

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

ONE AND J GALLERY,

Plaintiff,

-against-

VAN DE WEGHE, LTD.,
and DAVID ROGATH,

Defendants.

Index No: _____

SUMMONS WITH NOTICE

TO THE ABOVE NAMED DEFENDANTS:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED and required to serve upon Plaintiff's attorneys a notice of appearance or demand for a complaint within twenty (20) days after service of this Summons with Notice, exclusive of the day of service, or within thirty (30) days after service is complete if this Summons with Notice is not personally delivered to you within the State of New York. In case of your failure to appear or serve a demand for a complaint, judgment will be taken against you on default for the relief demanded herein.

VENUE

Plaintiff One and J Gallery (the "Gallery") designates New York County as the place of trial under N.Y. C.P.L.R. § 503. Venue is proper in New York County because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this County and Defendant Van de Weghe, Ltd. ("Van de Weghe") maintains its principal office in New York County at 1018 Madison Avenue, 5th Floor, New York, New York.

NOTICE

This is an action for declaratory judgment, replevin, and conversion arising from Defendants' purported acquisition in New York from Christie's Inc. ("Christie's") of Plaintiff's multi-million-dollar painting by renowned artist Francis Bacon (the "Painting"), which at the time of the purported sale was located in, and then shipped from New York.

Defendant Van de Weghe is one of the country's leading art dealers. And Defendant Rogath, an owner of Defendant Chalk & Vermilion Fine Arts, Inc., which touts itself as "perhaps the foremost publisher of contemporary fine art prints," is a gallerist, as well as one of the country's top art collectors. Upon information and belief, Defendants transact tens of millions of dollars in art sales annually through Christie's, both through private sales and at auction, and they are among Christie's leading clients.

In October 2017, Christie's agreed to act as the Gallery's exclusive agent to arrange a private sale of the Painting that would net the Gallery at least \$10 million. At the same time, Christie's agreed to make a loan of approximately \$4.9 million to the Gallery (the "Loan") collateralized by the Painting. At that time, Christie's appraised the Painting at \$10 million for purposes of the Loan (generally, appraisals for loan purposes are a more conservative valuation than the true fair-market value of an artwork; indeed, just several years prior, Christie's had estimated that it could sell this same Painting privately for more than *\$15 million*.)

Christie's failed to arrange a private sale of the Painting, and Christie's never indicated to the Gallery that it had made any efforts to sell the Painting. On or about September 14, 2018, notwithstanding the Gallery's arrangements with Christie's to pay down the outstanding Loan, in part, through the sale (by Christie's) of a different artwork, Christie's wrote to the Gallery asserting that it had defaulted on the Loan. And less than two weeks later, Christie's told the

Gallery that it had arranged to sell the Painting to an unidentified third party (the “Unknown Buyer”) for a fraction of the Painting’s fair-market value.

Shortly after learning of Christie’s planned sale, the Gallery paid \$500,000 to Christie’s, more than covering the alleged outstanding interest payments, and it explained to Christie’s that the purported sale, if consummated, would constitute an impermissible disposition of collateral under Section 9-610(b) of the New York Uniform Commercial Code: (1) Christie’s breached its obligations to provide the Gallery with adequate notice prior to entering the purported sale, *see* N.Y. U.C.C. § 9-611; and (2) Christie’s failed to conduct itself in good faith in a commercially reasonable manner to the parties’ mutual best advantage as required by N.Y. U.C.C. § 9-610 and N.Y. U.C.C. § 1-304, and Christie’s instead agreed to sell the Painting at a price far below its fair-market value, to enrich Christie’s and two of its leading clients, all at the Gallery’s expense.

At all relevant times during these discussions, Christie’s expressly assured the Gallery that until the end of December 2018, or more likely, early January 2019, the Painting would remain in Christie’s physical possession in New York, and that title would not transfer to the Unknown Buyer. Indeed, on December 20, 2018, counsel for Christie’s assured the Gallery in writing that “the current ownership status of the Painting will remain unchanged at least up to and including January 4, 201[9].” Based on those express promises, the Gallery agreed not to seek an injunction earlier against Christie’s enjoining the transfer, sale, or disposition of the Painting, as it otherwise was prepared to do, as it had informed Christie’s time and time again.

On January 2, 2019, the Gallery commenced a special proceeding against Christie’s seeking a temporary injunction enjoining the sale of the Painting on the basis that Christie’s planned sale constituted an impermissible disposition of collateral, and therefore Christie’s was not authorized to transfer title to the Painting. *See One and J Gallery v. Christie’s Inc.*, Index

No. 650005/2019 (Masley, J.). At the TRO hearing, Christie's candidly revealed to the Court and to the Gallery that its prior assurances to the Gallery that "the current ownership status of the Painting will remain unchanged at least up to and including January 4, 2018," were false, and that it purportedly had transferred title to the Painting on December 28, 2018. What is more, Christie's also revealed at the hearing that it had misrepresented that physical possession of the Painting would remain with Christie's in New York until title had transferred. Indeed, Christie's admitted at the hearing that it had released the Painting months prior—in *October*—to the Unknown Buyer, who then shipped the Painting to London.

At the conclusion of the hearing, the Court entered a temporary-restraining order, among other things, directing Christie's to disclose the identity of the Unknown Buyer. The next day, Christie's revealed to the Gallery that it had "invoiced Van de Weghe Ltd., 1018 Madison Avenue, 5th Floor, New York, New York in connection with the sale of the painting," although "[w]e understand . . . that it purchased the painting jointly" with Defendant Rogath.

Christie's did not have the authority to transfer good title to the Painting on December 28, 2018, in light of its affirmative misrepresentations to the Gallery that the Unknown Buyer would not be taking physical possession or title until after January 4, 2019, and because the Gallery, in reliance on those representations, refrained from obtaining injunctive relief to halt this improper and commercially unreasonable sale, as the Gallery was entitled to do under N.Y. U.C.C. §§ 9-610, 9-611, and 9-625.

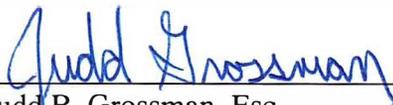
Because Christie's did not have authority to transfer title to the Painting, Defendants, as a matter of fact and law, could not have acquired good title to the Painting where, as here, they were not good-faith "buyer[s] in the ordinary course" under UCC § 2-403. As sophisticated art merchants, Defendants were required to perform a heightened degree of diligence in connection

with the sale. *See Davis v. Carroll*, 937 F. Supp. 2d 390, 422-23 (S.D.N.Y. 2013) (New York law holds art merchants to a “higher standard of good faith” to be considered “buyer[s] in the ordinary course of business” under the UCC, and art merchants may be required “to take additional steps to verify the true owner of a piece of artwork”) (internal quotation marks omitted). And here, Defendants knew, or at the very least should have known, of the Gallery’s pending title claims regarding the Painting. Indeed, upon information and belief, Christie’s did—or, at the very least it was required to—disclose to Defendants this material information concerning the Gallery’s title claims in connection with the purported sale of the Painting. What is more, the extremely low purchase price for the Painting was a glaring red flag that triggered Defendants’ obligation to conduct additional diligence before proceeding with the sale, and certainly before shipping it out of this Court’s jurisdiction.

Upon your failure to appear, judgment will be taken against you by default, among other things, for (a) a declaratory judgment declaring that Plaintiff is the owner of the Painting, and (b) an injunction ordering that the Painting be delivered to Plaintiff.

Dated: January 4, 2019
New York, New York

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