sale of the Auctions from the Trust.

81. Christie's is in the best position to know the true and correct amount owed and due to the Trust from the Auctions because the books and records necessary to make such a determination are in the possession, custody and control of Christie's.

82. The Trust is entitled to, and hereby demand, an accounting to precisely measure the quantum of damages owed to the Trust.

PRAYER FOR RELIEF

Wherefore, the Trust prays for relief, as follows:

ON THE FIRST CAUSE OF ACTION

1. For a declaration of the rights and obligations of the parties under (i) paragraph 13 of the Consignment Agreement, specifically, that the Trust is not obligated to pay Christie's the proceeds it received from the sale of the Diamond and (ii) paragraph 17 of the Consignment Agreement, specifically, that Christie's must indemnify and hold harmless the Trust for any losses arising out of the sale and/or rescission of the sale of the Diamond due to Christie's gross negligence and/or willful misconduct.

ON THE SECOND CAUSE OF ACTION

2. For the Court to enter judgment against Christie's in a sum to be determined according to proof at trial, together with interest thereon at the maximum statutory rate, fees and costs incurred herein, and such other and further relief as the Court may deem just and proper.

ON THE THIRD CAUSE OF ACTION

3. For the Court to enter judgment against Christie's in a sum to be determined according to proof at trial, together with interest thereon at the maximum statutory rate, fees and costs incurred herein, and such other and further relief as the Court may deem just and proper.

4. For an award of punitive and exemplary damages against Christie's in an amount sufficient to punish Christie's and deter it and others from engaging in similar, unlawful conduct in the future.

ON THE FOURTH CAUSE OF ACTION

5. For the Court to enter judgment against Christie's in a sum to be determined according to proof at trial, together with interest thereon at the maximum statutory rate, fees and costs incurred herein, and such other and further relief as the Court may deem just and proper.

6. For an award of punitive and exemplary damages against Christie's in an amount sufficient to punish Christie's and deter it and others from engaging in similar, unlawful conduct in the future.

ON THE FIFTH CAUSE OF ACTION

7. For an accounting under Court supervision, of the proceeds earned from the Auction and the amounts due and payable to the Trust in accordance with the terms of the Consignment Agreement.

ON ALL CAUSES OF ACTION

8. For attorneys' fees.
9. For all costs of suit incurred herein.
10. For any and all further relief which the Court deems proper.

DATED: May 11, 2017

Respectfully submitted,

KELLEY DRYE & WARREN LLP

By: /s/ Philip D. Robben

Philip D. Robben

Levi M. Downing

101 Park Avenue

New York, New York 10178

Tel: (212) 808-7800

probben@kelleydrye.com

ldowning@kelleydrye.com

David E. Fink (*pro hac vice forthcoming*)

David E. Jang (*pro hac vice forthcoming*)

Andreas Becker (*pro hac vice forthcoming*)

10100 Santa Monica Blvd.

Twenty-Third Floor

Los Angeles, California 90067

*Attorneys for Plaintiffs Barbara Berkowitz,
Timothy Mendelson and Quinn Tivey, as Co-
Trustees for the Sothern Trust*