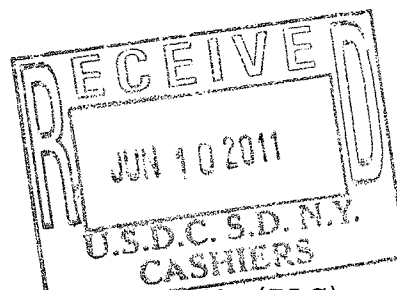


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ARG 6056



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SAFFLANE HOLDINGS LTD., and
ROBERT WYLDE,

11-CIV-1679 (DLC)

FIRST AMENDED COMPLAINT

(Jury Trial Demanded)

Plaintiffs,

-against-

GAGOSIAN GALLERY, INC.

Defendant.
-----X

Plaintiffs SAFFLANE HOLDINGS LTD. ("Safflane" and/or "Plaintiff Safflane") and ROBERT WYLDE ("Wylde" and/or Plaintiff Wylde"), by their attorney, AARON RICHARD GOLUB, ESQUIRE, PC, as and for their First Amended Complaint, allege as follows:

THE PARTIES

1. Plaintiff Safflane is a corporation duly organized under the laws of the Republic of Cyprus ("Cyprus").
2. Plaintiff Wylde is a citizen of the United Kingdom of Great Britain and Northern Ireland.
3. Defendant Gagosian Gallery, Inc. ("Defendant" and/or "GG") is a domestic business corporation organized under the laws

of the State of New York, and maintains its principal office and place of business at 980 Madison Avenue, New York, New York 10075.

JURISDICTION AND VENUE

4. This is a civil action over which this Court has original jurisdiction under the provisions of 28 U.S.C. § 1332(a)(2); the diversity jurisdiction statute. Complete diversity of citizenship exists between all proper parties to this action and the amount in controversy exceeds the sum or value of seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs.

5. Plaintiff Safflane is a corporation duly organized under the laws of Cyprus, is a citizen of Cyprus and maintains its principal place of business in Nicosia, Cyprus. Plaintiff Wylde is a citizen of the United Kingdom of Great Britain and Northern Ireland and is an individual Plaintiff herein. Plaintiffs assert claims arising from contractual relationships with Defendant.

6. The First Amended Complaint seeks compensatory damages in excess of Six Million Dollars (\$6,000,000.00), exclusive of interest and costs. Accordingly, the amount in controversy is in excess of the statutory minimum of seventy-five thousand dollars (\$75,000.00).

7. Venue is proper in this District pursuant to 28 U.S.C. § 1392(a)(1) and (2), because (a) Defendant resides in

this District and (b) a substantial portion of the events and omissions giving rise to Plaintiffs' claims occurred in this District.

FACTUAL BACKGROUND

8. Any and all allegations herein are made without prejudice to Plaintiffs' claims and defenses available and to be asserted in The Metropolitan Museum of Art, et. al. v. Safflane Holdings, Ltd., et. al., 11-cv-3143-DLC ("Met v. Safflane action"). Due to the facts and circumstances herein, such claims and defenses to be asserted in the Met v. Safflane action may be, perforce, inconsistent with the claims herein or may be asserted in the alternative.

A. The Defendant, and the World Renowned Artists Mark Tansey and Richard Prince

9. Defendant, established in 1979 by Lawrence G. Gagosian ("Gagosian"), is reputedly one of the most important contemporary art galleries in the world and maintains three art galleries in New York City.¹ Defendant is wholly owned and is principally managed by Gagosian. Defendant has represented the world-renowned artist Mark Tansey ("Tansey") since 2004 and has represented the world-renowned artist Richard Prince ("Prince") since approximately 2005 on a non-exclusive basis and, upon

¹ Defendant maintains ten gallery locations throughout the world at these locations: New York City (three locations); Beverly Hills; London (two locations); Rome; Athens; Paris; Geneva; and Hong Kong.

information and belief, commencing in 2008, on an exclusive basis.

10. Tansey was born in 1949 in San Jose, California. He is an American postmodern painter best known for monochromatic works and elaborate paintings incorporating hidden text, images and symbols. Tansey's works of art sell for millions of dollars privately and at auction. Defendant is, or ought to be, or should have been, familiar with every business and creative aspect of Tansey's works necessary to effectively represent him as his gallerist; otherwise, Defendant would not have been able to successfully represent Tansey since 2004.

11. Prince was born in 1949 in the Republic of Panama, is an American artist who bases his artistic work predominantly on the work of other artists and calls it "appropriation art." Prince's works of art sell for millions of dollars privately and at auction. Defendant is, or ought to be, or should have been, familiar with every business and creative aspect of Prince's works necessary to effectively represent him as his gallerist; otherwise, Defendant would not have been able to successfully represent Prince since 2005.

TANSEY FACTS

B. The Sale of Tansey's "The Innocent Eye Test" (1981)
To Plaintiff Safflane By Defendant

12. In or about late July, 2009, Defendant, by John Good ("JG"), one of Defendant's most senior and experienced salespersons, offered for sale to Plaintiff Safflane² by its authorized representative Wylde, a painting (the "Tansey Painting") described, inter alia, in the sales invoice dated July 31, 2009 (the "Tansey Invoice"), as follows:

MARK TANSEY
The Innocent Eye Test, 1981
Oil on canvas
78 x 120 inches
198.1 x 304.8cm
(TANSE 1981.0001)

13. No sale of art was or is made by Defendant without the express authority and supervision of Gagosian, including the sales of the Tansey Painting and the Prince Painting (as hereinafter referenced) in which Gagosian made all significant and final business decisions.

14. In 2004, a special relationship commenced between the parties based on several factors, including, inter alia, the following: commencing in 2004, Plaintiffs engaged in numerous substantial transactions with Defendant through JG (purchasing nine works of art, including, inter alia, one other

² All references to Plaintiff Safflane herein, with respect to the Tansey Painting, refer to Wylde acting on Plaintiff

Tansey painting, for a total of \$5,100,000.00); Plaintiffs actively collected the works of Tansey, who was exclusively represented by Defendant and whose paintings were marketed and sold on the primary market through Defendant; Defendant, for its part, specifically sought works of art to improve and complement Plaintiffs' art collections; and Defendant rendered written appraisals on Plaintiffs' artworks for Plaintiffs' insurance company.

15. Between on or about July 20, 2009 to and including the date Plaintiff Safflane was invoiced on July 31, 2009, JG represented, assured and warranted to Plaintiff Wylde in New York, orally and in writing, in sum and/or substance, expressly and/or impliedly, by telephone, in person and/or by e-mail, the following:

- i. That Defendant could convey good and unencumbered title to the Tansey Painting to Plaintiff Safflane;
- ii. That Charles Cowles ("CC"), a well-known New York City art dealer, was rightfully in possession of the Tansey Painting;
- iii. That prior to CC's having taken possession of the Tansey Painting, such work had been located and exhibited at the The Metropolitan Museum of Art (the "Met") located at 1000 Fifth Avenue, New York City and that the Tansey Painting had been properly returned to CC by the Met;
- iv. That CC had advised JG that CC had had a disagreement, described to Plaintiff Safflane by JG as a spat, with the Met's new director

Safflane's behalf.

(allegedly Gary Tinterow, who replaced the deceased renowned curator William Lieberman as the Chairman of the Met's Department of Nineteenth Century, Modern and Contemporary Art), and as a result the Tansey Painting was no longer going to be exhibited at the Met;

- v. That CC asked for the Tansey Painting to be returned to CC's possession and control. The Met complied and it was then evidently owned by CC. On July 28, 2009, three days prior to the purchase of the Tansey Painting, JG was questioned by Plaintiff Safflane in a series of e-mails,³ as follows:

"On 28 Jul 2009, at 16:36, John Good wrote:
Curator of 20th century art; now retired and replaced by Gary Tinterow.
----->[JG's response to Wylde]

-----Original Message-----

From: Wylde Robert
(mailto:robert~wylde.net)
Sent: Tuesday, July 28, 2009 4:35 PM
To: John Good
Subject: Re: promised gift of charles cowles in honour of wiliam s Lieberman

in honour of Wiliam S. Lieberman.....who is was he?
----->[Wylde's e-mail to JG]

On 28 Jul2009, at 16:32, John Good wrote:

Saw the listing for the loft but was there seomthing [sic] else about the promised gift?
----->[JG's response to Wylde]

³ The text of the e-mail exchange is being reproduced verbatim and should be read in reverse chronological order from Monday, July 27, 2009 to Tuesday, July 28, 2009. Plaintiffs have provided explanatory text concerning the identity of the sender and recipient of each e-mail in the e-mail chain.

-----Original Message-----

From: Wylde Robert
mailto:robert~wylde.net)
Sent: Monday, July 27, 2009 3:38 PM
to: John Good
Subject: promised gift of charles clowes
in honour of wiliam s
lieberman

[http://www.google.com/url?sa=t&source=web&oi=video
result&ct=res&cd=2&ur
l=http%3A%2F%2Frealstate.nytimes.com%2Fsales%2F
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BXj167E1l06n7M2AI_WXo5mw&sig2=iib4z9Sc8S0Aauokqgh28g](http://www.google.com/url?sa=t&source=web&oi=video
result&ct=res&cd=2&ur
l=http%3A%2F%2Frealstate.nytimes.com%2Fsales%2F
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NY-10012&ei=ZQFuSqnzMo_QlAfFlbS1Ag&usg=AFQjCNFUw1
BXj167E1l06n7M2AI_WXo5mw&sig2=iib4z9Sc8S0Aauokqgh28g)
-----> [Wylde's e-mail to JG]; and

- vi. That JG, in replying to the foregoing e-mail exchange, recklessly implied, if not expressed, that there was no title issue with respect to the promised gift, that the Tansey Painting could be freely sold and title could legally pass to Plaintiff Safflane. JG omitted to state that GG had not performed proper due diligence with respect to the Tansey Painting and specifically with respect to Plaintiff's e-mail questions concerning "the promised gift."

16. JG repeatedly represented and stressed to Plaintiff Wylde: (i) the excellent provenance, which includes exhibition history of the Tansey Painting, e.g., that it had previously been exhibited at the Met, one of the most prestigious museums in the world, which enhanced its value and/or desirability; (ii) the Tansey Painting's iconic status; and (iii) the scarcity of quality Tansey works of art in the secondary art market.

17. JG's representations to Plaintiff Wylde as aforesaid were material inducements for Plaintiff Safflane to consummate the purchase of the Tansey Painting.

18. JG's express and/or implied representations, assurances and warranties that the Tansey Painting had been returned to CC and could be sold to Plaintiff Safflane by Defendant were borne out by JG arranging for Wylde to view the Tansey Painting at CC's gallery, situated at 84 Mercer Street, New York City. On or about July 27, 2009, Wylde and JG viewed the Tansey Painting, which was hanging on a wall in CC's gallery.

19. The facts, circumstances and reasons relating to Wylde's justifiable reliance on JG's representations and assurances made in New York City during the period commencing July 20, 2009, through the date Plaintiff Safflane was invoiced for the Painting on July 31, 2009, were as follows:

- i. During and/or shortly after the viewing at CC's gallery, JG again reassured and represented to Wylde, in words and/or in sum or substance, expressly and/or impliedly, that the Tansey Painting was no longer being exhibited at the Met, the Tansey Painting had been properly returned to CC by the Met, CC then evidently owned it since it was hanging in CC's gallery, and the Tansey Painting could be sold to Plaintiff Safflane by Defendant;
- ii. JG was a senior salesperson at, and was acting on behalf of Defendant, one of the most reputable and renowned contemporary art dealers in the world;

- iii. CC was a well known New York City art dealer who was allegedly retiring from the business and was selling the Tansey Painting as part of the winding down of CC's art dealership;
- iv. Plaintiff Safflane and/or Wylde had previously consummated nine art transactions with Defendant through JG, with a total value in excess of \$5,000,000.00, and a special relationship developed, as set forth above, between Wylde and JG, including one of trust and confidence;
- v. Defendant was uniquely situated in the art world to research and to evaluate the truth or falsity of CC's representations, having dealt with the Met in the past, knowing key Met personnel and curators as well as knowing exactly how to source and verify the relevant information from the Met relating to the Tansey Painting (see paragraph 21 below). When questioned by Wylde via an e-mail (which expressly referenced the gift to the Met) as to who William Lieberman was, JG recklessly failed to reveal to Plaintiff Safflane that JG had not investigated anything with respect to the stated gift, which included the Met's longstanding loan practices. A proper and reasonable due diligence investigation would have immediately revealed that CC may not have had the right to sell the Tansey Painting and that the Tansey Painting may have been merely loaned and/or entrusted by the Met to CC, a merchant who dealt with goods of that kind. Such reckless act/omission served as an additional fraudulent inducement; and
- vi. JG's foregoing representations concerning ownership and title of the Tansey Painting were rational, credible and there was no reason for Safflane to doubt any of the foregoing.

20. Upon information and belief, prior to 2009, and well in advance of the sale of the Tansey Painting to Safflane, the Met had an alleged 31% ownership interest in the Tansey Painting, with a further agreement and commitment that the

balance of ownership of the Tansey Painting was to be gifted/donated at or before the death of Ms. Jan Cowles (who is CC's mother) and/or CC. Upon information and belief, according to documents on file at the Met, the Met allegedly obtained a partial ownership interest in the Tansey Painting as follows:

- i. A Promised Gift for Individual Donor (signed on the Met's gift form) executed by CC in 1988, giving a one percent (1%) interest in the Tansey Painting to the Met;
- ii. Offer of a Promised Gift (signed on the Met's gift form) executed by Ms. Jan Cowles in 1993, possibly promising a fifty percent (50%) interest in the Tansey Painting to the Met;
- iii. Offer of Partial Interest Gift (signed on the Met's gift form) executed by Ms. Jan Cowles in 2003, giving a twenty percent (20%) interest in the Tansey Painting to the Met; and
- iv. Offer of Partial Interest Gift (signed on the Met's gift form) executed by Ms. Jan Cowles in 2004, giving a ten percent (10%) interest in the Tansey Painting to the Met.

21. Had Defendant performed proper and customary due diligence based on its own resources and public and private information uniquely accessible and available to Defendant, including but not limited to access to the Met's staff, professional relationships between Defendant and the Met, information published by the Met electronically and through its annual reports (including, inter alia, its annual reports for fiscal years 2003-2004 and 2004-2005) - access to which Plaintiff Safflane did not readily enjoy - Defendant would have

expeditiously learned that: (i) the Met allegedly maintained and continued to maintain an ownership interest in the Tansey Painting well before the time Defendant sold the Tansey Painting to Plaintiff Safflane; (ii) CC may not have owned the Tansey Painting; and (iii) (subject to paragraph 8's exclusionary language above) the Tansey Painting could not be sold to Defendant and/or Plaintiff Safflane under such questionable circumstances and that good and clear title may not have been possible to pass to Defendant and/or Plaintiff Safflane.

22. In the alternative, Defendant knew or should have known at all relevant times that it did not have the right to make representations to Plaintiff Safflane regarding Defendant's ownership or CC's alleged rights and control of the Tansey Painting, upon which Safflane justifiably relied to its detriment and was thereby damaged; or, in the alternative, Defendant acted with reckless disregard therewith in making such representations.

23. On July 31, 2009, Defendant conveyed and sold the Tansey Painting to Plaintiff Safflane for a purchase price of \$2,500,000.00 and issued to Plaintiff Safflane the Tansey Invoice.

24. The Tansey Invoice purported to pass title from Defendant to Safflane conditioned upon payment in full, stating: "Title does not pass until payment in full has been received."

Payment in full was made on or about August 5, 2009, and thereafter the Tansey Painting was delivered to Plaintiff Safflane.

25. Safflane and Defendant are the only parties referenced in the Tansey Invoice. The Tansey Invoice does not, in any manner whatsoever, indicate that Defendant was acting on behalf of anyone other than itself. Defendant is specifically identified as the entity from which the Tansey Painting was purchased. Safflane paid only Defendant, and no other party, for the Tansey Painting. The Tansey Invoice does not indicate a purported commission or the amount of the original purchase price paid by Defendant to CC for the Tansey Painting. Safflane paid Defendant directly for the full value of the Tansey Painting as stated in the Tansey Invoice. Defendant performed pursuant to the Tansey Invoice by having the Tansey Painting delivered to Safflane.

26. On or about April 2, 2010, Defendant's counsel formally advised Safflane via an e-mail incorporating a memorandum dated April 2, 2010, inter alia, that the Met was asserting an alleged 31% ownership interest in the Tansey Painting, Defendant was not authorized in any way to sell the Tansey Painting and the sale of the Tansey Painting was extremely embarrassing for Defendant.

27. At all relevant times, Wylde believed that Defendant was acting as a principal and/or the selling merchant in the sale of the Tansey Painting to Plaintiff Safflane and that such sales transaction would be consummated directly between Plaintiff Safflane and Defendant. At no time did Defendant, through JG or otherwise, state orally or in writing that it was acting as an agent for CC or acting on CC's behalf. In point of fact, JG offered the painting to Plaintiff Safflane for a sum in excess of \$3,000,000.00 on or about July 27, 2009, and when Plaintiff Safflane subsequently responded with a counteroffer, JG replied that "I have to speak to Larry [Gagosian]." At no time did JG state that he had to speak to CC or anyone other than Gagosian about the price during any and all negotiations related to the purchase by Plaintiff Safflane of the Tansey Painting.

28. Upon information and belief, there was no consignment or agency agreement, written or otherwise, between CC and Defendant, and at no time did CC ever state, in words or in substance, or believe or act as if, Defendant was CC's agent. CC acted at all times with Defendant on a merchant-to-merchant basis and/or art-dealer-to-art-dealer basis, in which both acted independently, guided by their own self-interest, nor could Defendant act as an agent, disclosed or otherwise, for a principal who ultimately does not have title.

PRINCE FACTS

C. The Sale of Prince's "Millionaire Nurse" (2002)
To Plaintiff Wylde By Defendant

29. On October 15, 2009, Defendant showed Plaintiff Wylde the following painting:

Millionaire Nurse
RICHARD PRINCE (b. 1949)
Signed, titled and dated 2002 on the overlap
Ink jet print and acrylic on canvas
58 x 36 in. (147.3 x 91.4 cm).

30. On October 16, 2009, Defendant gave Plaintiff Wylde a fact sheet on the Prince Painting.

31. On Friday, October 23, 2009, Defendant, by its salesperson JG, sold to Plaintiff Wylde the Prince Painting for a purchase price of \$2,200,000.00.

32. Defendant issued to Plaintiff Wylde an invoice dated Friday, October 23, 2009, on the same day as the sale described above, memorializing the sale of the Prince Painting to Plaintiff Wylde for the sum of \$2,200,000.00 (the "Prince Agreement"). The invoice was sent to Plaintiff Wylde, who was in Europe, after the banks were closed. Plaintiff Wylde was therefore unable to initiate a wire transfer, which Plaintiff Wylde intended to do when the banks re-opened for business on the following Monday.

33. Two days later, on Sunday, October 25, 2009, JG e-mailed Plaintiff Wylde and advised him, inter alia, that the

owner of the Prince Painting had withdrawn it from sale and the sale was accordingly cancelled.

34. Subsequently, JG advised Plaintiff Wylde that he had "lied to" Plaintiff Wylde in the October 25, 2009 e-mail and advised Plaintiff Wylde that the truth was that the owner of the Prince Painting had not withdrawn it from sale but that in fact, Defendant had received a better offer, i.e., an offer higher in amount than the \$2,200,000.00 offer Defendant had already accepted from Plaintiff Wylde. Such acts defeated and destroyed Plaintiff Wylde's ability to perform pursuant to the Prince Agreement and accordingly Defendant breached the Prince Agreement.

35. Upon information and belief, Defendant has a business practice of entering into a binding agreement to sell a work of art ("Contract No. 1") and thereafter, but prior to the time, and even subsequent to the time, Defendant issues an invoice for Contract No. 1, Defendant unlawfully seeks higher offer(s) for the same work of art, and upon receiving such higher offer(s), Defendant unlawfully repudiates and/or rejects Contract No. 1 and accepts a higher offer, to the financial detriment of Contract No. 1's original purchaser.

TANSEY CLAIMS

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Express Warranty of Title)

36. Plaintiffs repeat and reallege all of the foregoing allegations as if fully set forth herein.

37. Defendant's representations made in July, 2009 concerning the Tansey Painting and title thereto were an affirmation of fact or promise made by the seller to the buyer relating to the Tansey Painting which was a material part of the basis of Plaintiff Safflane's purchase of the Tansey Painting.

38. At the time of the sale of the Tansey Painting to Plaintiff Safflane, and prior thereto and as a part thereof, and to induce Plaintiff Safflane to purchase the Tansey Painting, Defendant represented and warranted to Plaintiff Safflane, expressly and/or impliedly, inter alia, that the Tansey Painting was no longer being exhibited at the Met, had been returned to CC, could be sold to Safflane and good, clear and unencumbered title to the Tansey Painting could be conveyed to Plaintiff Safflane.

39. Plaintiff Safflane purchased the Tansey Painting relying on the aforementioned representations and warranties.

40. Defendant's representations and warranties in July, 2009 constituted an express warranty and/or guarantee that Defendant could convey to Plaintiff Safflane good, clear and unencumbered title to the Tansey Painting and/or that Plaintiff

Safflane would receive good, clear and unencumbered title to the Tansey Painting.

41. As a result of the foregoing, Plaintiff Safflane has been damaged in a sum reflecting the value of the Tansey Painting at the time of trial, exceeding Six Million Dollars (\$6,000,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto, including all consequential and incidental damages proximately related thereto.

AS AND FOR A SECOND CAUSE OF ACTION
(Breach of Implied Warranty of Title)

42. Plaintiffs repeat and reallege all of the foregoing allegations as if fully set forth herein.

43. The contract to sell the Tansey Painting contained an implied warranty that the title conveyed was to be good, and its transfer rightful, and that the Tansey Painting was to be delivered to Plaintiff Safflane free from any lien, encumbrance or claims by third parties.

44. Defendant's representations in July 2009 constituted an implied warranty and/or guarantee that Defendant could convey to Plaintiff Safflane good, clear and unencumbered title to the Tansey Painting and/or that Plaintiff Safflane would receive good, clear and unencumbered title to the Tansey Painting.

45. Plaintiff Safflane purchased the Tansey Painting relying on the aforementioned warranties and/or guaranties.

46. As a result of the foregoing, Plaintiff Safflane has been damaged in a sum reflecting the value of the Tansey Painting at the time of trial, exceeding Six Million Dollars (\$6,000,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto, including, all consequential and incidental damages proximately related thereto.

AS AND FOR A THIRD CAUSE OF ACTION
(Breach of Implied Warranty of Merchantability)

47. Plaintiffs repeat and reallege all of the foregoing allegations as if fully set forth herein.

48. Defendant's agreement to sell the Tansey Painting contained an implied warranty of merchantability that, inter alia, title to the Tansey Painting was to pass without objection in the trade pursuant to the description in the Tansey Invoice, was fit for the ordinary purposes for which goods such as the Tansey Painting are used and would conform to the promises or affirmations of fact made by Defendant.

49. Plaintiff Safflane purchased the Tansey Painting relying on such warranties.

50. As a result of the foregoing, Plaintiff Safflane has been damaged in a sum reflecting the value of the Tansey Painting at the time of trial, exceeding Six Million Dollars

(\$6,000,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto, including all consequential and incidental damages proximately related thereto.

AS AND FOR A FOURTH CAUSE OF ACTION
(Breach of Contract)

51. Plaintiffs repeat and reallege all of the foregoing allegations as if fully set forth herein.

52. On July 31, 2009, Plaintiff Safflane and Defendant entered into a contract, for good and valuable consideration, in which Defendant agreed to sell the Tansey Painting to Plaintiff Safflane for a purchase price of \$2,500,000.00, and Defendant thereafter issued to Plaintiff Safflane an invoice dated July 31, 2009, for the sale of the Tansey Painting.

53. On or about August 5, 2009, Plaintiff Safflane paid Defendant the sum of \$2,500,000.00, thereby performing its part of the contract.

54. Defendant breached the contract by failing and neglecting to perform its obligations by not conveying to Plaintiff Safflane good, clear and unencumbered title to the Tansey Painting.

55. As a result of the foregoing, Plaintiff Safflane has been damaged in a sum reflecting the value of the Tansey Painting at the time of trial, exceeding Six Million Dollars

(\$6,000,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto, including all consequential and incidental damages proximately related thereto.

AS AND FOR A FIFTH CAUSE OF ACTION
(Fraud)

56. Plaintiffs repeat and reallege all of the foregoing allegations as if fully set forth herein.

57. Defendant failed to inform Plaintiff Safflane that the Met allegedly owned a 31% interest in the Tansey Painting and that Defendant was not legally authorized to transfer to Plaintiff Safflane good clear and unencumbered title to the Tansey Painting.

58. Defendant knew or should have known that its representations to Plaintiff Safflane concerning title to the Tansey Painting were false, that such misrepresentations and omissions (see inter alia, paragraph 15, above) were made with knowledge of their falsity and with the intent and for the purpose of deceiving and defrauding and inducing Plaintiff Safflane to purchase the Tansey Painting or were made with reckless disregard to whether or not such representations were true or false. Defendant communicated such fraudulent misrepresentations concerning the Tansey Painting and intended that such material misrepresentations and omissions to Plaintiff Safflane be taken as true and caused and induced Plaintiff

Safflane to actually and justifiably rely on the misrepresentations and omissions of Defendant set forth above by purchasing the Tansey Painting.

59. The specifics of the fraud are alleged in the Tansey Facts section above in paragraphs 12 through 28.

60. Defendant had the opportunity to commit fraud as, upon information and belief, CC was in a desperate financial condition, and was exploited by Defendant, who seized upon and exploited CC's weak financial position to purchase the Tansey Painting on very favorable terms. Defendant had the motive to commit fraud as it could purchase the Tansey Painting on favorable terms, as aforesaid, and reap a high profit margin from the sale to Plaintiff Safflane, and as a result of such sale JG and Defendant could continue to maintain a fruitful client relationship with Plaintiffs Safflane and Wylde.

61. As a result of the foregoing, Plaintiff Safflane has been damaged in a sum reflecting the value of the Tansey Painting at the time of trial, exceeding Six Million Dollars (\$6,000,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto, including all consequential and incidental damages proximately related thereto.

AS AND FOR A SIXTH CAUSE OF ACTION
(Negligent Misrepresentation)

62. Plaintiffs repeat and reallege all of the foregoing allegations as if fully set forth herein.

63. Defendant is and was in a special position of confidence and trust with Plaintiffs, as more fully set forth above in paragraphs 14 and 19. Defendant has and had a unique and specialized expertise in the art market, including relationships with museums such as the Met and with world-renowned artists such as Tansey, as more fully set forth hereinabove.

64. Defendant had a duty to impart accurate and correct information to the Plaintiffs.

65. Defendant made reckless, negligent and false representations to Plaintiffs (see paragraph 15, above), which Defendant knew or should have known were untrue and inaccurate.

Such representations were known by the Defendant to be desired by Plaintiff Safflane for the purpose of purchasing the Tansey Painting for the sum of \$2,500,000.00.

66. When Defendant was made aware of the possible title issues related to the Tansey Painting, Defendant failed to discharge its duty of reasonable care (see paragraph 15, above) by not making proper inquiry to confirm CC's alleged rights or the truth or falsity of CC's statements related to the title and ownership of the Tansey Painting as set forth above (including

paragraph 15), and Plaintiff Safflane reasonably relied upon Defendant's misleading and incomplete representations to its detriment. Defendant was also negligent by failing to inform Plaintiff Safflane that it took no steps to contact the Met or any other party to confirm CC's alleged rights to the Tansey Painting.

67. Plaintiff Safflane would not have offered to purchase the Tansey painting, much less consummate its purchase, had it known title and ownership to the work were an issue.

68. Defendant violated its duty and its actions and/or omissions proximately caused Plaintiff Safflane damage.

69. As a result, Plaintiff Safflane has been damaged in a sum reflecting the value of the Tansey Painting at the time of trial, exceeding Six Million Dollars (\$6,000,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto, including all consequential and incidental damages proximately related thereto.

AS AND FOR A SEVENTH CAUSE OF ACTION
(Violation of New York
Arts and Cultural Affairs Law § 13.03)

70. Plaintiffs repeat and reallege all of the foregoing allegations as if fully set forth herein.

71. Defendant violated the New York Arts and Cultural Affairs Law § 13.03 as Defendant, intending to defraud, deceive

and/or injure Plaintiff Safflane, made and issued an invoice for the Tansey Painting attesting that title and accompanying authenticity of the Tansey Painting would pass to Plaintiff Safflane when payment in full had been received, when, in fact, good, clear and unencumbered title did not pass to Plaintiff Safflane after payment in full had been received by Defendant.

72. The Tansey Invoice is false and Defendant violated the law as Defendant could not pass title to the Tansey Painting to Plaintiff Safflane because, upon information and belief (subject to the paragraph 8's exclusionary language above), Defendant never had title to the Tansey Painting. Good, clear and unencumbered title to the Tansey Painting could not pass to Plaintiff Safflane when it made payment to Defendant.

73. As a result of the foregoing and Defendant's violation of New York Arts and Cultural Affairs Law § 13.03, Plaintiff Safflane has been damaged in a sum reflecting the value of the Tansey Painting at the time of trial, exceeding Six Million Dollars (\$6,000,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto, including all consequential and incidental damages proximately related thereto.

AS AND FOR AN EIGHTH CAUSE OF ACTION
(Unjust Enrichment)

74. Plaintiffs repeat and reallege all of the foregoing allegations as if fully set forth herein.

75. As a result of Defendant's sale of the Tansey Painting to Plaintiff Safflane, Defendant was unjustly enriched.

76. Defendant's unjust enrichment was at Plaintiff Safflane's expense.

77. The circumstances are such that equity and good conscience require Defendant to make full restitution to Plaintiff Safflane.

78. As a result of the foregoing, Plaintiff Safflane has been damaged in a sum exceeding One Hundred Thousand Dollars (\$100,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto, including all consequential and incidental damages proximately related thereto.

PRINCE CLAIMS

AS AND FOR A NINTH CAUSE OF ACTION (Repudiation and/or Breach of Contract)

79. Plaintiffs repeat and reallege all of the foregoing allegations as if fully set forth herein.

80. On October 23, 2009, Plaintiff Wylde and Defendant entered into an agreement for Plaintiff Wylde to purchase the Prince Painting for the sum of \$2,200,000.00, as set forth above.

81. At all times herein mentioned, Plaintiff Wylde was ready, willing and able to perform the terms and conditions

of the Prince Agreement on his part to be performed, including, payment of the purchase price therefore in full.

82. On October 25, 2009, without legal reason or cause, Defendant unlawfully repudiated and breached the Prince Agreement by unlawfully cancelling, failing and refusing to deliver the Prince Painting to Plaintiff Wylde because Defendant had sought and received a higher offer for the Prince Painting. As confirmed by Defendant's counsel's in court statement on May 13, 2011 before the Hon. Denise Cote, on Monday, October 26, 2009, Defendant sold the Prince Painting to another buyer who made a higher offer. Defendant accepted such higher offer notwithstanding that Defendant and Plaintiff Wylde had entered into a binding agreement for the sale of the Prince Painting.

83. As a result of the foregoing, Plaintiff Wylde has been damaged in a sum exceeding One Million Dollars (\$1,000,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto, including all consequential and incidental damages proximately related thereto.

AS AND FOR A TENTH CAUSE OF ACTION
(Deceptive and Misleading Business Practices -
GBL §§ 349 et. seq.)

84. Plaintiffs repeat and reallege all of the foregoing allegations as if fully set forth herein.

85. Defendant has engaged in deceptive and misleading business practices in violation of New York General Business Law Sections 349 et. seq. as set forth above in paragraph 35.

86. Defendant is an art gallery open to the public at large and sells works of art to the public at large, and has engaged in deceptive and dishonest misconduct which has a broad impact on the public at large, including collectors of art in New York City and throughout the world.

87. Defendant has engaged in consumer related activity affecting consumers at large. Defendant, by maintaining a business practice of entering into binding agreements to sell works of art and thereafter unlawfully seeking and/or accepting higher offer(s) for the same works of art and unlawfully repudiating and/or rejecting the prior binding agreements to the detriment of the original purchasers, utilizes tactics which were and are deceptive in material respects and Plaintiffs have been injured thereby.

88. As a result of the foregoing, a cause of action for deceptive and misleading business practices exists against Defendant in favor of Plaintiff Wylde and Plaintiff Wylde has been damaged in a sum exceeding One Million Dollars (\$1,000,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto,

including all consequential and incidental damages proximately related thereto.

AS AND FOR AN ELEVENTH CAUSE OF ACTION
(Unjust Enrichment)

89. Plaintiffs repeat and reallege all of the foregoing allegations as if fully set forth herein.

90. As a result of Defendant's cancellation of the sale of the Prince Painting to Plaintiff Wylde in order to accept a better offer, Defendant was unjustly enriched.

91. Defendant's unjust enrichment was at Plaintiff Wylde's expense.

92. The circumstances are such that equity and good conscience require Defendant to make full restitution to Plaintiff Wylde.

93. As a result of the foregoing, Plaintiff Wylde has been damaged in a sum exceeding One Hundred Thousand Dollars (\$100,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto, including all consequential and incidental damages proximately related thereto.

AS AND FOR A TWELFTH CAUSE OF ACTION
(Breach of the Implied Covenant
Of Good Faith and Fair Dealing)

94. Plaintiffs repeat and reallege all of the foregoing allegations as if fully set forth herein, with emphasis on paragraphs 29-35.

95. By soliciting and exploiting a higher offer which Defendant accepted, Defendant defeated and destroyed Plaintiff Wylde's right to receive the fruits of its bargain, including but not limited to, the value of the Prince Agreement, and interfered with Plaintiff Wylde's reasonable expectations.

96. As a result of the foregoing, Plaintiff Wylde has been damaged in a sum exceeding One Million Dollars (\$1,000,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto, including all consequential and incidental damages proximately related thereto.

AS AND FOR A THIRTEENTH CAUSE OF ACTION
(Specific Performance)

97. Plaintiffs repeat and reallege all of the foregoing allegations as if fully set forth herein.

98. Defendant has refused to acknowledge Plaintiff Wylde's legal interest in the Prince Painting.

99. Plaintiffs have no adequate remedy at law.

100. As a result of the foregoing, Plaintiff Wylde is entitled to a judgment of specific performance by Defendant on the Prince Agreement for the Prince Painting.

JURY DEMAND

Plaintiffs demand a jury for all claims stated herein.

WHEREFORE, Plaintiffs demand judgment:

a. On the First Cause of Action, against Defendant in favor of Plaintiff Safflane, damages reflecting the value of the Tansey Painting at the time of trial, in a sum exceeding Six Million Dollars (\$6,000,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto, including all consequential and incidental damages proximately related thereto;

b. On the Second Cause of Action, against Defendant in favor of Plaintiff Safflane, damages reflecting the value of the Tansey Painting at the time of trial, in a sum exceeding Six Million Dollars (\$6,000,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto, including all consequential and incidental damages proximately related thereto;

c. On the Third Cause of Action, against Defendant in favor of Plaintiff Safflane, damages reflecting the value of the Tansey Painting at the time of trial, in a sum exceeding Six Million Dollars (\$6,000,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto, including all consequential and incidental

damages proximately related thereto;

d. On the Fourth Cause of Action, against Defendant in favor of Plaintiff Safflane, damages reflecting the value of the Tansey Painting at the time of trial, in a sum exceeding Six Million Dollars (\$6,000,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto, including all consequential and incidental damages proximately related thereto;

e. On the Fifth Cause of Action, against Defendant in favor of Plaintiff Safflane, damages reflecting the value of the Tansey Painting at the time of trial, in a sum exceeding Six Million Dollars (\$6,000,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto, including all consequential and incidental damages proximately related thereto;

f. On the Sixth Cause of Action, against Defendant in favor of Plaintiff Safflane, damages reflecting the value of the Tansey Painting at the time of trial, in a sum exceeding Six Million Dollars (\$6,000,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto, including all consequential and incidental damages proximately related thereto;

g. On the Seventh Cause of Action, against Defendant in favor of Plaintiff Safflane, damages reflecting the value of

the Tansey Painting at the time of trial, in a sum exceeding Six Million Dollars (\$6,000,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto, including all consequential and incidental damages proximately related thereto;

h. On the Eighth Cause of Action, against Defendant in favor of Plaintiff Safflane, damages in a sum exceeding One Hundred Thousand Dollars (\$100,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto, including all consequential and incidental damages proximately related thereto;

i. On the Ninth Cause of Action, against Defendant in favor of Plaintiff Wylde, damages in a sum exceeding One Million Dollars (\$1,000,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto, including all consequential and incidental damages proximately related thereto;

j. On the Tenth Cause of Action, against Defendant in favor of Plaintiff Wylde, damages in a sum exceeding One Million Dollars (\$1,000,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto, including all consequential and incidental damages proximately related thereto;

k. On the Eleventh Cause of Action, against Defendant in favor of Plaintiff Wylde, damages in a sum exceeding One Hundred Thousand Dollars (\$100,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto, including all consequential and incidental damages proximately related thereto;

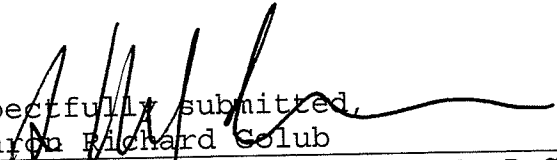
l. On the Twelfth Cause of Action, against Defendant in favor of Plaintiff Wylde, damages in a sum exceeding One Million Dollars (\$1,000,000.00), the precise amount to be proven at trial, with appropriate legal interest thereon and in addition thereto, including all consequential and incidental damages proximately related thereto;

m. Judgment on the Thirteenth Cause of Action:

- i. ordering and decreeing that Defendant specifically perform the contract concerning the Prince Painting; and
- ii. adjudging that Plaintiff Wylde is the true owner of the Prince Painting; and

n. Granting to the Plaintiffs such other and further relief as this Court shall deem just and proper, together with the costs and disbursements of this action, and reasonable attorneys' fees.

Dated: New York, New York
June 10, 2011


Respectfully submitted,
s/Aaron Richard Golub
AARON RICHARD GOLUB, ESQUIRE, P.C.
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ARG 6056

=====NOTICE OF ENTRY=====
PLEASE take notice that the within is a (certified)
true copy of a

duly entered in the office of the clerk of the within
named court on

Dated,

Yours, etc.

Attorney for

Office and Post Office Address
Aaron Richard Golub, Esquire, P.C.
34 East 67th Street-3rd Floor
New York, New York 10065

To

Attorney(s) for

=====NOTICE OF SETTLEMENT=====
PLEASE take notice that an order
of which the within is a true copy will be presented
for settlement to the Hon.
on

at M.

Dated,

Yours, etc.

Attorney for

Aaron Richard Golub, Esquire, P.C.
34 East 67th Street - 3rd Floor
New York, New York 10065

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

=====

11-CIV-1679 (DLC)

SAFFLANE HOLDINGS LTD., and
ROBERT WYLDE,

Plaintiffs,

-against-

GAGOSIAN GALLERY, INC.

Defendant..

FIRST AMENDED COMPLAINT

Attorneys for Plaintiffs

Office and Post Office Address, Telephone

Aaron Richard Golub, Esquire, P.C.

34 East 67th Street-3rd Floor

New York, New York 10065

212-838-4811

To

Attorney(s) for

Service of copy of the within is hereby admitted

Dated

.....
Attorney(s) for
