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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JEANNE MARCHIG and THE MARCHIG ANIMAL
WELFARE TRUST,

Plaintiffs,

10 cv 3624 (JGK)
ECF Case

-against-

COMPLAINT

CHRISTIE'S INC.,

Plaintiffs demand trial by jury.

Defendant.

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Plaintiffs JEANNE MARCHIG and THE MARCHIG ANIMAL WELFARE TRUST,
by their attorneys, Law Offices of Richard A. Altman, for their complaint against
defendant, allege as follows:

INTRODUCTION

1. This action seeks damages for the misattribution of a drawing which plaintiffs
consigned for sale to defendant, a prominent auction house. The drawing sold at a price
far below its actual value, solely because of defendant's willful refusal and failure to

investigate plaintiffs' believed attribution, to comply with its fiduciary obligations to plaintiffs, its negligence, its breach of warranty to attribute the drawing correctly, and its making of false statements in connection with the auction and sale.

2. The drawing was owned by plaintiff Marchig and her late husband, Giannino Marchig, for over fifty years. He believed it to be a work of Domenico Ghirlandaio (who was a teacher of Michelangelo), dating from the 15th century. Ghirlandaio and Leonardo da Vinci apprenticed at the same time, both under Andrea del Verrocchio.

3. At the time of consignment, plaintiffs presented it to defendant as a work of the Italian Renaissance, expressed that belief and asked defendant to investigate it.

4. This attribution was summarily rejected by one François Borne, defendant Christie's resident expert of old master drawings at the time, who, on information and belief, reached his opinion after about fifteen minutes of examination.

5. Borne erroneously and negligently dated it to the 19th century, attributed it to an anonymous German artist, and defendant sold it with that erroneous description for a fraction of its true value.

6. Plaintiff Marchig has recently learned that the drawing is almost certainly by Leonardo da Vinci, and that numerous respected scholars and scientific testing have so attributed it, and placed its origins in Italy in the late 15th or early 16th century.

7. Plaintiffs have been seriously damaged by defendant's negligent misattribution, breach of its fiduciary obligations, breach of warranty, and false statements, and seek recovery of damages caused them thereby.

THE PARTIES

8. Plaintiff JEANNE MARCHIG ("Marchig") is a resident of Cologny, Switzerland and a citizen of Sweden.

9. Plaintiff THE MARCHIG ANIMAL WELFARE TRUST ("Trust") is a charitable trust organized under the laws of England and Scotland, with a registered office at 10 Queensferry Street, Edinburgh EH2 4PG, Scotland, and is dedicated to the welfare of animals.

10. Defendant CHRISTIE'S INC. ("Christie's") is, on information and belief, a New York corporation with a principal place of business at 20 Rockefeller Plaza, New York, New York.

JURISDICTION AND VENUE

11. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1332(a)(2), in that it is between citizens or subjects of foreign states and a citizen of this State, and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

12. Pursuant to 28 U.S.C. § 1391(a), venue is proper in this district, in that the defendant resides in this district, a substantial part of the events or omissions giving rise to the claim occurred in this district and the defendant is subject to personal jurisdiction in this district. There is also an agreement between the parties placing venue in this district.

HISTORY OF THE DRAWING AND THE PARTIES' DEALINGS

13. In 1955, plaintiff Marchig married her late husband, Giannino Marchig. At the time, he owned a pen-and-ink drawing with pastel highlights, on vellum. It is a portrait in profile of a young woman ("the Drawing"). Its dimensions are approximately 33 x 24 cm. A copy of the Drawing is annexed as Exhibit A.

14. Mr. Marchig had been a well-known art restorer, with considerable expertise in Renaissance art.

15. In 1983, Mr. Marchig died, and plaintiff Marchig became the sole owner of the Drawing as his widow.

16. In 1997, plaintiff Marchig consigned the Drawing to defendant Christie's to be sold, intending to donate the proceeds of the sale to the plaintiff Trust.

17. On or about August 26, 1997, plaintiff Marchig entered into a consignment agreement with defendant Christie's, a copy of which is annexed as Exhibit B.

18. Plaintiff and Mr. Marchig have had many dealings with the defendant over the years, and defendant considered both to be valued clients.

19. On several earlier occasions, plaintiff Marchig had consigned works of art to defendant for sale, and had completely relied upon its expertise.

20. At the time of consignment, plaintiff Marchig informed both Noel Annesley (then the Deputy Chairman of Christie's International PLC, and presently the Honorary Chairman, Christie's International UK Ltd.), and François Borne, an employee or agent of defendant, and its resident expert of old master drawings, of her late husband's belief that the Drawing was from the time of the Italian Renaissance, and she asked defendant to investigate that possibility.

21. The Drawing is unusual in that it is on vellum, a material much less common after the invention of canvas and paper in the 16th century.

22. However, Borne was adamantly of the opinion that the Drawing was a nineteenth-century German work of unknown authorship. A copy of his letter to plaintiff Marchig is annexed as Exhibit C.

23. In his letter, dated July 25, 1997, Borne wrote to plaintiff Marchig, in French, "Your superb German drawing in the taste of the Italian Renaissance fascinates me. I think it an object of great taste and I would be ready to try our luck with an estimate of \$12,000 to 15,000 in New York. As I told you I would be tempted to change the frame in order to make it seem an amateur object of the 19th century and not an Italian pastiche." (counsel's translation).

24. On 25 August 1997, defendant wrote to plaintiff Marchig to inform her of some of the charges in connection with the consignment. In the letter, which is in French, the Drawing is described as “a German drawing in the taste of the Renaissance.” (counsel’s translation). A copy of the letter is annexed as Exhibit D.

25. Plaintiff Marchig had no expertise in drawings, and reluctantly acceded to Borne’s attribution, relying upon his reputed expertise with old master drawings.

26. Plaintiff Marchig had to accept Borne’s attribution, inasmuch as defendant would not have undertaken to sell the Drawing otherwise.

27. When plaintiff Marchig sent the Drawing to Christie’s, it was in an Italian frame.

28. Plaintiff Marchig did not agree to change the frame.

29. Without plaintiff Marchig’s knowledge or consent, Borne, or someone at defendant Christie’s, changed the frame of the Drawing, and it was sold with the changed frame.

30. Christie’s has never returned the original Italian frame to plaintiff Marchig.

31. The Drawing was listed in the auction catalog as “the property of a lady” and “German, 19th Century.” A copy of defendant’s record of the sale is annexed as Exhibit E.

32. The Drawing was sold at a public auction in January 1998, along with several other works which plaintiff Marchig had consigned to Christie’s, including drawings by Domenico Tiepolo and Gianbattista Tiepolo.

33. The Drawing was purchased at the auction by one Kate Ganz, a New York City art dealer, for \$21,850.

34. Plaintiff Marchig later received the proceeds from defendant, less their commission, and subsequently donated the proceeds to the plaintiff Trust.

35. On information and belief, Ms. Ganz thereafter kept the Drawing in her possession.

36. On information and belief, in 2007 Ms. Ganz sold the Drawing to a Peter Silverman, or to an entity controlled by him, and he or that entity are presently in possession and control of the Drawing.

37. According to news accounts, Mr. Silverman saw the Drawing in a drawer at Ms. Ganz's gallery in New York, where it had apparently been stored since she purchased it, and he offered to buy it from her.

38. On information and belief, she agreed to sell it to Mr. Silverman, and he paid approximately \$22,000 for the Drawing, the same price which she had paid at auction.

39. Plaintiff was unaware of this sale at the time it occurred.

40. In July 2009, plaintiff Marchig received a telephone call from Annesley, informing her for the first time about claims that the Drawing was by Leonardo da Vinci.

41. Plaintiff Marchig was devastated by this news, and shocked that defendant had failed to attribute the Drawing properly before selling it on her behalf.

42. This was the first time she had heard or seen anything about the Drawing since it had been sold by defendant.

43. Plaintiff Marchig has since July 2009 researched the question of the Drawing's attribution, and has collected clear and convincing evidence that the Drawing is indeed an authentic work by Leonardo da Vinci.

44. Among the evidence of this attribution is a small fingerprint on the Drawing, which matches that on a painting known to be by Leonardo da Vinci

45. There was also some recent carbon dating by an organization in Switzerland, indicating that the Drawing is from the 15th or 16th century, not the 19th, as Mr. Borne had insisted.

46. Most significantly, in April 2010 a book was published setting forth in great detail the artistic and scientific evidence for the attribution.

47. The book is by Martin Kemp and Pascal Cotte, and is entitled *La Bella Principessa: The Story of the New Masterpiece by Leonardo da Vinci* (Hodder & Stoughton, 2010).

48. Martin Kemp is Emeritus Professor in the History of Art at Oxford University in England, and has published extensively on Leonardo da Vinci.

49. Pascal Cotte is an engineer and optician, and the inventor of the first multi-spectral high-definition camera. He is with a company called Lumière Technology, in Paris, France.

50. Lumière Technology has scanned and analyzed many well-known works of art, including the Mona Lisa by da Vinci, and over 1500 works by Rubens, Delacroix, Rembrandt, Chagall, Picasso, Renoir and Van Gogh. It has established the correct attribution of many works of art through its scientific methodology and stylistic comparisons.

51. The camera has revealed a fragment of a fingerprint on the Drawing, “highly comparable” to one on a work known to be by Leonardo da Vinci, *St. Jerome* in the Vatican, according to a Montreal-based forensic art expert named Peter Paul Biro. An article about the research was published in October 2009 in the *Antiques Trade Gazette*, describing him as “pioneering fingerprint studies to help resolve authentication and attribution issues of works of art.” A copy is annexed as Exhibit F.

52. Another expert, Nicholas Turner, formerly the Director of Drawings at the J. Paul Getty Museum in Los Angeles, and formerly Deputy Keeper in the Department of Prints and Drawings, British Museum, London, has issued a statement supporting his opinion that the Drawing is a work of Leonardo da Vinci. A copy of his statement is annexed as Exhibit G.

53. There is also a group of eminent Italian art historians who believe the Drawing to be by Leonardo da Vinci, according to the article in the *Antiques Trade Gazette*.

54. Among these art historians are Alessandro Vezzosi, Director of the Museo Ideale in the artist's birthplace, Vinci, near Florence, Italy, Christina Geddo, an expert on the da Vinci school, Mina Gregori, an expert on Florentine paintings, and Prof. Claudio Strinati, Head of the City of Rome Museums.

55. A carbon-14 analysis of the Drawing, by the Institute for Particle Physics in Zurich, Switzerland, gave a date range for the Drawing of 1440-1650.

56. In October 2009, Time magazine published an article entitled "How a 'New' da Vinci was Discovered." A copy is annexed as Exhibit H.

57. According to the article, Alessandro Vezzosi identified the Drawing as by Leonardo da Vinci in his 2008 book, *Leonardo Infinito*. He is quoted as saying, "[t]here is some embarrassment out there. Just looking at it, you know it isn't German."

58. The article says that defendant Christie's "is wincing at the revelation." Exh. H at 2.

59. The Drawing is presently on public exhibition in Gotheborg, Sweden as a work of Leonardo da Vinci.

60. On information and belief, the Drawing has been insured against loss or damage for a sum in excess of \$100 million.

61. In short, there is overwhelming expert, esthetic, forensic and scientific evidence, as well as scholarly opinion, that the Drawing is by the hand of Leonardo da Vinci.

62. On information and belief, the Drawing's value exceeds \$150 million.

FIRST CLAIM
(Breach of Fiduciary Duty)

63. Plaintiffs re-allege paragraphs 1 through 62.

64. As the consignee of the Drawing, defendant was plaintiffs' agent.

65. Auction houses such as defendant Christie's are fiduciaries with respect to consignors of works for sale.

66. As such, defendant had a fiduciary duty to act in the utmost good faith and in the sole interests of plaintiffs throughout their relationship.

67. Plaintiffs selected defendant as their agent because of their special fitness for the performance of the duties to be undertaken.

68. Plaintiff Marchig and her late husband had consigned other works of art for sale with defendant over the years, and had placed complete trust and confidence in defendant's skill and knowledge of the art market.

69. Defendant is widely known in the art market for its special skill in and knowledge of that market, and in particular for their special skill with and knowledge of drawings.

70. Defendant failed to act in a manner commensurate with their skill and expertise.

71. Defendant failed to ascertain the correct age of the Drawing by means which were well-known, scientifically reliable, and readily available at the time.

72. Defendant failed to undertake any investigation whatsoever as to the validity of plaintiffs' belief that the Drawing dated from the Italian Renaissance, and might have been by Ghirlandaio.

73. Defendant rejected outright plaintiff Marchig's belief that the Drawing was from the 15th century, and possibly by an Italian Renaissance artist.

74. Defendant failed to investigate the attribution of the Drawing by the use of scientific methods and technology readily available to it at the time.

75. Defendant failed to perform any stylistic and historical investigation of the attribution and origins of the Drawing.

76. Defendant's insistence and conclusion that the Drawing was of German origin from the 19th Century was contrary to the evidence and expertise readily available to it at the time.

77. In fact, there is no evidence whatsoever for the defendant's erroneous attribution, and, on information and belief it was based solely upon Borne's arbitrary and unsupported opinion.

78. Defendant's investigation of the attribution of the Drawing was inadequate, and failed to comport with the standards to be expected of a reputable auction house and its in-house experts.

79. As a result of defendant's failure to discharge their fiduciary obligations, plaintiffs were damaged financially, in that the Drawing was sold for a small fraction of its actual value.

80. Plaintiffs would not have consigned the Drawing to defendant for sale had they known the facts, and that the Drawing was by Leonardo da Vinci.

81. Plaintiffs are entitled to damages in an amount to be determined.

SECOND CLAIM
(Breach of Warranty)

82. Plaintiffs re-allege paragraphs 1 through 62.

83. The consignment agreement was drafted by defendant.

84. It contains a disclaimer of certain warranties, but does not include any disclaimers of warranties with respect to attribution.

85. Defendant erroneously identified the Drawing as a German drawing from the 19th century, when it is actually a 15th century drawing by Leonardo da Vinci.

86. The defendant's misattribution is a breach of the warranty contained in the consignment agreement.

87. Defendant is obliged and warrants to attribute consigned works correctly.

88. Plaintiffs have been damaged by defendant's breach of their warranty to correctly attribute the Drawing before offering it for sale.

89. Defendant is entitled to damages in an amount to be determined.

THIRD CLAIM
(Negligence)

90. Plaintiffs re-allege paragraphs 1 through 62.

91. Defendant had a duty to plaintiffs to act as a reasonably prudent expert auction house in preparing the Drawing for sale, and to advertise and promote the sale so as to realize the highest possible price for their consignors, the plaintiffs.

92. Among their obligations were to correctly attribute the Drawing to the artist who created it, and to correctly estimate its age.

93. Defendant failed to do either.

94. Defendant had a duty to use due care which was reasonable under the circumstances to ascertain the above-stated characteristics of the Drawing.

95. Defendant was under an obligation to obtain the best possible price for the Drawing.

96. Defendant failed to exercise due care, and to act as reasonably prudent experts in its dealing with plaintiffs.

97. Defendant was negligent in discharging its obligations to plaintiffs.
98. Plaintiffs have been financially damaged by defendant's negligence.
99. Defendant's negligence was the proximate cause of plaintiffs' damages.
100. Plaintiffs are entitled to damages in an amount to be determined.

FOURTH CLAIM
(Negligent Appraisal or Representation)

101. Plaintiffs re-allege paragraphs 1 through 62.

102. Defendant and its employees and agents made statements to plaintiffs, and to the general public in its auction catalog, that the Drawing was "German School, early 19th Century," that it was "a German drawing in the taste of the Italian Renaissance," that it was advisable to "change the frame in order to make it seem an amateur object of the 19th century and not an Italian pastiche," and that it was "a German drawing in the taste of the Renaissance" (§§ 23, 24 and 31).

103. These statements were false and erroneous when made.

104. Defendant should have known that the statements were false and erroneous, because such statements were within their specialized knowledge and expertise, and a reasonable investigation would have demonstrated that the statements were false and erroneous.

105. Defendant, as a fiduciary, was under a duty of care to provide correct information as to the attribution of the Drawing to plaintiffs.

106. Defendant possessed specialized knowledge or expertise in the attribution of drawings consigned to it for sale.

107. Defendant knew that plaintiffs required correct information in order to sell the Drawing at the highest possible price.

108. Defendant knew that plaintiffs intended to rely and act upon the information provided by defendant as to the attribution of the Drawing.

109. Defendant knew that plaintiffs would have been damaged by false or erroneous information as to the attribution of the Drawing.

110. Plaintiffs had the right to rely upon defendant for correct and truthful information as to the attribution of the Drawing.

111. Plaintiffs did so rely, by permitting defendant to sell the Drawing on their behalf under the mistaken belief that defendant's statement was true and correct.

112. Plaintiffs placed complete trust and confidence in defendant to correctly attribute the Drawing.

113. Defendant willfully failed and refused to evaluate plaintiffs' belief as to the attribution of the Drawing, and summarily rejected it without investigation.

114. Defendant's false statement of attribution damaged plaintiffs, and defendant is liable for damages in an amount to be determined.

WHEREFORE, plaintiffs demand damages on their four claims against defendant in amounts to be determined, together with interest, costs and disbursements of this action, and such further relief as may be just.

Dated: New York, New York
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