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Attorneys for Petitioner One and J Gallery

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

ONE AND J GALLERY,

Petitioner,

-against-

CHRISTIE’S INC. and CHRISTIE’S PRIVATE
SALES, LTD.,

Respondents.

Index No.

VERIFIED PETITION

Petitioner One and J Gallery (the “Gallery”), by and through its undersigned attorneys, for its Petition for a preliminary injunction in aid of arbitration under CPLR §§ 6301, 6313, 7109, and 7502(c), and Section 9-625 of the New York Uniform Commercial Code, against Respondents Christie’s Inc. and Christie’s Private Sales, Ltd. (together, “Christie’s”), states as follows, on knowledge as to itself and on information and belief as to all other matters, which are likely to have evidentiary support after a reasonable opportunity for discovery:

NATURE OF THE ACTION

1. Petitioner seeks a preliminary injunction in connection with an arbitration that is to be commenced against Christie’s in New York County enjoining the sale, transfer, or

disposition of a unique painting (the “Painting”) by world-renowned artist Francis Bacon.¹ Christie’s is seeking to dispose of the Painting in a commercially unreasonable manner in violation of the Uniform Commercial Code, and in the absence of such provisional relief, the arbitration award to which Petitioner may be entitled will be rendered ineffectual.

2. In October 2017, Christie’s agreed to act as the Gallery’s exclusive agent with regard to the Painting until September 2019, and to seek to arrange a private sale of the Painting that would net the Gallery at least \$10 million (the “Private Sale Agreement”).

3. Christie’s simultaneously agreed to make a loan of approximately \$4.9 million to the Gallery (the “Loan”), with the Painting serving as Loan collateral (the “Advance Agreement”).

4. Christie’s appraised the Painting for purposes of the Loan at a value of no less than \$10 million. And under the Private Sale Agreement, Christie’s is obligated to insure the Painting for \$10 million.

5. And the Painting’s \$10 million valuation has been corroborated not only by Christie’s and by the Gallery’s owner, an experienced art dealer and gallerist, but by another leading expert who recently estimated the Painting could sell for more than \$10 million. Indeed, just several years prior, Christie’s agreed to try to sell the painting for no less than *\$15 million*.

6. At all relevant times, there have been no significant adverse changes in market conditions with regard to works by Francis Bacon. Indeed, in the last several years alone, multiple Bacon paintings have sold at auction (including at Christie’s) at or exceeding the high end of the auction house’s pre-sale estimate, and multiple Bacon works of similar size to the

¹ In this Petition and in related exhibits and other filings in this Court, the title of the Painting is omitted or, where necessary, redacted, to avoid diminishing the Painting’s value.

Painting here have sold at auction for prices ranging from just under \$20 million to just under \$50 million.

7. For nearly a year, Christie's failed to arrange a private sale of the Painting, and never indicated to the Gallery any progress it had made in trying to sell the work.

8. During the same time, the Gallery agreed to consign to Christie's a different painting (by Andy Warhol), with the sale proceeds to be used to repay the Loan. Although that work was one of the featured pieces in the sale, on the eve of the scheduled auction, Christie's withdrew it from the sale based on a purported lack of interest.

9. Notwithstanding these discussions, in September 2018, Christie's wrote to the Gallery claiming that it had defaulted on the Loan, and that Christie's was therefore entitled to sell the Painting "under any terms, at any time, as we see fit."

10. Less than two weeks later, Christie's told the Gallery that it had sold the Painting to an unidentified third party (the "Unknown Buyer") for a fraction of the Painting's fair-market value, which, again, per Christie's own appraisal, was no less than \$10 million.

11. Christie's apparently has agreed to give the Unknown Buyer an extended payment schedule straddling the fall auction season—all the while claiming that default interest is continuing to accumulate on the Loan. This timing suggests that the Unknown Buyer may be a valued or prospective Christie's client who planned to participate in Christie's fall auctions, and that Christie's agreed to sell the Painting as part of a larger "sweetheart deal" for that Unknown Buyer—again, all at the Gallery's expense.

12. Rendering Christie's course of action even more unreasonable, following the agreement with the Unknown Buyer, Christie's has frankly informed the Gallery that it has now switched sides and is acting as the *Unknown Buyer's representative* with regard to the Painting,

and that Christie's has been actively negotiating *against the Gallery* to maximize the Unknown Buyer's ability to realize a windfall on this Painting.

13. Christie's has breached its duties under the New York Uniform Commercial Code by disposing of the Painting in a commercially unreasonable manner and by failing to provide the Gallery with the requisite notice of its planned disposition of collateral.

14. Christie's has breached the implied duty of good faith and fair dealing that is inherent in its contracts with the Gallery, by failing to discharge in good faith its role as the Gallery's exclusive agent under the Private Sale Agreement, and by failing to exercise in good faith its discretion under the Private Sale Agreement and the Advance Agreement.

15. The Gallery plans to commence arbitration imminently, and in connection with those proceedings, it now brings this special proceeding to restrain the impending commercially unreasonable sale of the Painting to the Unknown Buyer so that the arbitration award Petitioner seeks will not be rendered ineffectual.

PARTIES, JURISDICTION, AND VENUE

Petitioner

16. Petitioner is a leading South Korean art gallery located in Seoul, South Korea.

Respondents

17. Defendant Christie's Inc. is a New York corporation with its headquarters located at 20 Rockefeller Plaza in Manhattan.

18. Defendant Christie's Private Sales, Ltd. is a company organized under the laws of the United Kingdom with its principal place of business located at 8 King Street, St. James's, London.

Jurisdiction and Venue

19. The Court has personal jurisdiction over Respondents under CPLR §§ 301 and 302 because Respondents regularly conduct and solicit business, and maintain offices, in the State of New York, including in connection with the transactions at issue.

20. Venue is proper in this County under CPLR § 503(a) because Respondent Christie's is headquartered in this County.

21. Venue is proper in this County under CPLR § 7502(a) where the underlying agreements do not designate a location for preliminary injunctive relief and Respondent Christie's resides and does business in this County.

22. The operative agreements contain New York choice-of-law provisions and provide for the arbitration to be held in New York County. (*See* Ex. A § 8.1; Ex. B § 19H.)

STATEMENT OF FACTS

Christie's Agrees to Loan Against the Painting.

23. On October 17, 2017, the Gallery entered into two written agreements with Christie's.

24. The first of these agreements is the "Advance Agreement," providing that Christie's would lend approximately \$4.9 million to the Gallery, secured by the valuable Painting. A copy of the Advance Agreement is attached as **Exhibit A**.

25. Under the Advance Agreement, Christie's has the "rights and remedies of a secured party under the [New York] Uniform Commercial Code." (*Id.* at § 3.4.)

26. The second of these agreements is the "Private Sale and Auction Agreement" ("Private Sale Agreement"), providing that Christie's would act as the Gallery's "exclusive

agent” concerning the sale of the Painting, through September 1, 2019. (*See* Ex. B at 1 § B.) A copy of the Private Sale Agreement is attached as **Exhibit B**.

27. The Private Sale Agreement provides a minimum net sales price of \$10 million, meaning that Christie’s was authorized to arrange a private sale of the Painting on the Gallery’s behalf that would net the Gallery at least \$10 million (after payment of a commission to Christie’s). But as the Gallery’s exclusive agent, and therefore fiduciary, Christie’s of course was obligated to seek to realize the maximum sale price for the Gallery’s benefit.

28. The Private Sale Agreement and the Advance Agreement are intended to be read together, and each cross-references the other.

29. At the time of the Loan in 2017, Christie’s own appraisal indicated that for purposes of the Loan, the Painting had a value of no less than \$10 million. And under the Private Sale Agreement, at all relevant times Christie’s was obligated to insure the Painting for \$10 million.

30. At all relevant times since the parties entered these agreements, the Painting has had a value of no less than \$10 million; indeed, just several years prior to the Loan Christie’s opined that the Painting likely could sell for more than \$15 million.

31. That valuation has been corroborated not only by the Gallery’s owner, an experienced art dealer and gallerist, but by another leading market expert who recently estimated the Painting could sell for more than \$10 million.

32. There has been no significant change in market conditions with regard to works by Francis Bacon since October 2017. In the last couple of years alone, multiple Bacon paintings of similar size to the Painting sold for prices ranging from approximately \$20 million to almost \$50 million.

33. Nonetheless, although Christie's had a contractual duty to act as the Gallery's exclusive agent with regard to the Painting under the parties' Private Sale Agreement, Christie's never communicated to the Gallery any efforts it had made to actually sell the artwork.

Christie's Declares An Event Of Default and Arranges To Sell the Painting To an Unknown Buyer, Without the Requisite Notice, at a Bargain-Base ment Price.

34. After Christie's originated the Loan, the Gallery agreed to consign to Christie's a different painting by Andy Warhol for an auction in Hong Kong. As the parties discussed at the time, the sale proceeds from that auction would then be applied against the outstanding Loan balance. That work was one of the featured pieces in the sale, but on the eve of the auction, based on a purported lack of interest in the work, Christie's withdrew it from the sale.

35. Despite these conversations about applying the sale proceeds from the other auction to the outstanding Loan balance, in early September Christie's sent an invoice to the Gallery claiming that it failed to make interest payments. And then on September 14, 2018, Christie's sent a "Final Demand Letter" to the Gallery declaring that an "event of default" had occurred under the Advance Agreement, due to the Gallery's "failure to pay quarterly interest," including "two quarterly invoices."

36. According to Christie's, as stated in the letter, this alleged event of default "allows us to sell the [Painting] under any terms, at any time, as we see fit."

37. Following this alleged event of default, Christie's nevertheless accepted an additional \$500,000 payment from the Gallery in connection with the Loan.

38. Less than two weeks later, on September 25, Christie's wrote to the Gallery notifying it for the first time that it had already arranged to sell the Painting: "this email confirms that because you are in default of your obligations under the Advance Agreement . . .

we are electing to consummate a transaction for” the Painting. In other words, Christie’s had already arranged to sell the Painting to the Unknown Buyer.

39. On September 26, Christie’s wrote to the Gallery advising that “[a]s per the terms of the Advance Agreement, we have moved forward with the sale of the [Painting],” and two days later, Christie’s confirmed in writing that “we have proceeded with the sale due to the breach of contract.”

40. The Gallery has learned that the price to be paid by the Unknown Buyer is far below the Painting’s actual fair-market value, and payment is to be made on an extended schedule allowing the Unknown Buyer to pay the final installment sometime in late December 2018, at which point the Unknown Buyer would take possession and full title to the Painting.

41. To stave off this “fire-sale” of its Painting, the Gallery offered to pay \$6.8 million—an amount well in excess of the Unknown Buyer’s agreed-upon purchase price—for the return of the Painting. But Christie’s has rejected this proposal as too “low.”

42. On October 31, 2018, Christie’s advised the Gallery that it had switched sides, and now it is acting as the Unknown Buyer’s representative concerning the Painting: “On this matter, Christie’s is the buyer’s representative. I think you need to pass back to WonJae [*i.e.*, Won Jae Park, the Gallery’s owner] that these types of requests are going to de-motivate the buyer/owner. My two cents – WonJae came in low and was trying to see what reaction it elicited.”

43. Christie’s then recommended that the Gallery make a significantly higher offer than its initial \$6.8 million offer—which, again, was itself well in excess of the purchase price Christie’s has offered the Unknown Buyer.

**Christie's Fails to Exercise Commercial Reasonableness
By Agreeing to Sell the Painting for A Fraction of its Fair Market Value.**

44. Under the terms of the Advance Agreement, the Painting constitutes collateral securing a loan. New York's Uniform Commercial Code requires that "[e]very aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable." N.Y. U.C.C. § 9-610(b).

45. This requirement of commercial reasonableness in the disposition of collateral, obligating the secured party to act in good faith and in the parties' mutual best advantage, may not be waived by contract.

46. Here, Christie's has breached its duties to the Gallery under the parties' agreements and under New York law, and there are a number of red flags showing that Christie's is not abiding by its duty to conduct the sale of the Painting to the Unknown Buyer in a commercially reasonable manner.

47. First, Christie's has agreed to sell the Painting to the Unknown Buyer at a price that is drastically low compared to the Painting's actual value, a state of affairs that (according to well-established New York case law) warrants careful scrutiny of all aspects of the disposition of the collateral.

48. Indeed, in or around October 2017, Christie's itself appraised the Painting for purposes of the Loan at a value of no less than \$10 million, and since that time, the Painting's \$10-plus million value has been corroborated not only by the Gallery's owner, an experienced art dealer, but also by another leading market expert who estimated the Painting could sell for more than \$10 million.

49. There has been no significant change in market conditions with regard to works by Francis Bacon between October 2017 and December 2018, as reflected by published auction

records, showing sales of paintings of comparable size from between approximately \$20 and \$50 million.

50. Christie's conduct and communications following its Final Demand Letter reveal Christie's own awareness that it had agreed to sell the Painting to the Unknown Buyer at an unreasonably low price.

51. On October 31, 2018, Christie's dismissed as too "low" the Gallery's \$6.8 million offer to the Unknown Buyer—an offer which was significantly higher than the Unknown Buyer's agreed-upon purchase price—and recommended that the Gallery make an even higher bid.

52. In other words, by Christie's own admission, its agreement to sell the Painting to the Unknown Buyer for an amount even less than \$6.8 million represents an unacceptably "low" price that is far out of step with the Painting's fair-market value.

53. Second, the timing of the agreement with the Unknown Buyer, and the purported sale terms that Christie's extended to its Unknown Buyer, cast further doubt on Christie's good faith and commercial reasonableness in entering into this purported transaction.

54. Here, Christie's ostensibly tried, without success, to sell this Painting for nearly a year. Yet Christie's now purports to have found the Unknown Buyer for the Painting within two weeks of sending its Final Demand Letter to the Gallery. This timing calls into question whether Christie's acted diligently in seeking to maximize the price to be realized for the Painting, both before and after the Final Demand Letter.

55. And further questions are raised by the payment schedule Christie's gave to the Unknown Buyer; Christie's apparently entered the deal to sell the Painting to this Unknown Buyer at some point in September, but agreed that the Unknown Buyer could postpone payment

of the full balance of the purchase price until late December (all while assessing default interest on the Gallery's Loan). Under these circumstances, such an extended payment plan, all at the Gallery's expense, is commercially unreasonable.

56. What is more, the timing of the deal with the Unknown Buyer is significant because the payment schedule straddles Christie's fall auction season. This suggests that Christie's agreement to sell the Painting at a bargain price is part of a larger "sweetheart deal" for the Unknown Buyer, who may be a valued existing or prospective Christie's client who planned to participate in Christie's fall auctions.² These indicia of self-dealing further demonstrate that Christie's has not conducted itself in a commercially reasonable manner.

57. Third, Christie's has baldly stated that it now is acting as "the buyer's representative" with regard to the Painting.

58. In other words, by its own admission, Christie's has literally switched sides and now is acting as the *Unknown Buyer's* agent with regard to this Painting, actively negotiating *against* the Gallery on behalf of the Unknown Buyer to maximize the *Unknown Buyer's* ability to realize a significant windfall on this Painting.

FIRST CAUSE OF ACTION
VIOLATIONS OF ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE
(Against all Respondents)

59. The Gallery repeats and realleges all the foregoing allegations as if fully set forth herein.

² Of course, while the direct evidence that would corroborate this inference is exclusively in Christie's possession, this circumstantial evidence is strong, and the underlying facts will be readily available to the Gallery through document discovery and depositions of Christie's and the Unknown Buyer.

60. Under the New York Uniform Commercial Code, Christie's has a nonwaivable duty to act in a commercially reasonable manner in its disposition of the collateral—*i.e.*, the Painting. *See* N.Y. U.C.C. § 9-610(b),

61. Christie's has breached its duty of commercial reasonableness in several material regards, including among other things, by failing to conduct itself in good faith to the parties' mutual best advantage, and instead by agreeing to sell the Painting at a price far below its fair-market value.

62. That fire-sale price is compounded by indicia of self-dealing, including the timing and terms of the planned sale to the Unknown Buyer under circumstances that indicate that Christie's goal was to give its Unknown Buyer (whom the Gallery believes is a valued client or prospective client participating in Christie's fall auctions) a favorable deal at the Gallery's expense.

63. Under the New York Uniform Commercial Code, Christie's, as a secured party wishing to dispose of collateral, has an additional duty to provide the debtor (here, the Gallery) with adequate notice prior to entering into the purported sale agreement with the Unknown Buyer. *See* N.Y. U.C.C. § 9-610 and 9-611. The notification must be reasonable as to the manner in which it is sent, its timeliness (*i.e.*, a reasonable time before the disposition is to take place), and its content.

64. Christie's "Final Demand Letter" falls woefully short of constituting sufficient notice to the Gallery, where it says nothing about the method of the intended disposition of the collateral, nor any indication of the time after which the disposition was to be made.

65. Indeed, had the Gallery had adequate notice of the impending sale to the Unknown Buyer, it would have at that time—as, in fact, it ultimately did after receiving notice

of the planned sale—offered to pay Christie’s a higher amount than the Unknown Buyer’s agreed-upon price for the Work.

66. And Christie’s subsequent communications to the Gallery cannot constitute sufficient notice where they merely indicate that Christie’s *already* had reached an agreement with the Unknown Buyer to sell the Painting.

67. As a result of Christie’s breaches of Article 9 of New York’s Uniform Commercial Code, the Gallery is at risk of losing the unique Painting, and the Gallery has been damaged in an amount to be determined at trial.

68. Further, the Gallery is entitled to injunctive relief under New York’s Uniform Commercial Code where it faces irreparable harm if the Painting is sold to a third party in such an unreasonable manner: “If it is established that a secured party is not proceeding in accordance with this article, a court may . . . restrain . . . disposition of collateral on appropriate terms and conditions,” and award damages. *See* N.Y. U.C.C. Law § 9-625.

SECOND CAUSE OF ACTION
BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
(Against all Respondents)

69. The Gallery repeats and realleges all the foregoing allegations as if fully set forth herein.

70. Under New York contract law and N.Y. U.C.C. § 1-304, Christie’s contracts with the Gallery contain an implied covenant of good faith and fair dealing.

71. Christie’s breached that implied covenant by, among other things, agreeing to sell the Painting to the Unknown Buyer at a price far below its value, and on terms, including the extended payment schedule, suggesting that Christie’s intent was not to maximize the sale price

of the Painting for the mutual benefit of the Gallery, but rather to give this Unknown Buyer, at the Gallery's expense, a favorable deal.

72. While the parties' contracts contemplate that Christie's may exercise some discretion in how it may dispose of collateral, the implied covenant of faith and fair dealing dictates that such discretion may not be exercised in bad faith or arbitrarily.

73. Here, Christie's discretion does not permit it to sell the Gallery's collateral at a bargain-basement price as a "sweetener" for a more favored client doing other business with Christie's, thereby frustrating the Gallery's rights under the contract.

74. Especially given Christie's role under the Private Sale Agreement to act as the Gallery's exclusive agent with regard to the Painting until 2019 (*see* Ex. B at 1 § B), it was certainly reasonable for the Gallery to expect that Christie's would not actively negotiate *against* the Gallery to help the Unknown Buyer reap a significant windfall on the Painting at the Gallery's expense.


75. As a result of Christie's breaches of this implied covenant of good faith and fair dealing, the Gallery has been damaged in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Petitioner One and J Gallery respectfully requests that the Court enter an Order granting a provisional remedy under CPLR §7502(c) enjoining the sale of the Painting pending the final award issued in the related arbitration, and awarding any other and further relief as the Court may deem just and proper.

Dated: January 1, 2019
New York, New York

GROSSMAN LLP

By:  _____

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Attorneys for Petitioner One and J Gallery

VERIFICATION UNDER CPLR RULE 2106(b)

I, Won Jae Park, the owner of Petitioner One and J. Gallery, being physically located in Seoul, Republic of Korea at the time of execution, hereby affirm under CPLR Rule 2106(b) this 18th day of December 2018, under the penalties of perjury under the laws of New York and the United State of America, which may include a fine or imprisonment, that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, that the foregoing Verified Petition is true to the best of my knowledge, and I understand that this document may be filed in an action or proceeding in a court of law.

Dated: December 18, 2018



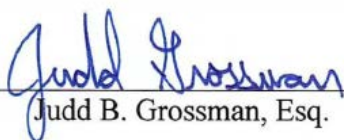
Won Jae Park, *for and on behalf of*
Petitioner One and J. Gallery

ATTORNEY VERIFICATION

I, Judd B. Grossman, Esq., an attorney duly admitted to practice law in the State of New York, under penalties of perjury, affirms the following:

That deponent is the attorney for the Petitioner in the special proceeding within; that deponent has read the foregoing Verified Petition and knows the contents thereof; that the same is true to the deponent's own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters believes it to be true; and the reason this verification is made by deponent is that Petitioner is not presently located in the county where the deponent-attorney maintains his office.

Dated: January 1, 2019

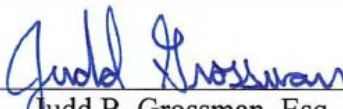


Judd B. Grossman, Esq.

CERTIFICATE OF COMPLIANCE

I, Judd B. Grossman, certify that this Verified Petition complies with Rule 17 of the Commercial Division Rules of Practice because it contains 3,797 words, excluding the parts of the Verified Petition exempted by Rule 17.

Dated: January 1, 2019



Judd B. Grossman, Esq.