

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

RICHARD J. HEARTY JR.,  
8234 Brownstone Ext.  
Cross Plains, Tennessee 37049

and

BECKY LYNN HEARTY  
8234 Brownstone Ext.  
Cross Plains, Tennessee 37049

Plaintiffs

versus

THE BONFOEY COMPANY,  
1710 Euclid Avenue  
Cleveland, Ohio 44115

RICHARD MOORE,  
1710 Euclid Avenue  
Cleveland, Ohio 44115

NEIL H. MORRIS,  
309 Bowles Street  
Neptune Beach, Florida 32266-4920

Also Serve:

NEIL H. MORRIS  
209 Bosley Street  
Cincinnati, Ohio 45219-1301

And

GEM VENTURES, INC.  
1713 Seabreeze Ave.  
Jacksonville Beach, Florida 32250

) CASE NO.

) JUDGE

) VERIFIED COMPLAINT

) (Jury Demand Endorsed Hereon)



Painting, and negotiated payment terms with the buyer spread over five months. Upon information and belief, the buyer is expected to begin making \$40,000 monthly payments on the Painting beginning in January 2018. Such terms are not reflected in the Consignment Agreement.

4. On November 3, 2017, the Heartys learned for the first time of the purported Consignment Agreement. The Heartys demanded that Bonfoey immediately return their Painting, and also demanded information as to its location, who was in possession, and the identity of any putative buyer. Additionally, the Heartys demanded all documentation associated with the purported sale, including contracts, orders, or correspondence evidencing sale terms, the identity of the buyers, and the present status of the Painting.

5. When Morris learned of the Heartys' demand, he emailed Bonfoey with instructions to provide a backdated invoice in order to establish a consummated transaction, and to preclude the Heartys from reclaiming and recovering their Painting.

6. Bonfoey and Moore have refused to return the Painting, and/or provide the information and documentation demanded by the Heartys. Morris has refused to respond to correspondence from the Heartys. As a result, the Heartys do not have their Painting, and do not know where the Painting is, or who has custody of it. Moreover, the Heartys are without either money or security arising from whatever unauthorized and unknown transaction the Defendants have entered into.

## **PARTIES**

7. Plaintiff Richard J. Hearty Jr. is a co-owner of the Painting, and a resident of the State of Tennessee.

8. Plaintiff Becky Lynn Hearty is a co-owner of the Painting, and a resident of the State of Tennessee.

9. Richard J. Hearty, Jr. and Becky Lynn Hearty are a married couple.

10. Defendant Bonfoey Company is an Ohio corporation located in Cleveland, Ohio.

11. Defendant Moore is the President and Owner of the Bonfoey Company. Moore manages and/or oversees the day to day business of the company in Cleveland.

12. Defendant Morris is, upon information and belief, an art dealer who resides and does business in Neptune Beach, Florida.

13. Defendant Gem Ventures, Inc. ("Gem") is a Florida corporation that is owned by Morris.

14. Upon information and belief, Morris operates Gem as an entity engaged in buying and selling art.

## **JURISDICTION AND VENUE**

15. Jurisdiction in this Court is proper based on diversity of citizenship under 28 U.S.C. §1332(a)(1). There exists complete diversity among the parties, because the Heartys are residents of Tennessee, Bonfoey is an Ohio corporation, Moore is an Ohio resident, Morris is a Florida resident, and Gem is a Florida corporation.

16. Additionally, the amount in controversy exceeds \$75,000, as the Painting is valued in excess of \$200,000.

17. Venue is proper in this Court under 28 USC §§1391(b)(1)-(2).

18. This Court has personal jurisdiction over all Defendants because the Painting was kept in Ohio, and it was transported from Ohio to Florida as a result of a scheme conceived between Moore and Bonfoey in Ohio, and Morris in Florida.

### **STATEMENT OF FACTS**

19. Plaintiffs restate all prior allegations as if fully rewritten herein.

20. The Painting was a gift to the Heartys, given by Richard's father, Richard J. Hearty Sr., in the early 1990s.

21. On or around January 26, 2011, Richard J. Hearty Jr. brought the Painting to Bonfoey for appraisal and potential consignment sale.

22. By Moore's letter of April 12, 2012, Bonfoey then agreed to offer the Painting on consignment for \$270,000, with a 10% consignment fee accruing to Bonfoey upon sale.

23. Bonfoey did not sell the Painting, and Richard J. Hearty Jr. retrieved it from Bonfoey in late spring or early summer, 2013.

24. Richard then stored the Painting at Mary Hearty's home in Akron, Ohio.

25. In October, 2016, Richard J. Hearty Jr. discussed the Painting with Moore by telephone, as Richard understood that Moore may have known of a potential buyer for the Painting. In that conversation, Moore told Richard that he did not know of a buyer.

26. In the course of the October, 2016 conversation, Moore told Richard that he no longer had the paperwork associated with the 2011 appraisal, and 2012 consignment agreement between Richard and Bonfoey. As a result, Richard provided that paperwork to Moore.

27. Moore and Richard did not discuss a renewed contingency agreement in October, 2016, or at any time after Richard retrieved the Painting in 2013. Indeed, Richard never heard from Moore or Bonfoey after the conversation in October, 2016, with the possible exception of a brief follow up call to confirm Moore's receipt of the papers from 2011-2012.

28. In early 2017, Bonfoey was dealing with Mary Hearty, then approaching 94 years of age, on matters related to certain fine art pieces that she owned.

29. At that time, Moore indicated a renewed interest in the Painting. Subsequently, Moore presented Mary Hearty with a consignment agreement, dated and executed March 18, 2017 (the "Consignment Agreement"). A true and accurate copy of the Consignment Letter is attached hereto at Exhibit A.

30. Around this time, Mary Hearty's son Owen Brion Hearty (Richard's brother, referenced herein as "Brion") delivered the Painting to Bonfoey from Mary Hearty's home.

31. The Consignment Agreement provided far more favorable terms to Bonfoey than the 2012 terms. Specifically, the Consignment Agreement provided that: (1) Mary Hearty would act as consignor and agent for her son, Richard J. Hearty Jr.; (2) that upon sale of the Painting at any price, Richard would receive a "NET amount of

\$200,000.00”; (3) the Painting would be insured for \$200,000; and (4) Bonfoey would allow a buyer 30-day “payment period,” and that Bonfoey would issue a check for the “NET amount” within thirty days of Bonfoey receiving payment.

32. Bonfoey also placed language in the Consignment Agreement affirming that Mary Hearty had the “right, title, and interest in the [Painting],” and that she could convey the same to Bonfoey free and clear of competing claims or liens.

33. Notwithstanding such language, Moore had, since at least 2011, dealt exclusively with Richard J. Hearty Jr. regarding the Painting and, as referenced above, discussed the Painting with Richard as recently 2016.

34. Despite knowing of the Hearty’s ownership of the Painting, and despite his previous dealings with Richard J. Hearty Jr., Moore never contacted Richard to confirm Mary Hearty’s authority to enter into the Consignment Agreement on Richard’s behalf. This is true despite the very significant differences between the 2012 consignment agreement, and the Consignment Agreement presented to Mary Hearty, which differences accrued to the benefit of Bonfoey.

35. On November 3, 2017, Richard J. Hearty Jr. learned of the Consignment Agreement, and discovered that Bonfoey had either possession or control of the Painting.

36. From his home in Tennessee, Richard engaged Attorney Roy A. Krall to visit Bonfoey on his behalf as soon as possible in order to recover the Painting or demand its immediate return.

37. On November 9, 2017, Attorney Krall visited Bonfoey and met with Moore. Attorney Krall told Moore that the Heartys had not provided permission for a sale of the Painting, and demanded its immediate return.

38. For his part, Moore told Attorney Krall the following:

- (a) Bonfoey had transferred possession of the Painting to its partner, Morris;
- (b) Moore understood that Morris had entered a contract to sell the Painting, and Moore promised that he would provide a copy of the contract following the meeting;
- (c) Moore also stated that Morris had arranged for payment terms with the purported buyer, providing for 5 monthly payments of \$40,000, beginning in January, 2018.

39. On November 10, 2017, Attorney Krall emailed correspondence to Moore, summarizing the conversation of November 9, 2017, and demanding again the return of the Painting. In the same letter, Attorney Krall also requested the identity of the purported buyer, and the specific location of the Painting.

40. Moore did not provide a copy of the purported sales contract, as he had promised, and no such document has ever been provided to the Heartys.

41. On November 22, 2017, counsel for Bonfoey, Theodore M. Mann, Jr., responded by letter to Attorney Krall. Therein, Attorney Mann stated that the "subject art work is in the process of completing a sale transaction" pursuant to the Consignment Agreement. Attorney Mann further stated that absent default or failure to perform by the (unidentified) "Buyer," the sale "is expected to proceed." Attorney Mann also explained that the agreed terms of the sale included five monthly payments, to be completed in May, 2018.

42. On November 22, 2017, undersigned counsel emailed Attorney Mann, again demanding the rescission of any transaction involving the Painting, and demanding its return. Undersigned counsel additionally demanded information as to the location of the Painting, the identity of any person in custody of the Painting, the identity of any purchaser. Undersigned counsel further demanded assurance that the condition of the Painting was unchanged from the time that Bonfoey took custody, and demanded copies of any contracts, orders, or correspondence pertaining to the terms of the purported sale.

43. On November 27, 2017, undersigned counsel followed up with another email to Attorney Mann, again demanding documents related to any purported sale of the Painting, and any “written agreement, contract, or commission arrangement [that] exists between Bonfoey and Neil Morris, or any entity affiliated with or owned by Mr. Morris, regarding the [Painting].”

44. On November 29, 2017, Attorney Mann replied as follows:

- (a) No written agreements exist between Bonfoey and Neil Morris, and that they have a twenty-year history of art-related transactions, undertaken under “various terms and conditions based on the individual event”;
- (b) As to the current status of the purported sale, Attorney Mann stated that (i) “[t]hird party buyer has provided a deposit of \$20,000 and purchased a \$6,000 frame for display,” (ii) “[s]ales Invoice was in the process of preparation and delivery when communication was received from lawyers for Richard Hearty Jr.,” and (iii) “[t]he Invoice has not been released to Neil Morris.”
- (c) Responding to the request for written terms and conditions of the purported sale, Attorney Mann attached and referenced the Consignment Agreement, and an email from Morris to Moore,

dated November 14, 2017. The Morris email, with attachments, is attached hereto as Exhibit A.

45. In his November 14, 2017 email, Morris instructed Moore to create and deliver to Morris an invoice for the Painting, and to *backdate* the invoice to November 2, 2017, *i.e.* before the Heartys demanded the return of their Painting. Morris wrote, “[h]ere is the text i need on that invoice, please be accurate this is what protects us!”

46. Morris also set forth the specific terms that Moore should include, including a price of \$200,000, a commission of \$10,000, to Bonfoey, and 5 monthly payments with interest.

47. Morris concluded with the following instruction: “Include that upon receipt of the full purchase price Free and Clear Title to the [Painting] passes to [Defendant] Gem Ventures, Inc.”

48. On December 4, 2017, undersigned counsel sent email to Morris, demanding the return of the Painting, and affirming that Richard J. Hearty Jr. had not consented to any sale of the Painting. A true and accurate copy of the December 4, 2017 email is attached hereto as Exhibit B.

49. On December 5, 2017, undersigned counsel followed up the December 4 email with additional correspondence to Morris. In that correspondence, undersigned counsel reiterated the Heartys’ demand for the return of the painting, referenced and attached Morris’s November 14, 2017 email, and stated that the entire transaction between Morris and Bonfoey was fraudulent. The letter additionally sought the immediate return of the Painting, information regarding its location custody, and

documents related to any transaction involving the Painting. A true and accurate copy of the December 5, 2017 correspondence is attached hereto as Exhibit C.

50. The December 5 correspondence was sent via email, and to the address referenced in Morris's instructions to Bonfoey in his November 14, 2017 email.

51. Morris did not reply to either the December 4 email or December 5 correspondence.

**COUNT I**  
(Replevin/all Defendants)

52. Plaintiffs restate all prior allegations as if fully rewritten herein.

53. Upon information and belief, Defendant Morris is in possession of, or has control and/or custody of, the Painting.

54. The Heartys own the Painting, and are entitled to possession of the Painting.

55. The Heartys have demanded that the Painting be returned to them, but the Defendants have refused to return the Painting to the Heartys.

56. The Heartys are entitled to an order of replevin requiring the return of the Painting pursuant to Ohio Revised Code 2737.

**COUNT II**  
(Conversion/ All Defendants)

57. Plaintiffs restate all prior allegations as if fully rewritten herein.

58. The Heartys have an immediate right to possession of the Painting.

59. Defendants have wrongfully exercised dominion and control over the Painting, and continue to do so.

60. Defendants exercise of dominion and control over the Painting is inconsistent with the Heartys right to immediate possession of the Painting.

61. The Heartys have demanded that the Defendants return the Painting.

62. The Defendants have refused to return the Painting, and have indicated that they will continue to do so.

63. In refusing to return the Painting, the Defendants have acted with a conscious and malicious disregard for the Heartys' rights, and acted in a way that foreseeably inflicted harm upon them.

64. As a direct and proximate result of the conduct of the Defendants, the Heartys have been damaged in their property rights, and the Defendants are jointly and severally liable to the Heartys for compensatory damages, punitive damages, and the costs of this action, including reasonable attorney fees.

### COUNT III

(Intentional Infliction of Emotional Distress/ All Defendants)

65. Plaintiffs restate all prior allegations as if fully rewritten herein.

66. Richard J. Hearty Jr. suffers from a recently diagnosed, and highly aggressive form of skin cancer. He is scheduled to begin radiology treatment in early January. Richard has also been treated since 2005 for chronic lymphocytic leukemia, and was treated in 2010 with radiation for prostate cancer.

67. Richard has suffered extensive tension and emotional upset as a result of the Defendants' conduct.

68. Such tension and emotional upset have exacerbated the grave emotional and physical difficulties that he faces entering cancer treatment.

69. Moreover, the Heartys' marriage has been strained and damaged as a result of the Defendants' conduct.

70. In their conduct, the Defendants have acted with a conscious and malicious disregard for the Heartys' rights, and acted in a way that foreseeably inflicted harm upon them.

71. As such, the Heartys have been damaged as a direct and proximate result of the Defendants' actions, and are entitled to compensatory damages, punitive damages, and the costs of bringing this action, including reasonable attorney fees.

**COUNT IV**  
(Fraud/Moore and Bonfoey)

72. Plaintiffs restate all prior allegations as if fully rewritten herein.

73. Bonfoey and Moore induced Mary Hearty to enter into the Consignment Agreement on behalf of Richard J. Hearty Jr. (a) with the false promise that Bonfoey would sell the Painting under the terms set forth in the Consignment Agreement, and (b) with the knowledge that the Heartys had not engaged Mary Hearty to act as their agent regarding a sale of the Painting.

74. Moore then entered into an agreement with Morris to sell the Painting under terms materially different, and less favorable, than those set forth in the Consignment Agreement.

75. In their fraudulent conduct, Moore and Bonfoey have acted with a conscious and malicious disregard for the Heartys' rights, and acted in a way that foreseeably inflicted harm upon them.

76. As a result of the conduct of Moore and Bonfoey, the Heartys are entitled to compensatory damages, punitive damages, and the costs of this action, including reasonable attorney fees.

**COUNT V**  
(Breach of Bailment/Moore and Bonfoey)

77. Plaintiffs restate all prior allegations as if fully rewritten herein.

78. The Consignment Agreement imposed upon Bonfoey and Moore the obligations of a bailment contract.

79. By fraudulently and improperly delivering the Painting to Morris, and refusing or failing to return the Painting to the Heartys, Bonfoey and Moore breached such obligations.

80. The Heartys have been damaged by the conduct of Bonfoey and Moore in an amount to be determined at trial.

**COUNT VI**  
(Civil Theft/ All Defendants)

81. Plaintiffs restate all prior allegations as if fully rewritten herein.

82. The Defendants knew, or had reason to know, that the Heartys owned the Painting.

83. The Defendants have nevertheless, in combination and separately, held the Painting, sought to sell the Painting without the consent of the Heartys, and refused to return the Painting upon the Heartys' demand.

84. The Defendants' conduct gives rise to criminal theft under Ohio law.

85. In their conduct, the Defendants have acted with a conscious and malicious disregard for the Heartys' rights, and acted in a way that foreseeably inflicted harm upon them.

86. As a direct and proximate result of the conduct of the Defendants, the Heartys have been damaged in their property rights, and the Defendants are jointly and severally liable to the Heartys for compensatory damages, punitive damages, and the costs of this action, including reasonable attorney fees.

**COUNT VII**  
(Civil Conspiracy/All Defendants)

87. Plaintiffs restate all prior allegations as if fully rewritten herein.

88. Defendants conspired and maliciously combined to fraudulently, wrongfully, and unlawfully convert the Heartys' painting for their own use and profit, and to deceive the Heartys' as to the existence and status of a purported sale of the Painting.

89. In their conduct, the Defendants have conspired and acted with a conscious and malicious disregard for the Heartys' rights, and acted in a way that foreseeably inflicted harm upon them.

90. As a direct and proximate result of the conduct of the Defendants, the Heartys have been damaged in their property rights, and the Defendants are jointly and severally liable to the Heartys for compensatory damages, punitive damages, and the costs of this action, including reasonable attorney fees.

WHEREFORE, Plaintiffs Richard J. Hearty Jr. and Becky Lynn Hearty request judgment against Defendants, as follows:

(1) As to Count I: An Order from this Court directing the Defendants to return the Painting, at their cost, to the Plaintiffs, and judgment against the Defendants, jointly and severally, in an amount that includes attorney fees, costs, including costs associated with appraising the Painting in its current condition, and punitive damages;

(2) As to Counts II, III, VI and VII: Against all Defendants jointly and severally in an amount to be determined at trial, but which shall include compensatory and punitive damages, including but not limited to an amount equal to the value of any diminution of the Painting's value caused by the Defendants' actions, attorney fees, and the costs of this action.

(3) As to Counts IV and V: Against Defendants Moore and Bonfoey, jointly and severally, in an amount to be determined at trial, but which shall include compensatory and punitive damages, including but not limited to an amount equal to the value of any diminution of the Painting's value caused by the Defendants' actions, attorney fees, and the costs of this action.

- (4) As to all Counts:
- (A) An injunction enjoining, restraining, and ordering the Defendants as follows:
- (i) The Defendants shall refrain from transferring the Painting to any third party;
  - (ii) The Defendants shall rescind any contract, sales agreement, or promise of any kind to sell the Painting to any third party;
  - (iii) The Defendants shall return, at their joint and several expense, the Painting to the Plaintiffs.
- (B) A declaration rescinding the Consignment Agreement.
- (C) In favor of the Plaintiffs and against the Defendants for the reasonable costs and expenses incurred by the Plaintiffs in connection with the prosecution of this action, fees, costs associated with appraising of Painting, and such other relief, legal or equitable, that this Court deems suitable and proper.

Respectfully submitted,

/s/ Max E. Dehn

Max E. Dehn (0079600)  
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*Attorneys for Plaintiffs*

**JURY DEMAND**

Plaintiffs demand that this case be tried before a jury of the maximum number allowed by law.

/s/ Max E. Dehn

Max E. Dehn (0079600)

STATE OF TENNESSEE )  
 ) SS:  
COUNTY OF ROBERTSON )

VERIFICATION

I, Richard J. Hearty Jr., being first duly sworn, depose and say that I am a Plaintiff in this action, that I am familiar with and have personal knowledge of the facts referred to in this Verified Complaint, that I have read the Complaint and that said facts and allegations are true to the best of my knowledge, information and belief.

Richard J. Hearty Jr.  
Richard J. Hearty Jr.

SWORN TO BEFORE ME this 29 day of December 2017.

Brenda Barrett  
Notary Public

