

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

-----X
EDINBURGH INVESTMENTS LIMITED,

Plaintiff,

-against-

SIDNEY TENOUDJI,

Defendant.

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Index No.

VERIFIED COMPLAINT

Plaintiff Edinburgh Investments Limited, by its attorneys, Franzino & Scher, LLC, for its Complaint, alleges:

1. Edinburgh Investments Limited (“EIL”) is a corporation organized under the laws of the Turks and Caicos Islands, British West Indies and its principal place of business is Shipston House, Lyford Cay, PO Box N-7776, Nassau, New Providence, Bahamas.
2. Upon information and belief, defendant Sidney Tenoudji (“Tenoudji”) is a foreign national, who resides in Paris, France.
3. Upon information and belief, Tenoudji is the son of Edmond Cohen-Tenoudji (“Cohen”), a well-known French film producer and collector of 19th and 20th Century artwork.

THE PAINTING

4. In or about February 2011 a painting entitled “Portrait de Femme”, signed and dated by Amedeo Modigliani (the “Painting”), was assigned to EIL by Michael D. Dingman (“Dingman”). Dingman is an agent and representative of EIL.
5. In or about August 1988, Dingman purchased the Painting from Perls Galleries in New York City for \$1.44 million.

6. The Painting's authenticity and genuineness was certified by Klaus Perls ("Perls"). His certification is handwritten on the back of a photograph. Perls was an art dealer who owned and operated Perls Galleries from 1935 until 1997. He dealt mainly in French art from the School of Paris. Perls was well respected and his gallery was known to sell only genuine artwork.
7. From about April 18, 1989 until about March 14, 1990, Dingman consigned the Painting to the Metropolitan Museum of Art in New York City under the care of William S. Leiberman, the Chairman of the 20th Century Art Department. When the Painting was returned to Dingman, it was hung at Dingman's apartment in New York City.
8. In or about December 2009, representatives from Sotheby's inspected several artworks owned by Dingman to determine current retail replacement values for insurance purposes.
9. In or about January 2010, representatives from Sotheby's provided Dingman with the values of the artworks they inspected with the exception of the Painting, which was labeled "Pending Authentication." Upon inquiry, Sotheby's representatives explained that there are many fake Modigliani artworks in circulation, and Sotheby's required additional research on the Painting to value it.
10. In or about March 2010, Dingman provided Sotheby's New York City location with the Painting to be professionally photographed. The photographs were to be used to conduct additional research to value the Painting.
11. In or about May 2010, Sotheby's reported that it could not find any record of the Painting. Since the Painting was not included in the currently accepted Modigliani catalogue raisonne by Ambrogio Ceroni, Sotheby's stated that it would not be able to

value it, without getting it authenticated by Marc Restellini (“Restellini”), the current accepted authority on Modigliani.

12. In or about June 2010, Dingman contacted the Smithsonian Institute where Perls Galleries’ records are archived. The Institute found the purchase invoice for the sale of the Painting to Dingman and some additional documentation going back to 1965. Through an investigation of the records and further inquiries, it was revealed that the Painting came from the collection of Cohen.
13. In or about August 2010, Dingman forwarded photographs of, and information about the Painting to Restellini, to have the Painting authenticated.
14. In or about September 2010, Dingman was advised that Restellini did not have a record of the Painting and that he wanted to inspect it. In addition, Dingman had the Painting independently appraised by Christopher Gaillard of Gurr Johns (Manhattan). Gaillard valued the Painting at \$10 million and his research found that the Painting was included in the Modigliani catalogue raisonne published by Joseph Lanthemann in 1970.
15. Gurr Johns later increased its appraisal of the Painting to \$12 million in April 2011 based on newer comparable sales data.
16. In or about January 2011, Sotheby’s in New York City professionally packaged the Painting and shipped it to Restellini at the Wildenstein Institute in Paris, France (“Institute”).
17. In or about February 2011, the Painting arrived at the Institute. Upon inspection, Restellini requested a scientific analysis, which was completed and sent to Restellini in or about April 2011.

18. In or about May 2011, concerns were raised pertaining to the Institute's security and the Painting was moved to the vault in Sotheby's Paris location.
19. In or about June 2011, Restellini advised Dingman/EIL that he would inspect the Painting one more time prior to making a final decision about authenticity. After the inspection, Restellini advised Dingman/EIL that he was unable to make such a determination because more information was still needed. Restellini provided three criterion for making his decision: 1) the scientific analysis (which was positive); 2) the provenance, or the history of the artwork (information was missing from before the sale to Cohen); and 3) the overall appearance of the Painting compared to other Modigliani works.
20. In or about July 2011, Restellini informed Dingman/EIL that the Painting would remain under further investigation.
21. On or about July 18, 2011, Dingman/EIL retained 1858 Ltd. Art Advisory ("Art Advisory") located in London, England to research the Painting's history. Specifically, Celine Fressart ("Fressart") and Viola Raikhel-Bolot ("Raikhel") were assigned to the project.
22. In or about June 2012, Edelman Arts, Inc. ("Edelman Arts") 136 East 74th Street, New York, New York 10021, was retained by Dingman/EIL to assist with respect to the negotiations with Tenoudji.
23. In or about June 2012, the Painting was delivered to, and is presently located at Edelman Arts' galleries in New York, New York.

DINGMAN CONTACTS SIDNEY TENOUDJI

24. Contemporaneously with the inspection and investigation of the Painting's authenticity, agents for Dingman/EIL attempted to locate and contact relatives and acquaintances of former owners of the Painting to obtain more information about the Painting's history.
25. In or about June 2011, Thom Ingram ("Ingram"), an agent of Dingman/EIL, contacted Tenoudji after discovering that Tenoudji was the son of Cohen (Cohen was deceased). Ingram made contact in hopes that Cohen retained information about the Painting.
26. On July 4, 2011, by email, Tenoudji's attorney, Matthieu Avril ("Avril"), advised Ingram that he currently represented Tenoudji and formerly represented Cohen. Avril informed Ingram that he would conduct a search of his firm's historical archives for information pertaining to the history of the Painting.
27. On July 13, 2011, by email, Avril advised Ingram that his firm had found several pieces (the "Documents") that could reconstruct the complete history of the Painting.
28. On July 14, 2011, by email, Ingram inquired as to the substance of the Documents Avril had located and the compensation required by Tenoudji.
29. On July 19, 2011, by email labeled "Confidential", Avril advised Ingram that they would not reveal the substance of the Documents, and after conducting research, Tenoudji believed the value of the Documents should be based on a percentage of the sale price of the Painting.
30. Numerous emails were exchanged between Ingram and Avril. Ingram informed Avril that to receive compensation, the Documents would need to be sufficient for Restellini to authenticate the Painting. Avril would not reveal the requested percentage of the

Painting's sale price Tenoudji wanted to be compensated for the Documents, prior to ascertaining the value of the Painting.

31. Dingman/EIL instructed Art Advisory to make contact with Tenoudji's lawyer to determine the authenticity and value of the Documents, which Tenoudji claimed to be the provenance of the Painting.
32. In or about October 2011, Van Kirk Reeves ("Reeves"), an attorney admitted to the bar of Paris, France and New York, and practicing in Paris, was retained by Dingman/EIL in an effort to negotiate with Tenoudji and Avril with respect to the transfer of the Documents.
33. During Reeves' dealings with Avril and Tenoudji, Tenoudji made several threats to destroy the Documents.

INSPECTING THE DOCUMENTS

34. In or about February 2012, Fressart had several telephone conferences with Tenoudji to schedule an appointment for her to inspect the Documents. During these conversations, Tenoudji revealed significant information about the substance of the Documents. Tenoudji was also adamant about receiving an offer for the Documents upon Fressart's inspection.
35. During these conversations between Tenoudji and Fressart, Tenoudji indicated that without an agreement, he may as well destroy the Documents.
36. On or about February 21, 2012, Fressart inspected photocopies of what Tenoudji purported to be the Documents. Tenoudji had placed white-out over all names and most geographical indications contained in the photocopies inspected by Fressart. Tenoudji did

not allow Fressart to take any notes, photographs, or make any copies. These documents inspected by Fressart included photocopies of the following:

- a. Purchase invoice for the Painting made out by Galerie David & Garnier, Avenue Matignon, Paris (1958).
- b. Letter from Emmanuel David to Edmond Cohen-Tenoudji confirming that in accordance with his request, statements of provenance for the work have been requested from the previous owners or dealers.
- c. Letter from the most recent owner of the Painting before Edmond Cohen-Tenoudji, a woman who inherited the work, confirming that it was acquired in sometime around 1931-1932 by Mr. Y, from a Galerie de Lyon. She stated that Mr. Y was born in Winterthur and passed away in Zurich on August 18, 1954 and that he was an industrialist who made his fortune in silks.
- d. Black/white photograph of the Painting by Marc Vaux, on whose back was a certificate of authenticity made and signed by Jeanne Castel (co-signed by Henry Bing), attesting that the work was part of the collection of her friend who inherited the Painting acquired by Mr. Y in Lyon in 1931.
- e. Black/white photograph of the Painting by Marc Vaux, on whose back was a certificate of authenticity by Emmanuel David, David & Garnier Gallery, Paris.
- f. Black/white photograph of the Painting by Marc Vaux, on whose back was a statement by a dealer in Lyon (Galerie de Lyon), confirming that he acquired said work from Zborowski in 1922 and sold it to Mr. X “chief architect of the city”. In 1932, he repurchased the work from Mr. X in order to sell it to Mr. Y.

37. Using white-out on the photocopies inspected by Fressart, Tenoudji concealed all names and most geographical indications mentioned within the Documents. In addition, Fressart was not allowed to take notes, photographs, or make any copies. Nonetheless, Fressart was able to form strong hypotheses as to their identities based on her inspection and the information previously provided to her by Tenoudji. These hypotheses included:

- g. Mr. X was the architect of the City of Lyon. Mr. Charles Meysson occupied that position from 1970 until 1940 (though Art Advisory has not found any proof that this individual was an art collector).
- h. Mr. Y was most likely Fritz Ernst Binschedler, the only citizen of Winterthur that fits, according to the town's records. Binschedler was the director of a silk factory, died in 1954 in Zurich, but lived the better part of his life in Lyon, then Paris after World War II (though Art Advisory has not found any proof that this individual was an art collector).
- i. Alfred Poyet had a gallery in Lyon, another one in Paris, and had contacts for works by Modigliani (of whom he was especially fond). An exhibition of Modigliani's works took place in his Lyon gallery in March 1922.

38. As Fressart was forbidden from taking notes during her inspection, these hypotheses are based on the notes Fressart took immediately after her meeting with Tenoudji.

39. Dingman/EIL has been advised that if genuine, the Documents are vital for verifying the authenticity of the Painting. Without the Painting, the Documents are worthless.

40. Dingman/EIL has been advised that if the Documents are authentic, and are certified by Restellini, the Painting could be worth more than \$30 million, provided the Documents are accompanied with the Painting.

TENOUDJI AGREES TO SELL THE DOCUMENTS

41. During Fressart's investigation of the authenticity of the Documents, Reeves continued to negotiate with Avril and Tenoudji.
42. In November 2011 and on September 3, 2012, Reeves viewed the Documents.
43. After Reeves' first meeting with Tenoudji in November 2011, his counsel informed Reeves that Tenoudji considered the value of the Painting to be between \$25 and \$30 million and that his client was entitled to \$5 million for the Documents.
44. Negotiations continued in the following months. A major issue was that plaintiff insisted payment would be made only if Restellini was able to inspect the Documents and issue a Certificate acknowledging the Painting was by Modigliani in such form that the Painting could obtain in a sale its full commercial value ("Certificate").
45. At a meeting at the Bristol Hotel on September 3, 2012, Edelman and Reeves, on behalf of plaintiff, and Tenoudji agreed that Tenoudji would sell and deliver the Documents to plaintiff for the sum of €500,000 subject to having the Documents being inspected by Restellini and Restellini issuing the Certificate.
46. On September 14, 2012, Reeves sent Tenoudji an email, outlining payment provisions, and discussions took place between them by phone as to terms so that a written memorandum of the agreement could be prepared.
47. On October 19, 2012 Reeves prepared a written contract embodying the terms of the oral agreement, as is stated in paragraph 45 above.
48. On October 24, 2012 Tenoudji visited Reeves' offices and stated that he agreed with the substantive provisions of the written contract but wanted certain stylistic modifications, to which Reeves agreed and which did not vary from any of the substantive terms.

49. Thereafter, despite prior agreement to the substantive terms of the oral agreement, Tenoudji began to insist on new terms and conditions.
50. The Institute is to publish Restellini's catalogue raisonne of the works in oil of Modigliani. It is the Institute's custom and practice to request that documents useful in ascertaining the authenticity of a work be deposited with the Institute to be viewed by the expert in private.
51. Notwithstanding the Institute's custom and practice, Tenoudji insisted that he must be present at the Institute while Restellini reviewed the Documents.
52. Reeves, after repeated efforts, was able to get the consent of the Institute to have Tenoudji present while Restellini reviewed the Documents.
53. When Reeves informed Tenoudji of this concession by the Institute and Restellini, to have Restellini and Tenoudji meet while the Documents were being inspected, Tenoudji resisted to such a meeting, notwithstanding his prior agreement. Tenoudji informed Reeves that he would not submit the Documents to Restellini at the arranged meeting.
54. On or about December 12, 2012, the day before Restellini's scheduled inspection, Tenoudji anticipatorily breached the agreement by informing Edelman (who was in New York) by telephone that he would not attend the inspection. Tenoudji protested that he believed Restellini was not reliable and would not approve of the Documents.
55. Edelman responded that there was a valid contract in place for the purchase of the Documents and Tenoudji need only attend the inspection to collect €500,000, provided the Documents were as Tenoudji portrayed.
56. Tenoudji still refused to attend the inspection and did not attend the following day, thus breaching the underlying contract.

AS AND FOR A FIRST CAUSE OF ACTION
(SPECIFIC PERFORMANCE)

57. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 56 as though fully set forth herein.
58. Defendant has represented that the Documents are genuine. If so, the Documents are unique and important for verifying the authenticity of the Painting. Typically such documents are provided to a purchaser in the sale of the artwork, especially for works that have such longstanding history.
59. Documents evidencing provenance are unique in character and can be extremely valuable, but only when combined with the artwork itself. Without the artwork, documents evidencing provenance are worthless.
60. Plaintiff substantially performed his contractual obligations, by arranging to have Restellini meet with defendant to inspect the Documents.
61. Plaintiff was willing and able to perform the remainder of his obligations as Restellini was ready to inspect the Documents and plaintiff was prepared to pay €500,000 to defendant after the inspection by Restellini and Restellini issuing the Certificate.
62. Defendant was able to convey the Documents to plaintiff, as defendant possessed the Documents, but refused to attend the inspection, or deliver the Documents.
63. The Documents are unique in nature.
64. Specific performance is necessary here, as there is no adequate remedy at law.
65. Plaintiff therefore demands, that defendant produce the Documents to plaintiff for inspection. Upon receipt of the Documents and approval of the Documents by Restellini, and Restellini issuing the Certificate, plaintiff will pay defendant €500,000.

AS AND FOR A SECOND CAUSE OF ACTION
(BREACH OF CONTRACT)

66. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 65 as though fully set forth herein.
67. A contract existed between plaintiff and defendant.
68. Plaintiff performed its obligations under the contract by arranging for Restellini to inspect the Documents in the presence of defendant.
69. Defendant breached the contract by refusing to attend the inspection and by not providing the Documents for inspection, which was obligated under the agreement.
70. Plaintiff was ready, willing, and able to pay defendant €500,000 in exchange for the Documents upon the approval of Restellini and Restellini issuing the Certificate.
71. Plaintiff has been damaged in the amount of \$30 million.
72. Plaintiff therefore demands, monetary compensation in the amount of \$30 million, plus interest, costs, disbursements of this action, and attorneys fees.

AS AND FOR A THIRD CAUSE OF ACTION
(INJUNCTION)

73. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 72 as though fully set forth herein.
74. Defendant has represented that the Documents are genuine. If so, the Documents are unique and important for verifying the authenticity of the Painting. Typically such documents are provided to the purchaser in the sale of the artwork, especially for works that have such longstanding history.

75. Documents evidencing provenance are unique in character and can be extremely valuable, but only when combined with the artwork itself. Without the artwork, documents evidencing provenance are worthless.
76. In addition, the destruction of documents evidencing provenance can severely impact the value of artwork and forever put authenticity in question.
77. Defendant has threatened to dispose of and/or destroy the Documents, which would render a judgment in this action ineffectual.
78. Defendant has breached the contract by not submitting the Documents for inspection; plaintiff is likely to succeed on the merits.
79. Injunctive relief must be granted in order to preserve the status quo and prevent defendant from destroying the Documents, which is the subject matter of this action.
80. Absent injunction, the Documents will be lost and plaintiff will suffer irreparable harm.
81. Plaintiff requests defendant be enjoined from removing, moving, selling, destroying or otherwise disposing of the Documents.

WHEREFORE, plaintiff seeks judgment as follows:

1. On the first cause of action, specific performance of the contract, whereby defendant will submit the Documents for inspection by Restellini, and upon Restellini issuing the Certificate, receive €500,000 in exchange for the delivery of the Documents to plaintiff;
2. On the second cause of action, \$30 million, plus interest, costs, disbursements of this action, attorneys fees, and such other relief as the Court deems just and proper;
3. On the third cause of action, an injunction barring defendant from removing, moving, selling, destroying or otherwise disposing of the Documents;

4. Appropriate interest, attorney's fees, costs, and disbursements; and
5. Such other relief the Court finds just and proper.

Dated: New York, New York
February ____, 2013

FRANZINO & SCHER, LLC

By: _____

Frank J. Franzino, Jr.
Attorneys For Plaintiff
900 Third Avenue, 17th Floor
New York, New York 10022
(212) 230-1140

VERIFICATION

STATE OF _____)
)
COUNTY OF _____) ss.:

MICHAEL D. DINGMAN, being duly sworn, hereby deposes and says:

I am the _____ of Edinburgh Investments Limited, the plaintiff in the above entitled action; I have read the foregoing Complaint and know the contents thereof; that the same is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters I believe them to be true.

MICHAEL D. DINGMAN

Sworn to before me this
_____ day of February 2013

Notary Public