

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

PARK WEST GALLERIES, INC.,

Plaintiff,

-against-

THERESA FRANKS, an individual, and
GLOBAL FINE ART REGISTRY, L.L.C.
D/B/A FINE ART REGISTRY, JOHN
DOES 1-10,

Defendants.

Index No.:

Plaintiff designates
New York County as the place of trial. The basis
of venue is: CPLR § 503(a)

SUMMONS

To the above named Defendants:

Theresa Franks
8233 West Country Gables Drive
Peoria, AZ 85381

Global Fine Art Registry, L.L.C. d/b/a Fine Art Registry
5350 West Bell Road, Suite C-22,
Glendale, AZ 85308

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
March 7, 2012

McCUSKER, ANSELM I,
ROSEN, CARVELLI P.C.
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Park West Galleries, Inc.*

By: 
Michael R. Futterman.

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

-----X
PARK WEST GALLERIES, INC., :
 : **Index No.**
 Plaintiff, :
 :
 -against- : **COMPLAINT**
 :
 THERESA FRANKS, an individual, and :
 GLOBAL FINE ART REGISTRY, L.L.C. :
 D/B/A FINE ART REGISTRY, JOHN :
 DOES 1-10, :
 :
 Defendant. :
-----X

Plaintiff Park West Galleries, Inc., by its attorneys, McCusker Anselmi Rosen & Carvelli, P.C., as and for its Complaint against defendants Theresa Franks and Global Fine Art Registry, L.L.C. d/b/a Fine Art Registry, alleges as follows:

Parties

1. Plaintiff Park West Galleries, Inc. is a Michigan corporation doing business in Oakland, Michigan.
2. Defendant Global Fine Art Registry, L.L.C. d/b/a Fine Art Registry (“FAR”) is an Arizona limited liability company that is owned by Global Fine Art Registry. FAR operates a website which is located at <http://www.fineartregistry.com>. FAR claims that it is dedicated to exposing art fraud and improper practices in the art industry. In fact, FAR is dedicated to attacking Park West and its artwork, executives (including founder Albert Scaglione), and business practices.
3. Defendant Theresa Franks is a resident of Arizona and is the founder and operator of FAR. Franks is also the author of an internet blog located at <http://fineartregistry.blogspot.com.n> Franks and FAR are one and the same as Franks is

completely and solely responsible for the content of FAR.

4. John Does 1 to 10 are fictitious individuals, businesses and/or corporations who participated in the actions, and/or related actions, described herein.

5. Franks and FAR are subject to personal jurisdiction in New York because they have committed tortious acts in this State, including, but not limited to, the claims set forth herein.

COMMON ALLEGATIONS

6. Defendants Franks and FAR over the course of several years have embarked on a sustained, malicious and outrageous cyber-smear campaign against Park West, its artwork, artists, executives, auctioneers and general business practices all in a calculated and intentional effort to interfere with Park West's present and potential business relationships with clients and customers.

7. Defendants have executed their scheme through misleading, inaccurate and outrageous statements made in various publications including websites, blogs and YouTube videos targeted at Park West's current and potential clients and customers. As but one example, after Park West prevailed in litigation brought against it by former customers who, agitated and urged on by Defendants, claimed Park West had sold them overpriced art, Park West sought, as was its right under contracts signed by the former customers, recovery of its attorneys' fees and costs. In response, Franks, writing on her FAR blog, accused Park West of "tortur[ing] its customers," associating Park West's business practices with "waterboarding." Franks wrote that Park West "and its dastardly lawyers ... viciously (if not desperately and stupidly) attack[ed] art fraud victims who had filed suits against [Park West]."

8. Franks continued that Park West's conduct was "all about vengeance, bitterness

and hatred.” She said Park West’s conduct demonstrated a level of “arrogance” that was “astonishing” especially because, she wrote, “valid claims of fraud are made and then proven by overwhelming evidence and expert testimony” – a statement that is demonstrably false.

9. Franks actively encourages Park West customers to cancel or negate their contracts: “[I]t is highly recommended that you refuse and run the other way as fast as you can and don’t look back.” She has written that Park West artwork is “forged, defaced and grossly overpriced,” but Park West’s contracts protect Park West. She stated that Park West’s art inventory is “fraudulent” and that Park West “is determined to make [its purported] victims pay in more ways than one.” A copy of Franks’ most recent blog-post quoted herein is attached as exhibit 1.

10. Franks’ recent blog-post is part and parcel of a prolonged and malicious campaign by Franks against Park West that includes a long and sordid history of inaccurate, unfair, and malicious attacks on Park West and its executives, artwork, auctioneers and practices. Franks conduct is designed to, and has, generated unjustified and unwarranted ill will towards Park West.

11. For instance, in May 2011, Franks, referring to “Park West Gallery and its thugs” posted that Park West “never plays fair (an understatement, we know).” She continued that Park West “wantonly ... infring[es] the intellectual property rights of others.”

12. Franks’ outrageous and malicious statements about Park West continued:

Park West Gallery is more notorious for its aggressive and thug-like litigation tactics than they are for the spurious artwork ... they peddle – not to mention all the other shenanigans and underhanded tricks they pull or have pulled in the past ... and which continue to this today.

(Franks’ May 6, 2011 blog post, attached as exhibit 2.)

13. Franks noted in her May 2011 blog post that she has accused Park West of

misconduct “for the last four years.” Indeed, since at least August 2007, Franks has engaged in a sustained and aggressive cyber-smear campaign against Park West and repeatedly denigrated without justification Park West and its executives (including Park West CEO Albert Scaglione, who is a frequent target of Franks’ broadsides), artwork, auctions and business practices. Franks, via her FAR web-portal, has stated:

- a. Park West customers suffer a “horrific experience”;
- b. Park West “financially rape[s]” customers;
- c. Park West engages in “deceptive and unfair trade practices”;
- d. “Park West ... salesman [make] false and misleading representations”;
- e. Potential Park West customers “can’t rely on a word that comes out of the mouth of Park West ... salesmen and especially the fork-tongued lead salesman, Morris Shapiro”;
- f. Park West appraisals are “bogus”;
- g. “Park West [has] lied to its customers for many years”;
- h. “Park West ... auctioneers/salesmen really stick it to the buyer”;
- i. “Park West ... preys on the first-time art buyer”;
- j. “Park West ... salesmen/auctioneers will lie through their teeth to make a sale”;
- k. Individuals who purchase from Park West are making a “big mistake”;
- l. Park West’s art collection is “dog food”;
- m. Park West’s provenance documentation constitutes “cheesy photocopies [and] data forgeries”;

(See May 25, 2011, FAR blog-post, attached as exhibit 3.)

14. Franks and FAR have accused Park West of “vicious and vindictive treatment” of Park West customers and of “getting away with murder.” (See May 9, 2011, FAR blog-post, attached as exhibit 4.) Franks and FAR have stated that Park West’s CEO and founder Albert

Scaglione “is desolate of integrity and scruples.” (*Id.*)

15. As stated, Franks and FAR’s constant malicious, false and improper conduct, including their sustained cyber-smear campaign have been on-going for several years. As of February 29, 2012, a review of FAR’s website reflects that Franks and FAR have published approximately 264 blog posts all critical of Park West and of a piece with the statements quoted above. In addition, Franks and FAR have published many YouTube videos improperly and unfairly critical of Park West, its artwork, auctioneers and business practices.

16. For example, on September 16, 2009, Franks and FAR published statements that the provenance of Park West artwork was “complicated, convoluted, complex and confusing” so that customers cannot assess its veracity: “The Park West provenance is meant to confuse. The more perplexing the provenance, the less chance that anyone will figure out the sleight of hand. They bank on the fact that no one will be the wiser - that no one has the energy to take the time to unwind the tangled web - with the exception of Fine Art Registry and its experts, of course, who have figured it out much to the frustration of Park West.”

17. Not surprisingly – indeed, as intended by Defendants – Defendants’ constant improper, malicious and unfair conduct targeting Park West has caused many Park West customers residing in New York to cancel contracts to purchase artwork.

18. In all, thirty-four (34) clients, residing in New York, representing thirty-four (34) contracts with a face value of \$477,547.13, cancelled their contracts after direct contact with Defendants whether through review of Defendants’ cyber-smear materials, email communications, telephone contact, or all.

19. Defendants have directed their conduct specifically to customers in New York by publishing their cyber-materials here, by emailing Park West customers who reside in New

York, by calling New York customers, or all.

20. All conditions precedent to the maintenance of this action have occurred or been waived.

**COUNT I
(TORTIOUS INTERFERENCE WITH
CONTRACTUAL AND BUSINESS RELATIONSHIPS)**

21. Park West realleges and incorporates by reference the common allegations as though fully set forth herein.

22. Park West had valuable contractual and business relationships with New York clients.

23. Park West had existing and prospective legal rights pursuant to existing contractual relationships with New York clients.

24. Defendants had knowledge of Park West's contractual and business relationships with clients including those contracts identified herein.

25. Defendants intentionally, maliciously and without justification interfered with Park West's relationships with these clients. Indeed, the very purpose of Defendants' conduct was to undermine and destroy Park West's relationships with all its clients including the New York clients at issue here.

26. Defendants tortiously interfered with Park West's contractual relationships by making improper, malicious, repeated, and false accusations about Park West and its artwork, business practices, executives and auctioneers.

27. Defendants' conduct was unprivileged, improper and malicious.

28. Defendants' conduct was intended to and did severely and irreparably interfere with Park West's contractual relationships with New York clients, including without limitation

those clients identified above.

29. As a direct and proximate result of Defendants' conduct, Park West has suffered damages. Park West is entitled to recover such damages from Defendants.

WHEREFORE, Park West respectfully demands judgment in its favor and against defendants as follows:

- A. Awarding plaintiff compensatory, consequential and incidental damages;
- B. Awarding plaintiff punitive damages;
- C. Awarding plaintiff pre-judgment and post-judgment interest;
- D. Awarding plaintiff attorneys' fees and costs; and
- E. Awarding plaintiff such other and further relief as this Court deems equitable and just.

**COUNT II
(TORTIOUS INTERFERENCE WITH
ADVANTAGEOUS BUSINESS RELATIONSHIP)**

30. Park West realleges and incorporates by reference the common allegations as though fully set forth herein.

31. Park West had valuable business relationships, not evidenced by contracts with New York clients who have purchased artwork from Park West.

32. Defendants had knowledge of Park West's advantageous business relationships with New York customers.

33. Defendants intentionally, maliciously and without justification interfered with Park West's advantageous relationships. Indeed, the very purpose of Defendants conduct was to undermine and destroy Park West's relationships with all its New York customers.

34. Defendants tortiously interfered with Park West's advantageous business

relationships by making improper, malicious, repeated, and false accusations about Park West and its artwork, business practices, executives and auctioneers.

35. Defendants' conduct was unprivileged, improper and malicious.

36. Defendants' conduct was intended to and did severely and irreparably interfere with Park West's advantageous business relationships with New York customers.

37. As a direct and proximate result of Defendants' conduct, Park West has suffered damages. Park West is entitled to recover such damages from Defendants.

WHEREFORE, Park West respectfully demands judgment in its favor and against defendants as follows:

A. Awarding plaintiff compensatory, consequential and incidental damages;

B. Awarding plaintiff punitive damages;

C. Awarding plaintiff pre-judgment and post-judgment interest;

D. Awarding plaintiff attorneys' fees and costs; and

E. Awarding plaintiff such other and further relief as this Court deems equitable and just.

COUNT III (CIVIL CONSPIRACY)

38. Park West realleges and incorporates by reference the common allegations and the allegations of Counts I and II as though fully set forth herein.

39. Defendants reached an agreement among themselves and with other as yet unknown parties identified herein as John Does 1-10 to undertake the tortious conduct alleged in this Complaint.

40. The tortious conduct alleged in this Complaint was wrongful and tortious under

the law of the State of New York and Defendants and John Does 1-10 knowingly and willfully engaged in such conduct.

41. Defendants and John Does 1-10 engaged in overt acts in the pursuit and furtherance of the conspiracy to commit the tortious acts alleged in this Complaint, including, but not limited to, providing financial support to Defendants with the express purpose of enabling the commission of the wrongful acts alleged herein.

42. Plaintiff has suffered damage as a direct and proximate cause of the acts done under and pursuant to the conspiracy alleged herein.

WHEREFORE, Park West respectfully demands judgment in its favor and against defendants as follows:

- A. Awarding plaintiff compensatory, consequential and incidental damages;
- B. Awarding plaintiff punitive damages;
- C. Awarding plaintiff pre-judgment and post-judgment interest;
- D. Awarding plaintiff attorneys' fees and costs; and
- E. Awarding plaintiff such other and further relief as this Court deems equitable and just.

**COUNT IV
(PRIMA FACIE TORT)**

43. Park West realleges and incorporates by reference the common allegations and the allegations of Counts I, II and III as though fully set forth herein.

44. Defendants intentionally, maliciously and without justification interfered with Park West's business.

45. The tortious conduct alleged in this Complaint was wrongful and tortious under the law of the State of New York and Defendants knowingly and willfully engaged in such

conduct.

46. As a direct and proximate result of Defendants' conduct, Park West has suffered damages. Park West is entitled to recover such damages from Defendants.

47. There has been no previous request for the relief requested herein.

WHEREFORE, Park West respectfully demands judgment in its favor and against defendants as follows:

- F. Awarding plaintiff compensatory, consequential and incidental damages;
- G. Awarding plaintiff punitive damages;
- H. Awarding plaintiff pre-judgment and post-judgment interest;
- I. Awarding plaintiff attorneys' fees and costs; and
- J. Awarding plaintiff such other and further relief as this Court deems equitable and just.

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Dated: March 7, 2011