

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

PAT LIPSKY,

Plaintiffs,

-against-

SPANIERMAN GALLERY, LLC and  
ARTSPACE, LLC,

Defendants.

Index No.:

**SUMMONS**

**TO THE ABOVE-NAMED DEFENDANTS:**

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer on Plaintiff's attorneys within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after completion of service made in any other manner than by personal delivery within the State. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Plaintiff designates New York County as the place of trial. The basis of this designation is CPLR 503.

Dated: New York, New York  
June 29, 2020

PRYOR CASHMAN LLP

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**COMPLAINT**

Plaintiff Pat Lipsky (“Lipsky”), by her attorneys, Pryor Cashman LLP, as and for her Complaint against defendants Spanierman Gallery, LLC (“Spanierman”) and Artspace, LLC (“Artspace”; together with Spanierman, “Defendants”), alleges as follows:

**NATURE OF THE CASE**

1. The acclaimed visual artist, Pat Lipsky, brings this action under the New York Artist’s Authorship Rights Act (“AARA”), N.Y. Arts & Cult. Aff. Law § 14.03, to stop the damage being done to her reputation by Defendants’ efforts to sell one of her major works – a painting entitled *Bright Music II* (1969) (the “Work”) – through the use of a distorted image of the Work.

2. Lipsky made her initial mark in the art world in the late 1960s, quickly rising to prominence with paintings celebrated as crucial contributions to the Color Field and Lyrical Abstraction movements.

3. The Work (an image of which appears in the following paragraph) is part of a series of paintings known as the “Stain Paintings,” spanning from the late 1960s through the mid-1970s. The Stain Paintings were characterized by Lipsky’s use of bold, vibrant colors, which is a hallmark of this historically important phase of her career.

4. As described below, Defendants have apparently created and are publishing a digitized image of the Work (the “Distorted Image”) that appears designed to obscure the fact that portions of the Work’s unpainted (*i.e.*, “raw”) canvas have become damaged and soiled over time, likely due to moisture, mold, or mishandling. However, the Distorted Image also significantly dulls the Work’s deep, vibrant colors, rendering it lifeless and entirely atypical of Lipsky’s *oeuvre* from this period. The following side-by-side comparison reflects the differences between the Distorted Image (at right) and an accurate image of the Work in its current state (at left):

**Accurate Reproduction:**



**Distorted Image:**



5. Defendants have used, and are continuing to use, the Distorted Image in promoting the Work for sale. In so doing, Defendants are falsely claiming that the Distorted Image reflects a painting “by” Lipsky. The Distorted Image undermines the integrity of the Work, as well as Lipsky’s reputation.

6. Defendants’ use of the Distorted Image is violating Lipsky’s moral rights granted under AARA. Lipsky seeks to vindicate those rights, to end the false association of the Distorted Image with her name, and to stop Defendants from further confusing the public about the nature and quality of Lipsky’s art, particularly works from the Stain Paintings era.

### **THE PARTIES**

7. Lipsky is an individual who lives in New York, New York.

8. Upon information and belief, defendant Spanierman is a Delaware limited liability company authorized to do business in the State of New York, with offices located in New York, New York.

9. Upon information and belief, defendant Artspace is a Delaware limited liability company authorized to do business in the State of New York, with offices located in New York, New York.

**JURISDICTION AND VENUE**

10. This Court has jurisdiction over Defendants pursuant to CPLR 301 and 302.

11. Venue is proper pursuant to CPLR 503(a) because Plaintiff resides in this county.

**FACTS**

**Lipsky's Artistic Background and Reputation**

12. Lipsky is a celebrated visual artist, most frequently identified with the Lyrical Abstraction and Color Field movements.

13. Throughout her career, Lipsky's paintings have thoughtfully examined the nature and impact of color.

14. Lipsky's reputation is substantially based on the public's association of her art with precise and sensitive color choices, and the Stain Paintings – Lipsky's best-known series – are known in particular for their lush, vibrant colors.

15. The use and interplay of such rich pigments, applied as a fluid medium to a wet surface, often in the form of energetic swaths, is a signature aspect of the Stain Paintings, as is Lipsky's deliberate compositional choices in these paintings, including the contrast of colored areas against raw areas of canvas (against which dynamic splatters of paint may often be observed at the margins of the colored swaths).

16. Lipsky has been particularly noted by art historians and critics for the Stain Paintings series, and works from this series appear in numerous prestigious art museums around the country, including the Brooklyn Museum, the Whitney Museum of American Art (the “Whitney”), the Hirshhorn Museum and Sculpture Garden (the “Hirshhorn”), the Harvard Art Museum, the San Francisco Museum of Modern Art, the Modern Art Museum of Fort Worth, Walker Art Center, the Blanton Art Museum, and the Lowe Art Museum.

17. A work from the Stain Painting series was also included in the influential 1970-71 exhibition “Lyrical Abstraction,” which toured the Aldrich Museum, the Phoenix Art Museum, and the Whitney; another work from the series was featured in the opening exhibition for the Hirshhorn in 1974.

18. Lipsky’s art has also appeared in numerous gallery exhibitions, and Lipsky has been represented by prominent gallerists for nearly fifty years.

#### **The Work and Defendants’ Use of The Distorted Image to Promote the Work for Sale**

19. Lipsky painted the Work in 1969, and it was sold decades ago.

20. Upon information and belief, ownership of the Work has since changed hands multiple times. At some point or points during its history of ownership, the Work suffered damage to certain raw areas of its canvas, most likely due to moisture, mold, and/or mishandling. The colors of the pigment that Lipsky applied as part of the Work’s integral composition, however, have remained true.

21. In or about early 2019, Lipsky learned that the then-owner of the Work intended to sell the Work in its non-restored (*i.e.*, damaged) condition.

22. In or about mid-2019, Spanierman offered the Work for sale in that same condition.

23. In an apparent effort to reduce the conspicuousness of the Work's physical condition issues to the viewing public over the Internet, Spanierman (upon information and belief) created the Distorted Image. In particular, the Distorted Image reflects apparent adjustments to the saturation, brightness, contrast, and/or white balance of the digital photo file.

24. Through these adjustments, the Distorted Image reduces the visibility the damaged areas that are actually present on the Work's raw canvas margins (in particular, on the upper center portion of the canvas).

25. The Distorted Image also, however, grossly distorts the Work's overall color palette, substantially muting the colors of the Work's composition and making them appear chalky and lifeless.

26. Spanierman misleadingly associated the Distorted Image with Lipsky and falsely claimed that the image depicted by the Distorted Image is a painting "by" Lipsky.

27. Following the sending of a cease-and-desist demand letter from Lipsky's counsel (to which Spanierman did not respond), Spanierman stopped offering the Work for sale over its website in or around early-2020.

28. Almost immediately thereafter, however, Artspace began to promote (and continues to promote) the Work for sale over its website, also using the Distorted Image.

29. Upon information and belief, Spanierman has a consignment or other agreement or arrangement with Artspace to sell the Work.

30. Upon information and belief, Spanierman supplied Artspace with the Distorted Image for its promotional efforts.

**Lipsky is Being Harmed by the Distorted Image**

31. Lipsky’s professional reputation and standing are damaged by the false and misleading association of her name and artistic style with the Distorted Image.

32. If one runs a search of Lipsky’s name on Google Images, one will see the Distorted Image on the first page of search results.

33. The Distorted Image confuses the public about the nature of Lipsky’s art. The Distorted Image also confuses potential buyers of the Work.

**FIRST CAUSE OF ACTION**

**(Violation of the New York Artist’s Authorship Rights Act (“AARA”),  
N.Y. Arts & Cult. Aff. Law § 14.03)**

34. Plaintiff repeats and realleges paragraphs 1-34 above as if fully set forth herein.

35. The Work is a painting and thus constitutes “fine art” within the meaning of AARA.

36. The Distorted Image is a “reproduction” of the Work: it is a copy of the Work, produced in digitized medium, that has been and is being displayed or published with the intent that it be taken as a representation of the Work as created by Lipsky.

37. The Distorted Image “alters,” “modifies” and “mutilates” the appearance of the Work in a manner that is not an ordinary result of the digitization process, including by prejudicially misrepresenting the vibrancy of the colors selected and applied by Lipsky.

38. Upon information and belief, Spanierman created the Distorted Image and shared it with Artspace.

39. Defendants have used and are continuing to use the Distorted Image to give the false and misleading impression that it depicts a painting “by” Lipsky.

40. Defendants have each knowingly displayed in a place accessible to the public (*i.e.*, via Defendants’ publicly accessible websites), published and/or reproduced the Distorted Image.

41. Defendants each published the Distorted Image as depicting a work of fine art by Lipsky, or under circumstances that would reasonably be regarded as indicating that the Distorted Image depicts an artwork by Lipsky.

42. Defendants have harmed, and are likely to continue to harm, Lipsky’s reputation through their use of the Distorted Image.

43. Lipsky is entitled to a permanent injunction prohibiting any further use of the Distorted Image in association with her name.

44. Lipsky has seen her painting sales drop since Spanierman first began publishing the Distorted Image in 2019. Lipsky has been damaged in an amount to be proved at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Lipsky respectfully prays for judgment in her favor as follows:

- a) Permanently enjoining Defendants from making any use of the Distorted Image in association with Lipsky’s name, and;
- b) Awarding Lipsky damages in an amount to be determined at trial, and;
- c) Awarding Lipsky such other and further relief as the Court deems just and proper.

Dated: New York, New York  
June 29, 2020

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