

Parfinim NV v UOVO Art LLC

2024 NY Slip Op 32677(U)

July 10, 2024

Supreme Court, New York County

Docket Number: Index No. 656534/2019

Judge: Andrea Masley

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

-----X

PARFINIM NV and AIDEN FINE ARTS, INC.	INDEX NO.	<u>656534/2019</u>
Plaintiffs,	MOTION DATE	<u>--</u>
- v -	MOTION SEQ. NO.	<u>004 005</u>
UOVO ART LLC, and INFINITY-NETS (RDUEL), BY YAYOI KUSAMA, 2018, IN REM,	DECISION + ORDER ON MOTION	
Defendants.		

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 150, 151, 153, 155, 157, 159, 161, 163, 166, 171, 173, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 197, 199, 200, 201, 202, 203, 204

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

The following e-filed documents, listed by NYSCEF document number (Motion 005) 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 152, 154, 156, 158, 160, 162, 164, 167, 172, 174, 195, 196, 198

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

This is a dispute about the ownership of “Infinity-nets (RDUEL),” a 2018 painting by Yayoi Kusama (Kusama Painting).¹

In motion sequence number 004, plaintiff Parfinim NV (Parfinim) moves pursuant to CPLR 3001, 3212, 7108, and 7109 for summary judgment declaring it to have full right, title, and interest in the Kusama Painting, directing the turnover of the Kusama

¹ This case also involved a 2014 painting “Untitled” by Rudolf Stingel (Stingel). The court granted plaintiff’s motion for partial summary judgment (NYSCEF Doc. No. [NYSCEF] 77, Decision and Order [mot. seq. no. 002]) and adjudged that “Parfinim NV is vested with full right, title and interest (legal and beneficial) to” the Stingel. (NYSCEF 80, Order and Judgment at 3.)

Painting to Parfinim, and deeming service of the motion upon Inigo Philbrick Ltd. and Inigo Philbrick good and sufficient notice of the motion.

In motion sequence number 005, intervening plaintiff Aiden Fine Arts, Inc. (Aiden)² moves pursuant to CPLR 3212 for summary judgment declaring its ownership of the Kusama Painting.

Background

Aiden is owned by Ely Sakhai and his son Andre Sakhai³ (NYSCEF 127, Andre aff ¶ 2) and “exists principally as a vehicle for [them] to acquire and collect works of fine art.” (*Id.* ¶ 4.) Aiden purchased the Kusama Painting from nonparty Victoria Miro Gallery Limited in May 2019 for \$850,000. (NYSCEF 93, Sale and Purchase Agreement at 2; NYSCEF 94, Invoice; NYSCEF 95, Account Summary at 6/10 [May 20, 2019 wire of \$850,000].) The Kusama Painting was located in the United Kingdom. (NYSCEF 93, Sale and Purchase Agreement ¶¶ 1.1 [defining storage facility], 1.2 [delivery].) In June 2019, Aiden shipped the Kusama Painting to UOVO Fine Art Storage facility in Long Island City, Queens, where the Kusama Painting “was held in a storage account owned by ... [Ely] and/or” Aiden.⁴ (NYSCEF 127, Andre aff ¶ 19.) On

² Aiden was named The Art Collection Inc. until October 26, 2018, when it was renamed Aiden Fine Arts, Inc. (See NYSCEF 106, Department of State website [August 11, 2021].) Aiden is frequently known as Art Collection. (NYSCEF 127, Andre aff ¶ 2.)

³ The court respectfully refers to Ely and Andre Sakhai by their first names to avoid confusion.

⁴ On March 30, 2016, “Ely Sakhai, The Art Collection, Inc.” entered into two agreements: (i) an Occupancy Agreement with nonparties QPN 1 LLC and QPN 10 LLC to provide storage services (NYSCEF 103, Occupancy Agreement ¶¶ 1-2) and (ii) a Fine Art Services Agreement with defendant UOVO Art LLC (UOVO) to provide services “which may include receipt, unpacking, storage, inventory management, processing, packing and shipping management services and direct transportation services” of property. (NYSCEF 104, Fine Art Services Agreement ¶ 2 [a].) On September 20, 2019, Ely, Aiden, and UOVO entered into an Assignment of Interest in Occupancy Agreement,

June 20, 2019, UOVO issued a warehouse receipt confirming receipt of the Kusama Painting. (NYSCEF 134, Non-Negotiable Warehouse Receipt.) On June 24, 2019, UOVO informed Andre’s assistant, Myles Nurse (NYSCEF 127, Andre aff ¶ 17), that the Kusama Painting “was not properly packed inside of the crate and [the UOVO] team noted some paint loss on the packaging.” (NYSCEF 99, Nurse-Uovo emails at 2.⁵)

Andre accepted assistance from Inigo Philbrick with arranging for the inspection and conservation of the Kusama Painting; Philbrick, an art dealer, was a close friend of Andre. (NYSCEF 127, Andre aff ¶¶ 23, 25.) “Philbrick informed [Andre] that for him to arrange the conservation ... [Andre] would need to transfer [the Kusama Painting] into [Philbrick’s] account at UOVO.... Trusting Philbrick, [Andre] agreed to this transfer.” (*Id.* ¶ 26.) On July 8, 2019, the Kusama Painting was transferred from Ely’s UOVO account to Inigo Philbrick Limited’s (IPL) UOVO account. (NYSCEF 101, Emails and Straight Bill of Lading at 4 [“Special Instructions: Internal transfer of Kusama from Ely Sakhai to Indigo Philbrick Limited”].)

On July 10, 2019, IPL and Parfinim executed a Bill of Sale wherein IPL purported to sell the Stingel and the Kusama Painting to Parfinim for the total price of \$3 million. (NYSCEF 116, Bill of Sale at 2.) Philbrick executed the Bill of Sale on behalf of IPL as its managing director and Dirk Cavens executed the same on behalf of Parfinim as its managing director. (*Id.* at 2, 5.) The Bill of Sale states that “[u]pon reception of payment of the Purchase Price ... title to the Work shall immediately transfer to the [Parfinim] ... [and IPL] and the Owner shall immediately release the Work and shall

whereby Ely “assigned all rights, interests and obligations of the Occupancy Agreement to Aiden Fine Arts.” (NYSCEF 105, Assignment of Interest in Occupancy Agreement.)

⁵ NYSCEF pagination.

undertake all necessary actions in this respect vis-à-vis UOVO.” (*Id.* at 4.) The Bill of Sale included the following resale provisions:

“If the Artworks are not resold before 31 December 2019 ... an additional fee of 300,000 USD is payable to [IPL];

If the Artworks are resold before 31 December 2019 ... an additional fee of 20% of the first 1,000,000 USD of profit in excess of the 3,000,000 USD purchase price, and 25% of all additional profit, is payable to” IPL. (*Id.*)

Parfinim sent funds to IPL on July 10, 2019. (NYSCEF 115, Cavens aff ¶ 10.)

Philbrick confirmed receipt of the \$3 million. (*Id.*; NYSCEF 119, Philbrick’s July 11, 2019 message.) Simon Mitchell, who worked for Philbrick (NYSCEF 178, tr at 28:9-10 [Philbrick depo]), subsequently advised UOVO that the Kusama Painting was “to be held at the authority of Parfinim NV/Dirk Cavens. The work should remain in our storage at our expense but should not be released without the written consent of Mr Cavens or Mathieu Ex on behalf of Parfinim NV.” (NYSCEF 120, Mitchell-UOVO emails at 2.)

On October 7, 2019, Philbrick emailed Cavens:

“I ... have a client who would like to view the Kusama either Tuesday or Wednesday in New York. We don’t have much time to organize this, so I will email Uovo with you in copy to authorize the release. After he has seen it we will return the work to your storage and organize the condition reports there.” (NYSCEF 121, Emails at 2.)

Instead, on October 10, 2019, Philbrick requested that UOVO release the Kusama Painting to Aiden. (NYSCEF 102, Emails and Straight Bill of Landing at 2.) The October 10, 2019 Straight Bill of Landing confirms the internal transfer from “Philbrick Limited” to “Art Collection,” i.e., Aiden. (*Id.*; see *supra* n 2.) After October 17, 2019, Philbrick stopped responding to Cavens’ messages and calls. (NYSCEF 115,

Andre aff ¶ 17.) On November 6, 2019, UOVO sent a letter to Parfinim, stating that the Stingel and the Kusama Painting

“are being stored at UOVO, under separate accounts governed by different Occupancy Agreements—the Stingel, as you know, is held under the account of [IPL], and the Kusama is held under another client’s account. Parfinim is not a UOVO client, and neither Parfinim nor any of its owners or members is listed as an ‘authorized’ representative on those accounts. Accordingly, UOVO cannot simply release the Artworks to Parfinim based on its ownership claims.” (NYSCEF 113, Nov. 6, 2019 UOVO letter at 1.)

In a November 11, 2019 letter to Parfinim, Aiden’s counsel stated that Aiden “is the sole owner of the Kusama, which it acquired in May 2019. Aiden never approved any consignment or sale of the Kusama and, therefore, [Parfinim] does not have title to the work. UOVO currently holds the work on Aiden’s behalf.” (NYSCEF 114, Nov. 11, 2019 Aiden letter.)

Procedural History

Parfinim filed this action on November 5, 2019. (NYSCEF 1, Verified Complaint.) On November 8, 2019, Parfinim amended its complaint, naming UOVO, Stingel, in rem, and Kusama, in rem, as defendants and alleging claims for (i) declaratory judgment declaring that Parfinim is a full legal and beneficial owner of the two paintings, (ii) replevin, and (iii) conversion. (NYSCEF 4, Verified Amended Complaint ¶¶ 25-36.)

On January 30, 2020, UOVO filed an interpleader summons and complaint against Aiden and IPL. (NYSCEF 18, Interpleader Summons and Complaint.) On March 11, 2020, this court granted Aiden’s unopposed motion to intervene as a party plaintiff. (NYSCEF 23, Decision and Order at 1 [mot. seq. no. 001]; NYSCEF 25, Amended Decision and Order at 1 [mot. seq. no. 001].) In its intervenor complaint, Aiden names Kusama, in rem, as defendant and seeks a declaratory judgment

declaring that Aiden owns full title to the Kusama Painting. (NYSCEF 12, Intervenor Complaint ¶¶ 22-27.)

Discussion

Under CPLR 3212, “the proponent of a summary judgment motion 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].) Once the movant has made such a showing, the burden shifts to the opposing party to demonstrate, with admissible evidence, facts sufficient to require a trial, or summary judgment will be granted. (See *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985].)

Motion Sequence 004 – Parfinim’s Motion for Summary Judgment

Parfinim argues that, because Aiden entrusted the Kusama Painting to IPL, Parfinim acquired a title to the Kusama Painting pursuant to the Uniform Commercial Code § 2-403 (2).

Generally, “[a] purchaser of goods acquires all title which his transferor had or had power to transfer.” (UCC 2-403 [1].) However, “[a]ny entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.” (UCC 2-403 [2].) As the Court of Appeals explained,

“The ‘entruster provision’ of the Uniform Commercial Code is designed to enhance the reliability of commercial sales by merchants (who deal with the kind of goods sold on a regular basis) while shifting the risk of loss through fraudulent transfer to the owner of the goods, who can select the merchant to whom he entrusts his property. It protects only those who purchase from the merchant to whom the property was entrusted in the ordinary course of the merchant’s business.” (*Porter v Wertz*, 53 NY2d 696, 698 [1981].)

Entrustment

“Entrusting” includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor’s disposition of the goods has been such as to be larcenous under the criminal law.” (UCC 2-403 [3].)

Here, Parfinim proffers Andre’s deposition transcript where Andre admitted that he released the Kusama Painting to Philbrick’s account at UOVO. (NYSCEF 107, tr at 95:23-96:2 [Andre depo]

[Question: “with regard to [the Kusama Painting], at some point you agreed to release the work from your own account to Mr. Philbrick’s account with UOVO, is that correct?”

Answer: “[t]hat’s correct”]; *id.* at 105:12-15

[Question: “[s]o on July 8, 2019, the work was moved from your or Art Collection’s account with UOVO into Mr. Philbrick’s account at UOVO, is that correct?”

Answer: “[y]es”].)

Parfinim also proffers Andre’s July 8, 2019 text message to Nurse where Nurse asked “[d]o I release the Kusama to Inigo” and Andre responded “[y]es.” (NYSCEF 100, Nurse-Andre messages) and the July 8, 2019 Straight Bill of Landing issued by UOVO, recording the internal transfer of the Kusama Painting from Ely to IPL. (NYSCEF 101, Emails and July 8, 2019 Straight Bill of Landing at 4.) Thus, Parfinim has demonstrated that no material issues of fact exist as to whether Aiden entrusted the Kusama Painting to IPL.

Aiden’s evidence does not show otherwise. In fact, it confirms that the transfer of the Kusama Painting to IPL’s account at UOVO took place. (See *e.g.* NYSCEF 127, Andre aff ¶ 26 [“Philbrick informed me that for him to arrange the conservation needed for [the Kusama Painting] I would need to transfer [the Kusama Painting] into his

account at UOVO. Trusting Philbrick, I agreed to this transfer in named account in early July 2019”.)

Further, Aiden’s argument that the Kusama Painting remained, at all times, in UOVO, and thus, there was no transfer of physical possession to IPL is unavailing. The evidence that Aiden transferred the Kusama Painting into IPL’s account at UOVO demonstrates that Aiden entrusted the Kusama Painting to IPL. (*See Heinrich v Titus-Will Sales*, 73 Wash App 147, 154 [1994] [“A person can entrust goods to a merchant by a variety of methods, such as consigning them, creating a bailment, taking a security interest in inventory, leaving them with the merchant after purchase, and delivering them for purposes of repair” (citation omitted)]; *see also Graffman v Espel*, 1998 WL 55371, *4 n 1, 1998 US Dist LEXIS 1339, *12 n 1 [SD NY, Feb. 11, 1998, No. 96 Civ. 8247 (SWK)] [“The U.C.C. ‘defines “entrusting” as including everything short of armed robbery (larceny is expressly approved)” (citation omitted)], *affd* 201 F3d 431 [2d Cir 1999].)

Merchants

“‘Merchant’ means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.” (UCC 2-104 [1].)

Here, it is undisputed that IPL is a merchant within the meaning of the statute. (See NYSCEF 115, Cavens aff ¶ 3 [“[IPL] ... [is] the gallery of an art dealer named Inigo Philbrick]; NYSCEF 127, Andre aff ¶ 23 [Inigo Philbrick ... [is] an art dealer and rising star in the art world. Working first with the internationally renowned White Cube Gallery,

Philbrick eventually opened his own eponymous galleries in London and Miami before the age of 30”].)

Buyer on the Ordinary Course of Business

“Buyer in ordinary course of business’ means a person that buys goods 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. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices.” (UCC 1-201 [b] [9].)

Generally, “[g]ood faith’ means honesty in fact in the conduct or transaction concerned.” (UCC 1-201 [20].) “Good faith’ in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.” (UCC 2-103 [1] [b].) “Given their knowledge of the practices of their trade, merchants or dealers, when acting as *purchasers*, are held to this ‘heightened standard’ of commercial reasonableness in part to prevent them from shielding their purchase of stolen or misappropriated goods behind the assertion that they acted in good faith.” (*Dorothy G. Bender Found., Inc. v Carroll*, 40 Misc 3d 1231[A], 2013 NY Slip Op 51362[U], *7 [Sup Ct, NY County 2013] [citation omitted], *affd* 126 AD3d 585 [1 Dept 2015], *lv denied* 26 NY3d 905 [2015].) “New York courts have held that under the UCC, a merchant purchaser may have a duty to inquire into the provenance or ownership of the merchandise where there are ‘warning signs’ or ‘red flags’ indicating problems with the sale.” (*Id.* [citations omitted]; see *Blue Riv. Gems Inc. v S.V.&V. Diamond Corp.*, 190 AD3d 581, 582 [1st Dept 2021] [“If MGD’s account is credited, then MGD ... would also have failed to investigate the provenance of the necklace despite the existence of ‘red flags’ indicating possible problems with ownership” (citations omitted)]; *Porter v*

Wertz, 68 AD2d 141, 147 [1st Dept 1979] [“Although this knowledge alone might not have been enough to put Feigen on notice that Wertz was not the true owner at the time of the transaction, it could have raised a doubt as to Wertz’ right of possession, calling for further verification before the purchase by Feigen was consummated”], *affd* 53 NY2d 696 [1981].)

“Red flags include: (1) whether the sale price is obviously below market, (2) whether the negotiations or procedure of the sale differed from previous transactions between buyer and seller, (3) whether the buyer was aware of the seller’s financial difficulties, or (4) whether the buyer would have reason to doubt the seller’s ownership of the artwork.” (*24 Art Holdings, LLC v Berry-Hill Galleries, Inc.*, 2014 NY Slip Op 32083[U], *8 [Sup Ct, NY County 2014] [citation omitted].)

“An art dealer who proceeds to purchase artwork from another dealer in the presence of such red flags, without making a diligent inquiry as to the provenance of the work in question, will therefore not qualify as a ‘buyer in the ordinary course’ whose title is protected by UCC 2-403 (2).” (*Dorothy G. Bender Found., Inc.*, 2013 NY Slip Op 51362[U], *8.)

Here, Cavens avers that Parfinim is “primarily involved in real estate development and investment, which is [his] occupation.” (NYSCEF 200, Cavens Reply aff ¶ 3; see *also* NYSCEF 115, Cavens aff ¶ 3 [Parfinim is “a company ... primarily involved in real estate development and investment].) Cavens also admits, however, to being an art collector (NYSCEF 177, tr at 12:5-8 [Cavens depo]) who started to purchase artwork 30 years ago and has a “quite well-known art collection in Belgium.” (*Id.* at 12:18-25.) Cavens admits that he owns “75, a hundred” pieces of art either directly or through one of his entities (*id.* at 50:13-16) and that he personally negotiated “99%” of those transactions. (*Id.* at 50:17-19.) Moreover, Parfinim admits that Cavens engaged Mathieu Ex, “an attorney specializing in art transactions to investigate [Kusama and Stingel] on his behalf.” (NYSCEF 199, Reply MOL at 13; see *also*

NYSCEF 117, Ex-Philbrick emails.) Thus, an issue of fact exists as to whether Cavens as an art collector who led Parfinim into the transaction with IPL had the “knowledge or skill peculiar to the practices or goods involved in the transaction” so as to qualify as a merchant and whether Ex, as Parfinim’s attorney specializing in art transactions, had any such knowledge. (UCC 2-104 [1].) Indeed,

“[o]ne can be a merchant without being in the business of buying and selling a product. *National Microsales Corp. v Chase Manhattan Bank, N.A.*, 761 F Supp 304, 306 (SDNY 1991) (bank’s purchase and sale of microfilm equipment used in its business sufficient to establish it as merchant); *Brown v Mitchell-Innes & Nash, Inc.*, [2009 US Dist LEXIS 35081, 2009 WL 1108526 [SD NY, April 24, 2009, No. 06 Civ. 7871 (PAC)] (art collector is merchant); *Pecker Iron Works, Inc. v Sturdy Concrete Co.*, 96 Misc2d 998, 1001-1002, 410 N.Y.S.2d 251 (N.Y. Civ. Ct. 1978) (general contractor is merchant with request to contract to buy steel based upon familiarity with steel, its use in construction, manner of ordering, and what contractors do with it before delivery).” (*24 Art Holdings, LLC*, 2014 NY Slip Op 32083[U], *9)

If Parfinim is a merchant, questions of fact exist as to whether the deal raised any red flags and if so, whether Parfinim made a diligent inquiry into the Kusama Painting’s prominence so as to be deemed a good faith purchaser. For example, Philbrick marketed the opportunity to Cavens as a deal by a desperate seller (NYSCEF 178, tr at 43:8-12 [Philbrick depo]) who was “[s]upper rich but no cash.” (NYSCEF 186, Philbrick-Cavens messages at 18.) Further, although Ex stated that Parfinim “will only proceed to signature (and payment) upon reception of ... [t]he proof of ownership of the Owner,” in response, Philbrick sent only “the consignment agreement which guarantees ownership and [Philbrick’s] authority to execute the sale.” (NYSCEF 117, Philbrick-Ex emails at 2.) The owner’s name was redacted on the consignment agreement. (*Id.* at 7-8.) This evidence creates an issue of fact as to whether the deal raised any red flags. (See *24 Art Holdings, LLC*, 2014 NY Slip Op 32083[U], *8; see e.g. *Interested Lloyd’s*

Underwriters v Ross, 2005 WL 2840330, *5, 2005 US Dist LEXIS 25471, *14 [SD NY, Oct. 28, 2005, No. 04 Civ. 4381 (RWS)] [“Whether the delay of four months between contract and delivery and the differential between the purchase price and the market value of the Painting constitute a ‘red flag’ to an art dealer appears to be a factual issue”].)

Further, Aiden and Parfinim submit contradicting expert affidavits. Aiden’s expert Megan Fox Kelly opines that several aspects of the transaction presented red flags, including

“Philbrick’s representation that the owner of the painting was desperate to sell and would reduce the price if the sale could be executed quickly; the rush to conclude an agreement and payment; the proposal to enter into an immediate and short term resale agreement with no commission due to Philbrick on the initial purchase; and the suggestion that Philbrick could re-sell the Kusama and Stingel at nearly double the combined purchase price in a few months.” (NYSCEF 193, Fox Kelly aff ¶ 20 [citation omitted].)

Fox Kelly also opines that that Parfinim did not exercised customary due diligence into those red flags. (*Id.* ¶ 24.) Parfinim’s expert Adam Sheffer “disagree[s] with Kelly’s description of there being any ‘red flags’ with respect to this transaction” (NYSCEF 202, Sheffer aff ¶ 14) and opines that “Parfinim exercised more due diligence than an art collector typically would with respect to this transaction.” (*Id.* ¶ 18.) Thus, these competing opinions do not resolve the issue. Accordingly, summary judgment is inappropriate. (See *Davis v Carroll*, 937 F Supp 2d 390, 426 [SD NY 2013] [“when [*Porter*, 68 AD2d 141] describes a duty of ‘further verification,’ it directs attention to commercial norms of the art business and requires the trier of fact to ascertain what forms of inquiry experienced participants in that business would consider appropriate in

response to the red flags at issue. In many cases, application of this rule may call for a fact-intensive inquiry guided by experts in art industry norms”].)

Service on Philbrick and IPL

Parfinim moves for an order deeming service of the motion on IPL and Philbrick good and sufficient notice of the motion. Parfinim proffers an affidavit of service wherein the server avers that on August 16, 2021, he served a notice of motion and accompanying papers upon Philbrick individually and IPL (care of Philbrick) by “FedEx at the Metropolitan Detention Center at 80 29th Street, Brooklyn, New York 11232” (NYSCEF 150, aff of service) where Philbrick was detained at the time according to Parfinim’s counsel.⁶ (NYSCEF 91, Lindstrom aff ¶ 11.) The service was also made “upon attorney Jeffery Lichtman (counsel for Inigo Philbrick in the criminal matter entitled *United States v. Inigo Philbrick*), via FedEx to The Law Offices of Jeffery Lichtman 11 East 44th Street #501, New York, NY 10017, followed by an email on August 18th, attaching PDF’s of the papers.” (NYSCEF 150, aff of service.) The court finds that the service upon IPL and Philbrick was sufficient. (See NYSCEF 80, Order and Judgment at 4 [mot. seq. no. 002].)

Motion Sequence 005 – Aiden’s Motion for Summary Judgment

Aiden’s motion for summary judgment seeking a declaration of its ownership of Kusama is denied. Although it is undisputed that Aiden acquired title to the Kusama Painting from Victoria Miro Gallery Limited (see NYSCEF 128, Sale and Purchase Agreement; NYSCEF 129, invoice; NYSCEF 130, account summary at 6/10 [May 20,

⁶ Parfinim states that Philbrick was subsequently transferred to a federal penitentiary in Allenwood, Pennsylvania. (NYSCEF 199 Reply MOL at 16 n.9.)

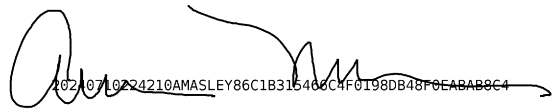
2019 wire of \$850,000]; NYSCEF 195, Opp MOL at 7-8 [“Parfinim does not dispute that Aiden took good title to the Kusama from the Miro Gallery”), as discussed *supra*, a question of fact exists as to whether Parfinim subsequently acquired title to the Kusama Painting pursuant to the section 2-403 (2) of the Uniform Commercial Code.

Accordingly, it is

ORDERED that motion sequence 004 is granted, in part, to the extent that service made upon Inigo Philbrick Limited and Inigo Philbrick was sufficient; the balance of the motion is denied; and it is further

ORDERED that motion sequence 005 is denied; and it is further

ORDERED that parties shall appear for trial scheduling conference on August 2, 2024 at 4PM.



20240710224210AMASLEY86C1B315406C4F0198DB48F0EAB88C4

7/10/2024

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE