

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

THE NEW AMERICAN CINEMA GROUP, INC,

Plaintiff,

- against -

P8H, INC. d/b/a PADDLE8, VALENTINE
UHOVSKI, RAMESHKUMAR GANESHAN,
and MICHAEL MCCLELLAN,

Defendants.

Index No. _____

SUMMONS

To: P8H, Inc. d/b/a Paddle8
107 Norfolk Street
New York, New York 10002

Mr. Rameshkumar Ganeshan
107 Norfolk Street
New York, New York 10002

Mr. Valentine Uhovski
107 Norfolk Street
New York, New York 10002

Mr. Michael McClellan
107 Norfolk Street
New York, New York 10002

TO THE ABOVE-NAMED DEFENDANT:

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 thirty days after 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.

Dated: New York, New York
2020-March-10

OLSOFF CAHILL COSSU LLP

By: s/ Paul Cossu
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SUPREME COURT OF THE STATE OF NEW YORK
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COMPLAINT

Plaintiff, The New American Cinema Group, Inc. (“NACG”), a not-for-profit New York corporation, by its attorneys, Olsoff | Cahill | Cossu LLP, as and for its Complaint against Defendants P8H, Inc., d/b/a Paddle8 (“Paddle8”), Valentine Uhovski (“Uhovski”), Rameshkumar Ganeshan (“Ganeshan”), and Michael McClellan (“McClellan”) (collectively, “Defendants”), alleges as follows:

NATURE OF THE ACTION

1. This action seeks (a) money damages, including payment of all sums due and owing to NACG, and (b) appointment of a receiver, in connection with Paddle8’s willful default of its payment obligations to NACG stemming from a charity art auction (the “Charity Auction”) that Paddle8 hosted months ago. Paddle8, however, has withheld—and appears to have spent—the sale proceeds from NACG, despite Defendants acknowledging that Paddle8 has received payment from the buyers of the art, and promising to make payment on multiple occasions. On information and belief, Defendants have misappropriated the funds Paddle8 received from the Charity Auction, which they were obligated to hold in trust for the NACG, and used those funds to perpetuate a Ponzi scheme designed to defraud the NACG and keep Paddle8 operating—it is conducting more charity auctions as of the date hereof—in violation of New York law.

PARTIES AND JURISDICTION

2. Plaintiff The New American Cinema Group, Inc. is a duly organized New York not-for-profit corporation with its principal place of business located at 475 Park Avenue South, New York, New York 10016. The NACG is an artist-run organization founded in 1961 in New York City, which holds the world's largest collection of avant-garde and experimental films, and supports the preservation, promotion and distribution of alternative, non-commercial films.

3. Defendant P8H, Inc., d/b/a Paddle8, is a Delaware corporation with its principal place of business located at 107 Norfolk Street, New York, New York 10002.

4. On information and belief, Defendant Valentine Uhovski is an individual residing in the State of New York, who was the Chief Executive Officer of Paddle8 at all relevant times.

5. On information and belief, Defendant Rameshkumar Ganeshan is an individual residing in the State of New York, who was the Financial Controller of Paddle8 at all relevant times.

6. On information and belief, Defendant Michael McClellan is an individual residing in the State of New York, who was the Director of Operations of Paddle8 at all relevant times.

7. This Court has personal jurisdiction over Defendants pursuant to CPLR 301 and 302(a).

8. Venue is proper in this county pursuant to CPLR 501 and 503.

FACTS

9. This action concerns Paddle8's sale of multiple artworks (the "Artworks") that were consigned to Paddle8 by artists and artists' estates, via the NACG, for the Charity Auction.

10. On or about 2019-January-08, NACG agreed to consign the Artworks to Paddle8 for the Charity Auction pursuant to a "Online Benefit Auction Agreement."

11. The Online Benefit Auction Agreement was signed by Defendants McClellan and Ganeshan.

12. On information and belief, Defendants were aware, based on three prior charity auctions it had held for the NACG, that the Artworks consigned by the NACG were from artists or artists' estates.

13. Following each of the three prior charity auctions that were held by Paddle8 for the benefit of NACG, NACG received the sale proceeds from each auction within one month following the close of the auction.

14. The Charity Auction was hosted on Paddle8's website from 2019-November-04 to 2019-November-18.

15. During the Charity Auction, and as a result of sales made shortly thereafter, over 30 Artworks were sold by Paddle8.

16. Paddle8 has received payment for all of the Artworks that were sold.

17. Despite the Charity Auction having concluded four months ago, Paddle8 has failed to make any payment to NACG for the Artworks sold.

18. On multiple occasions, the NACG inquired as to when it could expect payment for the sales that were made by Paddle8.

19. In response to those inquiries, Paddle8, via McClellan and others, assured the NACG that payment would be made shortly.

20. NACG has received communications from purchasers who paid Paddle8 months ago, inquiring as to when Artworks would be delivered.

21. On or about 2020-February-20, representatives of NACG went to Paddle8's offices to demand payment of the Artwork sale proceeds collected by Paddle8.

22. On or about 2020-February-20, McClellan represented to the NACG that payment would be made no later than 2020-February-24, and alluded to a "loan" being taken out to pay the NACG.

23. In reliance upon Defendant McClellan's assurance of payment, the NACG provided its wire instructions to Defendants.

24. On information and belief, Paddle8 was insolvent prior to the Charity Auction.

25. On information and belief, Defendants knew that Paddle8 was insolvent prior to the Charity Auction, but nonetheless accepted the consignment of the Artworks to Paddle8 with the intention of selling the Artworks and using the sale proceeds for Defendants' benefit.

26. Defendants have acknowledged their obligation to make payment to NACG for the Artworks, but they have failed—without any legal or other justification—to make the required payments.

**FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)
(AGAINST DEFENDANT PADDLE8)**

27. NACG repeats and realleges the allegations set forth in Paragraphs 1 through 26 above.

28. NACG and Paddle8 were parties to a contract that concerned NACG's consignment of Artworks to Paddle8 for sale via the Charity Auction.
29. NACG and Paddle8 agreed to all the terms of the contracts.
30. NACG has performed all of its obligations under the contracts.
31. The contract required Paddle8 to remit payment to NACG for the Artworks purchased through the Charity Auction.
32. Paddle8 breached the contract by failing to remit payment to NACG for the Artworks.
33. NACG has suffered damages in amount to be determined at trial.

**SECOND CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY)
(AGAINST ALL DEFENDANTS)**

34. NACG repeats and realleges the allegations set forth in Paragraphs 1 through 33 above.
35. NACG consigned the Artworks to Paddle8 for sale.
36. Paddle8 acted as the agent of NACG by virtue of NACG's consignment of the Artworks to Paddle8, and Paddle8's retention of the proceeds from the sale of the Artworks.
37. Paddle8 and its officers and employees owed and owe a fiduciary duty to NACG.
38. On information and belief, Defendants Uhovski, McClellan, and Ganeshan induced Paddle8 to breach its fiduciary duty to NACG by diverting the proceeds from the Charity Sale away from the NACG.
39. On information and belief, Defendants breached their fiduciary duties to NACG by wrongfully retaining the proceeds from the sale of Artworks and using such proceeds for Defendants' benefit.

40. NACG has been damaged by Defendants' misconduct, in an amount to be determined at trial.

41. Defendants' tortious and egregious conduct was intended to wrongfully enrich themselves, and to deliberately and willfully injure the NACG in wanton disregard of the NACG's rights and Defendants' civil obligations. The NACG is, therefore, entitled to an award of punitive damages in an amount to be determined at trial.

**THIRD CAUSE OF ACTION
(VIOLATION OF ARTICLE 12 OF NEW YORK'S ARTS AND CULTURAL AFFAIRS LAW)
(AGAINST ALL DEFENDANTS)**

42. NACG repeats and realleges the allegations set forth in Paragraphs 1 through 41 above.

43. Section 12.01(1) of New York's Arts and Cultural Affairs Law ("NYACAL") provides that:

(a) Whenever an artist or craftsperson, or a successor in interest of such artist or craftsperson, delivers or causes to be delivered a work of fine art, craft or a print of such artist's or craftsperson's own creation to an art merchant for the purpose of exhibition and/or sale on a commission, fee or other basis of compensation, the delivery to and acceptance thereof by the art merchant establishes a consignor/consignee relationship as between such artist or craftsperson, or the successor in interest of such artist or craftsperson, and such art merchant with respect to the said work, and:

(i) such consignee shall thereafter be deemed to be the agent of such consignor with respect to the said work;

(ii) such work is trust property in the hands of the consignee for the benefit of the consignor;

(iii) any proceeds from the sale of such work are trust funds in the hands of the consignee for the benefit of the consignor;

(iv) such work shall remain trust property notwithstanding its purchase by the consignee for his own account until the price is paid in full to the consignor; provided that, if such work is resold to a bona fide third party before the consignor has been paid in full, the resale proceeds are trust funds in the hands of the consignee for the benefit of the consignor to the extent necessary to pay any balance still due to the consignor and such trusteeship shall continue until the

fiduciary obligation of the consignee with respect to such transaction is discharged in full; and

(v) such trust property and trust funds shall be considered property held in statutory trust, and no such trust property or trust funds shall become the property of the consignee or be subject or subordinate to any claims, liens or security interest of any kind or nature whatsoever of the consignee's creditors.

44. Paddle8 is an art merchant.

45. By virtue of receiving works of fine art from an artist, or a successor in interest of an artist, Paddle8 is deemed to be the agent of such consignor.

46. The Artworks were trust property in the hands of Paddle8 for the benefit of the consignor, NACG.

47. The proceeds from the sale of the Artworks are trust funds in the hands of the Paddle8 for the benefit of the consignor, NACG.

48. Defendants violated NYACAL by failing to treat the trust funds identified in Section 12.01(1)(a) in accordance with the requirements of fiduciaries in Section 11-1.6 of New York's Estates, Powers and Trusts law.

49. Defendants are liable to NACG for damages caused by their breach, in an amount to be determined at trial, including NACG's reasonable attorneys' fees.

**FOURTH CAUSE OF ACTION
(FRAUDULENT INDUCEMENT & CONCEALMENT)
(AGAINST DEFENDANTS PADDLE8, MCCLELLAN, AND GANESHAN)**

50. NACG repeats and realleges the allegations set forth in Paragraphs 1 through 49 above.

51. NACG consigned the Artworks to Paddle8 based upon representations by Defendants that Paddle8 was solvent and would remit the proceeds from the Charity Auction to NACG.

52. On information and belief, at the time Defendants made those representations, they knew they were false.

53. On information and belief, Defendants knew that Paddle8 was insolvent, and would not be remitting the proceeds from the sale of the Artworks to NACG, following the Charity Auction.

54. Notwithstanding that Defendants knew that Paddle8 was insolvent and would be unable to pay the proceeds from the sale of any Artworks to NACG, Defendants induced the NACG to allow Paddle8 to continue to offer for sale, and collect payment for, Artworks that had gone unsold at the Charity Auction.

55. On information and belief, Defendants intended to misappropriate the funds received from the sale of the Artworks, including for payments to Defendants Uhovski, McClellan, and Ganeshan.

56. Following the Charity Auction, Defendants continued to misrepresent that payment of the Artworks' sale proceeds would be made to NACG.

57. On information and belief, Defendants' concealed and misrepresented Paddle8's finances in order to forestall the NACG from taking action against Defendants, and to allow Defendants to continue to induce other charities to consign property to Paddle8.

58. Defendants are liable to NACG for damages caused by their fraud, in an amount to be determined at trial.

59. Defendants' tortious and egregious conduct was intended to wrongfully enrich themselves, and to deliberately and willfully injure the NACG in wanton disregard of the NACG's rights and Defendants' civil obligations. The NACG is, therefore, entitled to an award of punitive damages in an amount to be determined at trial.

**FIFTH CAUSE OF ACTION
(VIOLATION OF GENERAL BUSINESS LAW § 349 & 350)
(AGAINST PADDLE8)**

60. NACG repeats and realleges the allegations set forth in Paragraphs 1 through 59 above.

61. Paddle8 presents and markets itself as a consumer-friendly and socially-conscious website.

62. Paddle8's website boasts that "Paddle8 makes buying and selling fine art and collectibles online an easy, secure, and efficient experience."

63. With regard to charity auctions, Paddle8's website specifically pronounces that "Our Benefit Auctions are sourced by our socially-minded partners. Hosted on our platform, they raise funds for vital causes and allow buyers to collect with a purpose."

64. On information and belief, Paddle8's statements are specifically intended to induce consumers into bidding for art with the belief that the funds from any property that they purchase will be delivered to Paddle8's "socially-minded partners."

65. The "business of an auctioneer" such as Paddle8 "has always been affected with a public interest."

66. Paddle8's claims that it uses best in class technology to provide consumers with a "secure" buying and selling experience at auction are false and misleading.

67. On information and belief, Paddle8 used, and is continuing to use, the money generated by selling consumers' artworks—*including those donated by artists for charity*—to operate a failing business whose executives appear to be abandoning it.

68. On information and belief, other consumers and non-profits that have consigned property to Paddle8 have not been received the sale proceeds from such sales by Paddle8.

69. Paddle8's statement that its benefit auctions "raise funds for vital causes and allow buyers to collect with a purpose" is false and misleading as the funds transferred by consumers to Paddle8 often do not go to the "vital causes" claimed by Paddle8.

70. NACG relied on Paddle8's misleading conduct and statements in consigning the Artworks to Paddle8.

71. Paddle8's misleading claims and practices were material in inducing the NACG to enter into the Online Benefit Auction Agreement and consign the Artworks to Paddle8.

72. NACG, a not-for-profit, has been damaged by the misleading representations of Paddle8 and other consumers, including other charities, are continuing to be damaged as of the date of this filing.

73. NACG has been damaged by Defendants' misconduct, in an amount to be determined at trial.

WHEREFORE, NACG demand judgment in their favor awarding NACG:

- (a) compensatory damages in an amount to be determined at trial;
- (b) an accounting of any and all sales of the Artwork made by Paddle8;
- (c) an injunction prohibiting Paddle8 from using funds raised from the sale of artworks belonging to, or sold by, other consumers and charities for Paddle8's operating expenses;
- (d) appointment of a receiver to preserve and distribute any assets of Paddle8;
- (e) punitive damages in an amount to be determined at trial;
- (f) costs and disbursements in connection with this action, including attorneys' fees;
- (g) costs, including reasonable attorneys' fees, and
- (h) such other and further relief as the Court deems just and proper.

Dated: New York, New York
2020-March-10

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