

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

RUSSIAN COLLECTIONS, LTD.	:	
	:	
Plaintiff,	:	Case No. 2:09-cv-300
	:	
v.	:	JUDGE MARBLEY
	:	
ALEXANDER MELAMID,	:	Magistrate Judge Abel
	:	
Defendant.	:	

OPINION AND ORDER

I. INTRODUCTION

This matter is before the Court on Plaintiff Russian Collections, Ltd. (“RC”) Motion for Preliminary Injunction enjoining Defendant Alexander Melamid (“Melamid”) from: (1) selling, transferring, encumbering, alienating or offering certain paintings, known as the Additional Paintings¹, for sale directly or through third parties, including Phillips, prior to offering them to RC, or contracting to sell, transfer, encumber or alienate the Additional paintings directly or through third parties, including the Phillips de Pury & Company in London, England (“Phillips”), prior to offering them to RC; and (2) offering the Additional Paintings for sale at prices below the minimum price requirement set out in the Agreement.² For the reasons set forth below, this Court **DENIES** Plaintiff’s Motion for Preliminary Injunction.

¹The term “Additional Paintings” means additional works in the same series — “painted portraits of ‘hip hop’ stars and related personages in any size.” (Agreement ¶ 4.)

²The term “Agreement” means the agreement between RC and Melamid and Mina Litinsky d/b/a Sloane Gallery of Art in Denver, Colorado regarding the purchase by RC of certain paintings by Melamid.

II. BACKGROUND

A. Factual History

RC's business is to acquire, own, maintain, invest in, hold for investment purposes and sell various works of Russian contemporary art. On August 29, 2005, RC entered into an Agreement with Melamid and Mina Litinsky ("Litinsky") d/b/a/ Sloane Gallery of Art in Denver, Colorado regarding the purchase of RC of certain paintings by Melamid. Pursuant to the Agreement, RC agreed to purchase and Melamid agreed to create and sell, a series of twelve painted portraits of "hip hop" stars and related personages (the "RC Paintings"). (Agreement ¶ 2.)

Pursuant to the Agreement, if Melamid decides to extend the series beyond the RC Paintings, Melamid agrees to offer any Additional Painting---"painted portraits of 'hip hop' stars and related personages in any size" completed on or before March 10, 2010---to RC before offering it to another potential purchaser. (*Id.* ¶ 3.) Melamid agrees to put the offer in a dated writing, and RC then has sixty days thereafter to decide whether to purchase the painting pursuant to purchase price and other terms to be agreed upon. (*Id.*)

RC alleges that Melamid has created at least eleven Additional Paintings. RC contends that Melamid did not offer these Additional Paintings to RC prior to announcing plans to offer these Additional Paintings for sale in conjunction with an exhibition at Phillips de Pury & Company ("Phillips"). The exhibition was scheduled to occur from May 22, 2009 through June 12, 2009. On March 24, 2009, Melamid offered RC the right to purchase seven of the Additional Paintings. RC had the right of first refusal on those Additional Paintings until May 27, 2009, which was after the Phillips exhibition. The other four Additional Paintings have not been

offered to RC. Due to the threat of litigation, Phillips cancelled the exhibition. The exhibition has been postponed until spring of 2010. (See http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aPShyYB3N_1M) (stating that “[t]he exhibition of works by Russian artist Alexander Melamid that was scheduled to open at Phillips de Pury, London and at the Saatchi Gallery on May 22 has been postponed. . . . Phillips’s event, title ‘OH, MY GOD,’ has been rescheduled for the spring of 2010). Provided that the exhibition and sale do not occur until after March 31, 2010, the spring of 2010 exhibition would not be in breach of the contract.

The Agreement further provides that if Melamid and RC fail to reach an agreement in regard to the Additional Painting, Melamid is then free to offer and sell the Additional Painting to any third party:

provided, however, that until after [March 31, 2010, Melamid] shall not sell such Additional Painting for a price that is less than 90% of the highest retail price reasonably being charged by RC or any gallery affiliated with it for any of the Paintings.

(Agreement ¶ 3.)

The Forum Gallery, a gallery affiliated with RC, has sold two of the twelve RC Paintings to two separate buyers for \$300,000 each. (Hoffeld aff. ¶ 5.) The other RC Paintings are currently being offered for \$300,000.00 through the Forum Gallery. (Id. ¶ 6.) RC posits, therefore, that \$300,000.00 is a reasonable price charged for the paintings, and Melamid cannot sell the paintings for less than \$270,000. RC contends that Melamid intended to sell the paintings through the Phillips exhibition for a price below this restriction, in breach of the Agreement.

III. STANDARD OF REVIEW

A preliminary injunction is a remedy used by the court to preserve the status between the parties pending a trial on the merits. *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981).

Courts will generally issue a preliminary injunction when the plaintiff establishes that: (1) there is a substantial likelihood that the plaintiff will prevail on the merits; (2) the plaintiff will suffer irreparable injury without the injunction; (3) that the balance of hardships tips in his favor; and (4) that the injunction serves the public interest. *Langley v. Prudential Mortg. Capital Co., LLC*, 554 F.3d 647, 648 (6th Cir. 2009). The standard for granting an injunction is more stringent than that required for summary judgment. *Leary v. Daeschner*, 228 F.3d 729, 736 (6th Cir.2000). This is because it is “an extraordinary remedy involving the exercise of a very far-reaching power, which is to be applied ‘only in [the] limited circumstances’ which clearly demand it.” *Id.*

IV. LAW AND ANALYSIS

A. PERSONAL JURISDICTION

Melamid asserts that this Court lacks personal jurisdiction to issue a preliminary injunction. The plaintiff bears the burden of proving personal jurisdiction exists. *CompuServe Inc. v. Patterson*, 89 F.3d 1257, 1262-63 (6th Cir. 1996). This Court held a preliminary injunction hearing, at which evidence was presented on the issue of personal jurisdiction. When an evidentiary hearing is held, the plaintiff must establish personal jurisdiction by a preponderance of the evidence. *Youn v. Track, Inc.*, 324 F.3d 409, 417 (6th Cir. 2003). A federal court sitting in a diversity matter can exercise personal jurisdiction over a defendant if jurisdiction is “(1) authorized by the law of the state in which it sits, and (2) in accordance with the Due Process Clause of the Fourteenth Amendment.” *Tharo Sys., Inc. v. Cab Produkttechnik GMBH & Co. KG*, 196 F. App’x 366, 369 (6th Cir. 2006) (quoting *Neogen Corp. v. Neo Gen Screening, Inc.*, 282 F.3d 883, 888 (6th Cir.2002)).

A. Ohio’s Long-Arm Statute

Pursuant to the Ohio long-arm statute, a suit can be brought against a nonresident defendant arising from the nonresident's "[t]ransacting any business in this state." *See* Ohio Rev. Code § 2307.382(A)(1). "Transact" is interpreted in Ohio as meaning "the carrying on or prosecution of business negotiations . . . and may involve business negotiations which have been either wholly or partly brought to a conclusion." *Kentucky Oaks Mall Co. v. Mitchell's Formal Wear, Inc.*, 559 N.E.2d 477, 480 (Ohio 1990).³ This Court may exercise jurisdiction over someone who directly transacts business in Ohio or over someone who transacts business by an agent in Ohio. Ohio Rev. Code § 2307.382(A).

There are two factors that help determine whether a non-resident defendant "transacted business" within the meaning of Ohio's long-arm statute. *Indus. Fiberglass Specialities, Inc. v. AlSCO Indus. Prods., Inc.*, No. 3:08-cv-0351, 2009 WL 982805, at *3-4 (S.D. Ohio April 13, 2009). The first factor is whether the non-resident defendant initiated the business dealing. *Id.* at *3 (citing *Paglioni & Assoc., Inc. v. Winnercomm, Inc.*, No. 2:06-cv-276, 2007 WL 852055 at *9 (S.D. Ohio Mar.16, 2007)). This is, however, just one factor to be considered, and the determination is not always dependent on who initiates the contact. *Id.* (citing *Military Supply, Inc. v. Reynosa Constr., Inc.*, No. 19326, 2000 WL 109783, at *3 n.3 (Ohio Ct. App. Jan. 26, 2000)).

The second factor is whether the parties conducted their negotiations or discussions in Ohio or with terms affecting Ohio. *Id.* at *4 (citing *Shaker Constr. Group, LLC v. Schilling*, No.

³The Supreme Court of Ohio has indicated that Section (A)(1) is "very broadly worded and permit[s] jurisdiction over nonresident defendants who are transacting any business in Ohio." *Genesis Ins. Co. v. Alfi*, 425 F.Supp.2d 876, 894 (S.D. Ohio 2006) (citing *Kentucky Oaks*, 559 N.E.2d at 480).

1:08cv278, 2008 WL 4346777, at *3 (S.D. Ohio Sept. 18, 2008)). If the parties negotiated in Ohio with provisions affecting Ohio, the non-resident transacted business in Ohio, provided there is “some continuing obligation that connects the non-resident defendant to the state or some terms of the agreement that affect the state.” *Shaker*, 2008 WL 4346777 at *3.

RC has established that in approximately May of 2005, Neil Rector (“Rector”), on behalf of RC, was having conversations with Litinsky, an art gallery dealer who was also an agent for Melamid. Rector told Litinsky about RC’s plans for marketing and selling Russian artists’ works of art and also made inquiries as to whether Litinsky was aware of works that she thought would be appropriate for RC to purchase and acquire. Litinsky specifically identified the “hip hop” paintings being created by Melamid as works that would be appropriate for RC to purchase and acquire. Rector then met with Melamid and Litinsky to view the “hip hop” paintings. During that meeting, Melamid indicated a willingness to sell the “hip hop” paintings and gave Rector a purchase price. Rector declined to purchase the paintings because he felt the price was too high. Melamid then indicated to Rector that he might be able to work out a better price for the paintings. These facts show that if either party could be called the “initiator” of business dealings, it was Melamid. Melamid initiated the business dealings by having his agent suggest to RC (who was not pursuing works by Melamid) that Melamid’s works would be appropriate for RC to purchase and acquire, by indicating a willingness to sell and providing a purchase price to RC, and then by continuing discussions and negotiations regarding the purchase of the paintings after RC had declined to purchase the paintings.

RC has also established that Melamid negotiated and entered into a binding Letter of Intent and subsequently a binding Agreement with RC, a company organized under the laws of

Ohio with its principal place of business in Ohio. Negotiations were conducted by Rector of RC and RC's legal counsel in Ohio, counsel for Melamid, and Melamid's agent, Litinsky. The negotiations were conducted via telephone and electronic mail communications between Ohio, New York, and Colorado. RC's Rector was the keeper of the "master document" for both the Letter of Intent and Agreement, so any changes made to either document needed to be made in Ohio by him. The Letter of Intent and Agreement were drafted and executed by RC in Ohio, then sent to Melamid in New York, and subsequently returned to Ohio by Litinsky on behalf of Melamid.

In addition, RC established that Melamid owes continuing obligations to RC in Ohio. Melamid has agreed to offer any "Additional Painting" completed on or before March 31, 2010 to RC. The offer to RC of an Additional Painting is to be in a dated writing addressed to RC in Ohio. Melamid is obligated to pass title to each RC Painting as provided for in the Agreement. Melamid has agreed to provide certain consent letters from the hip-hop painting subjects to RC in Ohio. Melamid has agreed to deliver each of the RC Paintings to such location as RC reasonably designates. Finally, all notices, statements and communications required under the Agreement are to be sent to RC at its Ohio office address.

In sum, the following establishes that personal jurisdiction over Melamid is authorized under Ohio's long-arm statute: (1) negotiations were conducted between an Ohio company from within Ohio, though which documents and emails were exchanged into Ohio and phone calls were made into Ohio; (2) the Letter of Intent and Agreement were drafted in Ohio, and while they were being drafted, the master documents were kept in Ohio and all changes to the documents were made in Ohio; (3) the Agreement was signed by RC in Ohio and returned to RC

in Ohio by Melamid after he signed it; (4) all notices, statements, and communications required under the Agreement are to be sent to RC in Ohio; and (5) Melamid owes the following continuing obligations to RC in Ohio: he must offer Additional Paintings, he must pass title to the RC Paintings, he must provide consent letters, and he must deliver the RC Paintings.

B. Due Process

In evaluating whether personal jurisdiction complies with due process, the test is whether there are sufficient minimum contacts between the nonresident defendant and the forum state so as not to offend “traditional notions of fair play and substantial justice.” *Bird v. Parsons*, 289 F.3d 865, 872 (6th Cir. 2002). The Sixth Circuit has adopted a three-part test for determining whether the exercise of personal jurisdiction over an out-of-state defendant comports with due process: (1) the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state; (2) the cause of action must arise from the defendant’s activities there; and (3) the acts of the defendant or the consequences caused by the defendant must have a substantial enough connection with the forum to make the exercise of jurisdiction over the defendant reasonable. *S. Mach. Co. v. Mohasco*, 401 F.2d 374, 381 (6th Cir. 1968).

1. Purposeful Availment

One’s acts become purposeful if one should have reasonably foreseen that a transaction would have consequences in the forum state. *Id.* at 383. When “a nonresident defendant transacts business by negotiating and executing a contract via telephone calls and letters to an Ohio resident, then the defendant has purposefully availed himself of the forum by creating a continuing obligation in Ohio.” *Cole v. Mileti*, 133 F.3d 433, 436 (6th Cir. 1998); *see also*

Burnshire Dev., LLC v. Cliffs Reduced Iron Corp., 198 F. App'x 425, 432 (6th Cir. 2006)

(holding that the Ohio “transacting any business” standard is coextensive with the purposeful availment prong of constitutional analysis). Due to Melamid’s transaction of business in Ohio and continuing obligations to RC in Ohio, Melamid reasonably should have foreseen that his actions would have consequences in Ohio. He has, thus, purposefully availed himself of the privilege of acting in Ohio.

2. Arise from Activities in Forum State

The second requirement, that the cause of action arises out of a defendant’s actions in this state, is satisfied when the defendant breaches a contract. *Wright Intern. Exp., Inc. v. Roger Dean Chevrolet, Inc.*, 689 F.Supp. 788, 790 (S.D. Ohio 1988). “In such case, the breach of the contract entered into with an Ohio resident is the event which does the damages within Ohio and satisfies this requirement.” *Id.* (citing *In-Flight Devices Corp. v. Van Dusen Air, Inc.*, 466 F.2d 220, 229 (6th Cir. 1972)). Melamid is alleged to have breached his contract with RC, an Ohio resident, and this suit arises out of that alleged breach. As such, the cause of action arises out of Melamid’s actions in Ohio.

3. Substantial Enough Connection to Make Jurisdiction Reasonable

For the third requirement, when the first two prongs of the due process inquiry have been satisfied, Ohio courts will “presume the specific assertion of personal jurisdiction was proper.” *Cole*, 133 F.3d at 436. The presumption is proper in this case. Ohio has a strong interest in resolving suits brought by one of its residents and has a substantial interest in seeing that its residents get the benefit of their bargains. *First Nat’l Bank, etc. v. J.W. Brewer Tire Co.*, 680 F.2d 1123, 1126 (6th Cir. 1982). Accordingly, the acts of Melamid and the consequences caused

by Melamid have a substantial enough connection with Ohio to make the exercise of jurisdiction over Melamid reasonable.

RC has established by a preponderance of the evidence that the requirements under Ohio's long-arm statute and the Due Process Clause of the Fourteenth Amendment have been satisfied. Therefore, this Court may exercise personal jurisdiction over Melamid.

B. MOTION FOR PRELIMINARY INJUNCTION

RC seeks a preliminary injunction to enjoin Melamid from his alleged continuing breach of the Agreement. A plaintiff seeking a preliminary injunction must demonstrate: (1) there is a substantial likelihood that the plaintiff will prevail on the merits; (2) the plaintiff will suffer irreparable injury without the injunction; (3) that the balance of hardships tips in his favor; and (4) that the injunction serves the public interest. *Langley*, 554 F.3d at 648. The elements are factors to be balanced against each other, and each element need not be satisfied to issue a preliminary injunction. *Dayton Area Visually Impaired Persons, Inc. v. Fisher*, 70 F.3d 1474, 1480 (6th Cir.1995) (quoting *In re DeLorean Motor Co.*, 755 F.2d 1223, 1229 (6th Cir.1985)). It is, however, the movant's burden of proving that the circumstances clearly demand a preliminary injunction. *Leary*, 228 F.3d at 739.

1. Substantial Likelihood that RC Will Prevail on the Merits

The Agreement is governed by and construed in accordance with the internal substantive laws of New York. (Agreement p. 8.) The elements of a claim for breach of contract are: (1) the existence of a contract; (2) performance of the contract by plaintiff; (3) breach of the contract by defendant; and (4) damages resulting from the breach. *Coastal Aviation, Inc. v. Commander Aircraft Co.*, 937 F.Supp. 1051 (S.D.N.Y. 1996), *aff'd* 108 F.3d 1369 (2d Cir. 1997).

RC claims it entered into an Agreement with Melamid. Melamid does not dispute that RC established this element. Melamid, however, disputes the following: RC has substantially performed its obligations under the Agreement, Melamid breached the Agreement, and damages resulted from the alleged breach.

a. Performance of the Agreement by RC

RC claims it has substantially performed its obligations under the Agreement. First, RC claims it has substantially performed its payment obligations because it made monthly installment payments as required under the Agreement through February 2009. As of the submission of the parties' briefs, RC had paid \$1,050,000 of the \$1,200,000 total purchase price, leaving a balance of \$150,000 due under the Agreement. Only \$75,000 of that amount was past due, though RC had until June 7, 2009 to cure such nonpayment. That date was after submission of the parties' briefs. Therefore, at the time the parties submitted their briefs, RC had not breached the Agreement by not performing its payment obligations.⁴

Second, RC contends it has fulfilled its obligation to "use commercially reasonable efforts to secure an exhibition of the RC Paintings as a group at one or more prominent national or international galleries." (*See* Agreement ¶ 6.) Contrary to the arguments of Melamid, RC is not obligated to promote the RC Paintings or exhibit the RC Paintings at a specific gallery. Likewise, there exists no obligation to re-sell the RC Paintings or to create a market for the RC Paintings during the term of the Agreement.⁵

⁴This Court does not know whether RC has paid Melamid the \$75,000 following submission of their briefs.

⁵Melamid asserts RC did not perform its obligations pursuant to the Agreement because: (1) RC failed to promote the "hip hop" series; (2) RC failed to exhibit the "hip hop" series at

Jeffrey Hoffeld (“Hoffeld”), on behalf of RC, undertook to exhibit for sale the RC Paintings at various galleries of contemporary art. (Hoffeld aff. ¶ 3.) In particular, Hoffeld sought to exhibit the RC Paintings at the following world renowned galleries for contemporary art: PaceWildenstein, Gagosian, Sprueth Magers Lee, and Luhring Augustine. (*Id.* ¶ 4.) The principals from each of these galleries declined to exhibit the RC Paintings. (*Id.*) The principals of the Faggionato and Volker Diehl galleries are currently considering exhibitions of the RC Paintings. (*Id.*) The RC Paintings were exhibited at the Forum Galleries in New York and Los Angeles. (*Id.* ¶ 5.) The RC Paintings were also exhibited at the Museum of Contemporary Art Detroit between February and April 2008. (*Id.* ¶ 7.)

The RC Paintings have been offered for exhibition at the following prominent museums in multiple locations around the world: the National Portrait Gallery, Washington D.C.; National Portrait Gallery, London; Corcoran Museum of Art; Detroit Museum of Art; Birmingham Museum of Art; Frye Museum of Art; Margolies Collection; and the Art Gallery of Ontario. (*Id.*) In addition, Hoffeld, on behalf of RC, was instrumental in arranging a series of reviews of the RC Paintings that were published in numerous prominent publications, including, the New York Times, the Los Angeles Times, and the Chicago Tribune. (*Id.* ¶8).

Based on the foregoing, it appears RC has used commercially reasonable best efforts to secure an exhibition of the RC Paintings at one or more prominent national or international galleries and has fulfilled its payment obligations. RC has established, therefore, that it has performed its obligations under the Agreement.

prominent national and international galleries; and (3) RC failed to re-sell the “hip hop” series and failed to create a market for them during the four year term of the Agreement.

b. Breach of the Agreement by Melamid

RC claims that Melamid has offered the Additional Paintings for sale to Phillips prior to offering the Additional Paintings to RC in breach of the Agreement. According to the Agreement, the Additional Paintings had to be offered to RC prior to being offered to a third party. (Agreement ¶ 3.) RC also claims that Melamid has offered the Additional Paintings for sale at a price below the price restrictions set out in the Agreement. According to the Agreement the Additional Paintings cannot be sold for a price less than 90% of the highest retail price reasonably being charged by RC or any gallery affiliated with RC. (*Id.*)

There is no evidence that any of the Additional Paintings have been sold at a price in breach of the Agreement. Nevertheless, even though the Phillips exhibition has been postponed, because Melamid offered the Additional Paintings to Phillips prior to offering them to RC, as evidenced by the Phillips exhibition advertisement, that is in breach of the Agreement. RC has established, therefore, that Melamid has breached the Agreement.

c. Damages Resulting from the Breach

RC asserts its reputation and customer goodwill has already been damaged as a result of Melamid's breach. Because Melamid offered the Additional Paintings to Phillips before giving RC the opportunity to purchase the RC Paintings, there appears to be some damage to RC's reputation and customer goodwill, though perhaps minimal, because Phillips proceeded to advertise that the Additional Paintings would be sold at its exhibition. This detracts from the RC Paintings which RC and its affiliated galleries are trying to sell.

Therefore, because RC has established all the requisite elements of a breach of contract claim, RC has demonstrated a substantial likelihood it will prevail on its claim of breach of the

contract.

2. Irreparable Harm

To demonstrate irreparable harm, the mere possibility of injury is not enough; rather, the injury must be likely. *JSG Trading Corp. v. Tray-Wrap, Inc.*, 917 F.2d 75, 80 (2d Cir. 1990).

Injury to reputation and the loss of customer goodwill often amounts to irreparable injury.

Johnson v. Controls, Inc. v. A.P.T. Critical Sys., Inc., 323 F.Supp.2d 525, 532 (S.D.N.Y. 2004).

RC asserts that if Melamid is permitted to sell the Additional Paintings at prices that are substantially below the minimum price set out in the Agreement, RC, the galleries selling the RC Paintings, and the customers who have already purchased the RC Paintings will be materially financially harmed, and consequently, RC's reputation and goodwill in the art community will be irreparably damaged.

Though RC's assertion may be true---that if Melamid sells the Additional Paintings at prices that are in breach of contract, RC's reputation and goodwill will be irreparably damaged--it is RC's burden to establish that it is **likely** that Melamid will sell the paintings in breach. The evidence shows that the Phillips Exhibition has been postponed until spring of 2010. Thus, no paintings will be exhibited or sold at the exhibition in breach of the Agreement. RC asserts:

[T]he cancellation or postponement of the Phillips Exhibition does not eliminate the irreparable harm that RC has suffered and will continue to suffer in the absence of an injunction. . . . Without an injunction, RC has no assurance that Melamid will not offer the Additional Paintings for sale directly to third parties, or through Phillips or other galleries, prior to offering all of the Additional Paintings to RC and at prices below the minimum price requirement set out in the Agreement. Given that Melamid has done this once, there is no reason to trust him not to do it against going forward.

(RC Brief pp. 17-18.)

RC has no evidence that its fear---that the Additional Paintings will be sold below the

minimum price in the Agreement in breach of the Agreement---is justifiable now that the Phillips Exhibition has been postponed until spring of 2010.⁶ Melamid has only allegedly breached the Agreement one time during the entirety of the contract period. RC is requesting an injunction solely to prevent a future speculative breach. An injunction cannot issue based upon a speculative harm. *See JSG Trading*, 917 F.2d at 79 (2d Cir. 1990).

The evidence shows that the only paintings which Melamid has currently offered to sell are the Roman Catholic and Russian Oligarch paintings. The Agreement states Additional Paintings constitute “painted portraits of ‘hip hop’ stars and related personages in any size.” (Agreement p. 2.) RC asserts it will suffer irreparable injury from the sale of these paintings because they are “related personages” and therefore fall under the term “Additional Painting” as defined in the Agreement. (RC Reply Brief p. 20.) Adopting RC’s interpretation, RC would have a claim to any paintings that Melamid chose to display with any “hip hop” paintings. This Court finds that this is not what the parties intended. “Related personages” means paintings of persons affiliated with the “hip hop” industry. For instance, Additional Paintings would include not just paintings of “hip hop” stars, but would also include paintings of “hip hop” disc jockeys or producers of “hip hop” music.

Therefore, RC has not established a substantial likelihood that it will suffer irreparable harm.

3. Balance of Hardships

This court must balance the hardships that RC may suffer if Melamid is not enjoined against those Melamid will suffer if the injunction is issued. An injunction would be forcing

⁶The Agreement is only in force until March 31, 2010.

Melamid to comply with the terms of the Agreement. The injunction, however, would only be preventing a speculative harm, not a likely harm. During the entirety of the contract period, Melamid allegedly has breached the Agreement one time, through his offer of the Additional Paintings to Phillips. At all other times before and after this alleged breach, RC admits that Melamid has complied with the Agreement. On the other hand, Melamid is concerned that if an injunction issues, he will have difficulty selling his other paintings, which are not affected by the injunction. There is a possibility that Melamid's goodwill and reputation would be harmed and he would have difficulty selling his other paintings if other galleries and customers became aware of the injunction. Therefore, because RC is seeking an injunction only for a speculative harm, and because the injunction could interfere with Melamid's goodwill and reputation and his ability to sell his other paintings, the balance of hardships tips in Melamid's favor.

4. Public Interest

The public interest factor does not weigh in either parties' favor. If an injunction was issued, that would prohibit Melamid from selling the Additional Paintings in violation of the Agreement, which is something he has already agreed to contractually. But, because there is no irreparable harm that the injunction would prevent, the public interest would not be served by issuing an injunction.

V. CONCLUSION

The only factor that weighs in RC's favor is that RC has shown a substantial likelihood of success on the merits for its breach of contract claim. Most problematic, however, is that RC has not shown an irreparable harm that it will suffer in the absence of an injunction. An injunction is not justified just because there has been a prior breach of the contract, and it is not

justified just because there is a possibility that a party will again breach the contract. If in the future a likely threat arises that Melamid will offer or sell his Additional Paintings in violation of the Agreement and cause irreparable injury, then at that time, RC can seek injunctive relief. Because there is no current plan to offer or sell the Additional Paintings in breach before the Agreement's expiration, this Court will not issue an injunction based upon a speculative harm. *See JSG Trading*, 917 F.2d at 79 (2d Cir. 1990). For the foregoing reasons, this Court **DENIES** RC's Motion for Preliminary Injunction.

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY
UNITED STATES DISTRICT COURT

Dated: July 1, 2009