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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 49

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BENJAMIN ARYEH, :

Plaintiff, :

Index No. 600064/95

- against - :

CAROL ALTMAN and BERRY-HILL GALLERIES, INC., :

Defendants, :

- and - :

ROBERTA CARROLL and PRIN CORP., :

Intervenors-Defendants. :

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Herman Cahn, J.

This action was tried before the undersigned, without a jury.

This is a dispute among fine art dealers concerning the ownership of an oil canvas which was painted in 1911, by American impressionist Richard E. Miller (1875-1943) (the painting). The artist never named the painting. Its lack of a name given by the artist spawned a variety of unofficial names within the art world, which were all designed to describe – not necessarily perfectly, it seems – what is portrayed in the picture. Therein lies, in large part, the circumstance giving rise to this controversy, involving allegations of theft, civil conspiracy, and fraudulent conveyance.

Plaintiff sues for replevin of the painting or, alternatively, for its value under a conversion theory.

The following facts were adduced through credible evidence at trial.

Plaintiff's Initial Acquisition of the Painting:

In June 1988, Rafael Gallery, Inc., an art gallery owned and operated by plaintiff Benjamin Aryeh; and Altman Fine Arts, Inc., an art gallery owned and operated by Michael N. Altman ("Altman"), son of defendant Carol Altman,[1] jointly purchased the Miller painting underlying this action, from Hollis Taggart Galleries, for $200,000.00 (Aryeh Aff. ¶ 4; Tr. at 74-75).[2]

The painting, which was produced at trial, is a color depiction of two young women, one standing and one sitting, on what may be described as an outdoor patio, facing one another (perhaps talking) around a small table supporting what may be described as a teapot and cups (Ex. U).[3] Altman Fine Arts listed the painting it in its November 1988 catalogue under the name "Women on a Terrace, Giverny" (Aryeh Aff. ¶ 4; Ex. U). The catalogue speculates the portrait to be that of two American female students visiting their teacher's summer home in Giverny, France – a town where Miller and some of his contemporaries, such as Claude Monet, spent their summers (*id.*).

Altman's Encumbrance of the Painting:

One month after the acquisition of the painting by plaintiff and Altman, on July

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[1] In a related Bankruptcy Court decision, discussed *infra*, defendant Carol Altman is referred to as "Carole" Altman, and is identified as the mother of Michael N. Altman, a debtor in bankruptcy (*In re Altman*, 230 BR 6 [US Bankr Ct, D Conn 1999] [Hon. Alan H.W. Shiff, Ch. J.], *vacated in part on other grounds & affd in part* 254 BR 509 [US Dist Ct, D Conn 2000]).

[2] References to "Aff." are to direct testimony affidavits submitted by the parties and permitted by the individual rules of practice of this Part. References to "Tr." are to the trial transcript.

[3] References to "Ex." are to exhibits admitted in evidence at trial.

27, 1988, Altman borrowed $800,000.00 from Cambridge Factors, Inc., a finance company. The loan was evidenced by a promissory note (Ex. 4A). Altman and Cambridge entered into a security agreement on July 27, 1988, collateralizing Altman's art inventory, as follows: "All artwork as identified in Schedule 'A' annexed hereto" (Ex. 4B ¶ 1 [d]). The schedule is broadly titled "Paintings in Inventory as of July 27, 1988," and includes one work by Richard E. Miller, referred to as "Two Women Taking Tea" (Ex. 4B [Schedule "A"] at 4). Altman acknowledged at trial that said work is the same painting as the one listed in his catalogue by Miller as "Women on a Terrace, Giverny" (Tr. at 98). On August 24, 1988, Cambridge filed a UCC financing statement, listing Altman Fine Arts as the debtor, covering:

> All artwork, inventory and accounts receivable (including but not limited to the artwork described in Schedule "A" annexed hereto) now owned or hereafter acquired or purchased by debtor, including replacements, substitutions, additions and proceeds of sale or other disposition of any of the above.

(Ex. 4C.) Schedule "A" to the financing statement is identical to Schedule "A" to the security agreement. The financing statement did not disclose Aryeh's interest in the painting, even though he owned 50% of it.

Altman's Transfer, Re-Acquisition, and Subsequent Transfer of the Painting to his Mother:

In 1988, Altman formed a new corporation – Altman/Burke Fine Arts, Inc. – which undertook the business of Altman Fine Arts and took possession of its inventory (Tr. at 77-78). Altman, through his new corporation, transferred the painting to one, Howard Kiviat, in exchange for another painting.[4] In 1990, Kiviat transferred the painting back to Altman in

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[4] As discussed *infra*, in Altman's related Bankruptcy proceeding, this transfer was deemed fraudulent and not made in the ordinary course of business. The Bankruptcy Court held that "those transfers were fraudulent as to Rafael in that they effectuated a transfer without recognizing Rafael's interest" (*In re Altman* [US Bankr Ct, D Conn], *supra*). That court further

exchange for another (*id.*, at 99-100). On November 25, 1991, Altman transferred the painting to his mother, defendant Carol Altman, in consideration for a $140,000.00 loan from her (*id.*, at 101-03). No transfer tax was paid, and no documents exist reflecting this transaction (*id.*, at 103).

During the midst of the foregoing transactions by Altman, on October 22, 1991, he and Cambridge re-stated the loan terms (Ex. 4F). Cambridge relinquished its security interest in one of the collateralized paintings – M.J. Heade's "Sunset Seascape" – in exchange for Altman's agreement to collateralize additional works. Cambridge, further, released Altman from his personal guaranty of Altman Fine Arts' loan obligations to it. The re-stated terms did not alter Cambridge's ongoing security interest in the Miller painting.

Prior, Related, State Court Actions:

Three prior, related, consolidated, actions were commenced in this court: *Backman v Aryeh* (index No. 6836/89); *Rafael Gallery, Inc. v Altman Fine Arts, Inc.* (index No. 21970/89); and *Rafael Gallery, Inc. v Altman* (index No. 25925/89). By decision and order dated January 7, 1994, the court (Gammerman, J.) determined that Aryeh is the owner of a one-half interest in the Miller painting, valued at $175,000.00 as of that time (Ex. 3A). The court entered judgment for Aryeh at that time in the amount of $238,739.00 (Ex. 3B).

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concluded that Altman's creditors, "including Rafael were injured by the debtor's misuse of ABFA's corporate form" (*id.*). The scope of the Bankruptcy Court decision was to determine whether a Chapter 11 Trustee should be appointed to oversee Altman's bankruptcy estate. Such trustees may be appointed "for cause, including fraud, dishonesty, incompetence, or gross mismanagement, either before or after the commencement of the case . . . ." (11 USC 1104 [a] [1].) The Bankruptcy Court, in fact, ordered a Chapter 11 Trustee to be appointed (*In re Altman* [US Bankr Ct, D Conn], *supra*).

Cambridge's Adversary Proceeding Against Altman:

Cambridge filed for bankruptcy protection on May 5, 1992, in the United States Bankruptcy Court for the Southern District of New York (Ex. 6A). That year, Altman ceased doing business as Altman/Burke Fine Arts, and in September 1993, reincorporated as Michael N. Altman & Co., Inc. (Tr. at 78-79). The Cambridge Bankruptcy Trustee filed an adversary proceeding against Altman to enforce the agreements relating to the $800,000.00 loan (Ex. 6A). Altman defaulted, resulting in an order, dated August 19, 1994, directing entry of a judgment against him of $1,063,319.50 (Exs. 5, 6A; Tr. at 115-16). The judgment was entered in the Office of the Town Clerk of New Fairfield, Connecticut.

In February 1996, the Cambridge bankruptcy trustee sold the foregoing judgments and incidental liens to Aryeh's company, intervenor-defendant Prin Corp., for $20,000.00 (Exs. 6A, 6B, 8A-8C). The Bankruptcy Court approved the sale (Ex. 7). Prin Corp. was granted leave to intervene herein by decision and order of this court, dated June 19, 1997.

Altman's Transfer of the Painting to the Carrolls:

Art dealer Joseph P. Carroll ("Carroll"), husband of intervenor-defendant Roberta Carroll, testified at trial. He testified that he met Altman on August 29, 1994, to discuss certain works of art owned by Carroll's company, JPC Ltd. (Carroll Aff. ¶ 20). Altman invited Carroll to his gallery, which by that time was known as Michael N. Altman & Co., Inc., and showed him various paintings, including the Miller painting (*id.*). Altman showed him the painting's authentication documents, which included a provenance, or ownership history, indicating that it was acquired by Altman from Taggart Jorgensen & Putnam Gallery in Washington, D.C., in 1988 (*id.*, ¶ 28). He further testified that affixed to the back of the painting was a label from

Taggart Jorgensen & Putnam, identifying the piece, and that it bore the name "Women on a Terrace, Giverny" (*id.*). The authentication papers include written, signed, statements by two art consultants, dated March 3 and April 19, 1988, referring to the painting as "Two Women on the Terrace" (Exs. C, D).

Carroll stated that he considered recommending to his wife, intervenor-defendant Roberta Carroll, that she purchase the Miller painting from Altman in order to obtain long-term capital gains upon a future sale of the painting (Carroll Aff. ¶¶ 31, 35). He testified that, therefore, he engaged a UCC search firm, CSC Networks, on August 30, 1994, to conduct a search for any UCC financing statements which might have been filed against the painting (*id.*). The search was done against the names "Michael Altman" and "Michael N. Altman & Co., Inc.," uncovering no results (*id.*, ¶ 32). As stated earlier, the UCC financing statement filed by Cambridge in 1988 identified the debtor by an earlier corporate incarnation, "Altman Fine Arts, Inc." (Ex. C).

After Roberta Carroll saw the painting on September 28, 1994, her husband, Carroll, met with Altman the next day in Carroll's JPC offices to discuss purchasing the piece (Carroll Aff. ¶¶ 39-40). On that day, September 29, 1994, Roberta Carroll and Altman executed an Exchange Invoice constituting the contract of sale of the Miller painting to Roberta Carroll (Ex. E). It primarily provided for Roberta Carroll's tender of four paintings to Altman, plus $20,000.00 cash, in exchange for the Miller painting. It further granted Altman an exclusive option to retrieve the painting on consignment for a defined period, at a specified price. The Exchange Invoice concludes with a grant to Roberta Carroll of:

full title, free and clear, to the following work(s) of art:

> Richard E. Miller, 1875-1943, WOMEN ON A TERRACE, GIVERNY, ca: 1910-1911 Oil on Canvas, 25 1/2 x 32 in.

(*Id.*) Carroll testified that the value of the four paintings constituting the consideration for the Miller painting was $205,000.00 (Carroll Aff. ¶ 56).

A little more than a month after the transaction, in November 1994, Carroll consigned the Miller painting back to Altman (Carroll Aff. ¶ 72). He testified that he did so because his wife, Roberta, told him that the painting "'was not speaking to her' and that it 'died on the wall'" (*id.*).

In November 1995, Altman transferred the painting to defendant Berry-Hill Galleries, Inc.

Altman's Bankruptcy Proceeding:

Altman filed a petition for bankruptcy protection on September 29, 1994 – the very date of the Exchange Invoice (Carroll Aff. ¶ 76). Aryeh filed a proof of claim against the Altman bankruptcy estate, in the amount of $300,000.00, corresponding to the approximate value of the Miller painting. He then filed a motion for the appointment of a Chapter 11 Trustee over Altman's bankruptcy estate. The United States Bankruptcy Court for the District of Connecticut granted the motion, finding that Altman's various transfers of the Miller painting were fraudulent, and violative of Aryeh's 50% ownership rights (*In re Altman*, 230 BR 6 [US Bankr Ct, D Conn 1999] [Hon. Alan H.W. Shiff, Ch. J.] ["those transfers were fraudulent as to Rafael in that they effectuated a transfer without recognizing Rafael's interest"]). That court further stated:

> It is especially significant that the debtor deliberately or negligently orchestrated the Painting's cryptic path by, inter alia, transferring it from gallery to gallery without any

> documentary record of those transfers, which obscured the identity of those who had an ownership or security interest. That conduct persuasively demonstrates, even under a clear and convincing standard, "fraud, dishonesty, incompetence, or gross mismanagement of the affair of the debtor . . . ."

(*Id.* [footnote omitted].) The court, therefore, held that the Miller painting is property of the estate, subject to administration on behalf of creditors and claimants of the estate, and that a Trustee should be appointed to oversee the estate (*id.*).

On appeal to the District Court for the District of Connecticut, the decision was vacated insofar as Roberta Carroll's possible interest in the painting was concerned, based on a finding that she did not receive adequate notice of Aryeh's motion (*In re Altman*, 254 BR 509 [US Dist Ct, D Conn 2000]). The District Court emphasized, however, that "[t]he remainder of the Trustee Order has been affirmed in a separate opinion issued this date in *In re Altman*, No. 99 cv 347 (JBA) (D. Conn. July 27, 2000), dismissing Altman's appeal of the order." Thus, the findings of the Bankruptcy Court concerning the fraudulent nature of Altman's transfers, up to the point of the transfer to the Carrolls, which remained an open question as of the date of the District Court's vacatur, were affirmed.

In view of the District Court's decision, the Chapter 11 Trustee of the Altman bankruptcy estate commenced an adversary proceeding against the Carrolls on September 29, 2000, seeking a declaration that the transfer to the Carrolls was fraudulent, and retrieving the Miller painting as property of the estate. The Carrolls settled that proceeding by paying the estate $10,000.00 and withdrawing their claims against the estate, which included a Bankruptcy Code § 548 (c) lien for the value of the four paintings they traded for the Miller painting; that value being "approximately between $126,000 and $155,000" (*In re Altman*, 302 BR 424 [US Bankr Ct, D

Conn 2003]). The Bankruptcy Court approved the settlement (*id.*). Significantly, that court stated:

> The Objectors[5] argue that the Carrolls' claim under § 548 (c) should be denied because Roberta Carroll's purchase was not in good faith. Apart from the absence of any credible evidence to support that claim, the trustee testified that his office investigated that claim and found no evidence that the transaction was anything other than in good faith. . . .

(*Id.*) That court concluded with an order that "the holder of the Painting, Berry Hill Galleries, Inc. and their storage agent . . . shall transfer possession and control of the Painting to Roberta Carroll, which transfer shall be facilitated by the trustee" (*id.*).

The Instant Action:

In the instant action, Aryeh reiterates his opposition to Carrolls' ownership of the Miller painting, asserting two necessary points: (1) the Cambridge UCC financing statement describing the painting as "Two Women Taking Tea" was sufficient to encumber the Miller painting, regardless of its other, numerous, unofficial titles; *and* (2) the Carrolls possessed knowledge of the encumbrance prior to their purchase of the painting and, thus, cannot be considered *bona fide* purchasers for value under the UCC, free of encumbrances.

For reasons which presumably only the Carrolls and/or their counsel are aware of, they had not moved for summary judgment on the basis of the second Bankruptcy Court decision, which explicitly denied Aryeh's objections based on the very arguments presented by him here. That court found an "absence of any credible evidence to support" Aryeh's challenge to the Carrolls' purchase (*In re Altman*, 302 BR 424 [US Bankr Ct, D Conn 2003]). That court

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[5] The objectors were Aryeh and his entities, Rafael Galleries and Prin Corp. (*In re Altman*, 302 BR 424 [US Bankr Ct, D Conn 2003]).

further credited the Chapter 11 Trustee's testimony that an official investigation prompted by Aryeh's challenge "found no evidence that the transaction was anything other than in good faith" (*id.*). In lieu of dispositive motion practice based on those Bankruptcy Court findings, a trial (non-jury) went forward before the undersigned on the issues of: (1) sufficiency of the financing statement; and (2) the Carrolls' *bona fides.*

In sum, plaintiff asserts that, in addition to Altman's wrongful transfers of the painting, in derogation of plaintiff's ownership rights, the Carrolls colluded with him in devising a way to keep the painting outside the scope of his bankruptcy estate, by participating in a sham exchange.

Collateral Estoppel:

The Carrolls contend that Aryeh and his entity, Prin Corp., successor in interest to Cambridge, are collaterally estopped from re-litigating their objections to the Carrolls' ownership interest in the Miller painting, by virtue of the Bankruptcy Court's approval of the Carroll settlement with the Altman bankruptcy estate. Aryeh and Prin were both objectors to that settlement and appear to have been afforded a full and fair opportunity to challenge the *bona fides* of the Carrolls' purchase of the painting. They do not assert otherwise herein.

The Bankruptcy Court denied the objections, finding that no credible evidence was presented by Aryeh and Prin to support such a challenge (*In re Altman*, 302 BR 424 [US Bankr Ct, D Conn 2003]). That court further credited the Chapter 11 Trustee's testimony that the Carrolls' purchase was effected, at least, on their parts, in good faith (i.e., presumably, without actual or constructive knowledge of the 1988 security interest). No appeal was taken from that disposition.

These circumstances serve to collaterally estop Aryeh and Prin from reopening issues relating to the legitimacy and finality of the Carrolls' purchase of the Miller painting from Altman, as they have had a full and fair opportunity to address such issues before the Bankruptcy Court during the course of their objections to the Carroll settlement, which was ultimately approved by that court (*Vanderbilt Realty Corp. v Gordon*, 134 AD2d 586 [2d Dept 1987] [Bankruptcy Court approval of transfer of title to mortgagee precluded subsequent state court challenge to mortgagee's right to the property]).

The fact that the parties previously litigated within the context of a motion to settle an adversary proceeding in Bankruptcy Court (Fed Rules Bankr Pro, rule 9019), as opposed to a plenary action in state court, is of no consequence to collateral estoppel analysis. In *Loving v Abbruzzese* (298 AD2d 749 [3d Dept 2002]), the Appellate Division found collateral estoppel to apply to Bankruptcy Court proceedings to confirm a plan of reorganization. As in the within case, the plaintiffs in a subsequent plenary action had participated in a Bankruptcy Court proceeding as objectors (to the plan). The Appellate Division held that plaintiffs were collaterally estopped from pursuing their plenary claims because:

> In short, plaintiffs had a full and fair opportunity to litigate . . . . And, inasmuch as Bankruptcy Court found that the reorganization plan was fair, equitable and nondiscriminatory and, further, that such plan had been proposed in good faith, it necessarily decided that Brown neither intentionally or negligently undervalued CAI, nor did he aid and abet the remaining defendants in this regard.

(*Id.*, at 751. *See also, Vanderbilt, supra* [full and fair opportunity to challenge a transaction which Bankruptcy Court ultimately approved, collaterally estopped subsequent challenge in state court].)

Here, too, the District Court's reversal of the Bankruptcy Court's original decision

explicitly recognized that the Carrolls had a right to litigate their claims to the Miller painting and, thereby, keep it out of Altman's bankruptcy estate (*In re Altman*, 254 BR 509 [US Dist Ct, D Conn 2000]). In fact, that court references Aryeh's contentions herein by stating that "[w]hile the Bankruptcy Court's finding that the Painting was fraudulently transferred to Carroll or that Carroll effectuated an invalid consignment of the Painting may prove accurate, Carroll has never been afforded an opportunity to present evidence to rebut these conclusions" (*id.*). Therefore, that court remanded the issue of Roberta Carroll's possible ownership interest back to the Bankruptcy Court. It stated: "The issue of whether the Painting is the property of the estate awaits determination by further proceedings in the Bankruptcy Court" (*id.*).

Such proceedings, in fact, commenced, and continued with the direct participation of Aryeh and Prin Corp. as objectors to the settlement proposed by the Carrolls and the Altman Chapter 11 Trustee – similar to the mode of participation exercised by the plaintiffs in *Loving v Abbruzzese, supra* (objections to a proposed plan of reorganization). During the hearing on those objections, Aryeh and Prin were afforded an opportunity to prove the allegations of fraud and collusion which allegedly permeated the Carrolls' purchase of the painting. Yet, the Bankruptcy Court concluded that there was an "absence of any credible evidence to support that claim" (*In re Altman*, 302 BR 424 [US Bankr Ct, D Conn 2003]). That court, further, credited the Trustee's testimony at the confirmation hearing that "his office investigated that claim and found no evidence that the transaction was anything other than in good faith" (*id.*).[6]

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[6] This action is distinguishable from *Newin Corp. v Hartford Accident & Indem. Co.* (37 NY2d 211 [1975]), where the Court denied collateral estoppel effect to a prior Bankruptcy Court settlement approval. Unlike here, the Bankruptcy Referee in that case "refused to make any finding on the validity of the plaintiffs' fraud charges" (*id.*, at 215). Here, though, the Bankruptcy Court held a hearing, and noted the absence of evidence to support plaintiff's

Accordingly, there is no basis for this court to disturb the findings of the Bankruptcy Court, or to vitiate its express mandate for turn-over of the Miller painting by defendant Berry-Hill Galleries, Inc., to intervenor-defendant Roberta Carroll. Per that disposition, neither plaintiff Benjamin Aryeh nor intervenor-defendant Prin Corp. have a superior right, inasmuch as, per that disposition, Roberta Carroll is a *bona fide* purchaser for value (*e.g.*, UCC 1-201, 2-103, 9-307).[7]

The Credible Evidence Supports Roberta Carroll's Ownership Status:

If the court were to consider the evidence at trial, independent of the decision of the Federal Courts, it would find that the credible evidence supports Roberta Carroll's ownership status vis-a-vis the Miller painting. The weight of evidence showed that Roberta Carroll satisfies the UCC definition of "buyer in ordinary course of business" (UCC 1-201 [9]): "a person that buys in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind."

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fraud charges, along with the Trustee's affirmative testimony in rebuttal of those charges.

[7] During opening arguments, counsel for Roberta Carroll made reference to the final Bankruptcy Court disposition, apprising this court that the Bankruptcy Court "made clear that Roberta Carroll was a good faith purchaser . . . ." (Tr. at 18.) Said counsel added that "[t]here was a hearing by the [Bankruptcy] Court, and the Court found, because Roberta Carroll was a good faith purchaser and there was no evidence to anything of the contrary, the Court approved that settlement" (*id.*, at 19). Although said counsel read the portions of the final Bankruptcy Court opinion, treated herein, concerning the lack of credible evidence to support plaintiff's fraud allegations, in contrast to the credibility of the Trustee's contrary testimony (*id.*, at 21), counsel for plaintiff maintained that the Carrolls' counsel misread the opinion, stating: "He doesn't read the rest of it, which clarifies it" (*id.*). This court has read the Bankruptcy Court opinion, finding no qualification whatsoever to that court's rejection of plaintiff's challenge, and unequivocally ordering the turn-over of the painting to Roberta Carroll.

It is undisputed, as the Bankruptcy Court found, that Altman was a dealer of art, and that Roberta Carroll purchased the Miller painting through the exchange of four other valuable pieces of art, minimally valued at $126,000.00, plus $20,000.00 cash (*In re Altman*, 302 BR 424 [US Bankr Ct, D Conn 2003]; *see*, UCC 1-201 [9] ["Buying may be for cash or by exchange of other property . . . ."]). The exchange transaction was negotiated and executed during normal business hours at either Altman's gallery or Carroll's office (Carroll Aff. ¶¶ 39-40, 64-69).

The criterion of good faith is further satisfied if the dealer takes reasonable steps to inquire into the title of the artwork (*Porter v Wertz*, 68 AD2d 141 [1st Dept 1979], *affd* 53 NY2d 696 [1981]). Carroll exercised reasonable measures of inquiry. Prior to the purchase, he checked various references regarding Altman's reputation within the art community, including Spanierman Gallery, Salander O'Reilly Galleries, and defendant Berry-Hill (Carroll Aff. ¶ 24). All responded favorably (*id.*; Tr. at 68).

Carroll further verified the authenticity of the Miller painting, insisting on seeing the authentication papers prior to its purchase, which consisted of the provenance bearing the label of Taggart Jorgensen & Putnam identifying the piece, and bearing the name "Women on a Terrace, Giverny." The authentication papers included written, signed, statements by two art consultants, dated March 3 and April 19, 1988, referring to the piece as "Two Women on the Terrace."

Carroll retained a search firm to investigate the existence against the painting of any public filings. The search was done in the names of "Michael Altman" and "Michael N. Altman & Co., Inc." – names under which Altman did business at the time of his association with

Carroll. No UCC financing statements were found (Carroll Aff. ¶¶ 31-32).

Importantly, the UCC financing statement filed by Cambridge in 1988 failed to adequately describe the Miller painting (UCC 9-110). Aryeh admitted that no documentary evidence exists identifying the Miller painting as anything other than "Women on a Terrace, Giverny" or "Two Women on the Terrace" (Tr. at 40-49; Exs. C, D, G, K). However, the UCC filing listed the painting as "Two Women Taking Tea." Although the name of the artist is correct, the title is not similar to the painting's title. Aryeh further acknowledged the accuracy of the Altman Fine Arts catalogue (November 2 through December 2, 1988, issue), describing the painting as "Women on a Terrace, Giverny" (Tr. at 49; Ex. U). He further admitted that, other than in the Cambridge financing statement, the painting never was referred to as "Two Women Taking Tea," nor was the word "tea" ever found in any document listing the title of the painting (Tr. at 40-42, 47-48). Furthermore, Aryeh's own check stub, recording his gallery's $50,000.00 share of the painting's purchase price, expressly acknowledges the name of the painting as "Women on a Terrace, Giverny" (Ex. K). The bill of sale itself (Ex. J) lists the painting by that name – a name appearing nowhere on the schedule of collateralized assets attached to Cambridge's 1988 UCC financing statement (Ex. 4C).

Aryeh's arguments in support of his claim are unpersuasive. Citing a Minnesota case, his counsel posits that the description "all goods whether now or hereafter acquired" suffices to encumber chattel (Prin Br. at 26; *cf.*, Ex. 4C ["All artwork . . . now owned and hereafter acquired . . . ."]). Regardless whether that is so under New York law,[8] the Cambridge

[8] There is no statutory ambiguity on this topic. Read carefully, UCC 9-504 (2), governing financing statements only, provides that a financing statement may sufficiently describe collateral if it indicates that it "covers all assets or personal property" of the debtor.

financing statement doesn't simply broadly describe the Miller painting; it affirmatively misdescribes it, by calling it, in quotation marks, "Two Women Taking Tea" (Ex. 4C [Schedule "A" at 5]). As observed, that name was invented by the drafters of the security agreement given to Cambridge and then adopted by the preparers of the Cambridge financing statement. It is not the name commonly accepted by art dealers and experts as the name for the Miller painting, which Aryeh himself acknowledged. Indeed, this court having viewed the original work during the trial, finds that the figures in the painting do not actually appear to be engaged in drinking or serving tea; rather, they appear to be engaged in conversation, somewhat oblivious to the tea service utensils on a table portrayed in the picture. One of the figures is not even seated at that table. The figures are, quite simply, and quite literally, "Women on a Terrace, Giverny" (*accord*, Ex. U [catalogue]) or "Two Women on the Terrace " (*accord*, Ex. C [experts' statements]). They are not "Two Women Taking Tea" (Ex. 4C [Schedule "A" at 5]).

Consequently, the 1988 Cambridge UCC financing statement misdescribes the Miller painting – by misnaming it – to the extent that it is "seriously misleading" (UCC 9-506 [a]).

Aryeh's preoccupation in this action with what appear to be serious infractions by Altman, as the Bankruptcy Court recognized, is, beside the point. One need only review the Bankruptcy and District Court decisions to realize the maze of apparent deceit which befell Aryeh at the hands of his former business associate, Altman. However, Aryeh's claims against

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Underlying security agreements between the debtor and creditor, on the other hand, are governed by UCC 9-108, which contrarily provides that "[a] description of collateral as 'all the debtor's assets' or 'all the debtor's personal property' or using words of similar import does not reasonably identify the collateral" (UCC 9-108 [c]).

Altman are relegated not to this court; but to the Bankruptcy Court which administers Altman's bankruptcy estate. As for Aryeh's claims against Roberta Carroll, the court finds that she is a *bona fide* purchaser for value, entitled to possession of the Miller painting, as the Bankruptcy Court ordered.

Aryeh's attempt to assert that Carroll had, in the past, engaged in unrelated "provenance laundering," as his counsel puts it (Prin Br. at 21), is rejected as irrelevant to this action.

Accordingly, it is

ORDERED and ADJUDGED that the complaint is dismissed; and it is further

ORDERED that, if they have not already done so, defendants Carol Altman and/or Berry-Hill Galleries, Inc., and/or their agents, shall turn over the Miller painting known as "Women on a Terrace, Giverny," that is the subject of this action, to Roberta Carroll no later than ten days from the date of service of a copy of this decision, order and judgment, with notice of entry on the attorneys for plaintiff, defendants, and intervenor-defendant Prin Corp.; and it is further

ORDERED that the clerk shall enter judgment accordingly, together with the costs and disbursements of this action.

Dated: November 29, 2005

ENTER:

J.S.C.