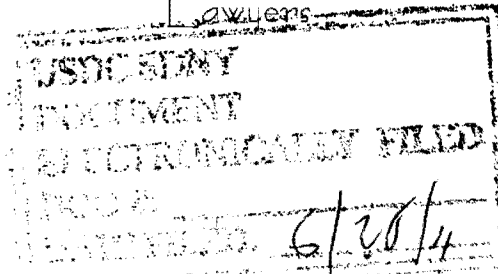


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June 28, 2011

VIA FAX

Magistrate Judge Michael H. Dolinger
United States District Court
Southern District of New York
Courtroom: 17D
500 Pearl Street,
New York, NY 10007

JUN 28 2011

Re: Safflane Holdings Ltd. et al. v. Gagosian Gallery, Inc.,
No. CV 11-1679-DLC and related action

Dear Judge Dolinger:

There is a dispute among the parties as to the proper date for the measurement of damages relating to the Tansey Painting. Settlement discussions are unlikely to be fruitful unless this issue can be resolved.

Plaintiffs respectfully submit that this issue is directly controlled by Menzel v. List, 24 N.Y.2d 91 (1969). There, the question before the court was how to measure damages for breach of implied warranty of title, in a third-party action brought by the purchaser of a painting against the gallery owners who had sold it to him, after the painting was replevined by a previous owner claiming superior title. Id. at 93-95. After considering four different approaches to the question raised, the Menzel court squarely held the damages were to be measured by "the value of the painting at the time when, by the judgment in the main action, [the third-party plaintiff] was required to surrender the painting to [its previous owner] or pay her the present value of the painting." Id. at 97 (emphasis added); see also Jeanneret v. Vichey, 693 F.2d 259, 266 n.11 (2d Cir. 1982) (noting that, for purposes of measuring damages for breach of an implied warranty of title, "there is ample New York authority for the assessment of damages at the appreciated value of property at the time of trial" (emphasis added)); Pagliai v. Del

6/28/11
Mj/USC

ENDORSED ORDER

This court is not empowered at present to rule on the cited issue since our reference is solely for settlement. If the parties wish to consent under section 636(c), that would enable us to act as requested. Alternatively, the parties may, as is typically done, negotiate on the basis that the outcome of this issue is, at present, unsettled. Finally, we are willing, in the course of such discussions, to offer non-binding views on the issue.

Aaron Richard Golub, Esquire, P.C.

Hon. Michael H. Dolinger

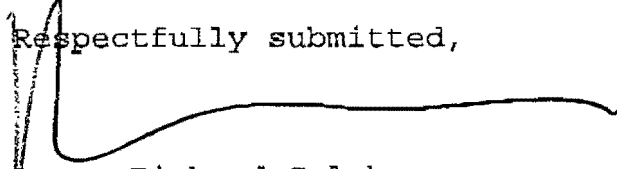
June 28, 2011

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Re, No. 99 Civ. 9030 (DLC), 2000 WL 122142, at *1 (S.D.N.Y. Jan. 31, 2000) (Cote, J.) ("[T]he New York courts have held that where the property converted is 'unique and irreplaceable ... as are works of art,' the appropriate measure of damages corresponds to 'the value of the item at the time of trial.'" (quoting Hoffman v. Dorner, 447 N.Y.S.2d 20, 22 (2d Dept. 1982), in turn citing Menzel v. List, 298 N.Y.S.2d 979, 983-84 (1969)) (emphasis added)).

We respectfully request that your Honor rule as soon as conveniently possible on the proper date for the measurement of damages so that effective settlement discussions can continue.

Respectfully submitted,



Aaron Richard Golub

ARG/bmt

cc: All opposing counsel via fax

FAX Cover Sheet

Date: June 28, 2011

To:

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**Re: Safflane Holdings, Ltd., v. Gagosian Gallery, Inc..
11 Civ. 1679 (DLC) (MHD)**

Text of enclosed endorsed order: "This court is not empowered at present to rule on the cited issue since our reference is solely for settlement. If the parties wish to consent under section 636(c), that would enable us to act as requested. Alternately, the parties may, as is typically done, negotiate on the basis that the outcome of this issue is, at present, unsettled. Finally, we are willing, in the course of such discussions to offer our non-binding view on the issue."

**From: Magistrate Judge Michael H. Dolinger
United States District Court
Southern District of New York
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This document contains 2 pages, including this cover sheet.