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

Xiaoqian Gu,

Plaintiff,

-against-

Lehmann-Maupin L.L.C.,

Defendant.

Plaintiff Xiaoqian Gu, by and through her undersigned attorneys, for her Complaint against Defendant Lehmann-Maupin L.L.C. (the “Gallery”), states as follows, on knowledge as to herself and on information and belief as to all other matters, which are likely to have evidentiary support after a reasonable opportunity for discovery:

NATURE OF THE ACTION

1. This is an action for breach of contract arising out of the Gallery’s refusal to deliver an artwork (the “Work”) that Plaintiff purchased under a November 20, 2019, invoice (the “Invoice”).

2. The Gallery offered the Work to Plaintiff on the opening “VIP day” of a public art fair in November 2019. The Gallery confirmed the offer in writing by email, and Plaintiff
responded in writing accepting the offer, resulting in a binding and enforceable sale contract (the “Agreement”). The Gallery invoiced Plaintiff the following day.

3. Shortly after the Gallery’s sale to Plaintiff, however, two of the Gallery’s “most important” clients contacted the Gallery to express that they were “deeply upset” and “angry” that the Gallery had sold the Work to Plaintiff after the Gallery had told them that “they would have to wait to purchase [this artist’s] works until more became available in 2020.”

4. Experiencing seller’s remorse, and wanting to appease its “most important” clients, the Gallery informed Plaintiff that it was refusing to proceed with the sale. After Plaintiff wired the purchase price in full under the Invoice, the Gallery reversed the wire without Plaintiff’s knowledge or consent, and the Gallery has stated unequivocally that it will not perform under the Agreement.

5. Plaintiff has commenced this action seeking specific performance of its Agreement to purchase the Painting or, alternatively, compensatory damages based on the fair-market value of the Work.

PARTIES, JURISDICTION, AND VENUE

6. Plaintiff Xiaqian Gu is an individual residing in Hong Kong.

7. Defendant Lehmann-Maupin L.L.C. is a contemporary art gallery with a main exhibition space in Chelsea, New York. The Gallery is a Delaware limited-liability company, and its members are New York citizens.

8. This Court has personal jurisdiction over Defendant under CPLR §§ 301 and 302 because Defendant is a New York citizen for jurisdictional purposes where its individual members are New York citizens. Defendant operates an art gallery in New York. Plaintiff made payment for the Work under the Invoice to the Gallery’s New York bank account.
9. Venue is appropriate in New York County under CPLR § 503 because the Gallery’s members reside in New York County and the Gallery’s main exhibition space and offices are located in Manhattan.

STATEMENT OF FACTS

10. In November 2019, Defendant participated in the Abu Dhabi Art Fair (the “Fair”), where it hosted a booth exhibiting artwork for sale to the public, including the Work.

11. Plaintiff viewed the Work at the opening VIP day of the Fair on November 19, 2019, and she expressed to the Gallery’s sales representative at that time her interest in purchasing the Work. That afternoon, the Gallery’s sales representative emailed Plaintiff with more information about the Work, noting that the Work was “on hold” for Plaintiff.

12. Approximately one hour later, the Gallery emailed Plaintiff again to inform her that there was a large amount of interest in the Work, and to ask whether she was still interested in purchasing it. In the same email, the Gallery offered to extend a 10% discount on the retail price for the Work.

13. Plaintiff wrote to the Gallery later that day accepting the offer to purchase the Work: “I will take the work.”

14. The Gallery’s representative replied, “Wonderful!” and informed Plaintiff that the Gallery would issue the Invoice the following day.

15. On November 20, 2019, Plaintiff received the Invoice, a redacted copy of which is appended hereto as Exhibit A.

16. After issuing the Invoice, one of the Gallery’s directors emailed Plaintiff stating that the Gallery would not proceed with the sale.
17. The Gallery offered a dubious explanation for attempting to repudiate the contract, claiming that it would not sell the Work to anyone in Asia because the Gallery preferred “to sell the work to a local client in Abu Dhabi, to develop the local market[.]” But Plaintiff is Asian, which of course the Gallery at all times knew, having dealt with her in person at the Fair regarding the Work, and invoiced the Work to her Hong Kong address. Rendering even more dubious that explanation (not that it would have been a basis in any case for breaching the contract), it appears that the Gallery has since sold Plaintiff’s Work to another of its “Asian clients.”

18. The real reason that the Gallery refused to proceed with the sale to Plaintiff is that two of its “most important Asian clients” “were deeply upset” because “[t]hey had been told by the Gallery that they would have to wait to purchase [the artist’s] works until more became available in 2020, and were angry that the Work had been sold to [Plaintiff] Ms. Gu when they themselves had been asked to wait.”

19. Whatever the Gallery’s motivations were for trying to cancel the sale, Plaintiff never agreed to rescind the deal, and so just days after being invoiced she wired the full purchase price to the Gallery’s New York bank account as provided in the Invoice.

20. Without Plaintiff’s knowledge or consent, Defendant later reversed the wire.

21. Plaintiff was, and remains, ready, willing and able to consummate the sale, and therefore she subsequently wrote to Defendant that she wishes to proceed with the sale, but Defendant has refused. This action followed.

FIRST CAUSE OF ACTION
(Breach of Contract)

22. Plaintiff repeats and realleges all the foregoing allegations as if fully set forth herein.
23. Defendant entered into a binding and enforceable Agreement with Plaintiff to sell the Work, as memorialized by the November 20, 2019, Invoice from Defendant to Plaintiff.

24. Plaintiff fully performed under the Agreement and Invoice by paying in full the purchase price under the Invoice on or about November 25, 2019.

25. Defendant breached the agreement by refusing to perform its obligation to deliver the Work to Plaintiff under the Agreement.

26. Plaintiff was ready, willing and able to purchase the Work from Defendant when Defendant breached the agreement, and remains ready, willing and able to purchase the Work.

27. The Work is a unique chattel.

28. Defendant should be required to fulfill its obligations under the Agreement to accept Plaintiff’s payment under the Invoice and deliver the Work to Plaintiff.

29. If, alternatively, Defendant is unable to deliver the Work, then Plaintiff is entitled to compensatory damages.
PRAYER FOR RELIEF

WHEREFORE, Plaintiff Xiaoqian Gu respectfully requests that the Court enter a
Judgment awarding: (1) specific performance of the terms of the Agreement; or, (2) alternatively, compensatory damages; and (3) any other and further relief as the Court may deem just and proper.

Dated: December 21, 2020
New York, New York

GROSSMAN LLP

By: Judd B. Grossman, Esq.
jgrossman@grossmanllp.com
Sarah E. Schuster, Esq.
sschuster@grossmanllp.com
745 Fifth Avenue, 5th Floor
New York, New York 10151
Telephone: (646) 770-7445
Facsimile: (646) 417-7997

Attorneys for Plaintiff Xiaoqian Gu