

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

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BELINDA NEUMANN-DONNELLY, in her Representative
Capacity as the Preliminary Executrix of THE ESTATE OF
DOLORES O. NEUMANN,

Plaintiff,

-- against --

HUBERT G. NEUMANN and MELISSA NEUMANN,

Defendants.
-----X

Index No. _____

Date Summons filed:
June 7, 2018

Plaintiff designated New
York County as place of
venue for this action

SUMMONS

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to serve on Plaintiff an answer to the Complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of the venue designated is CPLR § 503(a).

Dated: New York, New York
June 7, 2018

Yours, etc.,

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TO:

Hubert G. Neumann
Melissa Neumann

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

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BELINDA NEUMANN-DONNELLY, in her Representative
Capacity as the Preliminary Executrix of THE ESTATE OF
DOLORES O. NEUMANN,

Index No. _____

Plaintiff,

COMPLAINT

-- against --

HUBERT G. NEUMANN and MELISSA NEUMANN,

Defendants.

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Plaintiff Belinda Neumann-Donnelly (“Belinda” or “Plaintiff”), in her representative capacity as the Preliminary Executrix of the Estate of Dolores O. Neumann (“Estate”), by her attorneys, Judd Burstein, P.C. and Greenfield Stein and Senior, LLP, as and for her Complaint against Hubert G. Neumann and Melissa Neumann, alleges as follows:

INTRODUCTION

1. This action arises from a greedy, malevolent, fraudulent, bad-faith and (unfortunately) successful scheme to financially devastate the Estate and, indirectly, Belinda, by destroying the value of the Estate’s most valuable asset -- Jean-Michel Basquiat’s masterpiece, “Flesh and Spirit” (“the Basquiat”) -- in advance of a scheduled May 16, 2018 auction by Sotheby’s, Inc. (“Sotheby’s”) of the Basquiat (“May Auction”). The scheme was carried out by Defendant Hubert G. Neumann (“Hubert”), his daughters, Defendant Melissa Neumann (“Melissa”, and with Hubert collectively, “Defendants”) and Kristina Neumann (“Kristina”), and, on information and belief, Melissa’s billionaire husband, James W. Crichton, the CEO of

Hitchwood Capital,¹ either as (a) retribution for their unhappiness about the fact that, in her Last Will and Testament (“Will”), Dolores O. Neumann (“Dolores”) (Hubert’s wife and Belinda’s, Melissa’s, and Kristina’s mother) chose to favor Belinda over her two sisters and also disinherit Hubert because he had subjected her to years of physical and emotional abuse, (b) to intimidate Sotheby’s into not going forward with the May Auction, or (c) as part of a broader scheme to force Belinda to agree to the probate of the 20 year-old Will in which Dolores treated the daughters more equally and did not brand Hubert as the wife-beater that he was.

2. Moreover, Hubert’s actions were a fraud on the Court, as Plaintiff has recently learned that Hubert’s key allegation, that he is the trustee of two family trusts (“Neumann Trusts”) which own the bulk of the art purchased by his father, is a **lie** because Hubert was never appointed as the trustee of one of those trusts. This revelation not only demonstrates Hubert’s bad faith, it will also create havoc in the art world because, for many years, he has been fraudulently buying and selling art owned by a trust for which he had no authority to act. In other words, **he has destroyed the provenance of all of that art.**

3. Regardless of why they acted as they did, Hubert and Melissa succeeded in their effort through a frivolous, bad faith, and fraudulent course of conduct designed to ensure that potential bidders for the Basquiat would be scared away at the last minute due to perceived uncertainty about the Estate’s right to sell the painting:

¹ Kristina is not named as a defendant in this action because Plaintiff believes that Kristina, faced with a number of troubling issues in her life, was browbeat by Hubert into assisting him and Melissa in their outrageous conduct. As for James Crichton, Plaintiff has not named him as a defendant because, at present, the only direct evidence against him is Hubert’s statement on an audio recording of a conversation he had with Belinda that Melissa and Mr. Crichton had “concocted this scheme.” Out of an excess of caution, Plaintiff has decided not to name Mr. Crichton as a defendant unless and until discovery uncovers additional evidence beyond Hubert’s damning statement about Mr. Crichton’s role in this affair.

- a. After learning no later than April 2, 2018 that the Estate had entered into an agreement with Sotheby's to sell the Basquiat at the May Auction, Hubert waited more than a month – less than two weeks prior to the May Auction date – to file a frivolous complaint against Sotheby's ("Sotheby's Complaint") and motion seeking a temporary restraining order and preliminary injunction ("TRO Motion") enjoining the May Auction;
 - b. After Justice O. Peter Sherwood of the Supreme Court of the State of New York emphatically denied the TRO Motion on May 8, 2018, Hubert pushed forward with an appeal of that ruling so that the uncertainty as to whether the May Auction would even go forward was not resolved until May 16, 2018 – the very day of the May Auction; and
 - c. Hubert and his counsel aggressively hyped the TRO Motion and the appeal of its denial in the media so that their manufactured dispute would receive maximum exposure. Indeed, **Hubert and his attorneys issued a press release immediately upon the filing of the TRO Motion, and Hubert has admitted in a recorded conversation that he continued to speak with the press even after the May Auction.**
4. The value of the Basquiat was so damaged that it sold for only \$30.7 million at the May Auction when it would otherwise have sold for tens of millions of dollars more. While discovery and expert testimony in this case will demonstrate the price at which the Basquiat would have otherwise sold absent the misconduct alleged here, Hubert has himself acknowledged the damage he has caused. In multiple conversations with Belinda which, unbeknownst to Hubert, she recorded (some after the May Auction when he was trying to get her

to go along with a “scheme” “concocted by Melissa and James,” pursuant to which they would seek to cancel the May Auction sale by probating only Dolores’s superseded 20-year old Will), Hubert has time and again unwittingly incriminated himself by stating, *inter alia*, that:

- a. It would be “counterproductive” for “anyone who’s interested in buying [the Basquiat] to fight three people”;
- b. He could “get substantially more for the painting if I’m the person that’s cooperating in the picture there would be much more interest in people buying the painting even if it’s a private dealer.... I would be involved with marketing this thing with my saying to the world, I’m not fighting this thing anymore its clear....”;
- c. He was the “the 10,000-pound gorilla in the room”;
- d. “If you get me on your side, you have a very big possibility of getting substantially more, maybe more than double [than the amount for which the Basquiat sold]”; and
- e. The damages caused by the efforts to enjoin the May Auction were demonstrable because there were “no fucking bids,” for the Basquiat, and “the next night, [a different Basquiat] painting brings \$45 million [at an auction], a picture that is at best equivalent.”

5. Hubert’s conduct concerning the Basquiat is emblematic of the fact that he is a reprehensible human being – a conclusion reinforced not only by the fact that he was a wife-beater, but also by what has transpired since Belinda refused to agree to his demands about the Basquiat:

- a. In Hubert's purported role as trustee of the Neumann Trusts, he has recently sought to leave Belinda, her husband, and their three children (Hubert's grandchildren) homeless by evicting them from a house owned by one of the Neumann Trusts;
- b. He also announced that the Neumann Trusts would no longer continue to pay for the education of Belinda's children; and
- c. He has so mercilessly and threateningly stalked Belinda and her family that **they were forced to seek and obtain a Temporary Order of Protection from the Family Court.**

6. On information and belief, Hubert's conduct is largely explained by the fact that he is the epitome of the child with rich parents who suddenly wakes up on third base and foolishly believes that he has hit a triple. For most of his life, Hubert lived in the shadow of his immensely successful father, Morton Neumann ("Morton"). Morton was a true titan of commerce, having founded and grown a very successful mail-order business, Valmor Products. He then went on to create the Neumann Trusts, which now own more than a billion dollars' worth of art.

7. In contrast to his father, Hubert has lived a life of failure. Plainly not believing that Hubert had any business talents or other value, Morton never brought Hubert into the family business. Instead, until he was fired after approximately 20 years, Hubert had toiled away as a mid-level executive at Commercial Decal, a printing company in Mount Vernon, New York. His frustration with his life resulted in his cruel treatment of his children and, more importantly, his repeated emotional and physical abuse of Dolores, from whom he was separated for 29 years before her death. Indeed, his abuse of Dolores was so great that she went out of her way to

ensure that he never reaped the benefit of having been married to her. Thus, the Will explicitly expresses Dolores's wish to disinherit Hubert "to the fullest extent permitted by law because he has been physically abusive to me for decades and has threatened my life."

8. However, things changed for Hubert when Morton died in 1985. At that point, Hubert became the trustee of the Neumann Trusts and gained control over their assets, including more than a billion dollars' worth of art they own. **Hubert has falsely alleged for years that he is the trustee of one of those Trusts – the Appointed Neumann Descendants' Trust created under the Will of Arthur Neumann ("Descendants' Trust") – when in fact, a review of the Bronx County Surrogate's Court case file reveals that the Court never granted Hubert the Letters of Trusteeship that were a necessary condition for him to serve as Trustee of the Descendants' Trust. In other words, Hubert has been buying and selling art for years based upon the utterly false representation that he had the authority to do so.**

9. In any event, from that point on, Hubert, having never accomplished anything on his own, started promoting himself as a force in the art world – an easy accomplishment for someone who controls so much art. Over the years, as is too often the case with light-weights such as Hubert, he started to believe that he was successful in his own right, refusing to recognize that he was merely the archetypal failed scion of a wealthy family who can only pretend to add value to this world.

PARTIES

10. Plaintiff Belinda is a resident of New York County. She has been granted preliminary letters testamentary by the New York County Surrogate and sues here in her representative capacity as the Preliminary Executrix of the Estate.

11. Defendant Hubert is a resident of New York County.

12. Defendant Melissa is a resident of New York County.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

13. On or about January 21, 1983, Dolores personally purchased the Basquiat from the Tony Shafrazi Gallery with money provided to her by her parents.

14. From the date of her purchase until the date of her death on September 23, 2016, Dolores retained sole ownership of the Basquiat.

15. Neither Hubert nor the Neumann Trusts have ever held any ownership interest in the Basquiat.

16. On March 4, 2015, Dolores executed the Will.

17. As noted, the Will designates Belinda as the Executrix of the Estate.

18. The Will directs Belinda, as the Executrix of the Estate, to sell the Basquiat, with the sale proceeds to then be “distributed as part of my residuary estate....”

19. As the Preliminary Executrix of the Estate, Belinda needed to sell the Basquiat to timely meet the Estate’s tax obligations in order to avoid significant interest and penalties.

20. On or about March 15, 2018, Belinda entered into a consignment agreement with Sotheby’s to sell the painting at the May Auction.

21. Hubert learned of the impending May Auction no later than April 2, 2018.

22. Thereafter, Hubert purposefully waited until the end of business on May 3, 2018, more than one month after learning about the May Auction, and only 13 days prior to the date of the May Auction, to file the Sotheby’s Complaint and the TRO Motion. On information and belief, the filing of the Sotheby’s Complaint and the TRO Motion was purposefully delayed so that, even when it failed to succeed, it would be impossible to cure the devastating uncertainty the litigation was sure to and did create in the marketplace.

23. Both the Sotheby's Complaint and the TRO Motion were frivolous, fundamentally and knowingly fraudulent, and filed in bad faith:

24. **First**, Hubert falsely alleged that he had standing to interfere with the May Auction because the Basquiat had always been considered part of an entity which he denominated the "Neumann Family Art Collection." There is no formal Neuman Family Art Collection. Rather, the Neumann Trusts own art, as do Hubert and Melissa personally, and as did Dolores. However, as Hubert and Melissa knew, neither he nor the Neumann Trusts have any right to control the disposition of the Basquiat. Rather, as Hubert and Melissa knew, Dolores paid for the Basquiat with her own funds, and it is solely owned and controlled by the Estate.

25. **Second**, Hubert made the knowingly frivolous allegation that he had the right to object to the May Auction because he was still married to Dolores at the time of her death, and is therefore entitled to an elective share of the Estate pursuant to E.P.T.L. § 5-1.1-A. Even though, pursuant to E.P.T.L. § 5-1.2, Hubert will ultimately be denied his right to an elective share of the Estate, Plaintiff does not dispute the fact that, at present, Hubert is presumptively entitled to that share. However, as Hubert's counsel undoubtedly informed him before he filed the Sotheby's Complaint and TRO Motion, any rights he may have under E.P.T.L. § 5-1.1-A did not grant him standing to challenge Belinda fulfilling her fiduciary obligation to sell the Basquiat. Indeed, on April 13, 2018, Belinda's counsel sent Hubert's counsel an email warning Hubert not to interfere with the May Auction because "[e]ven if he has an elective share claim[,] that does not give him an ownership interest in any particular estate asset."

26. **Third**, Hubert falsely alleged that the terms of what the Sotheby's Complaint describes as the Weitman-Billault Agreement were set forth in a March 24, 2015 email exchange

between Hubert and Warren Weitman (“Weitman”) of Sotheby’s, and then extended through a March 17, 2016 email exchange between Hubert and Gregoire Billault of Sotheby’s. In fact, as Hubert knew, and indeed had subsequently acknowledged in writing to Sotheby’s, the terms of that first email exchange were altered and superseded by a formal April 9, 2015 written Loan and Consignment Agreement between (a) Sotheby’s and (b) Hubert and the Neumann Trusts (“Hubert-Sotheby’s 2015 Written Agreement”), which was then extended by the March 17, 2016 email exchange between Hubert and Gregoire Billault.

27. **Fourth**, Hubert used his knowingly false allegation that his March 24, 2015 email exchange with Weitman (“Weitman Email”), rather than the Hubert-Sotheby’s 2015 Written Agreement, governed his relationship with Sotheby’s, as the basis for making additional false allegations that he **personally** (as the sole plaintiff in the Sotheby’s Complaint) had a right to control the sale of the Basquiat:

- a. While the Weitman Email was vague as to its scope, the Hubert-Sotheby’s 2015 Written Agreement explicitly applies only to art owned either by Hubert or the Neumann Trusts. Hence, Hubert knew that the Hubert-Sotheby’s 2015 Written Agreement explicitly did not govern any sale of the Basquiat, but nonetheless falsely alleged to the contrary;
- b. The Hubert-Sotheby’s 2015 Written Agreement requires Hubert to represent that either he or the Neuman Trusts are the “sole and absolute owners” of any art sold pursuant to its terms. Hubert knew that he could never have enforced the Hubert-Sotheby’s 2015 Written Agreement with respect to the Basquiat because neither he nor the Neuman Trusts could have truthfully represented that he or the Neuman Trusts owned the Basquiat; and

c. While the Weitman Email stated that Sotheby's would "seek [Hubert's] approval on all matters relating to cataloguing, placement, and exhibiting each and every work consigned[,]” the Hubert-Sotheby's 2015 Written Agreement granted Sotheby's **alone** the “**absolute discretion** as to ... (iii) providing catalogue and other descriptions [of consigned art], (iv) the date of the Auction; (v) the marketing and promotion of the Auction; and (vi) the manner of conducting the Auction.” (Emphasis supplied) Moreover, the Hubert-Sotheby's 2015 Written Agreement expressly provided that its terms superseded the Weitman Email.

28. **Fifth**, Hubert defrauded Sotheby's into entering into the Hubert-Sotheby's 2015 Written Agreement because Hubert is not the trustee of one of the parties to that Agreement: the Descendants' Trust.

29. Melissa aided and abetted Hubert's fraudulent effort to enjoin the sale by executing an affidavit supporting the TRO Motion which falsely claimed, *inter alia*, that “Sotheby's granted my father marketing approval rights for all works sold from the Neumann Family Collection, but has denied him that right with respect to this work.” On information and belief, Melissa knew that this allegation was false in that the Basquiat was not part of any “Neumann Family Collection” that was the subject of an agreement between Hubert and Sotheby's. Additionally, she falsely claimed in her affidavit that art works which she owns personally are also part of the “Neumann Family Collection.” On information and belief, however, she has not granted Hubert control over the disposition of that art, which is likely co-owned with her husband, James Crichton.

30. Not content with using a frivolous litigation to cast doubt upon the Estate's right to sell the Basquiat, Hubert and his counsel issued a press release announcing the Sotheby's

Complaint and the TRO Motion so that his and Melissa's efforts to interfere with the May Auction would be highly publicized. Indeed, Hubert admitted in a conversation with Belinda which she recorded that he has continued speaking with reporters even after the May Auction.

31. On May 7, 2018, counsel for Hubert, Sotheby's and the Estate appeared before Hon. O. Peter Sherwood to argue the TRO Motion. After listening to argument from all counsel, Justice Sherwood denied the TRO Motion, correctly concluding that Hubert "has absolutely no right or even interest in" the Basquiat.

32. By the time that Justice Sherwood ruled, the value of the Basquiat had been severely damaged because prospective buyers willing to spend tens of millions of dollars on art work shy away from purchasing art when there is potential issue as to whether the seller has the right to sell a work. Moreover, on information and belief, the specifics of Hubert's claim were lost on potential buyers, many of whom believed that there was a dispute over the ownership of the Basquiat.

33. However, the damage did not end there, as Hubert, Melissa and/or Hubert's lawyers notified the media that Hubert would be appealing Justice Sherwood's ruling and that he was going to file a motion asking the Appellate Division of the New York State Supreme Court to enjoin the May Auction.

34. Hubert's appeal and motion in the Appellate Division was, if possible, even more frivolous than the Sotheby's Complaint and TRO Motion because Hubert now had the benefit of Justice Sherwood's ruling. Nonetheless, Hubert pursued the appeal and the motion to enjoin the May Auction, and publicized to the media his decision to do so, in a malicious and bad faith effort to continue to sow confusion in the marketplace for as long as possible

35. Hubert's tactics succeeded in further destroying the market-value of the Basquiat because the Appellate Division did not deny Hubert's motion to prevent the May Auction until May 16, 2018 – the date of the May Auction. This uncertainty until that late date, as well as the fact that the Appellate Division had only ruled on Hubert's motion and not his appeal, deterred prospective bidders such that the Basquiat sold only for \$30.7 million even though, by Hubert's own audio-recorded admission, it should have sold for at least as much as the \$45 million price garnered on May 17, 2018 for a different Basquiat painting which Hubert described in that conversation as "at best equivalent" to the Basquiat.

PLAINTIFF'S FIRST CAUSE OF ACTION

(Tortious Interference with Prospective Contractual Relations)

36. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1-35 above as if fully set forth herein.

37. There were a significant number of prospective purchasers of the Basquiat – whose identities will be revealed through the discovery process in this case – who did not bid for the painting at the May Auction, but would have done so if not for Hubert and Melissa's knowingly frivolous, fraudulent and bad faith conduct.

38. Defendants interfered with Plaintiff's efforts, through Sotheby's, to sell the Basquiat to these prospective purchasers through wrongful means – specifically their knowingly frivolous, bad faith and fraudulent litigation seeking to enjoin the May Auction.

39. Hubert also acted for the sole purpose of harming Plaintiff in that he has no financial interest in the Basquiat and therefore was necessarily acting with the sole motive of depriving the Estate of the Basquiat's true market value.

40. By reason thereof, Defendants damaged the Estate in an amount to be determined at trial, but in no event less than \$15 million.

41. In addition, because Defendants' conduct was so outrageous, fraudulent, frivolous, wanton, willful and malicious, punitive damages in an amount to be determined at trial, but in no event less than \$100 million, should be awarded.

PLAINTIFF'S SECOND CAUSE OF ACTION

(Prima Facie Tort Against Hubert)

42. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1-41 above as if fully set forth herein.

43. Hubert intentionally harmed the Estate by interfering with the May Auction.

44. By reason of Hubert's intentional, wrongful conduct, the Estate suffered special damages – *i.e.*, the difference between the price at which the Basquiat sold and the price at which it would have sold in the absence of Hubert's wrongful conduct.

45. Hubert had no financial motive for seeking to interfere with the May Auction, but instead did so out of disinterested malevolence.

46. Hubert's conduct was neither excusable nor justified.

47. Hubert's conduct harmed Plaintiff even though his conduct was otherwise legal.

48. By reason thereof, Hubert damaged the Estate in an amount to be determined at trial, but in no event less than \$15 million.

49. In addition, because Hubert's conduct was so outrageous, fraudulent, frivolous, wanton, willful, and malicious, punitive damages in an amount to be determined at trial, but in no event less than \$100 million, should be awarded.

WHEREFORE, Plaintiff demands Judgment as follows:

- A. On Plaintiff's First Cause of Action, an award against Defendants, jointly and severally, of (a) compensatory damages in an amount to be determined at trial, but in no event less than \$15 million, and (b) punitive damages in an amount to be determined at trial, but in no event less than \$100 million;
- B. On Plaintiff's Second Cause of Action, an award against Hubert of (a) compensatory damages in an amount to be determined at trial, but in no event less than \$15 million, and (b) punitive damages in an amount to be determined at trial, but in no event less than \$100 million;
- C. An award of the costs and disbursements of this action; and
- D. An Order granting such other and further relief as deemed just and proper by this Court.

Dated: New York, New York
June 7, 2018

Yours, etc.,

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