

Banach v Dedalus Foundation, Inc.
2012 NY Slip Op 30124(U)
January 9, 2012
Sup Ct, NY County
Docket Number: 600918/2009
Judge: Saliann Scarpulla
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Scargulla
Justice

PART 19

Banach, Joan

INDEX NO. 600918/09

- v -

Pedalus Foundation

MOTION DATE _____

MOTION SEQ. NO. 86

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for Dismiss Complaint

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the accompanying memorandum decision.

FILED

JAN 18 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 1/16/12

Samuel Scargulla
J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG.

☐ SETTLE ORDER/ JUDG.

CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 19

-----X
JOAN BANACH,

Plaintiff,

Index No.: 600918/2009

-against-

THE DEDALUS FOUNDATION, INC.,

DECISION AND ORDER

Defendant.
-----X

For Plaintiff:
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New York, NY 10019

For Plaintiff:
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New York, NY 10003

For Defendant:
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7 Times Square
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Papers considered in review of this motion to dismiss:

Mem of Law in support
of Motion to Dismiss 1
Aff of Lee F. Bantle 2
Mem of Law in Opposition 3
Aff of Perry M Amselem 4
Reply Mem of Law 5

FILED
JAN 18 2012
NEW YORK
COUNTY CLERK'S OFFICE

HON. SALIANN SCARPULLA, J.:

In this action between the long-time assistant to artist Robert Motherwell and the foundation dedicated to preserving and exhibiting his artwork, plaintiff Joan Banach ("Banach") moves pursuant to CPLR 3211(a)(1) and (7) to dismiss twelve counterclaims asserted against her by defendant The Dedalus Foundation, Inc. ("Dedalus").

Renowned artist Robert Motherwell ("Motherwell") formed Dedalus, originally named The Robert Motherwell Foundation, Inc., for the purpose of fostering public understanding of modern art. Dedalus is also responsible for collecting, preserving and arranging Motherwell works for exhibition. In his will, Motherwell left Dedalus all of his works that he did not specifically provide for in other will provisions.

Banach began working with Motherwell in 1981. Dedalus alleges that while working with Motherwell, Banach had full access to Motherwell's collection and was responsible for inventorying and cataloguing all of Motherwell's works. During this time, Banach also worked on several projects for Dedalus.

After Motherwell died in 1991, Banach became an employee, and later a board member, of Dedalus. At Dedalus, Banach was responsible for organizing and inventorying Motherwell's works. Banach's responsibilities included creating Motherwell's "Catalogue Raisonné," the historical monograph cataloguing Motherwell's works.

Dedalus alleges that during Banach's employment with Dedalus, she was obligated to disclose to Dedalus any Motherwell works in her possession. Dedalus further alleges that in 2005, it discovered that Banach had taken Motherwell works home without permission and was observed secretly returning the works to Dedalus. That same year, Dedalus discovered that Motherwell's "Elegy" drawing was missing from its collection. Thereafter, Dedalus searched Banach's office for the drawing and found two other

Motherwell drawings stowed there without permission. Dedalus did not find the "Elegy" drawing, but alleges that it reappeared after Dedalus asked Banach about it.

In 2008, after discovering that Banach had consigned two Motherwell works to auction house Christie's for sale, Dedalus President Jack Flam ("Flam") requested that Banach disclose all Motherwell works in her possession and those which she had previously sold. Banach confirmed via email that she possessed six, and had previously consigned four, Motherwell works. Banach acknowledged that the list was incomplete, as it did not include works she sold "through Ann Freedman at Knoedler Gallery many years ago," of which she no longer had records or images. Dedalus alleges that it did not have a record of any of the works Banach listed in her email.

In a later email, Banach stated that she acquired these works directly from Motherwell. Dedalus contends that Banach came into possession of these works unlawfully and that the works belong to Dedalus pursuant to Motherwell's will. Dedalus maintains that Motherwell never sold his works to employees and rarely gave away his works. Dedalus does acknowledge that Motherwell gifted two works to Mel Paskell ("Paskell"), Motherwell's studio assistant.

In August 2008, Dedalus fired Banach and began investigating "the provenance of works sold at auction or by dealers for which there had been no studio cards or that had come to the attention of the Catalogue Raisonné project through auction catalogues or dealers' records." During this investigation, Dedalus discovered that Banach had sold or

consigned Motherwell works in 1988, 1996 and 1997. It also discovered that ten other Motherwell works had notices on the studio cards, in Banach's handwriting, describing them as "destroyed" in 1984. Dedalus alleges that these works were not destroyed because "Motherwell was openly and notoriously averse to destroying his own works and he almost never did so."

From 1999 onward, Banach had been working primarily from home. Dedalus provided her with two computers with "remote internet access software," which allowed her to view the Catalogue Raisonné database from home. Dedalus alleges that in August 2008, Banach informed Dedalus that the software had not been working for a year and a half and that during that time, Banach "was unjustly taking a salary in excess of \$100,000.00 per year and falsely representing to Dedalus that she was carrying out her responsibilities, when in fact she was not."

After Banach's termination, Banach returned the computers Dedalus had provided her to work from home. Dedalus alleges that these computers' hard drives held electronic data about Motherwell's works, their inventory, consignment, sales, purchasers and whereabouts. According to Dedalus, both computers' hard drives were wiped clean and the relevant electronic data destroyed upon their return.

Banach commenced this action in March 27, 2009, alleging seven causes of action arising out of Dedalus's termination of her employment and membership on its Board of Directors. That same day, Dedalus filed suit against Banach in the United States District

Court for the Southern District of New York, alleging federal and state law claims. On October 15, 2009, the District Court dismissed all of Dedalus's state law claims against Banach, declining to exercise its discretionary state law jurisdiction over them.

Thereafter, Dedalus moved in this Court to dismiss six of Banach's seven causes of action. The Court granted that motion on May 27, 2010, leaving the employment discrimination cause of action.

In June 2010, Dedalus served its Answer with Counterclaims in this action, asserting six counterclaims for: 1) breach of fiduciary duty; 2) replevin; 3) unjust enrichment; 4) misappropriation and diversion of corporate opportunity; 5) conversion; and 6) trespass to chattel. Thereafter, Dedalus served an Answer with Amended Counterclaims, consisting of two-hundred-thirty-six separate paragraphs. In the Answer with Amended Counterclaims, Dedalus asserts six additional counterclaims. The seventh counterclaim is for fraud and the remaining counterclaims are for replevin, conversion, trespass to chattel, permanent mandatory injunction and permanent negative injunction as to Dedalus's Archival Material.¹ Banach now moves to dismiss the first, third, fifth,

¹Dedalus defines its "Archival Material" as "[a]ll of [Motherwell's] published and unpublished manuscripts, personal papers, records and all correspondence to and from [Motherwell] . . . together with all publication contract rights, other literary property rights and copyrights pertaining thereto, . . . including [Motherwell's] art library," as well as "all Motherwell related documents at Dedalus, including documents and correspondence that relate to Dedalus' business, finances, business methods, trade secrets, databases, pricing, sales, consignments, collection, invoices, inventories, ownerships and provenance of all Motherwell works, the Catalogue Raisonné, the Prints Catalogue Raisonné, consignment activities, including documents and correspondence by and between Dedalus and art galleries, collectors, curators, museums and private art dealers . . ."

sixth, seventh, eighth, ninth, tenth, eleventh and twelfth counterclaims in their entirety, and the second and fourth counterclaims in part.

Discussion

On a motion to dismiss pursuant to CPLR §3211, the pleading is to be afforded a liberal construction. The sole inquiry is whether, according the facts alleged in the complaint every favorable inference, any cognizable cause of action can be made out. *See Leder v. Spiegel*, 31 A.D.3d 266 (1st Dept. 2006) *aff'd* 9 N.Y.3d 836 (2007); *Franklin v. Winard*, 199 A.D.2d 220 (1st Dept. 1993).

In its first counterclaim, Dedalus alleges that Banach breached her fiduciary duty by (i) failing “to disclose, for her personal gain, the existence of numerous works owned by Dedalus,” (ii) failing to assign inventory numbers to Motherwell works, and (iii) secretly misappropriating and selling Motherwell works belonging to Dedalus.

Dedalus’s third allegation, that Banach breached her fiduciary duty by misappropriating and selling art belonging to Dedalus, is duplicative of Dedalus’s conversion counterclaim. “A cause of action is duplicative of another when they both arise out of the same facts and allege the same damages.” *Corsello v. Verizon N.Y., Inc.*, 77 A.D.3d 344, 370 (2d Dept. 2010). This counterclaim arises out of the same facts as Dedalus’s conversion counterclaim. Further, Dedalus alleges the same damages in both counterclaims. Thus, to the extent that Dedalus’s breach of fiduciary duty counterclaim is based upon Banach’s alleged conversion of Motherwell art, it is dismissed. *See Gold Sun Shipping v. Ionian*

Transp., 245 A.D.2d 420, 421 (2d Dept. 1997) (dismissing breach of fiduciary duty cause of action sounding in conversion “because the legal remedy for conversion would have afforded the plaintiffs full and complete relief”).

However, the Court will not dismiss the breach of fiduciary duty counterclaim as to the allegations that Banach failed to disclose her possession or sale of Motherwell art and failed to give and record inventory numbers to Motherwell’s works. Banach argues that Dedalus has failed to sufficiently allege damages flowing from these alleged breaches of Banach’s fiduciary duties. Though “the proponent of a claim for a breach of fiduciary duty must, at a minimum, establish at trial that the offending parties’ actions were ‘a substantial factor’ in causing an identifiable loss,” *Gibbs v. Breed, Abbot & Morgan*, 271 A.D.2d 180, 189 (1st Dept. 2000) (quoting *Millbank, Tweed, Hadley & McCloy v. Chan Cher Boon*, 13 F.3d 537, 543 (2d Cir. 1994)), the purpose of a breach of fiduciary duty action “is not merely to compensate the plaintiff for wrongs committed by the defendant but” also to prevent those wrongs. *Diamond v. Oreamuno*, 24 N.Y.2d 494, 498 (1969) (internal quotations omitted). Thus, Dedalus is not required at the pleading stage to specify with exacting detail the damages flowing from these alleged breaches. See *Diamond*, 24 N.Y.2d at 498.

In its second counterclaim, Dedalus seeks to replevy “all Motherwell works rightfully owned by Dedalus but subsequently wrongfully seized by Banach.” Banach argues that any claim to recover works wrongfully seized before March 27, 2006 is time-

barred. Both parties agree that the statute of limitations on replevin claims is three years from the date of theft, not the date of discovery. *See Solomon R. Guggenheim Foundation v. Lubell*, 153 A.D.2d 143, 146 (1st Dept. 1990). Dedalus, however, maintains that Banach should be equitably estopped from asserting the statute of limitation as a defense because her subsequent acts of concealment by altering Dedalus's records prevented Dedalus from discovering her theft. *See Putter v. North Shore Univ. Hosp.*, 7 N.Y.3d 548, 553-54 (2006).

Banach argues that Dedalus may not invoke equitable estoppel here because Banach's alleged act of concealing her possession and sale of the Motherwell works was the same as her act of taking the works. *See Kaufman v. Cohen*, 307 A.D.2d 113, 122 (1st Dept. 2003) ("[E]quitable estoppel does not apply where the misrepresentation or act of concealment underlying the estoppel claim is the same act which forms the basis of plaintiff's underlying substantive cause of action"). The Court disagrees. Dedalus's allegation that Banach altered the company's records to show that the Motherwell works were lost is separate from its allegation that she physically stole the works. Dedalus's concealment allegations may form the basis of an equitable estoppel assertion. *See Matter of Spewack*, 203 A.D.2d 133, 134 (1st Dept. 1994).

Banach maintains that, in any event, Dedalus may not invoke equitable estoppel because Dedalus admits that in 2005, "it learned of the existence of, and third-party assertions of ownership over, several of the works it contends Banach wrongfully

acquired. . . .” A plaintiff with “sufficient knowledge of the possible existence of a claim” has a duty to inquire and “ascertain all the relevant factors before the statute of limitation expires,” *Estate of Boyle v. Smith*, 15 A.D.3d 338, 339 (2d Dept. 2005).

Here, Dedalus alleges only that it discovered that Banach had taken works home and stored them in her office without authorization in 2005. It was not until 2008 that Dedalus alleges that it discovered that Banach had been surreptitiously selling Motherwell works.

Based upon the allegations contained in the Answer with Amended Counterclaims, Dedalus has sufficiently pled facts from which a trier of fact may apply equitable estoppel to toll the statute of limitations on the replevin counterclaim. Whether Dedalus had sufficient knowledge to impose on it a duty to investigate the alleged theft is an issue of fact which may not be determined on this preanswer motion to dismiss. *See Norwalk v. J.P. Morgan & Co.*, 268 A.D.2d 413, 415 (2d Dept. 2000). The motion to dismiss the second counterclaim for replevin is therefore denied.²

Dedalus’s third counterclaim for unjust enrichment is based on allegations that Banach: i) misappropriated Motherwell works from Dedalus, and ii) unjustly received a salary from Dedalus for the year and half that Dedalus alleges Banach was performing no

²The Court notes that Dedalus may not assert a replevin counterclaim for any works that Banach has already sold because “a cause of action sounding in replevin must establish that the defendant is *in possession of* certain property of which the plaintiff claims to have a superior right.” *Batsidis v. Batsidis*, 9 A.D.3d 342, 343 (2d Dept. 2004) (emphasis added).

work from home. As to the misappropriation allegation, “[t]here is no indication that the remedy afforded by plaintiff’s conversion and replevin claims would be in any way inadequate.” *Kapernekas v. Brandhorst*, 638 F. Supp. 2d 426, 428 (S.D.N.Y. 2009). *See also Samiento v. World Yacht Inc.*, 10 N.Y.3d 70, 81 (2008); *Gold Sun Shipping*, 245 A.D.2d at 421. Further, Dedalus fails to state a viable unjust enrichment counterclaim to recover salary it paid Banach. New York Labor Law § 193 “prohibits claims against former employees for allegedly negligent acts or for lost profits caused by poor performance.” *Gortat v. Capala Bros.*, 585 F. Supp. 2d 372, 372 (E.D.N.Y. 2008). *See also Rivers v. Butterhill Realty*, 145 A.D.2d 709, 710-11 (3d Dept. 1988). Dedalus may not avoid the prohibition of Labor Law § 193 by asserting a counterclaim sounding in unjust enrichment for salary it paid to Banach when she was allegedly not fulfilling her job duties. Accordingly, the Court dismisses the third counterclaim for unjust enrichment.³

In its fourth counterclaim, Dedalus asserts that Banach misappropriated “Dedalus’ corporate opportunities to sell and/or retain and preserve works sold or misappropriated by Banach . . .” A corporate opportunity is “any property, information, or prospective business dealing in which the corporation has an interest or tangible expectancy or which

³ Dedalus also argues that it is entitled to recovery because Banach acted inconsistently with her fiduciary duties by not working while still receiving a salary. *See Bon Temps Agency, Ltd v. Greenfield*, 184 A.D.2d 280, 281 (1st Dept. 1992). But in its unjust enrichment counterclaim, Dedalus does not seek to recover wages because Banach breached her fiduciary duty to Dedalus, but because she did not perform her job duties.

is essential to its existence or logically and naturally adaptable to its business.”

Greenberg v. Greenberg, 206 A.D.2d 963, 964 (4th Dept. 1994) (citing *Alexander & Alexander v. Fritzen*, 147 A.D.2d 241 (1st Dept. 1989)). Here, the Court finds that Dedalus has sufficiently pled a loss of its opportunity to amass and sell, on the most favorable terms, Motherwell art allegedly improperly held by Banach. With respect to the limitation period of this counterclaim, for the reasons set forth above, application of a statute of limitations defense must await discovery on Dedalus’s equitable estoppel assertion.

In its fifth counterclaim, Dedalus seeks to recover for all Motherwell works Banach allegedly converted from Dedalus. “[I]n order to assert a cause of action for conversion . . . a plaintiff must have exercised ownership, possession or control of the property in the first place.” *Soviero v. Carroll Group Intl., Inc.*, 27 A.D.3d 276, 277 (1st Dept. 2006) (internal citations omitted). *See also Petty v. Barnes*, 70 A.D.3d 661, 662 (2d Dept. 2010). Here, Dedalus never took ownership of, or had a vested interest in, any Motherwell works until Motherwell died and his estate distributed them. *See Thea v. Thea*, 284 A.D.2d 245, 245 (1st Dept. 2001); *Ponnambalam v. Sivaprakasapillai*, 35 A.D.3d 571, 573 (2d Dept. 2006). Thus, the conversion cause of action fails as to any works Banach allegedly converted before Motherwell’s death in 1991.

Banach also argues that Dedalus’s conversion counterclaim is too vague to state a viable cause of action because it does not specify which Motherwell works Banach

allegedly converted. In its Answer and Amended Counterclaims, Dedalus lists several works by name which it contends Banach wrongfully converted and consigned.

Moreover, Dedalus alleges that the works Banach listed in her August 19, 2008 email to Flam belonged to Dedalus.⁴ Accepting the truth of these factual allegations, *see JFK Holdings Co., LLC v. City of New York*, 68 A.D.3d 477, 477 (1st Dept. 2009), Dedalus has pled a viable cause of action for conversion for all works alleges Banach stole from Dedalus after Motherwell's death in 1991.

In its sixth counterclaim for trespass to chattel, Dedalus alleges that Banach intentionally deleted hard drive data on the computers it provided her to work from home. To be liable for trespass to chattel, Banach must have intentionally dispossessed, used or intermeddled with Dedalus's property. *See Yo! Braces Orthodontics, PLLC v. Theodorou*, 2011 N.Y. Misc. LEXIS 1820, at *8 (Sup. Ct. N.Y. County 2011). Dedalus alleges that Banach "knowingly and intentionally caused the removal and/or destruction of all relevant data" on the hard drives of the computers it provided her to work from home. Accepting the truth of these allegations, as is required on a preanswer motion to dismiss, Dedalus has satisfied the elements required to state a trespass to chattel counterclaim. *See Hecht v. Components Intl, Inc.*, 22 Misc. 3d 360, 370 (Sup Ct. Nassau

⁴These works were allegedly converted before March 27, 2006, and the statute of limitations for conversion is three years from the date of theft. *See* CPLR 214. However, as with Dedalus's replevin counterclaim, the Court will not dismiss this counterclaim as time-barred until further discovery is conducted to determine whether Dedalus may assert equitable estoppel to toll the statute of limitations.

Cty. 2008) (“Interference with information stored on a computer may give rise to trespass to chattel if plaintiff is dispossessed of the information or the information is impaired as to its condition, quality or value.”).⁵

Further, Dedalus has stated a viable cause of action on its seventh counterclaim for fraud. In this counterclaim, Dedalus alleges that Banach made false entries in Dedalus’s books, records and inventory in 1998 and 1999. Banach argues that this counterclaim is time-barred because Dedalus did not assert it within the greater of six years or two years from the time in which Dedalus “discovered the fraud or could with reasonable diligence have discovered it.” *See* CPLR § 213(8). “[T]he issue of when a plaintiff could have discovered an alleged fraud turns upon whether the plaintiff possessed knowledge of facts from which he [or she] could reasonably have inferred the fraud.” *Saphir Intl., SA v. UBS Painewebber Inc.*, 25 A.D.3d 315, 315-16 (1st Dept. 2006) (quoting *Schmidt v. McKay*, 555 F.2d 30, 37 (2d Cir. 1977)).

Banach contends that Dedalus was on notice of the alleged fraudulent scheme in 2005 when it suspected Banach of taking Motherwell works home and storing them in her office without Dedalus’s authorization. At this point, the Court has insufficient

⁵Banach argues that Dedalus contradicts itself by alleging that the information on the hard drives was critical while also alleging that Banach did no work for the two and a half years prior to her termination when she did not have remote access but did have access to the hard drive data. Banach’s argument is based on the assumption that the information on the hard drive would allow Banach to perform her job duties without having remote access, which Dedalus does not allege. As the Court is required to give Dedalus every favorable inference in its pleadings, *see Leder*, 31 A.D.3d at 267, I decline to make this assumption at this point.

information to determine whether at that time Dedalus had any more than a suspicion that Banach was engaging in fraudulent activity. *See Erbe v. Lincoln Rochester Trust Co.*, 3 N.Y.2d 321, 326 (1957) (“[K]nowledge of the fraudulent act is required and mere suspicion will not constitute a sufficient substitute.”). As the extent of Dedalus’s knowledge has not yet been explored in discovery, the Court will not dismiss the fraud counterclaim as time-barred. *See Saphir Intl., SA*, 25 A.D.3d at 316 (The question of when a plaintiff could have discovered a fraud “involves a mixed question of law and fact, and, where it does not conclusively appear that a plaintiff had knowledge of facts from which the alleged fraud might be reasonably inferred, the cause of action should not be disposed of summarily on statute of limitation grounds.”).

Banach further maintains that Dedalus had sufficient knowledge of the alleged fraud in 2008 when it conducted its investigation of the works sold by Banach, and that the Amended Counterclaims were filed in December 2010, more than two years after this investigation. Dedalus further contends that the fraud allegations do not relate back to the original Answer with Counterclaims, filed in Jun 2010.⁶

Pursuant to CPLR § 203(f), a “claim asserted in an amended pleading is deemed to have been interposed at the time other claims in the original pleading were interposed, unless the original pleading does not give notice of the transactions, occurrences, or series

⁶Dedalus argues that the amended counterclaims relate back to the federal claims it filed in March 2009. However, Dedalus’s Answer with Amended Counterclaims may not relate back to the federal action as that “is a separate lawsuit in a different jurisdiction” *Williams v. State*, 235 A.D.2d 776, 777 (3d Dept. 1997).

of transactions or occurrences, to be proved pursuant to the amended pleading.” The original Answer with Counterclaims was based on allegations of Banach’s wrongful possession and sale of Motherwell works, and her failure to disclose as much to Dedalus. The fraud counterclaim in the Answer with Amended Counterclaims arises from two further instances of related wrongful conduct, thus it is a “mere expansion” of the allegations in the prior pleading. *See Pendleton v. City of N.Y.*, 44 A.D.3d 733, 737 (2d Dept. 2007).

Lastly, Dedalus’s Archival Material counterclaims are dismissed. A pleading must “enable the defendant to determine the nature of the plaintiff’s grievance and the relief he seeks in consequence of the alleged wrongs.” *Shapolsky v. Shapolsky*, 22 A.D.2d 91, 91 (1st Dept. 1964). In the counterclaims concerning Archival Material, Dedalus fails to sufficiently and specifically allege what “Archival Material” is at issue, fails to specify what Banach has done with such material which constitutes a legal wrong, and fails to specify how Dedalus was damaged. As pled, these counterclaims do not put Banach on fair notice as to what she is to defend. *See Shapolsky*, 22 A.D.2d at 91; *Gordon v. Dino De Laurentiis Corp.*, 141 A.D.2d 435, 436 (1st Dept. 1988) (“the pleadings must set forth facts showing the damage upon which the action is based”). The dismissal of the counterclaims concerning Archival Material is without prejudice.

In accordance with the foregoing, it is

ORDERED that plaintiff Joan Banach’s motion to dismiss the counterclaims

asserted against her is granted to the extent that the third counterclaim for unjust enrichment is dismissed, and the eighth, ninth, tenth, eleventh and twelfth counterclaims are dismissed without prejudice; and it is further

ORDERED that the first counterclaim is dismissed only with respect to the allegation that plaintiff Joan Banach breached her fiduciary duty by misappropriating and selling artwork belonging to Dedalus; and it further

ORDERED that the second counterclaim is dismissed as to all Motherwell works of which plaintiff Joan Banach is no longer in possession; and it is further

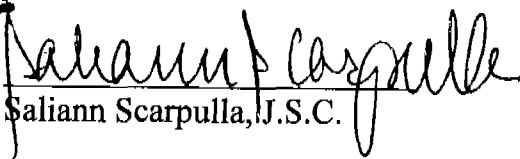
ORDERED that the fifth counterclaim is dismissed as to all Motherwell works that plaintiff allegedly converted before Motherwell's death in July 1991, and the motion is otherwise denied.

This constitutes the decision and order of the Court.

Dated: New York, New York
January 9, 2012

FILED
JAN 18 2012
NEW YORK
COUNTY CLERKS OFFICE

ENTER:


Saliann Scarpulla, J.S.C.