

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No. 159407/2017

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DAVID MUGRABI,

Plaintiff,

**AFFIDAVIT OF
DAVID MUGRABI**

-against-

MANA CONTEMPORARY,
MANA CONTEMPORARY ART TRADING CORP.,
MANA CONTEMPORARY WORLDWIDE, LTD.,
MANA FINE ARTS and
GUARANTEE WINE STORAGE, INC.

Defendants.

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STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

DAVID MUGRABI, being duly sworn, deposes and says:

1. I am Plaintiff in the above-captioned action and am fully aware of the facts and circumstances of this matter. All claims and rights against Defendants¹ in this matter have been assigned to Plaintiff. I submit this affirmation in support of Plaintiff's Order to Show Cause, seeking, inter alia: (1) The immediate release and return of the 1,389 important works of art and 80 miscellaneous personal items, including, but not limited to, paintings, sculptures and collectible furniture, valued at more than \$100,000,000.00 (the "Mugrabi Art Collection"), that are currently being stored at Defendants' storage facility in Jersey City, New Jersey ("Defendants' Storage Facility"); and (2) Restraining Defendants from selling, transferring to a third party or otherwise disposing of the Mugrabi Art Collection.

¹ It is impossible to distinguish between the various Defendant entities. Plaintiff's contracts are with Mana Contemporary. For the sake of bringing a proper action, all parties must be named to obtain full and complete relief. Plaintiff challenges Defendants to clarify in their opposition papers the relationships of the various Defendant entities for liability purposes.

PLAINTIFF'S BACKGROUND

2. As world-renowned art dealers and collectors, my family and I have collected a renowned, large and valuable art collection, including works of art by, inter alia, Andy Warhol, Jean-Michel Basquiat, Tom Wesselmann and Damien Hirst. In our art business (the "Mugrabi Art Business" or "MAB"), which was started by my father, Jose Mugrabi, I regularly work closely with my father and with my brother, Alberto Mugrabi. As a family, we collect, exhibit and sell major works of art. As a result, I am well aware of all actions taken and conversations had by my father in connection with MAB.

WHY THE EQUITABLE RELIEF REQUESTED SHOULD BE GRANTED

3. As set forth below, the Court respectfully should grant the requested temporary restraining order and preliminary injunctive relief because, for the reasons set forth below, Plaintiff is likely to prevail on the merits and the requested relief is the only way to ensure that MAB is not irreparably damaged and can resume exhibiting, selling and placing in a safe storage facility the Mugrabi Art Collection, which is the lifeblood of MAB. MAB is suffering and will continue to suffer grave, irreparable harm of an economic and an intangible nature such as Defendants physically damaging Mugrabi Art Collection works of art, as set forth below, and loss of economic goodwill as a result of MAB's inability to deal in the art marketplace, e.g. exhibit paintings in galleries and museums, deal with prospective purchasers and create exhibition history to add value to the Mugrabi Art Collection.² Unless the Mugrabi Art Collection is immediately released from Defendants' possession and control and Defendants are prohibited from selling, transferring to third parties or otherwise disposing of the Mugrabi Art Collection, the ultimate judgment will be fruitless. As aforesaid in part, in the absence of the

² Every time a work of art is exhibited at a show or a museum, it adds value and importance to the work of art.

requested relief, MAB will suffer vast, imminent damages, which are very difficult to account for in the art world and which cannot entirely be compensated monetarily; on the other hand, Defendants will suffer no harm whatsoever if the requested provisional relief is granted. If the Court permits Plaintiff to post an undertaking that fully covers the amount of the debt claimed by Defendants, there is no risk whatsoever that Defendants will suffer any damage.

4. Defendants' reprehensible and intentional misconduct in holding hostage the Mugrabi Art Collection, as set forth below, has paralyzed MAB, defeating, impairing and destroying its business and prohibiting MAB from exhibiting and selling to potential clients millions of dollars worth of art. Art collectors and dealers simply do not purchase works of art that cannot be delivered and clearly Defendants are well aware of that proposition. Defendants do not have any ownership claim to the Mugrabi Art Collection and are simply holding hostage the Mugrabi Art Collection—composed of approximately 1,400 works of art and valued at more than \$100,000,000.00—to extort payment of an alleged \$519,475.43 debt, knowing full well that the monetary value of the Mugrabi Art Collection is far in excess of and in farcical proportion to the alleged outstanding storage fees purportedly owed to Defendants. Would it be fair and equitable for Con Edison to block one from living in a \$10,000,000.00 residence because of a disputed \$1,000.00 electric bill? The damages sustained as a result of Defendants' unlawful misconduct cannot reasonably be ascertained with certainty since the damages are ongoing and the prices of works of art fluctuate daily.

STORAGE OF THE MUGRABI ART COLLECTION

5. On March 21, 2014, Plaintiff signed a storage agreement with Defendants (the "Storage Agreement") (Ex. 1).

6. Pursuant to the Storage Agreement, for which Susie Parker ("Parker") was

Defendants' account manager until leaving the company in May 2015, a considerable number of works of art from the Mugrabi Art Collection would be stored at Defendants' Storage Facility at a designated storage rate.

7. On September 24, 2014, my father, Jose Mugrabi, met with Gene Lemay ("Lemay"), Defendants' President, and Shai Baitel ("Baitel"), Defendants' Senior Vice President, Strategy in New York City. Lemay and Baitel discussed changing the terms of the Storage Agreement to provide for free storage of the entire Mugrabi Art Collection.

8. On September 30, 2014, Lemay and Baitel executed a second storage agreement (the "Second Storage Agreement") providing for free storage of the Mugrabi Art Collection in exchange for moving the entire Mugrabi Art Collection to Defendants' Storage Facility and counseling clients to use Defendants' logistics services (Ex. 2). The Second Storage Agreement clearly changed the terms and provisions of the Storage Agreement.

9. In reliance on the free storage provision of the Second Storage Agreement, 1,389 works of art and 80 miscellaneous personal items owned by MAB—valued at more than \$100,000,000.00—were and are being stored at Defendants' Storage Facility.

**IRREPARABLE HARM WILL ENSUE ABSENT A TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

10. On many occasions, including, without limitation, on September 13, 15, 19 and 26 and October 3, 2017, Defendants' employees repeatedly and unlawfully blocked and prevented the collection of Mugrabi Art Collection works of art from Defendants' Storage Facility (Exs. 3, 4, 5 and 6).³ Defendants have drawn a line in the sand: Plaintiff will not have access to the Mugrabi Art Collection without paying the full balance of the spurious invoices.

³ Exhibits 3-6 have been redacted to remove the names of any purchasers or consigners and any other confidential business secrets that would give MAB's competitors an unfair advantage. If the Court requests such information, Plaintiff will divulge it in camera.

11. The gravity of Defendants' deliberate and illegal misconduct is exacerbated by the fact that, prior to the embargo, MAB sold three works of art and arranged for the exhibition of two others at prestigious museums.⁴ Though these third parties, including one of the artists himself, have repeatedly and vociferously demanded immediate delivery of the works of art, Defendants still refuse to release them. If one of the works of art is not delivered to a certain world-renowned New York museum by Friday, October 27, 2017, the museum will not include the work of art in its exhibition. As stated in footnote one, exhibition histories are critical in the art world and play key roles in building a work of art's provenance.

12. A foreign gallery already has canceled the consignment of a sculpture for exhibition at the gallery because MAB was unable to deliver the sculpture on the promised date or even provide a date on which delivery could be accomplished in the near future. By virtue of Defendants' baseless intransigence, MAB is rapidly losing the goodwill it has spent so many years and so much expense and effort accruing.

**DEFENDANTS PHYSICALLY DAMAGED MUGRABI ART COLLECTION
WORKS OF ART**

13. In further support of the need for the provisional relief sought herein, in addition to holding the Mugarbi Art Collection hostage, Defendants have damaged certain of the works of art, including at least 11 Mugarbi Art Collection works of art by Tom Wesselmann, Richard Prince, Mark Flood, Kaws, Anh Duong, Frank Gehry, David Opdyke, Robin Rhode and Jenny Saville and Glen Luchford. These damaged works of art are valued at many millions of dollars, which Plaintiff will illustrate and prove to the Court. Until MAB and its art conservators are permitted to fully examine and inspect the entire Mugarbi Art Collection, MAB cannot fully

⁴ Plaintiff is not listing the names of any purchasers or consignors herein as they are confidential business secrets and would give MAB's competitors an unfair advantage. If the Court requests such information, Plaintiff will divulge it in camera.

determine the extent of the damage and what other works of art have been damaged and/or are in dire need of repair.

THE UNDISPUTED FACTS CONFIRM THAT NO STORAGE CHARGES WERE TO BE INCURRED AND DEFENDANTS ARE ESTOPPED FROM ARGUING OTHERWISE

14. All storage and services invoices issued by Defendants from March 2014 until September 2014 were paid.

15. Beginning in September 2014, Lemay and Baitel participated in several in-person conversations with Jose Mugrabi and others in which they repeatedly represented that, pursuant to the Second Storage Agreement, MAB would not be invoiced for and would not have to pay any storage fees to Defendants.

16. On November 18, 2014, Angela Outar (“Outar”), an employee in Defendants’ accounting department, emailed a storage invoice to Esty Neuman (“Neuman”) (Ex. 7). On December 8, 2014, Neuman responded, “It is our understanding that, as agreed with Gene Lemay and Shai Baitel last September, we will no longer be billed for storage. The invoice for August, which was paid October 17, 2014, represents the final bill for storage.” (*Id.*). Neither Outar nor any other principal or employee of Defendants disputed the contents of Neuman’s December 8, 2014 email. Accordingly, Defendants did not send any storage invoices for the period of October 2014 through August 2015.

17. On May 8, 2015, Parker, Defendants’ then-account manager, left the company and was replaced by Joelle Perry (“Perry”) (Ex. 8). In or about September 2015, an unlabeled envelope was delivered to Plaintiff’s office containing various storage invoices dating back to May 15, 2015. On September 21, 2015, Outar emailed Neuman, claiming that several invoices between May 15, 2015 and August 30, 2015 were outstanding (Ex. 9). On October 8, 2015,

Neuman emailed Lemay and Baitel that the invoices were incorrect and wrote, “[A]ccording to our deal, we do not pay rent....” (Id.). Plaintiff is informed that, after reading Neuman’s email, in or about October 2015, Baitel orally represented to Joanna Kozinska (“Kozinska”) on a telephone call that the invoices were not meant to be paid by MAB, but rather were for MAB’s records only.

18. On November 24, 2015, Outar emailed Neuman, again inquiring about Defendants’ invoices. Outar wrote, “I’m sure something is going on that I’m not aware of, so please advise me and I will discuss with my boss as he doesn’t know also.” (Ex. 10). On December 3, 2015, Kozinska emailed Baitel, “Please let us know if the agreement you had with Mr. Mugrabi has changed....” (Id.) Baitel responded later that day, “Gene [Lemay] and I will go over it w victor [Kamara, an employee in Defendants’ accounting department] on Monday and clarify to all parties the agreement.” (Id.) On February 9, 2016, Perry, Defendants’ new account manager, sent an internal email, including to Baitel and Outar, stating that MAB was mistakenly receiving certain invoices (Ex. 11). Perry clarified, “Fashion Concepts is not being billed for any of Mana Fine Art’s work....” (Id.)

19. Almost one and a half years later, Defendants’ attorney, Fran Mulnick Parker, Esquire (“Mulnick Parker”), sent a letter to Plaintiff, dated August 8, 2017, falsely claiming that Defendants were owed the sum of \$519,475.43 in outstanding storage and service charges (Ex. 12). Mulnick Parker blatantly, conveniently and purposefully ignored the Second Storage Agreement (Ex. 2) and the numerous conversations in which Lemay and Baitel represented that MAB was not being charged for storage and would not have to pay any storage fees to Defendants. Mulnick Parker further erred in demanding payment for invoices that were never

delivered to MAB or for which MAB had paid Defendants in full.⁵

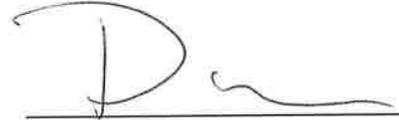
PLAINTIFF WILL IMMEDIATELY POST AN ADEQUATE UNDERTAKING

20. To facilitate the immediate release and transfer of the Mugrabi Art Collection to MAB's possession and control, Plaintiff is willing to post an undertaking forthwith during the pendency of this action in the amount of \$600,000.00—covering the full amount that Defendants claim they are owed in outstanding fees, as well as accruing interest and/or litigation costs, if any. Posting this undertaking would ensure that Defendants could not possibly suffer any economic harm in the event the Court orders that MAB can immediately collect the Mugrabi Art Collection and physically move it to another storage facility.

21. In conclusion, were the Court to grant the relief Plaintiff seeks, Defendants would suffer no harm whatsoever and MAB's art business would be immediately rescued from further catastrophic harm that cannot be entirely compensated monetarily and that would render the ultimate judgment fruitless. In the absence of granting the requested injunctive relief, MAB will be significantly damaged and its economic relationships will be destroyed as Defendants continue to unlawfully hold hostage the Mugrabi Art Collection, to which they have no ownership claim and which is valued at more than \$100,000,000.00, over an alleged debt that is a de minimis fraction of that figure. At the bare minimum, Defendants should be ordered to forthwith turn over all works of art from the Mugrabi Art Collection to be transferred by truck to another facility not under Defendants' ownership or control and independent of Defendants in every way, shape and form, except for the bare minimum needed to satisfy the alleged debt.

⁵ I am advised that Mulnick Parker informed Plaintiff's attorney that she was unaware of the Second Storage Agreement (Ex. 2).

22. No prior application has been made for the relief sought herein. No other provisional remedy has been sought or obtained in this action.


DAVID MUGRABI

Sworn to before me this
22nd day of October, 2017


NOTARY PUBLIC

NEHEMIAH S. GLANC
Notary Public, State of New York
No. 02GL4997690
Qualified in New York County
Commission Expires June 15, ~~2018~~ 2018