

Edward Tyler Nahem Fine Art, L.L.C. v Lee
2026 NY Slip Op 30546(U)
February 11, 2026
Supreme Court, New York County
Docket Number: Index No. 653982/2023
Judge: Lyle E. Frank
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK **PART** **11M**

Justice

-----X

EDWARD TYLER NAHEM FINE ART, L.L.C., EDWARD
TYLER NAHEM,

Plaintiff,

- v -

LEA LEE, ELISABETH ROYER GRIMBLAT,

Defendant.

-----X

INDEX NO. 653982/2023

MOTION DATE 10/23/2025,
10/12/2025

MOTION SEQ. NO. 017 018

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 017) 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 781, 782, 783, 784, 794

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

The following e-filed documents, listed by NYSCEF document number (Motion 018) 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 698, 699, 700, 701, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 778, 779, 780, 795

were read on this motion to/for PARTIAL SUMMARY JUDGMENT.

This case arises out of defendant Elisabeth Royer Grimblat’s sale to plaintiffs of a sculpture by Alexander Calder (the “Calder”). Defendant Grimblat now moves for summary judgment, motion sequence 017. Plaintiffs oppose the instant motion and move separately for partial summary judgment, motion sequence 018. For the reasons set forth below, plaintiff’s motion is denied, and defendant’s motion is granted in its entirety.

Background

Defendant sold to plaintiff the Calder in November 2017. In June 2018, plaintiffs provided a settlement statement to defendant, predated December 5, 2017, and requesting defendant sign the statement. Defendant signed the statement and returned the executed

document plaintiff. It is undisputed that the request to defendant was made only after defendant Lee approached plaintiffs, in 2018, regarding the artwork.

Defendant Lee subsequently commenced an action in 2023 which challenged the title of the artwork in question, and which was subsequently dismissed and confirmed that defendant Grimblat was authorized to sell the artwork. Plaintiffs subsequently commenced the instant action seeking indemnification from Grimblat based on Lee's claims.

Standard of Review

It is a well-established principle that the "function of summary judgment is issue finding, not issue determination." *Assaf v Ropog Cab Corp.*, 153 AD2d 520, 544 [1st Dept 1989]. As such, the proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law. *Alvarez v Prospect Hospital*, 68 NY2d 320, 501 [1986]; *Winegrad v New York University Medical Center*, 64 NY 2d 851 [1985]. Courts have also recognized that summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted.

Discussion

Plaintiffs' complaint asserts three causes of action as against Grimblat, the fifth cause of action in the amended complaint for breach of indemnity, the sixth cause of action for fraud and the seventh cause of action for unjust enrichment. The Court will address each cause of action in turn.

Breach of Indemnity

Both parties rely on the settlement statement in support of their respective motion. The relevant portions are:

3. Seller represents and warrants that upon the complete execution of this Settlement Statement and full payment of the Purchase Price by Buyer [the Nahem Gallery] to Seller good, valid and marketable title and exclusive and unrestricted right to possession of the Work, free and clear of all liens, security interests, encumbrances and restrictions (including, without limitation, claims of governments or governmental agencies), and free of all Claims (as defined below) will pass from Seller to Buyer.

5. Seller hereby represents and warrants to Buyer as of the date hereof that: (i) the Work is authentic, that is, the Work was created by Alexander Calder; (ii) to the best of Seller's knowledge the attribution, provenance, and description of the Work as described in . . . this Settlement Statement are accurate and complete; (iii) Seller has provided Buyer with all information available to Seller concerning the attribution, authenticity, provenance and description of the Work; and (iv) the Work is the same as the work registered with the Calder Foundation under the application number AI 0978. The representations and warranties contained in this Settlement Statement and all other terms hereof, shall survive the delivery of this Settlement Statement and transfer of the Work.

7. Seller agrees to indemnify Buyer against all demands, suits, judgments, damages, losses or other liability, including all attorney or other professional fees and expenses (collectively "Claims") resulting from any breach of, or falsity or inaccuracy of, any of Seller's representations, warranties (express or implied) or other terms set forth in this Settlement Statement.

In support of its motion, defendant contends that pursuant to paragraph 7, it did not make any representations to plaintiffs that were false or inaccurate, thus the indemnification provision has not been triggered. In opposition to defendant's motion and in support of its motion, plaintiffs contend that defendant Lee's conduct renders the artwork unmarketable and based on the Lee's claim to the artwork, the indemnification provision is triggered. The Court does not agree.

While the Court appreciates that plaintiffs may have a difficult time selling the artwork in question, that does not automatically entitle it to judgment as against defendant Grimblat.

Plaintiff contends that the subject artwork has been listed in Interpol as stolen as well as listed in the Art Loss Register, however none of these listings are attributable to defendant Grimblat nor the terms of the agreement.

It is undisputed that Grimblat was unaware of any claims to the artwork before the transfer and did not become aware of any claims until she was informed by plaintiffs months after the transaction was complete. Plaintiff has failed, in its motion and in opposition, to establish that pursuant to the plain terms of the settlement statement, that the difficulties it is enduring, based on the repeated allegations by defendant Lee, are in anyway attributable to any false representations or inaccuracies made by defendant Grimblat.

Moreover, the Court agrees with Grimblat's contention that the indemnification provision would only be triggered based on the marketability of the Calder at the time of the sale to plaintiff. At the time of that sale, there was no indication that there was anything that would impact the marketability of the Calder.

Accordingly, defendant Grimblat has established entitlement to judgment as a matter of law.

Fraud

Defendant also seeks dismissal of plaintiffs' fraud cause of action. Plaintiffs' fraud cause of action is based on the assertion that defendant Grimblat had a duty to disclose that it received commission from the seller of the artwork. Plaintiffs contend that they were damaged by this nondisclosure when it paid 100,000 Euros in commission to Grimblat.

In support of its motion, defendants have established that there is no duty owed by defendant to disclose its commission. There is undisputedly no fiduciary relationship between the parties and thus no duty to disclose. Plaintiffs contend that the "Special Facts Doctrine" is

applicable here in that whether defendant was receiving commission from the seller is essential and material to the transaction. The Court does not agree, and the cases cited by plaintiffs are distinguishable from the instant action. Specifically, in *P.T. Bank Cent. Asia*, cited by plaintiffs, the First Department specifically held that the duty to disclose arises when “one party's superior knowledge of essential facts renders a transaction without disclosure inherently unfair” (*P.T. Bank Cent. Asia v ABN AMRO Bank N.V.*, 301 AD2d 373, 378 [1st Dept 2003] internal quotations omitted). *P.T. Bank Cent. Asia* involved the issue of the value of loan collateral. Here, the issue of whether or how defendant was paid commission is not material or an essential fact of the underlying transaction nor did plaintiffs cite any legal authority to support the contention that purported duty to disclose. Further, plaintiffs have not submitted any admissible evidence to rebut defendant’s testimony that she did not receive a commission from the seller. Accordingly, defendant has established that it did not have a duty to disclose its commission and thus the fraud cause of action is not viable.

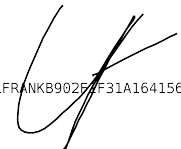
Unjust Enrichment

Plaintiffs’ unjust enrichment claim is premised on the 100,000 Euros commission paid to Grimblat. Based on the same reasons for dismissal of the fraud cause of action, the unjust enrichment cause of action also fails. Defendant has established that it received the commission it was entitled to and plaintiffs’ arguments in opposition are not supported by the facts of this case. Accordingly, it is hereby

ORDERED that plaintiffs’ motion, motion sequence 018, is denied; and it is further

ORDERED that defendant’s motion, motion sequence 017., is granted in its entirety and the complaint is dismissed as against defendant Elisabeth Royer Grimblat; and the matter is severed and continues as against the remaining defendant.

20260211165500LFRANKB902F31A1641568F6FD749AAC4568A



2/11/2026
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE