

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

THE MAYOR GALLERY LTD.

Plaintiff

Index No.

– against –

SUMMONS

THE AGNES MARTIN CATALOGUE
RAISONNE LLC, ARNOLD GLIMCHER,
TIFFANY BELL, MEMBERS OF THE AUTHEN-
TIFICATION COMMITTEE OF THE AGNES
MARTIN CATALOGUE RAISONNÉ, *i.e.*,
John Doe or Jane Doe ##1-6,

Defendants

SUMMONS

To: **The Agnes Martin Catalogue Raisonné, LLC**

C/O Pace Gallery
32 E. 57th Street
New York, New York 10022
(Registered Agent for Service of Process)

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff's attorney an answer to the Complaint in this action within twenty 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. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Pursuant to CPLR § 503(a), plaintiff designates New York County as the place of trial because the acts and omissions giving rise to this action occurred primarily in New York County.

Dated: New York, New York
October 17, 2016



Melvyn R. Leventhal
488 Madison Avenue, 18th Floor
New York, New York 10022
212 935 0800
Attorney for Plaintiff

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To: **Arnold Glimcher**
C/O Pace Gallery
32 E. 57th Street
New York, New York 10022

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To: **Tiffany Bell**
Artifex Press
109 West 27th Street
New York, New York

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff's attorney an answer to the Complaint in this action within twenty 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. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

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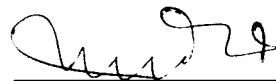
SUMMONS

To: **Members of the Authentication
Committee, John Doe # 1**

YOU ARE HEREBY SUMMONED and required to serve upon plaintiff's attorney an answer to the Complaint in this action within twenty 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. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

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SUMMONS

To: **Members of the Authentication
Committee, John Doe # 2**

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488 Madison Avenue, 18th Floor
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212 935 0800
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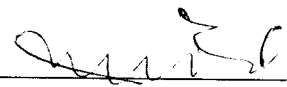
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To: **Members of the Authentication
Committee, John Doe # 3**

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Committee, Jane Doe # 1**

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212 935 0800
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COMPLAINT

The Mayor Gallery Ltd. of London, England, brings this action alleging that defendants have unlawfully declared that thirteen authentic Agnes Martin artworks are fakes, resulting in a loss to The Mayor Gallery LTD. of more than \$7 million.

Preliminary Statement & Background Facts

1. Agnes Martin was an abstract expressionist and minimalist artist. She was born in Canada, moved to the United States in the 1930's and became an American citizen in 1950. She resided, was educated and worked in both New York City and in New Mexico. She was reclusive and eccentric and was hospitalized several times for schizophrenia. She died in 2004 at the age of 92 in Taos, New Mexico. Her paintings and works on paper regularly sell at auction and worldwide for hundreds of thousands to millions of dollars.

2. A “catalogue raisonné” is a compilation of the artworks created by a specific artist. It may include all the artworks of the artist or only the artworks in a particular medium (e.g., all “works on paper”). Generally, each entry in the catalogue raisonné identifies the work by name,

medium, dimensions and date of creation; many if not all entries include a photograph of the artwork. A catalogue raisonné may take many years, sometimes a lifetime to create and is often and necessarily a “work in progress.” It may be published digitally/on-line, and therefore can be frequently and inexpensively updated.

3. For example, arguably the most famous catalogue raisonné is of Pablo Picasso’s oeuvre compiled by Christian Zervos with input from the artist himself. It is a 33 volume work compiled over four decades, listing thousands of paintings and drawings with each volume published and distributed as it was completed; the final volume was released in 1978. It is used, by art galleries, dealers and auction houses, *inter alia*, to establish authenticity of artworks purportedly created by Pablo Picasso.

4. A catalogue raisonné may be compiled and published by a self-appointed expert, *e.g.*, an art historian who has devoted years to the study of the artist’s works; or it may be compiled by art experts selected to create the catalogue raisonné by the estate or family of a deceased artist. An “authentication committee” – consisting of reputed experts on the particular artist – is often formed and serves as the compiler of and adjunct to, the catalogue raisonné. Persons owning artworks by the subject artist are often solicited by the catalogue raisonné to submit their artworks for vetting and for possible inclusion in the catalogue raisonné.

5. Andy Warhol Art & Authentication Board, Inc. (The “Warhol Board”) and The Calder Foundation (“Calder Board”) are well known in the art world. The policies and practices of these two Boards provide useful points of comparison for the Agnes Martin Catalogue Raisonné:

(a) The Warhol Board required while it was in operation,¹ and the Calder Board has always and still requires, the completion and submission of its forms by collectors who seek authentication of their Warhol or Calder artworks;

(b) The Warhol Board responded to owners who submitted works for authentication with any one of three answers: the work is by Andy Warhol, the work is not by Andy Warhol, or that the Warhol Board was “not able at this time to form an opinion as to whether said work is, or is not, the work of Andy Warhol.” In addition, the Warhol Board, when pressed, provided explanations for its adverse determinations;

(c) The Calder Board issues an “application number” for a submitted artwork that it believes is authentic. If it decides against issuing an “application number” for an artwork, it will so inform the owner by telephone; it will thereafter issue a letter that it is refusing to assign an inventory number but only upon the request of the owner. It too, when pressed, will provide an explanation for a decision to reject an artwork;

(d) Art dealers, galleries and auction houses will not accept an artwork for sale that is purported to be created by Calder or Warhol unless the artwork has been vetted and approved by the Calder or Warhol Board. Moreover, auction house sales catalogues routinely state in the entry for a Calder or Warhol that the artwork has been authenticated by the Warhol Board or given an application number by the Calder Board. For example, the entry for any Calder artwork in any auction catalogue will prominently state that “this work is registered in the archives of the Calder Foundation, New York, under the application number ____.” The Calder Board and the

¹ The Warhol authentication board vetted artworks for more than fifteen years, from approximately 1996 until early 2012 at which time it discontinued its operations.

Warhol Board are the final arbiters in the worldwide fine art market of whether a Calder or Warhol artwork is authentic or fake. An artwork rejected by either Board is worthless.

The Parties, Jurisdiction and Venue

6. Plaintiff, The Mayor Gallery LTD, is a company organized under the laws of the United Kingdom with offices at 21 Cork Street, First Floor, London W1 S3 LZ. It has been in continuous operation since 1933 and it is recognized among collectors, auction houses, art dealers and galleries, as adhering to the highest ethical standards governing the purchase and sale of fine art.

7. Defendant The Agnes Martin Catalogue Raisonné LLC (hereinafter “The AM Catalogue Raisonné LLC”) is a domestic limited liability company organized under the New York Limited Liability Company Act. It was formed in November 2012, *i.e.*, eight years after Agnes Martin’s death, to govern the creation of The Agnes Martin Catalogue Raisonné. Its offices are maintained by defendant Arnold Glimcher at his Gallery, The Pace Gallery, 32 East 57th Street, New York, New York.

8. Defendant Arnold Glimcher (“Glimcher”) maintains a residence in New York, New York. Upon information and belief, he formed and is the managing member of the defendant AM Catalogue Raisonné LLC. He represents himself to the art world as having been a close friend of and a leading expert on Agnes Martin and her artworks; he has also written and published a book about her and her artworks. Upon information and belief, he participates in and is jointly responsible for the policies, practices, procedures and actions challenged in this Complaint.

9. Defendant Glimcher is also the primary if not the exclusive owner and the CEO of the

Pace Gallery which has its principal office and exhibition space at 32 E 57th Street, New York, New York 10022, a second New York City office and exhibition space at 510 West 25th Street and additional offices and exhibition spaces in other parts of the world. The Pace Gallery represents itself to the art world as a leading national and international art dealer and gallery.

10. The Pace Gallery represents the Estate of Agnes Martin; it is also the authorized agent for service of process on the defendant AM Catalogue Raisonné LLC. Glimcher and the Pace Gallery claim that they have represented Agnes Martin – at times serving as her exclusive agent – from 1975 to the present.

11. Auction house sales catalogues regularly include the Pace Gallery and/or Arnold Glimcher in the provenance (*i.e.*, the history of ownership) of Agnes Martin artworks. *See, e.g.*, “Exhibit A” hereto, the entry from Christie’s-London Auction Catalogue for October 4, 2016, *Lot # 7, Praise*, acrylic and pencil on canvas, by Agnes Martin, which sold that day, with buyer’s premium, for £2,853,000 or approximately \$3,529,000.

12. Defendant Glimcher has also established under IRS Section 501 (c) 3 the non-profit tax-exempt Agnes Martin Foundation, with offices at Pace Gallery, 32 E. 57th Street, 4th Floor, New York, New York 10022, for as yet unspecified and unfunded charitable and educational purposes. He has installed himself and his son, Marc Glimcher, as the Foundation’s only officers and directors.

13. Defendant Tiffany Bell is a resident of New York and the editor of the Agnes Martin Catalogue Raisonné which is being produced and published digitally and on-line by Artifex Press. Defendant Bell and Artifex Press have offices at 109 West 27th Street, New York, New York. Defendant Bell is also a member of the committee of art professionals (hereinafter the

“Authentication Committee”) responsible for vetting artworks – including the thirteen artworks enumerated in ¶¶ 22-51 below – considered for inclusion in or for exclusion from the Agnes Martin Catalogue Raisonné (¶ 14, below). The mission of the Agnes Martin Catalogue Raisonné is to compile the most authoritative and comprehensive list of paintings and works on paper created by Agnes Martin.

14. Defendants John Doe or Jane Doe ##1- 6 are the purported “art professionals” who serve on the Authentication Committee referred to in ¶ 8, above. Defendants Glimcher and Bell know, but as a matter of policy keep secret, the identity of these individuals (*see also*, ¶ 29, *below*). On information and belief these unnamed defendants live in New York and/or do business in New York in connection with their work on the Authentication Committee. They will be individually named in an amended complaint as soon as their identities are obtained.

15. The court has personal jurisdiction over defendants pursuant to CPLR §§ 301-302. Plaintiff has selected venue in New York County, as authorized by CPLR § 503(a), because the acts and omissions giving rise to this action occurred primarily in New York County.

The Facts – I
Effect of Rejection Of Artworks By The Agnes Martin Catalogue Raisonne.

16. Pace Gallery, which is owned and managed by defendant Glimcher, is the designated agent, the representative of the Estate of Agnes Martin, to the art world. And Glimcher has installed himself and the Agnes Martin Catalogue Raisonné and the Authentication Committee as the final arbiters of whether an artwork will be accepted for auction or for private sale anywhere in the world. Defendants decisions can render worthless an artwork purchased for millions of dollars.

17. Thus, Christie's and Sotheby's are the two dominate auction houses in the United States and the world. They both recognize the Agnes Martin Catalogue Raisonné as the definitive compilation of authentic artworks of Agnes Martin. Both will not accept for auction or sale any painting or work on paper purported to be Agnes Martin unless it has been or will be included in the Agnes Martin Catalogue Raisonné. A refusal by defendants to include an artwork in the Agnes Martin Catalogue Raisonné is therefore recognized in the worldwide marketplace as a conclusive statement that the artwork is a fake. An Agnes Martin artwork rejected by defendants is worthless and the defendants have fostered and created this status for themselves.

18. Entries for artworks by Agnes Martin included in auction sales catalogues routinely include the following vital representation: "This work will be included in the forthcoming catalogue raisonné to be published digitally by Artifex Press" (*e.g., see, "Exhibit A" hereto*).

Facts – II
Standard Procedures For The Submission of Artworks to the AM Catalogue Raisonné

19. For the reasons explained above, collectors have no choice but to submit their Agnes Martin artworks to defendants for vetting subject to non-negotiable terms dictated by defendants. Collectors are required to complete and submit a form "Examination Agreement," now available on the Artifex Press website (*see, e.g., as an exemplar, "Exhibit B" hereto*).²

20. Following the submission of the Examination Agreement, defendant Bell and the other members of the Authentication Committee are required to carefully examine and investigate the artwork. The defendants then take only one of two actions: they either accept or

² Exhibit "B" hereto includes the handwritten form "Examination Agreement" prepared by James Mayor in person and hand-delivered to defendant Bell in connection with *Day & Night* one of the artworks rejected by defendants and at issue in this action. See ¶ 29, below.

reject the artwork for inclusion in the Agnes Martin Catalogue Raisonné. And they inform the collector of their decision through a cursory form letter, without any explanation of any kind (*see, e.g.,* “Exhibit C” hereto).

21. As established below, defendants refuse to answer – indeed, they simply ignore – reasonable inquiries from the owners of rejected artworks who, having just experienced the loss of large sums of money because of defendants’ decisions, seek an opportunity for rebuttal and detailed information explaining the rejection.

Facts – III
Levy Submits *Day & Night* to the AM Catalogue Raisonné and It Is Rejected.

22. In September 2010, Jack Levy purchased from The Mayor Gallery *Day & Night*, acrylic on canvas, 72" x72", signed, on the front, lower left in pencil, “To Delphine, Agnes Martin, 1961- 64.” The Mayor Gallery represented and warranted to Levy that this artwork was created by Agnes Martin.

23. Levy’s agent paid The Mayor Gallery \$2.9 million for *Day & Night*.

24. On information and belief, on or about May 1, 2014, Levy delivered *Day & Night* to the defendants accompanied by a completed and signed Examination Agreement addressed to defendant Tiffany Bell (*see* “Exhibit D” hereto).

25. On information and belief, a “Notification Letter” dated September 25, 2014, was sent by the defendants to Levy informing him that the artwork would not be included in the Agnes Martin Catalogue Raisonné (*see* final page of “Exhibit D” hereto).

26. As explained above, defendants refusal to approve *Day & Night* for inclusion in the Agnes Martin Catalogue Raisonné, had as its purpose and was in substance and effect a

declaration by defendants to Levy and to the marketplace that the artwork is a fake, rendering it worthless.

27. Levy thereupon returned *Day & Night* to The Mayor Gallery and demanded rescission of the sale and a refund of the purchase price. The Mayor Gallery, honoring its warranty of authenticity, thereupon accepted the return of the artwork and refunded to Levy the \$2.9 million purchase price plus \$288,438 in sales tax.

Facts – IV
The Mayor Gallery Resubmits *Day & Night* to the AM Catalogue
Raisonné and it is Again Rejected

28. The Mayor Gallery believed that the rejection of *Day & Night* may have been caused by a number of important errors in the Examination Agreement submitted by Levy. Therefore, on May 14, 2015, the Mayor Gallery – now again the owner of *Day & Night* – submitted to defendants its own Examination Agreement which corrected certain errors in the provenance (*i.e.*, the list of previous owners). It also provided: a) additional documentary proof of the exhibition history of the artwork; and b) photographs of *Day & Night* with Agnes Martin and other previous owners of that artwork in the foreground; and c) the results of radiocarbon testing of the canvas, all of which documented and established the authenticity of *Day & Night* (*see*, “Exhibit B” hereto).

29. James Mayor, the principal of The Mayor Gallery, prepared, completed and presented the substantially revised Examination Agreement in person to defendant Bell at her office in New York, and he provided personal commentary on the artwork and the documents he was submitting. During that meeting he also asked defendant Bell for the names of the members of the Agnes Martin Authentication Committee; she refused to answer claiming that their names

were “confidential.”

30. James Mayor also had several discussions with defendant Bell prior to May 2015 during which he questioned defendant Glimcher’s bona fides and whether the art world should refuse to cooperate and support The Agnes Martin Catalogue Raisonné. He was concerned that Glimcher’s obvious conflicts of interest (see ¶¶ 9-12, above) and the longstanding frictions and disagreements that existed between him and Glimcher, prevented an objective and fair vetting of submitted artworks, including of *Day & Night*.

31. Plaintiff was told that it was unnecessary for it to re-submit the artwork itself and the defendants therefore never examined it in the context of The Mayor Gallery’s re-submission.

32. A “Notification Letter” dated October 21, 2015, on the letterhead of the “Agnes Martin Catalogue Raisonné LLC” was sent to The Mayor Gallery but under a cover letter dated October 22, 2015 signed by Aaron Richard Golub, Esquire, as counsel to “Artifex Press and the Agnes Martin Catalogue Raisonné Committee.” The “Notification Letter” informed “James Mayor, The Mayor Gallery” that *Day & Night* would not be included in the Agnes Martin Catalogue Raisonné (see, final two pages of “Exhibit B,” hereto).

33. As explained above, defendants refusal to approve *Day & Night* for inclusion in the Agnes Martin Catalogue Raisonné, had as its purpose and was in substance and effect a declaration by defendants to The Mayor Gallery and the marketplace that the artwork is a fake, rendering it worthless.

Facts – V
**Kolodny Submits *Untitled, Ink & Yellow Wash*, to the AM Catalogue
Raisonné and It Is Rejected**

34. In 2009, Patricia and Frank Kolodny (“Kolodny”) purchased from The Mayor Gallery, *Untitled*, an ink and yellow wash on paper, signed and dated by Agnes Martin, “A. Martin ‘59”, (hereinafter “*Untitled*”) which The Mayor Gallery represented and warranted was an authentic artwork created by Agnes Martin.

35. Kolodny paid The Mayor Gallery \$240,000 for *Untitled*.

36. On information and belief: a) soon thereafter Kolodny gifted *Untitled* to Johanna Kolodny; and b) on August 15, 2015, Johanna Kolodny’s delivered “*Untitled*” to the AM Catalogue Raisonné along with a completed and signed Examination Agreement (*see*, “Exhibit E” hereto). James Mayor telephoned defendant Bell to offer answers to whatever questions she might have about this artwork and he left a message asking her to return his call; but defendant Bell never did.

37. On information and belief, a “Notification Letter” dated November 24, 2015, was sent by the defendant AM Catalogue Raisonné to Johanna Kolodny informing her that *Untitled* would not be included in the Agnes Martin Catalogue Raisonné (*see*, final page of “Exhibit E” hereto).

38. As explained above, defendants refusal to approve *Untitled*, for inclusion in the Agnes Martin Catalogue Raisonné, had as its purpose and was in substance and effect a declaration by defendants to Kolodny and the marketplace that the artwork is a fake, rendering it worthless.

39. Kolodny thereupon considered demanding that The Mayor Gallery rescind the sale

and refund the purchase price. However, he then decided to retain ownership and possession of *Untitled*, but only until and if The Mayor Gallery established that it was authentic and marketable.

Facts - VI
Shainwald Submits *The Invisible* to the AM Catalogue Raisonné and It Is Rejected

40. In December 2012, Sybil Shainwald purchased from The Mayor Gallery, *The Invisible*, 1957, graphite on paper, signed and titled by Agnes Martin, which The Mayor Gallery represented and warranted was an authentic artwork created by Agnes Martin.

41. Shainwald paid The Mayor Gallery \$180,000 for *The Invisible*.

42. On information and belief, on August 15, 2015, Shainwald delivered “*The Invisible*” to the AM Catalogue Raisonné LLC along with a completed and signed Examination Agreement (see, “Exhibit F” hereto).

43. On information and belief, a “Notification Letter” dated November 24, 2015, was sent by the defendant AM Catalogue Raisonné LLC to Shainwald informing her that *The Invisible* would not be included in the Agnes Martin Catalogue Raisonné. (see, final page of “Exhibit F” hereto).

44. As explained above, defendants refusal to approve *The Invisible* for inclusion in the Agnes Martin Catalogue Raisonné, had as its purpose and was in substance and effect a declaration by defendants to Shainwald and the marketplace that the artwork is a fake, rendering it worthless.

45. Shainwald thereupon demanded that plaintiff Mayor Gallery rescind the sale and refund the purchase price. The Mayor Gallery thereupon honored its warranty of authenticity and

refunded the \$180,000 purchase price to Shainwald.

Facts - VII
Labouchère Submits Ten Artworks to the AM Catalogue
Raisonné and They Are All Rejected

46. In March and October 2013, Pierre de Labouchère purchased from The Mayor Gallery ten artworks, all acrylic on canvas, signed by the artist on the back, which plaintiff Mayor Gallery represented and warranted were created by Agnes Martin as follows: (a) Ancient Melody; (b) Dawn #3; (c)Untitled (Solitude); (d) Untitled (74_14 GYB); (e) The Mountain; (f) Untitled (81 BY); (g) Untitled (12 BY); (h) Elation; (I) Discipline; and (j) Infinite Space.

47. Labouchère paid a total of € 3,250,000 (currently converting to \$3,625,000) for the ten artworks.

48. On information and belief, on or about October 13, 2014 Labouchère delivered the ten artworks to the AM Catalogue Raisonné; each was accompanied by a completed and signed Examination Agreement (*see, e.g.*, one of the identical ten forms, “Exhibit G” hereto).

49. On information and belief, a “Notification Letter”dated November 24, 2015, was sent by the defendant AM Catalogue Raisonné to Labouchère for each of the ten artworks informing him that the artwork would not be included in the Agnes Martin Catalogue Raisonné (*see, e.g.*, one of the ten “notification letters,” final page of “Exhibit “G” hereto),

50. As explained above, defendants refusal to approve the ten artworks for inclusion in the Agnes Martin Catalogue Raisonné had as its purpose and was in substance and effect a declaration by defendants to Labouchère and the marketplace that the artwork is a fake, rendering it worthless.

51. Labouchère thereupon considered demanding that The Mayor Gallery rescind the

sales and refund the purchase price. However, he then decided to retain ownership and possession of the ten artworks, but only until and if The Mayor Gallery established that the artworks were authentic and marketable.

Facts –VIII

Defendants Are Asked to Explain and Defend Their Decisions To Reject All Thirteen of the Above Enumerated Artworks But They Refuse to Do So.

52. As alleged in paragraph 31, above, The Mayor Gallery received a “Notification Letter” dated October 21, 2015, but under a cover letter dated October 22, 2015 from Aaron Richard Golub, Esq., counsel to the “Agnes Martin Catalogue Raisonné Committee” (*see*, final pages of Exhibit B” hereto).

53. By email-pdf and first class mail dated January 6, 2016, addressed to Aaron Richard Golub, undersigned counsel for The Mayor Gallery asked specific and reasonable questions, the answers to which would enable The Mayor Gallery to fully understand and fully answer the specific reasons the defendants rejected *Day & Night* (*see*, “Exhibit H” hereto, pp. 1-3).

54. The letter (“Exhibit H” hereto at p. 3) stated, *inter alia* :

We believe that if Mr. Mayor and perhaps others with relevant information, are given an opportunity to fully examine and respond to the above requested documents and facts, your client may reconsider its October 21, 2015 letter and decide instead to include ... [*Day & Night*] in the Agnes Martin Catalogue Raisonné.

55. By emails dated January 25, 2016 and February 25, 2016, undersigned counsel asked for the status of the request for information as set forth in the January 6, 2016 letter (*see*, “Exhibit H” hereto, pp. 4 & 8).

56. The January 6, January 25 and February 25, 2016 requests were and continue to be ignored by Mr. Golub and defendants.

57. As alleged in paragraph 37, above, Kolodny received a “Notification Letter” dated November 24, 2015, from the defendant AM Catalogue Raisonné LLC rejecting Agnes Martin’s *Untitled*.

58. The undersigned counsel to the Mayor Gallery – by email-pdf and first class mail dated March 2, 2016, addressed to defendant Tiffany Bell and Aaron Richard Golub, Esq., asked specific and reasonable questions, the answers to which would enable it to fully understand and fully answer the specific reasons defendants rejected Agnes Martin’s *Untitled*. The letter stated that if necessary, defendants’ answers could be provided to Ms. Kolodny (*see*, “Exhibit H” hereto, pp. 11-12).

59. This March 2, 2016 request was and continues to be ignored by Mr. Golub and defendants.

60. As alleged in paragraph 43, above Shainwald received a “Notification Letter” dated November 24, 2015, from the defendant AM Catalogue Raisonné LLC rejecting Agnes Martin’s *The Invisible*.

61. By email-pdf and first class mail dated March 2, 2016, addressed to defendant Tiffany Bell and Aaron Richard Golub, Esq., undersigned counsel for The Mayor Gallery asked specific and reasonable questions, the answers to which would enable the Gallery to fully understand and fully answer the specific reasons defendants rejected Agnes Martin’s *The Invisible* 1957 (*see*, “Exhibit H” hereto, pp. 13-14). The letter stated that if necessary, defendants’ answers could be provided to Ms. Shainwald . *Id.*

62. This March 2, 2016 request was and continues to be ignored by Mr. Golub and defendants.

63. As alleged in paragraph 49, above Labouchère received ten separate “Notification Letter(s)” dated November 24, 2015, from the defendant AM Catalogue Raisonné rejecting the ten Agnes Martin artworks.

64. By email-pdf and first class mail dated February 23, 2016, addressed to defendant Tiffany Bell and Aaron Richard Golub, Esq., undersigned counsel for The Mayor Gallery asked specific and reasonable questions, the answers to which would enable it to fully understand and fully answer the specific reasons defendants rejected the ten artworks by Agnes Martin submitted by Labouchère. (*see*, “Exhibit H” hereto, pp. 15-16). The letter stated that if necessary, defendants’ answers could be provided to Labouchère. *Id.*

65. On February 24, 2016, Aaron Richard Golub, Esq. responded by letter and email (*see*, “Exhibit H” hereto, p.7). He ignored entirely the requests for documents and information sought in undersigned counsel’s February 23, 2016 letter. Instead Mr. Golub warned “be guided in all respects by the agreement your client signed.” (This despite the fact that neither James Mayor nor The Mayor Gallery signed any agreement in connection with the Levy, Kolodny, Shainwald and Labouchère’s submissions.) In addition, Mr. Golub in his February 24, 2016 letter reserved “any rights of Artifex and the Agnes Martin Catalogue Raisonné Committee.” *Id.*

**First Cause of Action – Product Disparagement
For All Thirteen Artworks**

66. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 to 65, above, as if fully set forth herein.

67. The thirteen artworks referred to herein and purchased by The Mayor Gallery, Kolodny, Shainwald and Labouchère (¶¶ 22-51 above) are authentic, *i.e.*, they were created and signed by the artist, Agnes Martin.

68. The statements made in defendants' Notification Letters sent to The Mayor Gallery, Kolodny, Shainwald and Labouchère rejecting the thirteen artworks, were in substance and effect statements by defendants to The Mayor Gallery, Kolodny, Shainwald, and Labouchère, and the art world generally, that the artworks submitted for vetting were fakes.

69. As explained above, these statements were made without a careful examination of the facts relating to authenticity and without providing – indeed refusing to provide – information and documents explaining and supporting the decision. Nor did defendants give The Mayor Gallery, Kolodny, Shainwald and Labouchère an opportunity to review and rebut any documents or information relied upon by defendants in connection with their decisions. In substance, defendants conducted their vetting peremptorily and dictatorially much like a Star Chamber – without disclosing their identities or their policies, practices and procedures and without disclosing the evidence supporting or justifying their decisions and without affording The Mayor Gallery, Kolodny, Shainwald and Labouchère an opportunity to review, respond or dispute their conclusions.

70. The statements in the Notification Letters were therefore made with “malice,” *i.e.*,

with a reckless disregard for whether the statements were true or false.

71. Solely because of the Notification Letters, Kolodny, Shainwald and Labouchère sought rescission of their contracts under which they agreed to purchase the artworks from The Mayor Gallery.

72. The Mayor Gallery, solely because of the Notification Letter, cannot again offer *Day and Night* for sale.

73. The Mayor Gallery entered into an Examination Agreement but only for *Day & Night*, under which it agreed not to sue defendants for any claims arising from its submission of *Day & Night* (see, “Exhibit B” hereto, ¶10, and final sentence of ¶ 3.). Either that entire Examination Agreement or the specific provisions therein barring any lawsuit by The Mayor Gallery, are void as against public policy, unconscionable or otherwise unenforceable.

74. Plaintiff was damaged by defendants’ product disparagement in the amount of \$7,233,438 – the total amount paid by and that has already been or must be refunded to Levy, Kolodny, Shainwald and Labouchère.

75. Defendants have thereby committed the tort of product disparagement against The Mayor Gallery.

**Second Cause of Action for Tortious Interference With Contract –
For All Thirteen Artworks**

76. Plaintiff repeats and re-alleges the allegations contained in paragraph 1 to 75, above, as if fully set forth herein.

77. The Mayor Gallery had a contract with each of Levy, Kolodny, Shainman and Labouchère under which the Gallery sold and each of them purchased artworks by Agnes Martin.

78. All of the artworks submitted to defendants for vetting were authentic.

79. Defendants by improperly finding that the artworks were not authentic, induced or caused Levy, Kolodny, Shainman and Labouchère to rescind their purchases and demand refunds of the purchase price from The Mayor Gallery.

80. Plaintiff was damaged by defendants' interference with these contracts in the amount of \$7,233,438 – the total amount paid by and that has already been or must be refunded to Levy, Kolodny, Shainwald and Labouchère.

81. Defendants thereby tortiously interfered with the contracts of sale between The Mayor Gallery and Levy, Kolodny, Shainman and Labouchère.

**Third Cause of Action for Tortious Interference With Prospective
Business Relations – For All Thirteen Artworks**

82. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1-81, above, as if fully set forth herein.

83. The Mayor Gallery had a profitable business relationship with Levy, Kolodny, Shainman and Labouchère under which The Mayor Gallery sold them artworks.

84. Defendants interfered with those relationships by wrongfully taking action against Levy, Kolodny, Shainman and Labouchère, *i.e.*, by finding and advising them that artworks they had purchased from Mayor were fakes and in effect forcing them to rescind their purchases of artworks from Mayor.

85. Defendants used unfair or improper means to interfere with the relationships. Specifically, defendants rejections of the artworks purchased by Levy, Kolodny, Shainman and Labouchère were made without a careful examination of the facts relating to authenticity and

without providing – indeed refusing to provide – information and documents explaining and supporting the decision. Nor did defendants give Mayor, Kolodny, Shainwald and Labouchère an opportunity to review and rebut any documents or information relied upon by defendants in connection with their decisions.

86. Defendants had no competing interest supporting their actions against Levy, Kolodny, Shainman and Labouchère. In fact, their announced mission of identifying all authentic and fake works by Agnes Martin is enhanced by a careful and thorough vetting of all artworks purportedly created by Agnes Martin.

87. Plaintiff was damaged by defendants' interference with plaintiff's business relationships with Levy, Kolodny, Shainman and Labouchère in the amount of \$7,233,438 – the total amount paid by and that has already been or must be refunded to Levy, Kolodny, Shainwald and Labouchère.

88. Defendants thereby tortiously interfered with the prospective business relations between The Mayor Gallery on the one hand, and Levy, Kolodny, Shainman and Labouchère on the other hand.

**Fourth Cause of Action For Negligent Misrepresentation –
For All Thirteen of the Artworks**

89. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 to 88, above, as if fully set forth herein.

90. All of the thirteen artworks submitted to defendants for vetting were authentic.

91. Defendants failed to properly investigate the authenticity of the artworks and negligently misrepresented to Levy, Kolodny, Shainwald and Labouchère that the thirteen

artworks were fakes which in effect forced them to rescind their purchases and demand a refund of the purchase price.

92. Defendant Tiffany Bell met with James Mayor, principal of the Mayor Gallery, on several occasions prior to the submissions of the artworks and she and the other defendants knew from those meetings as well from the submitted Examination Agreements, that The Mayor Gallery would be adversely affected by any determination that the artworks submitted by Levy, Kolodny, Shainwald and Labouchère were fakes. Defendant also knew that any adverse determination would have the purpose and effect of foreclosing any sale of the artworks by The Mayor Gallery.

93. Defendants also knew that if they declared that the artworks submitted by The Mayor Gallery, Levy, Kolodny, Shainwald and Labouchère were fakes, The Mayor Gallery would have no choice but to rely on defendants' determinations and would be impelled to rescind the sales and refund the purchase price.

94. Plaintiff was damaged by defendants' negligent misrepresentations in the amount of \$7,233,438 – the total amount that has already been or must be refunded to Levy, Kolodny, Shainwald and Labouchère.

95. For the foregoing reasons, defendants committed the tort of negligent misrepresentation against The Mayor Gallery.

ALTERNATIVE CAUSE OF ACTION
Fifth Cause of Action – Breach of Contract, i.e., For
Breach of Implied Duty of Good Faith & Fair Dealing
For the artwork *Day & Night*

96. Plaintiff repeats and re-alleges the allegations contained in paragraph 1 to 95, above,

as if fully set forth herein.

96. Defendant Tiffany Bell, as editor of the Agnes Martin Catalogue Raisonné and the Authentication Committee and defendant Arnold Glimcher, as the managing member of the AM Catalogue Raisonné LLC and as the owner and CEO of the Pace Gallery which represents The Agnes Martin Estate, have a unique status. They are recognized in the art world as the final arbiters of whether an artwork purported to be by Agnes Martin is in fact authentic.

97. For this reason Sotheby's, Christie's and other auction houses, art galleries, and dealers will not accept for sale any purported Agnes Martin artwork if defendants do not vet and approve the artwork as authentic.

98. Plaintiff and defendant, AM Catalogue Raisonné LLC, entered into an Examination Agreement dated May 14, 2015, under which plaintiff submitted *Day & Night* to the said defendant for vetting to determine whether that artwork would be included or excluded from the Agnes Martin Catalogue Raisonné (*see*, "Exhibit B," hereto). The Agreement provided that the substantive law of New York would be controlling (*Id.* ¶ 11).

99. Implied in The Examination Agreement is a duty imposed on defendants to vet *Day & Night* in "good faith." In this case, this includes a duty to:

a) to conduct a physical examination of the artwork, gather, review and consider all of the facts and evidence supporting acceptance of the artwork as authentic alongside any facts that support rejection of the work as a fake. In fact, ¶ 2 of the Examination Agreement explicitly represents, *e.g.*, that the taking of paint samples from and the conducting of other tests on the artwork may be necessary to determine authenticity and it explicitly requires that the cost of all such tests and investigations be paid by the owner of the artwork.

b) fully and in good faith answer the requests of The Mayor Gallery, for:

(i) the name of the person who signed the October 21, 2015 Notification [of rejection] Letter [the signature is illegible and no individual is named as the author of the letter] and that person's role in the authentication process.

(ii) The names of the members of the Catalogue Raisonné LLC and the Authentication Committee; a copy of the curriculum vitae of each such member.

(iii) The steps and procedures followed by the Catalogue Raisonné and the Authentication Committee that concluded in the rejection.

(iv) The detailed reasons the Catalogue Raisonné and the Authentication Committee rejected *Day & Night*. " A copy of any and all documents that were relied upon in connection with the rejection.

vi) A copy of the Operating Agreement, if any, for the Agnes Martin Catalogue Raisonné LLC.

(c) afford The Mayor Gallery an opportunity to rebut the above information before defendants issued a Notification Letter rejecting the artwork.

See "Exhibit H", hereto, pp. 2-3.

(d) Finally, Jack Levy, in his Examination Agreement for *Day & Night* submitted a year before The Mayor Gallery's submission made a number of significant errors which were later corrected by The Mayor Gallery's substantially revised Examination Agreement (*see*, ¶ 28, *above*). The Mayor Gallery's submission also contained additional supporting documentation, photographic evidence and the results of scientific testing of the artwork's canvas. *Id.* Defendants had a duty to answer The Mayor Gallery's request that defendants provide the reasons they had found such new evidence unpersuasive (*see*, "Exhibit B" hereto).

100. The Mayor Gallery requested that defendants provide all of the above information and further that they allow The Mayor Gallery to rebut any such information (*see*, "Exhibit H,"

hereto).

101. Defendants refused to provide any of the above information or allow for rebuttal by The Mayor Gallery (*see*, “Exhibit H,” hereto).

102. Defendants failure to provide the above information and to allow for rebuttal by The Mayor Gallery was a breach of defendants’ implied duty under the Examination Agreement of good faith and fair dealing.

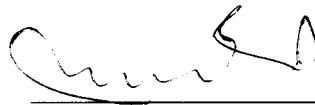
WHEREFORE, Plaintiff The Mayor Gallery, prays for judgment:

A. On its First, Second, Third and Fourth Causes of Action money damages against defendants in the total amount of \$7,233,438 with pre and post-judgment interest thereon as permitted by law.

B. In the alternative, on its Fifth Cause of Action, an injunction enjoining defendants to provide the information and take the steps requested by plaintiff as set forth in ¶¶ 99- 101 of the Complaint.

C. Such additional or alternative relief as the Court deems just and equitable.

October 17, 2016



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