

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X Civil Action No.

JAMES WHITELEY,

COMPLAINT

Plaintiff,

-against-

ATAM SAHMANIAN, PARIS CUSTOM SHIRTMAKERS,
INC. and ATAM SAHMANIAN, INC.,

Defendants.

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Plaintiff, by his attorney, Gabriel Fischbarg, Esq., as and for his Complaint against defendants herein, alleges as follows:

1. At all relevant times, plaintiff was and is an individual domiciled in California.

2. Upon information and belief, defendant Paris Custom Shirtmakers, Inc. is a corporation organized and existing under the laws of the State of New York with a principal place of business in New York.

3. Upon information and belief, defendant Atam Sahmanian, Inc. is a corporation organized and existing under the laws of the State of New York with a principal place of business in New York.

4. Upon information and belief, defendant Atam Sahmanian, is an individual domiciled in New York and is an officer, sole owner and sole controlling party of all the other defendants.

5. Upon information and belief, defendants and each of them were the agents, employees, partners, joint-venturers, co-conspirators, owners, principals, shareholders, members, officers, directors and/or employers of the remaining

defendants, and each of them and are and at all times herein mentioned were, acting within the course and scope of that agency, employment, partnership, conspiracy, ownership, membership or joint venture, and that the acts and conduct herein alleged of each such defendant were known to, authorized by and/or ratified by the other defendants, and each of them.

6. This action arises under 28 U.S.C. 2201(a) (Declaratory Judgment Act) and 28 U.S.C. 1332 (a)(1), i.e., as a civil action between citizens of different states with the matter in controversy exceeding the value of \$75,000.00, exclusive of interest and costs. Pendent jurisdiction over all claims and parties arising from the same nucleus of operative facts lies in consideration of judicial economy, convenience, and fairness to litigants. Venue is proper in this District.

7. Plaintiff was first introduced to defendant Atam Sahmanian ("Sahmanian") by a close friend of plaintiff in October, 2016. On or about October 21, 2016, plaintiff, while located in Los Angeles, California, spoke to Sahmanian, while located in New York, New York, over the telephone. During such conversation, Sahmanian represented to plaintiff that (1) Sahmanian had worked continuously as an art collector and dealer since 1999, (2) Sahmanian personally had purchased at least 20 artworks worth more than \$50,000 each since 1999, (3) Sahmanian brokered as a dealer the sale of more than 20 artworks worth more than \$50,000 each since 1999 and (4) Sahmanina had previously purchased or brokered the sale of works by Jasper Johns, Tom Wesselmann, David Hockney

and Banksy.

On or about October 28, 2016, plaintiff spoke to Sahmanian in a face-to-face conversation in Los Angeles, California. During such conversation, Sahmanian represented to plaintiff that (1) Sahmanian currently had a sizable personal collection of art including artwork from the artists Warhol, Basquiat and Picasso, (2) Sahmanian bought and sold over 1000 Picassos over the years as either a dealer or for his personal collection, (3) Sahmanian was the personal art adviser for the Prince of Wales with special clearance from the Royal family and (4) that he had sold over \$300 million worth of art to a group of "Texans" who were still his clients.

8. Upon information and belief, none of such representations in paragraph 7 were true at the time they were made.

9. Relying on such misrepresentations, on or about November, 2016, plaintiff agreed to enter into arrangement with defendants whereby plaintiff, on the one hand, and defendants, on the other hand, would each provide half of the funds necessary to purchase certain artwork at prices agreed upon by plaintiff and defendants. The parties also agreed to split the proceeds of sales of the artwork equally between plaintiff, on the one hand, and defendants, on the other hand. The parties also agreed that defendants were solely responsible for locating buyers and sellers of artwork and negotiating with the buyers and sellers. The parties also agreed that defendants were not permitted to charge

or receive any sales commission or any other fee in connection with the purchase or sale of an artwork. The parties also agreed that defendants must obtain plaintiff's prior approval for all purchases and sales of artwork.

10. From November, 2016 to the present, defendants reported to plaintiff that the following alleged purchases and sales of paintings had occurred in New York, New York:

- (i) purchase of original artwork by Jasper Johns entitled "Numbers" on or about November 19, 2016 for \$200,000 and sale of such artwork on or about January 20, 2017 for \$380,000;
- (ii) purchase of original artwork by David Hockney entitled "Kviknes Hotel" on or about January 23, 2017 for \$2,100,000;
- (iii) purchase of original artwork by Tom Wesselmann entitled "Study for Great American" on or about November 19, 2016 for \$180,000 and sale of such artwork on or about May 2, 2017 for \$200,000;
- (iv) purchase of original artwork by Banksy entitled "Christ" on or about May 17, 2017 for \$60,000 and sale of such artwork on or about September 4, 2017 for \$90,000;
- (v) purchase of original artwork by Banksy entitled "Happy Chopper" on or about May 17, 2017 for \$65,000 and sale of such artwork on or about July 24, 2017 for \$80,000;
- (vi) purchase of original artwork by Banksy entitled "Choose Your Weapon" on or about May 17, 2017 for \$75,000 and sale of such artwork on or about July 17, 2017 for \$90,000;
- (vii) purchase of original artwork by Banksy entitled "Girl with

Balloon" on or about May 17, 2017 for \$140,000 and sale of such artwork on or about June 28, 2017 for \$160,000;

(viii) purchase of original artwork by Banksy entitled "Soupcan" on or about May 17, 2017 for \$50,000 and sale of such artwork on or about October 5, 2017 for \$75,000;

(ix) purchase of original artwork by Banksy entitled "Heavy Weaponry" for \$210,000 on or about May 17, 2017;

and

(x) purchase of original artwork by Banksy entitled "Sprung Horse" on or about May 17, 2017 for \$460,000.

Accordingly, as a result of all these alleged purchases and sales, defendants have represented to plaintiff that they are currently in possession of the following paintings: "Kviknes Hotel" by David Hockney (watercolor on paper), "Sprung Horse" by Banksy (oil and emulsion on canvas), "Heavy Weaponry" by Banksy (spray paint on canvas).

For each alleged sale and purchase listed above, defendants requested and obtained pre-approval from plaintiff by either a telephone communication or a smartphone text.

11. Upon request of the defendants, plaintiff wire-transferred the following funds to defendants' bank account in New York, New York to purchase certain of the artworks listed above:

- \$200,000 sent on November 18, 2016 allegedly to purchase the artworks described above by Jasper Johns and Tom Wesselmann;
- \$810,000 sent on January 23, 2017 allegedly to purchase the artwork described above by David Hockney;

-\$500,000 sent on May 16, 2017 allegedly to purchase the artworks described above by Banksy.

12. On or about January 20, 2017, defendants informed plaintiff that plaintiff's alleged portion of the proceeds of the sale of the artwork by Jasper Johns (\$190,000) was allegedly utilized to purchase the artwork by David Hockney.

13. Defendants have returned the following funds to plaintiff together with the following respective explanations for the returns:

- \$100,000 returned on May 3, 2017 allegedly for plaintiff's portion of the sale of the artwork by Tom Wesselmann;
 - \$80,000 returned on June 29, 2017 allegedly for plaintiff's portion of the sale of the artwork by Banksy entitled "Girl with Balloon";
 - \$45,000 returned on July 18, 2017 allegedly for plaintiff's portion of the sale of the artwork by Banksy entitled "Choose Your Weapon";
 - \$40,000 returned on July 25, 2017 allegedly for plaintiff's portion of the sale of the artwork by Banksy entitled "Happy Chopper";
 - \$45,000 returned on September 5, 2017 allegedly for plaintiff's portion of the sale of the artwork by Banksy entitled "Christ";
- and
- \$37,500 returned on October 5, 2017 allegedly for plaintiff's portion of the sale of the artwork by Banksy entitled "Soupcan".

14. Despite plaintiff's repeated requests for proof of any

of the foregoing alleged sales and purchases, defendants have refused to provide plaintiff with any proof whatsoever, including, without limitation, proof of storage of any artwork, invoices, purchase orders, bank statements and contracts for purchase of the artwork. Accordingly, upon information and belief, none of the purchases and sales described above actually occurred.

Alternatively, upon information and belief, some or all of the purchases and sales described above occurred at prices different from those represented by defendants to plaintiff. Upon information and belief, the defendants' misrepresentations regarding such alleged purchases and sales were part of a scheme by defendants to defraud plaintiff.

15. Defendants have refused to provide plaintiff with any proof whatsoever that any of the artworks listed above were ever under the ownership, control or possession of defendants despite repeated requests by plaintiff for such proof. Defendants have refused to provide plaintiff with any proof whatsoever that any of the following artworks are currently under the ownership, control or possession of defendants despite repeated requests by plaintiff for such proof: "Kviknes Hotel" by David Hockney (watercolor on paper), "Sprung Horse" by Banksy (oil and emulsion on canvas), "Heavy Weaponry" by Banksy (spray paint on canvas). Given that plaintiff has provided a total of \$1,510,000 to defendants and has been returned \$347,500 from defendants, defendants owe plaintiff at least \$1,162,500.

FIRST CAUSE OF ACTION
(Breach of Agreement against Defendants)

16. Plaintiff has properly performed under the agreement between plaintiff and defendants in connection with the purchase and sale of certain artwork by providing the funds requested by defendants in order to purchase certain artwork at set prices agreed upon by the parties.

17. In breach of the agreement, defendants have refused to pay plaintiff his portion of the proceeds of sales of alleged artwork and/or have never made the purchases represented to have been made by defendants.

18. As a result of such breach of agreement, plaintiff has been damaged in an amount to be proven at trial, but which is at least \$1,162,500 plus interest thereon.

SECOND CAUSE OF ACTION
(Accounting)

19. Plaintiff repeats and realleges the allegations of paragraphs 1 through 18 of the Complaint as if set fully set forth herein.

20. Defendants have allegedly received monies from third parties a portion of which is the property of plaintiff.

21. The exact amount of monies received by defendants can only be determined by an accounting. Plaintiff is informed and believes and on that basis alleges that the money diverted and exploited for themselves from plaintiff are at least \$1,162,500.

22. Plaintiff has demanded an accounting by defendants of all amounts received as a result of the alleged purchases and

sales of artwork described above. Defendants have failed and refused, and continue to fail and refuse, to render such an accounting or to pay plaintiff the reasonable sums due, which plaintiff hereby demands (namely, at least \$1,162,500).

THIRD CAUSE OF ACTION
(Declaratory Judgment)

23. Plaintiff repeats and realleges the allegations of paragraphs 1 through 22 of the Complaint as if set fully set forth herein.

24. On or about November, 2016, defendants agreed to provide plaintiff with 50% ownership in each artwork purchased 50% with the funds of plaintiff and 50% with the funds of defendants.

25. Since November, 2016, despite plaintiff's repeated request for proof of purchase or ownership of any of the artworks described above, defendants have not provided and have refused to provide plaintiff with any proof showing purchase or ownership of any artwork purchased or partially purchased with the funds of plaintiff. Defendants have refused to acknowledge plaintiff's ownership or co-ownership of any artwork purchased with plaintiff's funds.

26. Plaintiff requests that the court issue a declaratory judgment that (1) plaintiff is (i) the 100% owner of each artwork purchased solely with plaintiff's funds and (ii) the pro rata percentage owner of each artwork purchased with the applicable portion of plaintiff's funds and (2) requires plaintiff to obtain (i) sole possession and ownership of each artwork purchased solely

with plaintiff's funds and (ii) sole possession of each artwork purchased partially with plaintiff's funds and co-owned by plaintiff.

FOURTH CAUSE OF ACTION
(Fraud)

27. Plaintiff repeats and realleges the allegations of paragraphs 1 through 26 of the Complaint as if set fully set forth herein.

28. Regarding the misrepresentations described in paragraph 7 above, plaintiff thereby relied on the misrepresentations in deciding to send money to defendants.

29. Defendants, through Mr. Sahmanian, intentionally and knowingly made false and fraudulent misrepresentations and omissions to induce Plaintiff to enter into a purported business relationship with defendants or to induce plaintiff to continue its purported business relationship with defendants.

30. Plaintiff, to its substantial detriment, reasonably relied on the aforementioned misrepresentations and omissions, believing them to be true, and entered into a purported business relationship with defendants and/or continued the purported business relationship after the date of each misrepresentation.

31. But for defendants' misrepresentations, plaintiff would not have sent money to defendants and entered into a purported business relationship with defendants and/or continued the purported relationship past the date of each misrepresentation.

32. Because defendants fraudulently intended to induce plaintiff to detrimentally rely on defendants' intentional misrepresentations and omissions, and because plaintiff did detrimentally rely upon defendants' intentional misrepresentations and omissions, and because defendants concealed the truth from plaintiff, plaintiff is entitled to compensatory damages and foreseeable consequential damages in the amount of at least \$1,162,500, including, without limitation, (1) a return of monies paid by plaintiff to defendants, (2) out-of-pocket expenses and legal fees incurred by plaintiff as a result of the fraud performed by defendants plus applicable interest or such other greater amount to be determined at trial including, without limitation, expert witness fees, costs and attorneys' fees.

33. In addition, because defendants' misconduct and actions were in bad faith, in flagrant disregard of their obligations to plaintiff, and were committed maliciously, knowingly, intentionally, recklessly, and/or with a conscious or gross disregard of plaintiff's rights and/or with willful fraud and deceit, plaintiff is entitled to recover punitive damages in an amount to be determined at trial, in addition to the compensatory damages sought herein.

FIFTH CAUSE OF ACTION
(Negligent Misrepresentation)

34. Plaintiff repeats and realleges the allegations of paragraphs 1 through 33 of the Complaint as if set fully set

forth herein.

35. In making the misrepresentations and omissions described in paragraph 7 above to plaintiff, the defendants were careless and negligent in imparting the misrepresentations and omissions, had no reasonable grounds for believing the aforesaid representations to be true, or should have known them not to be true. Plaintiff was expected to rely on the aforesaid misrepresentations and omissions and defendants expressed the misrepresentations directly to plaintiff with the knowledge that the misrepresentations and omissions would be relied and acted upon by plaintiff. Defendants negligently breached their duty owed to plaintiff and induced plaintiff to send defendants money and enter into a purported business relationship with defendants and/or continue the purported business relationship after the date of each misrepresentation.

36. In detrimental reliance upon the aforesaid negligent misrepresentations and omissions, plaintiff sent defendants money and entered into a purported business relationship with defendants and/or continued the purported business relationship after the date of each misrepresentation. But for defendants' misrepresentations, plaintiff would not have send defendants any money or entered into a purported business relationship with

defendants and/or continued the purported relationship past the date of each misrepresentation. Defendants, in the course of their business, profession, or employment, and/or in the business relationship with plaintiff, supplied false information and guidance to plaintiff in connection with said purported business relationship. Plaintiff justifiably relied upon the information. Defendants failed to exercise reasonable care or competence in obtaining or communicating said information to Plaintiff.

37. Because of the negligent misrepresentations and omissions of the defendants, plaintiff is entitled to compensatory damages and foreseeable consequential damages in the amount of at least \$1,162,500, including, without limitation, (1) a return of monies paid by plaintiff to defendants, (2) out-of-pocket expenses and legal fees incurred by plaintiff as a result of the improper conduct by defendants plus applicable interest or such other greater amount to be determined at trial including, without limitation, expert witness fees, costs and attorneys' fees.

38. In addition, because defendants' misconduct and actions were in bad faith, in flagrant disregard of their obligations to plaintiff, and were committed maliciously, knowingly, intentionally, recklessly, and/or with a conscious or

gross disregard of plaintiff's rights and/or with willful fraud and deceit, plaintiff is entitled to recover punitive damages in an amount to be determined at trial, in addition to the compensatory damages sought herein.

SIXTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

39. Plaintiff repeats and realleges the allegations of paragraphs 1 through 38 of this Complaint as if set fully set forth herein.

40. Defendants owe a fiduciary duty to plaintiff stemming from their status as custodian and fiduciary of (1) plaintiff's funds that were specifically to be utilized to purchase certain artworks and of (2) the alleged proceeds of sales of artworks of which plaintiff was the sole or partial owner. Defendants have breached their fiduciary duties to plaintiff by putting their own interests above those of plaintiff and by perpetrating the scheme and acts hereinabove described.

41. Such wrongful conduct includes, among other things, converting, misappropriating, diverting and/or secretly utilizing plaintiff's funds for purposes not agreed upon by the parties.

42. Plaintiff did not consent to any of the aforementioned conduct which constitutes a breach by defendants of their fiduciary duty to plaintiff.

43. By reason of the foregoing, plaintiff has been damaged in an amount to be determined at trial, but believed to be at least of \$1,162,500.

44. In addition to the foregoing damages, in connection with the matters and things alleged herein, defendants have been guilty of oppression, fraud and malice and plaintiff is therefore entitled to exemplary damages in an amount to be proved at trial.

SEVENTH CAUSE OF ACTION
(Unjust Enrichment)

45. Plaintiff repeats and realleges the allegations of paragraphs 1 through 44 of the complaint as if set fully set forth herein.

46. By pursuing his scheme against plaintiff as described hereinabove, defendants have been unjustly enriched at the expense of plaintiff.

47. By reason of the foregoing, plaintiff has been damaged in an amount to be determined at trial, but believed to be at least of \$1,162,500.

EIGHTH CAUSE OF ACTION
(Constructive Trust)

48. Plaintiff repeats and realleges the allegations of paragraphs 1 through 47 of the complaint as if set fully set forth herein.

49. As a result of defendants' aforesaid wrongful acts and breach of fiduciary duty, defendants have received monies, and/or other valuable consideration and have been unjustly enriched at the expense of plaintiff, and defendants will continue to receive the benefit of plaintiff's funds.

50. Plaintiff is entitled to possession of any and all monies, assets and other value derived by defendants from their

wrongful conduct as hereinabove alleged. As a direct and proximate result of defendants' wrongful and illegal conduct as alleged herein, the aforementioned interests so acquired by defendants in breach of their fiduciary duty are charged with a constructive trust for the benefit of plaintiff.

NINTH CAUSE OF ACTION
(Conversion of Funds)

51. Plaintiff repeats and realleges the allegations of paragraphs 1 through 50 of the complaint as if set fully set forth herein.

52. As hereinabove described, defendants have converted specific funds allocated for specific purchases and sales of artwork that defendants intentionally did not accomplish.

53. Such assets were diverted and/or withheld from plaintiff without the consent or permission of plaintiff.

54. Defendants' conduct constitutes conversion and by reason of the foregoing, plaintiff has been damaged in an amount to be determined at trial, but believed to be in at least \$1,162,500.

55. In addition to the foregoing, in connection with the matters and things alleged herein, defendants are guilty of oppression, fraud and malice and plaintiff is therefore entitled to exemplary damages in an amount to be proved at trial.

TENTH CAUSE OF ACTION
(Conversion of Artworks)

51. Plaintiff repeats and realleges the allegations of paragraphs 1 through 50 of the complaint as if set fully set forth

herein.

52. As hereinabove described, upon information and belief, defendants have taken possession of artworks that are the sole property of plaintiff and/or are jointly owned by plaintiff and defendants (and/or others).

53. Such artworks have been diverted and/or withheld from plaintiff without the consent or permission of plaintiff.

54. Defendants' conduct constitutes conversion and by reason of the foregoing, plaintiff has been damaged in an amount to be determined at trial, but believed to be at least of \$1,162,500. In addition to the foregoing, in connection with the matters and things alleged herein, defendants are guilty of oppression, fraud and malice and plaintiff is therefore entitled to exemplary damages in an amount to be proved at trial.

ELEVENTH CAUSE OF ACTION
(Injunction)

56. Plaintiff repeats and realleges the allegations of paragraphs 1 through 55 of the complaint as if set fully set forth herein.

57. The artworks allegedly currently in possession of the defendants and purchased with plaintiff's funds are "unique items" under New York law. As a result, defendants' conduct has caused irreparable harm. By virtue of the wrongful acts described herein, defendants should be ordered (1) to give sole possession and ownership to plaintiff of the artworks purchased solely with plaintiff's funds, (2) to provide sole possession of the artworks

to plaintiff that were purchased partially by plaintiff's funds and thus co-owned by plaintiff and (3) to provide plaintiff with any and all documentation necessary to prove plaintiff's ownership or co-ownership of the artworks.

JURY DEMAND

Plaintiff demands a trial by jury.

WHEREFORE, the plaintiff respectfully prays the Court for judgment as follows:

a. On the first (1st) cause of action for breach of agreement, for judgment in favor of plaintiff and against defendants, and each of them, in the amount to be provable at trial, but believed to be at least \$1,162,500, with interest thereon, together with attorneys' fees, costs and disbursements of this action;

b. On the second (2nd) cause of action for an accounting, for judgment in favor of plaintiff and against defendants, and each of them, in the amount to be provable at trial, but believed to be at least \$1,162,500, with interest thereon, together with attorneys' fees, costs and disbursements of this action;

c. On the third (3rd) cause of action for declaratory judgment, (1) that plaintiff is (i) the 100% owner of each artwork purchased solely with plaintiff's funds and (ii) the applicable pro rata percentage owner of each artwork purchased with the applicable portion of plaintiff's funds and (2) that requires plaintiff to obtain (i) sole possession and ownership of each

artwork purchased solely with plaintiff's funds and (ii) sole possession of each artwork purchased partially with plaintiff's funds and co-owned by plaintiff, together with attorneys' fees, costs and disbursements of this action.

d. On the fourth (4th) cause of action for fraud, for judgment in favor of plaintiff and against defendants, and each of them, in the amount to be provable at trial, but believed to be at least \$1,162,500, together with interest thereon, together with attorneys' fees, costs and disbursements of this action; plus exemplary damages in an amount to be determined.

e. On the fifth (5th) cause of action for negligent misrepresentation, for judgment in favor of plaintiff and against defendants, and each of them, in the amount to be provable at trial, but believed to be at least \$1,162,500, together with interest thereon, together with attorneys' fees, costs and disbursements of this action; plus exemplary damages in an amount to be determined.

f. On the sixth (6th) cause of action for breach of fiduciary duty, for judgment in favor of plaintiff and against defendants, and each of them, in the amount to be provable at trial, but believed to be at least \$1,162,500, with interest thereon, together with attorneys' fees, costs and disbursements of this action; plus exemplary damages in an amount to be determined.

g. On the seventh (7th) cause of action for unjust enrichment, for judgment in favor of plaintiff and against

defendants, and each of them, in the amount to be provable at trial, but believed to be at least of \$1,162,500, with interest thereon, together with attorneys' fees, costs and disbursements of this action.

h. on the eighth (8th) cause of action for constructive trust, for judgment in favor of plaintiff and against defendants for possession of any and all monies, assets and other value derived by defendants from their wrongful conduct as hereinabove alleged.

i. On the ninth (9th) cause of action for conversion of funds, for judgment in favor of plaintiff and against defendants, and each of them, in the amount to be provable at trial, but believed to be at least \$1,162,500, with interest thereon, together with attorneys' fees, costs and disbursements of this action; plus exemplary damages in an amount to be determined.

j. On the tenth (10th) cause of action for conversion of artwork, for judgment in favor of plaintiff and against defendants, and each of them, in the amount to be provable at trial, but believed to be at least \$1,162,500, with interest thereon, together with attorneys' fees, costs and disbursements of this action; plus exemplary damages in an amount to be determined.

k. On the eleventh (11th) cause of action for an injunction awarding (1) sole possession and ownership to plaintiff of the artworks purchased solely with plaintiff's funds,

(2) sole possession of the artworks to plaintiff that were purchased partially by plaintiff's funds and co-owned by plaintiff and (3) plaintiff with possession of any and all documentation necessary to prove plaintiff's ownership or co-ownership of the artworks.

Dated: New York, New York
October 5, 2017

_____/s/_____
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