

Sotheby's, Inc. v Nature Morte LLC
2020 NY Slip Op 31810(U)
June 10, 2020
Supreme Court, New York County
Docket Number: 655636/2017
Judge: Andrew Borrok
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

-----X

SOTHEBY'S, INC,

Plaintiff,

- v -

NATURE MORTE LLC, ANATOLE SHAGALOV,

Defendant.

-----X

INDEX NO. 655636/2017

MOTION DATE 01/15/2020

MOTION SEQ. NO. 016

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 016) 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 353, 354, 355, 356, 357, 358, 359, 360

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER)

Upon the foregoing documents, Sotheby's, Inc.'s (Sotheby's) motion for summary judgment against Nature Morte LLC and Anatole Shagalov (collectively, the Defendants) pursuant to CPLR § 3212 is granted.

The Relevant Facts and Circumstances

This action arises from the sale of an artwork, Untitled (1982), by Keith Haring (the Work) at a Sotheby's auction on May 18, 2017 (the Auction), which was consigned to Sotheby's by a private party (NYSCEF Doc. No. 325, ¶¶ 3-4). Sotheby's invited certain individuals to attend the Auction, including Mr. Shagalov, who ultimately purchased the Work through his company, Nature Morte LLC (Nature Morte). In order to participate in the Auction, Nature Morte was required to execute certain agreements as set forth below.

Reference is made to a Paddle Registration Form (the **Paddle Registration Form**; NYSCEF Doc. No. 328), dated May 18, 2017, by and between Sotheby's, Nature Morte, and Mr. Shagalov, whereby the Defendants agreed "to be bound by Sotheby's Conditions of Sale which are published in the catalogue for this sale, including payment of buyer's premium and all/any applicable taxes."

The Conditions of Sale (the **Conditions of Sale**; NYSCEF Doc. No. 329) apply to all bidders and purchasers at a Sotheby's sale and provide that all property is sold at auction on an "as is" basis:

1. **As Is** Goods auctioned are often of some age. The authenticity of the Authorship (as defined below) of property listed in the catalogue is guaranteed as stated in the Terms of Guarantee and except for the Limited Warranty contained therein, all property is sold "AS IS" without any representations or warranties by us or the Consignor as to merchantability, fitness for a particular purpose, the correctness of the catalogue or other description of the physical condition, size, quality, rarity, importance, medium, frame, provenance, exhibitions, literature or historical relevance of any property and no statement anywhere, whether oral or written, whether made in the catalogue, an advertisement, a bill of sale, a salesroom posting or announcement, or elsewhere, shall be deemed such a warranty, representation or assumption of liability. We and the Consignor make no representations and warranties, express or implied, as to whether the purchaser acquires any copyrights, including but not limited to, any reproduction rights in any property. We and the Consignor are not responsible for errors and omissions in the catalogue, glossary, or any supplemental material. Sotheby's will not be responsible or liable for damage to frames and glass coverings, regardless of the cause.

(*id.* at 1).

Further, the Conditions of Sale provide that the identity of the seller will not be disclosed:

Provenance In certain circumstances, Sotheby's may print in the catalogue the history of ownership of a work of art if such information contributes to scholarship or is otherwise well known and assists in distinguishing the work of art. However, the identity of the seller or previous owners may not be disclosed for a variety of reasons. For example, such information may be excluded to accommodate a seller's

request for confidentiality or because the identity of prior owners is unknown given the age of the work of art.

(*id.* at 3).

The Conditions of Sale also provide that a buyer's premium, payable by the purchaser, forms part of the purchase price, to be calculated as follows:

3. Buyer's Premium A buyer's premium will be added to the hammer price and is payable by the purchaser as part of the total purchase price. The buyer's premium is 25% of the hammer price up to and including \$250,000, 20% of any amount in excess of \$250,000 up to and including \$3,000,000, and 12.5% of any amount in excess of \$3,000,000.

(*id.* at 1).

The Conditions of Sale expressly state that the contract between consignor and purchaser is concluded on the fall of the auction hammer and the winning bidder must immediately pay the full purchase price. Absent compliance by the purchaser, Sotheby's is entitled to resell the Work by private sale:

9. Purchaser's Responsibility Subject to fulfillment of all of the conditions set forth herein, *on the fall of the auctioneer's hammer, the contract between the consignor and the purchaser is concluded, and the winning bidder thereupon will immediately pay the full purchase price or such part as we may require.* Title in a purchased lot will not pass until Sotheby's has received the full purchase price in cleared funds. The purchaser's obligation to immediately pay the full purchase price or such part as we may require is absolute and unconditional and is not subject to any defenses, setoffs or counterclaims of any kind whatsoever ... *If any applicable conditions herein are not complied with by the purchaser, the purchaser will be in default and in addition to any and all other remedies available to us and the Consignor by law, including, without limitation, the right to hold the purchaser liable for the total purchase price, including all fees, charges and expenses more fully set forth herein, we, at our option, may (x) cancel the sale of that, or any other lot or lots sold to the defaulting purchaser at the same or any other auction, retaining as liquidated damages all payments made by the purchaser, or (y) resell the purchased property, whether at public auction or by private sale, or (z) effect any combination thereof. In any case, the purchaser will be liable for any deficiency, any and all costs, handling charges, late charges, expenses of both sales, our*

commissions on both sales at our regular rates, legal fees and expenses, collection fees and incidental damages ...

(*id.* [emphasis added]).

Further, the Conditions of Sale specify that payment is due immediately after the sale, unless Sotheby's grants the purchaser an extended payment plan and that third-party financing is only permissible upon prior agreement with Sotheby's:

BUYING AT AUCTION

...

4. AFTER THE AUCTION

Payment If your bid is successful, you can go directly to Post Sale Services to make payment arrangements. Otherwise, your invoice will be mailed to you. The final price is determined by adding the buyer's premium to the hammer price on a per-lot basis. Sales tax, where applicable, will be charged on the entire amount. *Payment is due in full immediately after the sale. However, under certain circumstances, Sotheby's may, in its sole discretion, offer bidders an extended payment plan.* Such a payment plan may provide an economic benefit to the bidder. *Credit terms should be requested at least one business day before the sale. However, there is no assurance that an extended payment plan will be offered.* Please contact Post Sale Services or the specialist in charge of the sale for information on credit arrangements for a particular lot. *Please note that Sotheby's will not accept payments for purchased lots from any party other than the purchaser, unless otherwise agreed between the purchaser and Sotheby's prior to the sale.*

(*id.* at 3 [emphasis added]).

The Conditions of Sale also provide that Sotheby's may require a guarantee as security for a bid

(*id.* at 1). In this case, Sotheby's required Mr. Shagalov to guarantee the obligations of Nature Morte.

To wit, reference is made to a Personal Guarantee (the **Guarantee**; NYSCEF Doc. No. 327), dated May 18, 2017, by and between Sotheby's and Mr. Shagalov as guarantor pursuant to which Mr. Shagalov provided an irrevocable and unconditional guarantee of:

... any and all liabilities of [Nature Morte] to Sotheby's, including without limitation, the full and complete performance and observance of all of the covenants, representations, warranties and indemnities, and prompt and full payment, when due, of all of the obligations of [Nature Morte] under the terms of the Conditions of Sale and Terms of Guarantee applicable to the Auction (the "Agreement") required to be performed, observed and paid by the Company and its successors and assigns.

(*id.* at 1 [emphasis added]).

It is undisputed that Nature Morte was the winning bidder of the Work at the Auction (NYSCEF Doc. No. 325, ¶ 5) and that Sotheby's submitted an invoice (the **Invoice**; NYSCEF Do. No. 331), dated May 19, 2017, the "hammer price" of the Work was \$5,600,000 with a buyer's premium of \$938,500, for a total purchase price of \$6,537,500. The Invoice also provided that the purchaser was subject "to the Conditions of Sale and Terms of Guarantee" and that

Payment is due immediately after the sale. It is Sotheby's policy to accept payment only from the buyer named on the invoice. *We reserve the right to decline payments received from anyone other than the invoiced party.*

(*id.* [emphasis added]).

After the Auction, Mr. Shagalov sent a number of emails and text messages to Sotheby's representatives that confirmed his obligation to pay for the Work. For example, in a text message sent on June 18, 2017 from Mr. Shagalov to Sotheby's representative, Gail Skelly, Mr. Shagalov advised that he would "be in touch with [Ms. Skelly] tomorrow afternoon with details on payment" (NYSCEF Doc. No. 333).

In text messages between Mr. Shagalov and Sotheby's representative, Bartolomé Fierro March, Mr. March requested to talk about payment for the Work on July 12, 2017, to which Mr. Shagalov responded, "Absolutely" (NYSCEF Doc. No. 332). On July 14, 2017, Mr. Shagalov texted Mr. March that the "[m]ajority of the money is being organized for next week. I'm working out the difference today. And will fill you in on the details around 3 today" (*id.*).

By email, dated August 23, 2017, Mr. Shagalov advised Ms. Skelly that he would pay 10% of the payment on the Work and that he had sold another work that would enable payment of the remaining purchase price (NYSCEF Doc. No. 334). In September 2017, when payment was still not received, Sotheby's representatives contacted a number of bidders to gauge their interest in buying the Work (NYSCEF Doc. Nos. 337-340).

By letter (the **October 3 Letter**; NYSCEF Doc. No. 336), dated October 3, 2017, Sotheby's advised Mr. Shagalov of its intent to resell the Work privately on October 13, 2017, pursuant to the Conditions of Sale and New York Uniform Commercial Code (UCC) § 2-706(3), due to the Defendants' failure to make any payment. Sotheby's further reserved its rights under UCC § 2-706(1) to recover the difference between the resale price and contract price, together with incidental damages (*id.*).

On October 13, 2017, the Work was sold to an undisclosed bidder in a private sale for the purchase price of \$4,400,000 (NYSCEF Doc. No. 341). On the same date that the Work was resold, Mr. George Wang, on behalf of Mr. Shagalov advised by email that Mr. Shagalov identified a third-party buyer for the Work and requested a delay of the sale while arrangements

were finalized with the purported buyer (NYSCEF Doc. No. 342). Mr. Shagalov now alleges that the Work was resold for too little. He does not however adduce any expert valuation or other evidence in support of this contention.

Sotheby's commenced this action for (1) breach of contract against Nature Morte and Mr. Shagalov, (2) breach of contract against Mr. Shagalov, and (3) account stated against Nature Morte and Mr. Shagalov (the **Complaint**; NYSCEF Doc. No 1). In their Answer, the Defendants' plead the following affirmative defenses: (1) failure to state a claim, (2) that Sotheby breached its promise to extend the period of payment, (3) failure to mitigate, (4) set off, (5) failure to satisfy conditions precedent, (6) claims barred by the relevant agreements, and (6) breach of the covenant of good faith and fair dealing (NYSCEF Doc. No. 7).

Sotheby's now moves for summary judgment as to (i) liability on all causes of action in its Complaint, (ii) damages against the Defendants in the sum of \$1,508, 750, and (iii) an inquest to determine additional damages.

Discussion

On a motion for summary judgment, the movant "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986], citing *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). The opposing party must then "produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact" that its claim rests upon (*Zuckerman v New York*, 49 NY2d 557, 562 [1980]).

A. Breach of Contract (First and Second Causes of Action)

1. Liability for the Breach of Contract Claim

Sotheby's argues that it has met its burden on summary judgment to establish each element of its claim for the Defendants' breach of contract. The court agrees. The elements of a claim for breach of contract are (1) the existence of a contract, (2) the plaintiff's performance, (3) the defendant's breach and (4) resulting damages (*Harris v Seward Park Hous. Corp.*, 79 AD3d 425, 426 [1st Dept 2010]).

In support of the instant motion, Sotheby's adduces the affidavit of Aimee M. Scillieri, Vice President and Associate General Counsel of Sotheby's with the relevant documentary evidence, including the Paddle Registration Form, Conditions of Sale, and Guarantee (NYSCEF Doc. Nos. 325, 327, 328, 329). At his deposition on April 4, 2018, Mr. Shagalov acknowledged that he signed the Paddle Registration Form and agreed to be bound by Sotheby's Conditions of Sale, thereby binding Nature Morte to the obligations therein (NYSCEF Doc. No. 349, at 300:9-301:6). Further, Mr. Shagalov executed the Guarantee, which required him to cover all obligations of Nature Morte for the Work (NYSCEF Doc. No. 327). As a result, Sotheby's has established the existence of the relevant contracts.

It is well settled that in the formation of a contract, a party is bound by all those terms that one should reasonably know or should have known of, regardless of whether one was actually aware of such terms (*Hessel v Christie's Inc.*, 399 F Supp 2d 506, 516 [SDNY 2005], citing *Williston on Contracts*, § 4:9). The same principle applies in the context of a bid at an auction, i.e., that a

bidder is bound by the terms of an auction sale even if the bid was made in ignorance of the same (*id.*).

Here, the “Conditions of Sale and Terms of Guarantee” were Sotheby’s and the consignor’s “entire agreement” with Nature Morte, to which Nature Morte agreed to be bound when it chose to participate and bid at the Auction (NYSCEF Doc. No. 329). The Conditions of Sale also provide that “on the fall of the auctioneer’s hammer, the contract between the consignor and the purchaser is concluded, and [Nature Morte] thereupon will immediately pay the full purchase price or such part as we may require” (*id.*). Thus, once Nature Morte made the highest bid at the Auction, Nature Morte was required to pay the full purchase price of the Work immediately (*see Christie’s Inc. v Dominica Holding Corp.*, 2006 US Dist LEXIS 49251, at *12, n 13 [SDNY 2006] [sale complete when defendant made successful bid at auction and defendant agreed to be bound by terms in catalogue when they placed the bid]). Further, the Conditions of Sale expressly state that Sotheby’s would not accept payment from “any party other than the purchaser” or extend an extended payment plan unless an agreement was reached with the purchaser “*prior to the sale*” (NYSCEF Doc. No. 329, at 3).

It is undisputed that Nature Morte and/or Mr. Shagalov have made no payment for the Work to date (NYSCEF Doc. No. 325, ¶ 7). Under these circumstances, Sotheby’s has established its *prima facie* case for summary judgment regarding Nature Morte’s breach of the Conditions of Sale and Mr. Shagalov’s breach of the Guarantee.

In opposition, the Defendants argue that the instant motion for summary judgment should be denied because Sotheby's: (i) did not present an affidavit of a person with knowledge in support of its motion, (ii) did not provide a copy of the pleadings with its moving papers, (iii) failed to acknowledge the Defendants' affirmative defenses, (iv) failed to identify the Defendants' alleged breach, and (v) ignored material issues of fact. The Defendants' arguments are unavailing.

As an initial matter, although the Defendants filed their opposition eight business days after the contemplated deadline, the court will nevertheless consider the opposition as Sotheby's was not prejudiced by the late filing and provided a reply (*see Guzzetti v City of NY*, 32 AD3d 234, 234 [1st Dept 2006]).

To the extent that the Defendants argue that Sotheby's failed to include an affidavit of a person with knowledge, the argument fails. Mr. Shagalov admits that he was the winning bidder and does not deny his obligation to pay the Invoice. The gravamen of his contention is that the amount owed should be less because the work was sold for too little and that he was prevented from paying for it based on the resale. In any event, Ms. Scillieri is an employee of Sotheby's who attests that her affidavit in support of the instant motion was made with personal knowledge due to her review of Sotheby's business records which made and kept in the regular course of its business (NYSCEF Doc. No. 325, ¶¶ 1-2). She further attests to the authenticity of the attached documentary evidence such that the Defendants' unsubstantiated allegations regarding her lack of knowledge are insufficient to ground any rejection of the record adduced by Sotheby's (*see First Interstate Credit Alliance, Inc. v Sokol*, 179 AD2d 583, 584 [1st Dept 1992]). Inasmuch as Sotheby's did not attach its Complaint to the moving papers, this omission is not fatal where the

pleadings were attached to the reply, as was done in this case, and the Defendants suffered no prejudice (*see Montalvo v Episcopal Health Servs., Inc.*, 172 AD3d 1357, 1359 [2d Dept 2019]; CPLR § 2001).

In his affidavit in opposition, Mr. Shagalov attests that he previously used third-party financing to purchase pieces over \$500,000 and that the principal auction houses he worked with were aware of this process (NYSCEF Doc. No. 354, ¶ 5). He further attests that he was approached by Sotheby agents to participate in the auction for the Work to drive up the price, and that he was clear that he could only do so with third-party financing (*id.*, ¶ 7). Mr. Shagalov asserts that he advised Adam Chinn, a senior Sotheby's executive, that he would obtain financing for 100% of the Work's purchase price and Mr. Chinn responded that Mr. Shagalov had "30-60-90 days for payment" (*id.*, ¶ 8; NYSCEF Doc. No. 348, at 62-63).

However, these facts are simply insufficient to raise a material issue of fact for trial. Review of the communications (NYSCEF Doc. Nos. 332-335) indicates that Mr. Shagalov merely advised Sotheby's of his intent to obtain third-party financing and in fact, in such messages, it is clear that Sotheby's continued to remind Mr. Shagalov that the money remained due.

To wit, Ms. Skelly texted Mr. Shagalov on June 17, 2017:

Hi Anatole, hope you are feeling better. I wanted to check in with you and leave a gentle reminder that payment for your purchase is due on Monday. Please confirm and thanks.

(NYSCEF Doc. No. 333).

In addition, Mr. March texted Mr. Shagalov on July 12, 2017:

Let's talk Friday regarding the payment. I have a meeting with Adam and Gail Friday at lunch time and I need to give them an answer regarding this payment. Thank you ... I need to give them a firm answer when the funds will be at sothebys account.

(NYSCEF Doc. No. 332).

Per the terms of the agreements discussed above, Sotheby's was not obligated to accept any financing or extended payment plan arrangement which financing agreement was, in any event, supposed to be requested at least one business day in advance of the sale. Equally significant, there simply is no indication written or otherwise which supports the notion that Sotheby's agreed to an extended payment plan beyond 90 days or to waive its rights to resell the Work when Sotheby's failed to receive payment as required. Further, Mr. Shagalov's claim that the parties had agreed to enter into an extended payment plan is undermined by his failure to provide any details as to when the parties reached this purported agreement and/or any of the material terms of such purported extended payment plan or that such payment plan permitted payment some five months after the Auction, the text messages discussed above, and his failure to adduce any evidence of any objection to the resale based on any such alleged agreement in response to Sotheby's 10 days-notice of its intent to resell the Work as it was permitted to do. Indeed, the evidence is that by counsel Mr. Shagalov merely asked on the day of the resale for delay of the resale purporting to have found another purchaser (i.e., as opposed to an email objecting to the sale based on an alleged agreement as one would expect if such agreement in fact existed)

(NYSCEF Doc. No. 342).

In any event, and fatal to the Defendants' argument, even if Nature Morte was permitted to pay up to 90 days after the Auction as Mr. Shagalov claims – i.e. by August 18, 2017 – the Defendants indisputably failed to do so prior to its subsequent sale in October 2017 (i.e.,

approximately 150 days after the auction) (NYSCEF Doc. No. 348, 179:24-180:3). Put another way, the Defendants' failure to pay for the Work, whether payment was due immediately as indicated by the relevant agreements or 90 days after the Auction crediting Mr. Shagalov's unsupported assertion, constitutes a breach of the Conditions of Sale.

2. Damages for the Breach of Contract Claim

Pursuant to the UCC §2-703, a seller may resell and recover damages where a buyer fails to make payment before delivery of the goods. Pursuant to UCC § 2-706(1), a seller's resale made in good faith and in a commercially reasonable manner permits recovery of the difference between the resale price and the contract price, together with any incidental damages less expenses saved resulting from the buyer's breach. Further, UCC § 2-706(3) requires that the seller give the buyer reasonable notice of intention to resell when the resale is held privately.

Here, Sotheby's decided to resell the Work in October 2017, five months after the Auction and after it made further attempts in September 2017 to contact other individuals for resale of the Work (NYSCEF Doc. Nos. 337-340). In the October 3 Letter, Sotheby's provided 10 days-notice to the Defendants of its intent to resell the Work (NYSCEF Doc. No. 336). In addition, Sotheby's adduced the expert report of Elizabeth von Habsburg, Appraiser at Winston Art Group, dated December 14, 2018, who appraised the fair market value of the Work to be \$4,400,000 as of October 13, 2017 (NYSCEF Doc. No. 344).

It is undisputed that Mr. Shagalov received notice of the resale and, significantly, he does not adduce any expert evidence in opposition to Ms. Habsburg's conclusion regarding the Work's

fair market value at the time of the resale. Under these circumstances, Sotheby's conducted its resale with reasonable notice and in a commercially reasonable manner, especially considering that the Defendants had up to five months after the Auction to satisfy their payment obligations (*see City Univ. of NY v Finalco, Inc.*, 129 AD2d 494, 495 [1st Dept 1987] [resale commercially reasonable under UCC § 2-706 where breaching buyer given additional opportunity to purchase good and reasonable notice of seller's intent to resell]). Accordingly, Sotheby's is entitled to recover \$1,508,750, which is the difference between the total sale price of \$6,537,500, the resale price of \$4,400,000, and \$628,750 for a profit share payment obligation that Sotheby's eliminated through the resale.

To the extent that the Defendants argue that Sotheby's must acknowledge its affirmative defenses, it is the Defendants' burden to establish a basis for such a defense, which burden the Defendants have not met (*see Beard v Chase*, 162 AD3d 533, 534 [1st Dept 2018], citing *C. H. Sanders Constr. Co. v Bankers Trust Co.*, 123 AD2d 251, 252 [1st Dept 1986] [defendant bears the burden of establishing evidentiary basis for affirmative defense]). Accordingly, the branch of Sotheby's motion for summary judgment on its first and second causes of action for breach of contract against the Defendants is granted.

B. Account Stated (Third Cause of Action)

An account stated is the parties' agreement to an account based on their prior transactions with respect to the correctness of the account items and balance due (*Ryan Graphics, Inc. v Bailin*, 39 AD3d 249, 250 [1st Dept 2007]). On a motion for summary judgment, a party establishes entitlement to an account stated by providing evidence of the relevant invoices, receipt by the

defendant, and lack of objection by the defendant for a substantial period of time (*L.E.K. Consulting LLC v Menlo Capital Group, LLC*, 148 AD3d 527, 528 [1st Dept 2017]).

Sotheby's argues that the Defendants agreed to be bound by the relevant contracts, the Defendants accepted the Invoice, and failed to make any objection to the same. The record indicates that after the Auction, Mr. Shagalov acknowledged that he would pay for the Work on at least five different occasions, in text messages and emails, between May 18, 2017 and October 13, 2017. He did not object to payment or the purchase price of the Work throughout this period of time.

Mr. Shagalov also fails to offer any documentary or affidavit evidence to raise a material issue of fact concerning his receipt of the Invoice and lack of any objection to the purchase price on the Invoice. The single email adduced by Mr. Shagalov in opposition to the motion instead confirms his payment obligations to Sotheby's as a Sotheby's representative states that Mr. Shagalov requested that the Invoice be sent to another individual. Accordingly, the branch of Sotheby's motion for summary judgment on its third cause of action for an account stated against the Defendants is granted.

The branch of Sotheby's motion for summary judgment seeking an inquest to determine additional damages, including a late charge and attorneys' fees, is also granted pursuant to the "Purchaser's Responsibility" to pay the same as set forth in the Conditions of Sale (NYSCEF Doc. No. 329, at 1). Thus, the portion of the action that seeks recovery of additional damages is

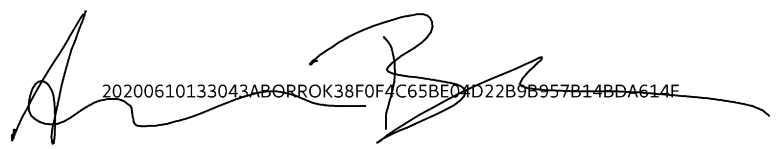
severed and the issue of the amount of additional damages that Sotheby's may recover against the Defendants shall be referred to a Special Referee to hear and report.

Accordingly, it is

ORDERED that Sotheby's motion for summary judgment pursuant is granted; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Sotheby's Inc. and against Nature Morte LLC and Anatole Shagalov in the amount of \$1,508,750, plus statutory interest of 9% from May 18, 2017, the date of auction, until the date of entry of judgment, plus statutory interest of 9% per annum from the date of entry of judgment, plus costs and disbursements as allocated by the Clerk, for a total of \$_____. The plaintiff shall have execution thereof; and it is further

ORDERED that that portion of the plaintiff's action that seeks the recovery of additional damages is severed and the issue of the amount of additional damages that plaintiff may recover against Nature Morte LLC and Anatole Shagalov is referred to a Special Referee to hear and report.


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6/10/2020
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED
- SETTLE ORDER
- INCLUDES TRANSFER/REASSIGN

DENIED

- NON-FINAL DISPOSITION
- GRANTED IN PART
- SUBMIT ORDER
- FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: