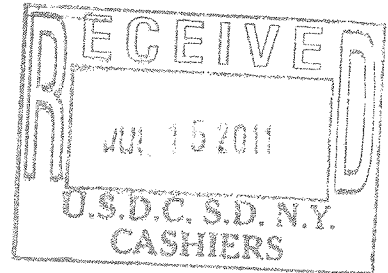


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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

-against-

GAGOSIAN GALLERY, INC.,
Defendant.

-----X

GAGOSIAN GALLERY, INC.,
Third-Party Plaintiffs,

-against-

CHARLES COWLES,
Third-Party Defendant.

-----X

Defendant/Third-Party Plaintiff Gagosian Gallery, Inc. (“Gagosian Gallery”), by its attorneys, Withers Bergman, LLP, as and for their third-party complaint, alleges as follows:

THE PARTIES

1. Defendant/Third-Party Plaintiff Gagosian Gallery is a 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.

Case No.: 11 CIV 1679 (DLC)

THIRD-PARTY COMPLAINT

2. Third-Party Defendant Charles Cowles (“Cowles”) is an individual residing at 84 Mercer Street, New York, NY 10012.

NATURE OF THIS ACTION

3. This is a third-party action by Gagosian Gallery against Cowles for indemnification and contribution arising out of claims Plaintiffs Safflane Holdings, Ltd. and Robert Wylde have asserted in the underlying action against Gagosian Gallery for allegedly fraudulent and negligent misrepresentations as to the title and ownership of a painting by Mark Tansey entitled, “The Innocent Eye Test” (the “Tansey Painting”) that Cowles sold to plaintiffs through Gagosian Gallery.

JURISDICTION AND VENUE

4. This Court has supplemental over the subject matter of this Third-Party Complaint pursuant to 28 U.S.C. § 1367(a). The claims in this Third-Party Complaint are so related and intertwined with the claims at issue in the lawsuit commenced by Safflane Holdings, Ltd. and Robert Wylde against Gagosian Gallery in the United States Court, Southern District of New York, bearing Civil Action number 11 Civ 1679 (the “Safflane Action”) and the lawsuit commenced by The Metropolitan Museum of Art and Jan Cowles against Safflane Holdings, Ltd. and Robert Wylde, in the United States Court, Southern District of New York, bearing Civil Action number 11-cv-3143 (the “Met Action”), they form part of the same case or controversy under Article III of the United States Constitution.

5. Venue is proper in this District pursuant to U.S.C. § 1392 (a)(1) and (2) because the Third-Party Defendant resides in this District and a substantial portion of the events and omissions giving rise to Defendant/Third-Party Plaintiff’s claims occurred in this District.

PROCEDURAL HISTORY

6. On March 10, 2011, Gagosian Gallery was named as a Defendant in the Safflane Action, which seeks to recover \$6 million from Gagosian Gallery on claims relating to the Tansey Painting. A copy of the Safflane Action is annexed hereto as Exhibit A.

7. On May 10, 2011, the Metropolitan Museum of Art (the “Met”) and Jan Cowles filed a lawsuit against Plaintiffs in the Safflane Action for a declaratory judgment that the Met is the sole and exclusive owner of the Tansey Painting and for its immediate return. A copy of the Met Action is annexed hereto as Exhibit B.

8. On June 6, 2011, the parties in the Safflane Action and the Met Action entered into a Coordination Stipulation consolidating discovery for the Safflane Action and Met Action (the “Coordinated Actions.”).

FACTUAL BACKGROUND

9. Cowles, a graduate of Stanford University, is a well-known New York City art dealer and collector of contemporary art. In 1979, after four years as the curator of Fine Art at the Seattle Art Museum, Cowles opened his own contemporary art gallery, The Charles Cowles Gallery, in lower Manhattan at 420 West Broadway. The Charles Cowles Gallery was later re-located to 537 West 24th Street, where it remained until its closing in June 2009. In addition, from 1965 until the mid-1980s, Cowles published *Artforum* magazine, one of the leading contemporary art magazines in America,

10. During the years, Gagosian Gallery engaged in art transactions with Cowles and/or the Charles Cowles Gallery without incident.

11. In or about late July 2009, Cowles contacted John Good (“Good”), a Gagosian Gallery employee, and asked Good if Gagosian Gallery could help him find a buyer for the

Tansey Painting. Attached hereto as Exhibit C are the relevant excerpts from the deposition of Charles Cowles on July 13, 2010 (“Cowles Tr.”) at 189-190.

12. Because the Tansey Painting has attained an “iconic status” in the art world, and had been on display at the Met, Good asked Cowles whether the Met had an interest in it. Cowles replied that due to a “spat” Cowles had with the Met’s director, the Tansey Painting was no longer being exhibited at the Met and, as such, the Tansey Painting had been properly returned to Cowles by the Met, that Cowles was rightfully in possession of the Tansey Painting, and it was now his to sell.

13. Cowles intended for Gagosian Gallery and Good to rely on these representations in helping Cowles find a buyer for the Tansey Painting.

14. On the basis of the representations made by Cowles, Good agreed to assist Cowles in finding a buyer for the Tansey Painting and Cowles consigned the Tansey Painting to Gagosian Gallery for sale.

15. Knowing of Robert Wylde’s interest in, and knowledge of, Tansey and his works, Good thereafter contacted him to determine whether he might be interested in purchasing the Tansey Painting from Cowles.

16. During their discussion of the Tansey Painting, Good conveyed to Wylde exactly what Cowles, the seller, had told him – namely, that Cowles owned and was in possession of the Tansey Painting, that prior to Cowles having taken possession of the Tansey Painting, it had been located and exhibited at the Met, that due to a “spat” that Cowles had with the Met’s director, the Tansey Painting was no longer being exhibited at the Met, and that the Tansey Painting was now owned by Cowles and could be sold to Safflane.

17. Before deciding to purchase the Tansey Painting from Cowles, Wylde told Good he wanted to view it at Cowles' gallery. Thereafter, Good arranged for Wylde to view the Tansey Painting at Cowles' gallery, which was located at the same premises as Cowles' residence.

18. On or about July 27, 2009, Wylde, accompanied by Good, viewed the Tansey Painting in the gallery space of Cowles' residence, and confirmed that the Tansey Painting was in Cowles' possession.

19. During the viewing at Cowles' gallery, Wylde directly questioned Cowles about the Tansey Painting previously being in the possession of and on display at the Met. In response, Cowles reassured and represented that the Tansey Painting was his (Cowles) to sell.

20. Wylde never asked Good if he had contacted the Met to determine whether it had any ownership interest in the Tansey Painting, nor did Wylde request that Good do so. Instead, Wylde appears to have conducted his own due diligence, which confirms that he was on inquiry notice of the Met's interest in the Tansey Painting *before* he decided to purchase it from Cowles.

21. Specifically, the next day on July 28, 2009, Wylde sent an email to Good with the following subject line: "promised gift of charles cowles in honour of william s. lieberman."¹ *Id.*; *see also* Cpl. ¶ 18. As the email contained a link to an apartment, but nothing that would explain the subject line, Good responded: "Saw the listing for the loft but was there something else about the promised gift?" Good Aff. Ex. A. Wylde replied: "in honour of William S.

¹ As a quick Google search confirms, Wylde appears to have lifted the text from "Visions and Revisions," the definitive art book on the works of Tansey. The text also appears in the subject line from the webpage on the Met's website regarding the Cowles' promised gift of *The Innocent Eye Test*. *See* The Met Works of Art, Modern Collection Database, Mark Tansey, Innocent Eye Test, *available at* http://www.metmuseum.org/works_of_art/collection_database/modern_art/the_innocent_eye_test_mark_tanse/objview.aspx?collID=21&OID=210005185; *see also* Bart Aff. at Ex B; *Muller-Paisner v. TIAA*, 289 Fed. Appx. 461, 466, 466 n.5 (2d Cir. 2008) (taking judicial notice of "defendants' website for the facts of its publications.").

Lieberman.... who was he?” Good answered, explaining, “Curator of 20th century art; now retired and replaced by Gary Tinterow.” *Id.*

22. Nonetheless, satisfied by the representations made by Cowles during the viewing, Wylde, shortly after the viewing, told Good to let Cowles know that he would purchase the Tansey Painting for \$2.5 million.

23. On or about August 5, 2009, Safflane paid the \$2,500,000.00 in full for the Tansey Painting, and Gagosian Gallery thereafter, paid Cowles \$2,000,000 for the Tansey Painting and arranged for its delivery from Cowles’ home gallery to plaintiffs.

24. In or about December 2009, Gagosian Gallery learned for the first time that Cowles did not have the authority to sell the Tansey Painting, as he had represented he did, and that the Met, through gifts made by Cowles and his mother, held a 31% undivided interest in it.

25. Cowles readily admitted in his deposition taken on July 13, 2011 that the following statements attributed to him in an article that was recently published in the *New York Times* discussing this lawsuit, are true and were made by him:

Mr. Cowles . . . said that he considered the whole dispute his mistake. He said that after the museum returned the painting to him “I didn’t even think about whether the Met owned part of it or not.” “And one day I saw it on the wall and thought, ‘Hey, I could use money’ and so I decided to sell it,” he added. “And now it’s a big mess.”

Annexed hereto as Exhibit D is a copy of *The New York Times* article entitled, *Collector Sues Gagosian Gallery for Selling Him a Painting Partially Owned By Met*, dated March 11, 2011. See Cowles Tr. 191-193.

AS AND FOR A FIRST CAUSE OF ACTION
(Indemnification)

26. Defendant/Third-Party Plaintiff Gagosian Gallery repeats and re-alleges each and every of the foregoing allegations as if more fully set forth herein.

27. If the Safflane Plaintiffs sustained damages in the matters they alleged in the underlying action, then Cowles' negligent misrepresentations or omissions were the sole proximate cause of the damages thereof, and not any acts or omissions of Gagosian Gallery.

28. If the Safflane Plaintiffs should obtain a recovery against Gagosian Gallery in the Safflane Action in the underlying action, then the facts and conditions resulting in such recovery were brought about by the negligence, wrongful, or culpable conduct of Cowles.

29. By approaching and asking Gagosian Gallery to assist him in finding a buyer for the Tansey Painting on his behalf, Cowles created an agency-principal relationship with Gagosian Gallery that gives rise to an implied duty to indemnify Gagosian Gallery.

30. By reason of the foregoing, in the event of any recovery, judgment or verdict against Gagosian Gallery, then Gagosian Gallery is entitled to common law indemnification from Cowles, for the full amount of any such recovery, judgment, or verdict including costs and disbursements, together with attorneys' fees and the expenses incurred therein.

AS AND FOR A SECOND CAUSE OF ACTION
(Contribution)

31. Defendant/Third-Party Plaintiff Gagosian Gallery repeats and re-alleges each and every of the foregoing allegations as if more fully set forth herein.

32. If the Safflane Plaintiffs sustained damages in the underlying action, then Cowles' negligent misrepresentations or omissions were the sole proximate cause of the damages thereof, and not any acts or omissions of Gagosian Gallery.

33. If the Safflane Plaintiffs should obtain a recovery against Gagosian Gallery in the Safflane Action in the underlying action, then the facts and conditions resulting in such recovery were brought about by the negligent, wrongful, or culpable conduct of Cowles.

34. By reason of the foregoing, in the event of any recovery, judgment or verdict against Gagosian Gallery, Gagosian Gallery would be entitled to full contribution from Cowles, based on his culpability, including costs, disbursements, and expenses as well as attorneys' fees.

WHEREFORE, Defendants/Third-Party Plaintiffs Gagosian Gallery demands judgment against Third-Party Defendant Cowles for the amount of any recovery, judgment or verdict which shall or may be recovered against Gagosian Gallery, and/or apportionment of liability and contribution for any recovery Plaintiffs obtain against Gagosian Gallery, together with costs and disbursements of this action including attorney's fees, and for other, further, and different relief that this Court may deem just and proper.

Dated: New York, New York
July 15, 2011

WITHERS BERGMAN LLP

By: Hollis Gonerka Bart

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