

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

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ARTEMUS USA LLC,	:	
	:	INDEX NO. _____
Plaintiff,	:	
	:	
- against -	:	<b>SUMMONS</b>
	:	
PAUL KASMIN GALLERY, INC.	:	
	:	
Defendant.	:	
	:	
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To the Person Named as Defendant Above:


PAUL KASMIN GALLERY, INC.  
293 Tenth Avenue/515 West 27th Street  
New York, NY 10001

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer on the Plaintiff's attorneys at the address indicated below within 20 days after the service of this Summons (not counting the day of service itself), or within 30 days after service is complete if the Summons is not delivered personally to you within the State of New York; and in case of your failing to appear or answer, judgment will be entered against you by default for the relief demanded in the Complaint.

Plaintiff designates New York County as the place of venue. The basis of venue is CPLR 503.

Dated: New York, New York  
July \_\_\_\_\_, 2018

WALDEN MACHT & HARAN LLP

By:  \_\_\_\_\_

Jim Walden (jwalwden@wmhlaw.com)  
Georgia Winston (gwinsteon@wmhlaw.com)  
One Battery Park Plaza  
New York, New York 10004  
Tel: (212) 335-2030

*Attorneys for Plaintiff Artemus USA LLC*

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**COMPLAINT**

Plaintiff Artemus USA LLC (“Artemus”), by its undersigned counsel, for its Complaint, alleges as follows:

**NATURE OF THE CASE**

1. This is a fraud action against an art gallery, Defendant Paul Kasmin Gallery, Inc. (“PKG”), that created and back-dated materially false invoices on which Artemus detrimentally relied in purchasing an artwork by Frank Stella named *La Scienza della Fiacca* (“*La Scienza*”).

2. The invoices falsely represented that PKG had sold *La Scienza* to non-parties Anatole Shagalov (“Shagalov”) and his gallery, Nature Morte, LLC (“Nature Morte”), for \$430,000, such that upon paying this amount Shagalov and Nature Morte acquired full title to the artwork.

3. In fact, when it created the invoices, PKG knew that, contrary to the face of the invoices, PKG had sold Shagalov only a 60% interest in *La Scienza* for \$430,000; that title had not passed because Shagalov had not paid PKG in full; and that Shagalov in fact had to pay at least another \$168,000 to PKG to acquire title.

4. Unaware of these facts, Artemus falsely believed, as PKG intended or reasonably expected, that Shagalov and Nature Morte purchased *La Scienza* for \$430,000, and thus could

pass good title to Artemus on that basis, only to learn after the fact that PKG retained a 40% interest, and that title to the artwork was encumbered by PKG's claim to the \$168,000 balance.

5. Artemus thereby was fraudulently induced to purchase something considerably less valuable than what it bargained for.

6. As a result of such fraud, Artemus incurred substantial out-of-pocket expense caused by PKG's hidden ownership interest in *La Scienza*.

### **PARTIES**

7. Plaintiff Artemus was founded in 2014 by the Durst Organization, David Storper, and Asher Edelman ("Edelman"), who collectively represent more than 85 years of combined experience in art, finance, and real estate.

8. Artemus provides sale-leaseback, art leasing, and lending services. Sale-leasebacks entail a financial transaction in which a client owning fine art sells a portion or the totality of its art collection to Artemus. Artemus then leases those pieces to a client at an annual rate. Artemus's clients include private collectors, art dealers, galleries, hotels, and commercial offices. The seller and the lessee may be, but are not necessarily, the same individual or entity; Artemus may purchase works from one party and lease them to another party.

9. Defendant PKG is an art gallery located in New York City that offers works by modern artists for sale.

### **FACTS**

#### **In 2014, PKG Sells Shagalov a 60% Interest in *La Scienza***

10. On or about August 20, 2014, Shagalov entered into a transaction with PKG pursuant to which Shagalov purchased a 60% interest in *La Scienza*.

11. Shagalov and PKG memorialized this transaction by entering into a "Consignment and Purchase Agreement" dated August 20, 2014 (the "August 2014 Consignment and Purchase

Agreement”), which stated that PKG “agrees to sell a 60% interest in [*La Scieznza*] to Anatole Shagalov ... for \$430,000” and that “if [*La Scienza*] remains unsold, on January 1, 2016, Mr[.] Shagalov has the option to acquire full title to the work for \$168,000.”

**PKG Manufactures a Materially False Invoice that  
Misrepresents Shagalov’s Ownership Interest in *La Scienza***

12. On April 25, 2016, Artemus entered into an Artwork Collection Purchase and Sale Agreement (as amended from time to time, the “April 2016 Purchase and Sale Agreement”) with Shagalov and his company, Nature Morte (collectively, the “Shagalov Parties”) pursuant to which the latter sold to Artemus four artworks. One of those four artworks was *La Scienza*.

13. In early April 2016, as part of Artemus’s due diligence before entering into contractual arrangements with the Shagalov Parties, Artemus requested from the Shagalov Parties evidence of their full ownership of *La Scienza*.

14. At that time, unknown to Artemus, Shagalov had not paid off the full balance due on *La Scienza* (which also had not been sold to any other buyer in the preceding year). Thus, in fact, the Shagalov Parties could not convey full and unencumbered title to *La Scienza*.

15. On or about April 1, 2016, PKG provided Shagalov with proof of his \$430,000 payment to PKG, and asked Shagalov to let PKG know if he needed anything else.

16. On or about April 3, 2016, Shagalov provided to Artemus an invoice dated August 20, 2014 and addressed to Shagalov, ostensibly memorializing the sale by PKG to Shagalov for \$430,000.

17. Although dated August 20, 2014, in fact the invoice was created by PKG in response to a request by Shagalov in April 2016.

18. This invoice was regular on its face. The invoice was made out on PKG letterhead; it contained the gallery’s address; and it contained information normally found on an invoice, such

as the purchaser, the invoice number, a description of the item purchased, the price, payment terms, and wire payment instructions.

19. The invoice was made out to Anatole Shagalov, 50 Jayson Avenue, Great Neck, New York. The invoice stated that the “Total,” after a discount, was “\$430,000”; that payment was “due upon receipt”; and that title “will not pass until payment is made in full.”

20. Thus, this invoice, on its face, represented that the purchase price for *La Scienza* was \$430,000, and that title would pass to Shagalov upon “payment in full” -- where the full amount due, on the face of the invoice, was \$430,000.

21. PKG knew that this invoice falsely represented the true state of affairs. Under its actual agreement with Shagalov, PKG had sold only a 60% interest, had *not* in fact conveyed title, and would not convey title unless and until it received payment of an *additional* \$168,000.

22. This invoice was calculated to mislead in a second way as well, because PKG had previously provided Shagalov with evidence of his \$430,000 wire payment to PKG, which Shagalov transmitted to Artemus. Thus, as PKG knew -- or could have avoided knowing only by turning a blind eye to the obvious truth -- any third party to whom Shagalov conveyed both PKG’s bank record showing a \$430,000 wire payment and PKG’s newly-minted invoice would falsely believe that Shagalov had in fact acquired title to *La Scienza* by virtue of having made “payment ... in full” in accordance with PKG’s invoice.

23. After reviewing this invoice on April 3, 2016, Artemus noticed that the invoice did not provide a resale certificate number, and told Shagalov that Artemus needed to have this number on record.

24. On or about April 4, 2016, Shagalov contacted PKG and asked that the invoice be addressed to Nature Morte LLC, rather than Shagalov. Shagalov also sent PKG a resale certificate and asked that the invoice use Nature Morte's EIN (employer identification number).

25. PKG accommodated Shagalov's request by creating a second invoice dated August 20, 2014, this time made out to Nature Morte, LLC and Anatole Shagalov -- despite the fact that, as PKG well knew, its own agreement was solely with Shagalov and not his company.

26. This new invoice contained the same material misrepresentations as its predecessor, *i.e.*, that the "Total" was \$430,000, that payment was due upon receipt, and that "Title will not pass until payment is made in full" -- where, on the face of the invoice, the "full" amount due was \$430,000. The invoice further stated, as requested, "Resale Certificate on file," followed by Nature Morte's EIN.

27. This invoice, too, was regular on its face. It, too, was made out on PKG letterhead; it contained the gallery's address; and it contained information normally found on an invoice, such as the purchaser, the invoice number, a description of the item purchased, the price, payment terms, and wire payment instructions.

28. Shagalov then passed along this second phony invoice to Artemus.

29. Upon information and belief, in the course of his communications with PKG leading up to the creation of this second invoice, Shagalov indicated that the purpose of the request was to present documentation requested by a third party with whom Shagalov was engaging in a transaction.

30. Even without such a communication, however, the purpose of Shagalov's request was obvious.

31. A resale certificate is a document presented by a purchaser who purchases a product for resale. By presenting a resale certificate at the time of purchase, the purchaser can avoid payment of sales tax. The document bears the purchaser's EIN, which the seller records.

32. Thus, by instructing PKG to create an invoice that reflected a resale certificate with Nature Morte's EIN, Shagalov was making clear that he needed the invoice in order to be positioned to resell *La Scienza* to a third party.

33. Correlatively, by creating such an invoice, PKG understood that it was creating an invoice for presentation by Shagalov to a prospective third-party purchaser.

34. Upon information and belief, PKG understood or expected at the time that had it created or provided truthful documentation, which correctly reflected (a) its own 40% retained interest in *La Scienza*, (b) that it had transacted solely with Shagalov, not with Nature Morte, and (c) that title would not pass without payment of an additional \$168,000, such a document would impede Shagalov's ability to pursue a transaction involving *La Scienza* with a third party. PKG consciously chose to create a phony document rather than jeopardize any such transaction between Shagalov and a third party.

#### **Artemus Proceeds with the Transaction in Reliance on PKG's Phony Invoice**

35. On or about April 25, 2016, the Shagalov Parties sold *La Scienza* (among other artworks) to Artemus pursuant to the April 2016 Purchase and Sale Agreement. That same day, the Shagalov Parties leased back from Artemus *La Scienza* (among other artworks) pursuant to a Lease and Possession Agreement (as amended from time to time, the "Lease Agreement").

36. In entering these transactions, Artemus relied upon the documentation supplied by PKG, including the two false invoices dated August 20, 2014 manufactured by PKG (the "Invoices") that were sent to Artemus, as evidence that the Shagalov Parties had made "payment ... in full" on a purchase price of \$430,000 and thereby acquired title to *La Scienza*.



### The Fraud Is Revealed

37. After Artemus concluded its transactions with Shagalov and Nature Morte, PKG began pursuing Shagalov for his debt.

38. Upon information and belief, in PKG's subsequent collection efforts against Shagalov, Shagalov sought to claim that he did not owe PKG anything more because, on the face of the Invoices, the full purchase price was \$430,000, and Shagalov had already paid this amount. In response, PKG told Shagalov that the Invoices did not reflect the actual terms of sale. Rather, the true terms of sale were contained in the Consignment and Purchase Agreement, not the false Invoices.

39. On or about July 12, 2017, PKG filed a UCC-1 financing statement against *La Scienza*.

40. On or about July 21, 2017, Artemus learned about the PKG's UCC-1 financing statement against *La Scienza*.

41. On or about July 24, 2017, Artemus obtained a copy of the August 2014 Consignment and Purchase Agreement, which expressly states that Shagalov purchased only a 60% interest in *La Scienza* and that, unless a sale occurred before January 1, 2016, he would have to pay an additional \$168,000 to obtain full title.

42. This was the first notice Artemus received that the Invoices were false. Prior to July 24, 2017, PKG never informed Artemus about its claim to 40% of *La Scienza* or about the outstanding \$168,000 balance owed by Shagalov to acquire full title.

43. When Artemus learned of this fraud, Artemus informed the Shagalov Parties that they were in breach of various express warranties set forth in the Lease Agreement.

44. In response, on September 1, 2017, the Shagalov Parties sued Artemus and related parties in an action titled *Shagalov et ano. v. Edelman et al.*, Index No. 655576/2017, filed in Supreme Court, New York County (the “Shagalov Action”).

45. In that action, among other things, the Shagalov Parties disputed the assertion that they had breached any warranties or representations concerning their possession of title to *La Scienza* at the time they entered their agreements with Artemus in April 2016.

**CAUSE OF ACTION**  
**(Fraud)**

46. Plaintiff repeats and realleges each allegation contained in all prior paragraphs with the same force and effect as if set forth fully herein.

47. PKG made materially false representations in the Invoices that it created and provided to Shagalov for presentation to Artemus.

48. PKG knew that the Invoices falsely represented that Shagalov had purchased *La Scienza* for \$430,000 and that title would pass upon payment of such amount, when in fact Shagalov only purchased a 60% interest, and could not obtain title unless he paid at least \$168,000 more.

49. At the time it created the Invoices and provided them to Shagalov, PKG was aware or had reason to expect that the Invoices would be presented to a third party who was interested in purchasing or engaging in a financial transaction with Shagalov involving *La Scienza*.

50. At the time it created the Invoices and provided them to Shagalov, PKG was aware or had reason to expect that its Invoices would be relied upon by such a third party.

51. At the time it created the Invoices and provided them to Shagalov, PKG was aware or had reason to expect that such a third party would rely on the Invoices to determine the nature of Shagalov’s -- and Nature Morte’s -- interest in *La Scienza*.

52. Artemus, which was in active negotiations with Shagalov in a sale and leaseback transaction that involved *La Scienza* at the time PKG created the Invoices and transmitted them to Shagalov, is within the class of persons whom PKG was aware of or had reason to expect would receive and act in reliance upon the Invoices.

53. Artemus did in fact rely upon the Invoices in entering the Purchase and Sale Agreement and the Lease Agreement with the Shagalov Parties.

54. Artemus's reliance upon the Invoices was justifiable.

55. PKG's material misrepresentations fraudulently induced Artemus to enter into transactions with the Shagalov Parties to acquire and lease back an artwork in which Shagalov held only a 60% interest and in respect of which he owed a substantial debt to PKG and not, as PKG falsely represented, an artwork that Shagalov had purchased outright.

56. Through the wrongful and fraudulent action of PKG, Artemus has become involved in litigation with the Shagalov Parties to protect Artemus's interests.

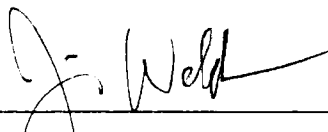
57. As a natural and foreseeable consequence of PKG's conduct, Artemus suffered substantial out of pocket losses, including attorney's fees and other expenses arising from the Shagalov Action.

**WHEREFORE**, Plaintiff demands judgment:

- (a) Awarding Plaintiff compensatory damages, in an amount to be determined at trial, together with interest, and costs;
- (b) awarding Plaintiff punitive damages, in an amount to be determined at trial;
- and
- (c) granting such other and further relief as may be just and equitable.

Dated: New York, New York  
July 6, 2018

WALDEN MACHT & HARAN LLP

By:  \_\_\_\_\_

Jim Walden (jwalden@wmhlaw.com)  
Georgia Winston (gwinston@wmhlaw.com)  
One Battery Park Plaza  
New York, New York 10004  
Tel: (212) 335-2030

*Attorneys for Plaintiff Artemus USA LLC*