

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

ZHANG CHANG,

Plaintiff(s),

*-against-*

PHILLIPS AUCTIONEERS LLC,

Defendant(s).

Index No. [REDACTED]

**Summons**

Date Index No. Purchased: December 29, 2020

To the above named Defendant(s)

Phillips Auctioneers LLC  
450 Park Avenue  
New York, NY 10022

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 attorney 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.

The basis of venue is Defendant's principal place of business,  
which is 450 Park Avenue, New York, NY 10022.

Dated: New York, New York

December 29, 2020

K&L GATES LLP

by \_\_\_\_\_

Matthew J. Weldon

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

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ZHANG CHANG

Plaintiff,

**INDEX NO.** \_\_\_\_\_

v.

PHILLIPS AUCTIONEERS LLC.

**JURY TRIAL DEMANDED**

Defendant.

-----X

**COMPLAINT**

Plaintiff Zhang Chang (“Plaintiff” or “Mr. Zhang”), for his Complaint against Defendant Phillips Auctioneers LLC (“Defendant” or “Phillips”), states and alleges as follows:

**SUMMARY OF THE ACTION**

1. This is an action for breach of a Settlement Agreement and Release of Claims dated January 31, 2018, by and between *inter alia* Mr. Zhang and Phillips (the “Settlement Agreement”). The Settlement Agreement provides, amongst other things, that in exchange for the payment of \$26 million (“Settlement Amount”) by Mr. Zhang to Phillips, Mr. Zhang is entitled to full title to a painting by Gerhard Richter entitled “*Düsenjäger*” (the “Richter Work”).

2. However, Phillips wrongfully forced Mr. Zhang to pay ***an additional \$2,664,608*** over the Settlement Amount for the Richter Work in breach of the Settlement Agreement. In this action, Mr. Zhang seeks *inter alia* the return of the additional \$2,664,608 that Phillips forced him to pay to it, plus interest and costs, including his attorneys’ fees as provided for under the terms of the Settlement Agreement, and a declaratory judgment that the parties did not have a valid, enforceable agreement with required Mr. Zhang to pay the additional \$2,664,608.

**THE PARTIES**

3. Mr. Zhang Chang is a Chinese citizen with an address located at 3/F, Building 1, Armani Apartment, Zone B, Junhao Central Park Plaza, 10 Chaoyang Park South Road, Chaoyang District, Beijing, China.

4. Mr. Zhang is an art enthusiast and a businessman.

5. Upon information and belief, Phillips Auctioneers LLC is a Delaware limited liability company, registered to do business in New York, with a principal place of business located at 450 Park Avenue, New York, NY 10022.

6. Phillips is an auction house for art, design, watches and more.

**JURISDICTION AND VENUE**

7. This Court has jurisdiction over Phillips pursuant to New York Civil Practice Law and Rules (“CPLR”) §§ 301 and 302(1) and General Obligations Law § 5-1402. Under Section 15 of the Settlement Agreement all parties consented to the exclusive jurisdiction of the Federal or State courts in New York, New York, for all disputes or litigation arising out of or relating to the Settlement Agreement.

8. Venue is proper in this Court pursuant to CPLR §503(a). Further, under Section 15 of the Settlement Agreement all parties consented to exclusive venue in the Federal or State courts of New York, New York, for all disputes or litigation arising out of or relating to the Settlement Agreement.

**FACTUAL ALLEGATIONS**

**A. Background to the Settlement Agreement**

9. In 2016, the well-known auction house, Sotheby’s, invited Mr. Zhang to enter into a guarantee arrangement in respect to a painting by Gerhard Richter entitled “A B, *STILL (1986)*”.

10. A guarantee in this context is in essence financing for an auction house in respect of a painting to be sold at auction. In simple terms, a third party, such as Mr. Zhang, guarantees a certain minimum price for a work to be featured at auction in exchange for a financing fee. The auction house thus secures a consignment and the seller receives a minimum price. If no bid in excess of the guaranteed minimum price is received at auction, the guarantor must purchase the painting at the guaranteed minimum price.

11. In response to this overture from Sotheby's, Mr. Zhang contacted Ms. Kevie Yang ("Ms. Yang") to seek her advice on the matter. Upon information and belief, at that time, Ms. Yang was an Associate Vice President and specialist in 20<sup>th</sup> Century & Contemporary Art at Phillips in New York City.

12. Ms. Yang had previously advised Mr. Zhang on several art-related matters, and he put a great deal of trust in her advice. Mr. Zhang valued Ms. Yang's advice on this matter, and believed that Ms. Yang would look out for his interests.

13. Ms. Yang advised Mr. Zhang not to guarantee the "*A B, STILL (1986)*" painting.

14. Instead, Ms. Yang advised Mr. Zhang to guarantee the Richter Work with Phillips. The Richter Work was to be offered at auction at the 20<sup>th</sup> Century & Contemporary Art Evening Sale in New York on November 16, 2016.

15. In early October 2016, Ms. Yang wrote to Mr. Zhang that the Richter Work was a "major major Richter that might be in play this season...much more major than all the other Richters in the market," and noted that this information she was sharing with Mr. Zhang was "highly confidential." Ms. Yang advised Mr. Zhang that guaranteeing the Richter Work was a "no brainer," especially at \$25 or \$26 million, as its valuation for a private sale was \$35 million. Ms. Yang further assured Mr. Zhang, in writing, that the Richter Work "will do well," and that she had

multiple confidential clients who would be interested in the Richter Work.

16. Mr. Zhang, upon Ms. Yang's advice, entered into a Guarantee Agreement with Phillips for the Richter Work on October 18, 2016, and thereby committed to a guarantee amount of \$27.13 million, consisting of an irrevocable bid of \$24 million on the Richter Work at auction plus a "buyer's premium" amount of \$3.13 million.

17. Upon information and belief, the Richter Work received no bids at the auction.

18. A dispute then arose related to the Guarantee Agreement. Mr. Zhang believed he was misled relating the Guarantee Agreement, and did not make the payment under the Guarantee Agreement.

19. In connection to that dispute, seeking to secure payment under the Guarantee Agreement, Phillips sought and received an order of attachment in New York State Court on June 9, 2017 against another painting that was in New York at the time—a certain diptych by Francis Bacon entitled Study for Head of Isabel Rawsthorne and George Dyer (1967) (the "Bacon Work"). Phillips alleged that Mr. Zhang owned the Bacon Work, however another businessman, Mr. Lin San ("Mr. Lin") asserted an interest in the Bacon Work at that time, and Mr. Lin sought to remove the attachment to protect his interest.

#### **B. The Settlement Agreement**

20. To resolve this dispute, Mr. Zhang entered in the Settlement Agreement with Phillips and Mr. Lin on January 31, 2018.

21. As noted above, the Settlement Agreement provided that in exchange for the payment of the settlement amount of \$26 million ("Settlement Amount") by Mr. Zhang, Mr. Zhang was entitled to full title to the Richter Work. In the case of late payment of the Settlement Amount, the Settlement Agreement provided for interest to be paid by Mr. Zhang to Phillips.

22. The Settlement Agreement also contained in its terms a Consignment Agreement in the amount of \$22 million of the Bacon Work, upon which Phillips in essence retained the Bacon Work as security for the Settlement Amount. However, Phillips committed thereunder: “We shall communicate to you any reasonable offer for purchase of the Property received by us that would result in payment to you of a lesser amount than the Consignment Amount and will only accept such an offer on your behalf if instructed to do so in writing by you.” That is, Phillips was not permitted to sell the Bacon Work below \$22 million unless instructed to do so.

23. Mr. Zhang began making payments required under the Settlement Agreement. By October 2018, Mr. Zhang had paid approximately \$3 million of the \$26 million Settlement Amount, and thus still owed approximately \$23 million under the Settlement Agreement.

24. Mr. Zhang had trouble making further required payments under the Settlement Amount due the Chinese currency control measures. Mr. Zhang was in regular communication with Ms. Yang and Phillips that the Chinese currency control measures were strict and he could not convert Renminbi into United States Dollar, and could not transfer money from China to the United States. Mr. Zhang repeatedly told Ms. Yang and Phillips that he was working to arrange the payment of the remainder of the Settlement Amount.

25. As Mr. Zhang continued to experience difficulty in making the Settlement Amount payment, Phillips wrongly threatened to sell the Bacon Work contrary to the terms of the Settlement Agreement. For example, Phillips wrongfully threatened in its letter to Mr. Zhang dated October 12, 2018, that it was going to sell the Bacon Work and that: “The venue for sale, and all amounts set for such sale shall be set at Phillips’ sole discretion. [Clause 4]. **All previously discussed amounts for the collateral work are no longer applicable**” (emphasis added). Phillips continued to demand for the remaining part of the Settlement Amount, plus accruing

interest under the terms of the Settlement Agreement.

26. Mr. Zhang continued to try to make the payment of the Settlement Amount, and assured Phillips that he would.

27. However, Phillips continued to threaten to also sell the Bacon Work in a “fire sale” in violation of the terms in the Settlement Agreement. In particular, Phillips, in its letter dated October 12, 2018, threatened to sell the Bacon Work, with disclosed auction estimates of \$10-15 million, in order to simply generate the monies needed to cover the remaining Settlement Amount. Mr. Zhang objected to this as the estimate was extremely low compared to the price Mr. Zhang paid for the Bacon Work in 2015, and below its current value. Mr. Zhang purchased the Bacon Work at a Christie’s auction in 2015 for £10.8 million GBP (around \$17 million at the exchange rate at the time).

28. Mr. Zhang explored various options, including obtaining a loan from DHB Bank with the help and cooperation of Phillips. Ms. Yang introduced Mr. Zhang to DHB Bank to try to secure a loan, but this fell through in early 2019 after Ms. Yang and Mr. Zhang participated in various calls together with DHB Bank.

29. Phillips continued with its wrongful threats to breach the Settlement Agreement and deprive Mr. Zhang of both paintings, to satisfy the Settlement Amount. Indeed, Phillips, around January 31, 2019, threatened to sell both the Richter Work and the Bacon Work at very low prices.

30. As of January 31, 2019, the amount outstanding under the Settlement Agreement was \$23,691,232.88.

31. Phillips, on February 20, 2019, followed through with its threats, and continued with its coercive conduct. Over the objection of Mr. Zhang, Phillips listed the Richter Work for

sale at the 20<sup>th</sup> Century and Contemporary Art Evening Sale, scheduled for 7:00pm on March 7, 2019 in London (the “Second Auction”), with a very low estimate of £10-15 million GBP (around \$13-20 million USD). Phillips reported that this low price was in order to “generate interest” in the painting. Mr. Zhang objected to the sale of the Richter Work, as *inter alia* the estimate was significantly lower than the value of the Richter Work under the Settlement Agreement and Guarantee Agreement. Based upon this estimate, Phillips and Mr. Zhang knew that the sale would generate a huge loss to Mr. Zhang, and Mr. Zhang would lose the unique painting, even though the Settlement Amount was intended to be payment for the painting, and consequently destroy Mr. Zhang’s business relationships and reputation as noted below. Further, a sale at the Second Auction would violate the Settlement Agreement.

32. In an email from Phillips to Mr. Zhang on February 26, 2019, Phillips refused to withdraw the Richter Work from the Second Auction after Mr. Zhang repeatedly demanded that the Richter work be withdrawn.

33. Phillips refused to withdraw the Richter Work from the Second Auction even though Mr. Zhang communicated in his various emails sent to Phillips in February 2019, as well as conversations, that he fully intended to pay the Settlement Amount, with interest, and was working on securing the monies to make the payment. Mr. Zhang informed Phillips of this and Phillips was aware of Mr. Zhang’s intention to pay the Settlement Amount. Based upon Mr. Zhang’s conversations with Ms. Yang, Phillips also was aware that Mr. Zhang did not want Phillips to irreparably damage the value of the painting by listing it for a second auction in such a short time period.

34. Due to Phillips’ threats and conduct, Mr. Zhang was terrified that if Phillips sold the Richter Work at auction for an amount less than the Settlement Amount (which was extremely

likely given the low estimate), Phillips would also sell the Bacon Work in a “fire sale,” as it was threatening to do. This would ruin Mr. Zhang financially, and it would ruin his business reputation and relationships, including with Mr. Lin.

35. In response, on February 27, 2019, Phillips proposed that Mr. Zhang pay \$15 million to Phillips, in exchange for releasing the Bacon Work and the ability to participate in the Second Auction. Phillips specifically indicated that it would agree that the \$15 million payment effectively replace the Bacon Work as security for the Settlement Amount under the Settlement Agreement.

36. In order to manage the situation and prevent substantial loss (tens of millions of dollars), and avert financial and reputational disaster, on March 6, 2019, Mr. Zhang arranged for multiple transfers of a total of approximately \$15 million to Phillips, which Phillips acknowledged receiving, and Mr. Zhang planned to bid at the Second Auction if Phillips would not refrain from offering the Richter Work for sale at the Section Auction.

37. In order to transfer the \$15 million, Mr. Zhang had incurred substantial costs and expenses, including 4.5% of service charge for the \$15 million payment. Phillips received this \$15 million payment the morning of the date of the Second Auction.

38. Thus, before the start of the Second Auction, Phillips had approximately \$18 million in cash in its accounts from Mr. Zhang, while the estimate for the Richter Work at the Second Auction was \$13-20 million. Phillips also had possession of the Richter Work and the Bacon Work at the time of the Second Auction.

39. Despite Mr. Zhang’s payments of approximately \$18 million, together with possession of the Richter Work and Bacon Work, Phillips refused to remove the Richter Work from the Second Auction.

40. Under duress, Mr. Zhang was forced to “bid” for the Richter Work at the Second Auction on March 7, 2019 for £15,532,500 GBP (around \$20 million at the exchange rate at the time), which was significantly lower than the value of the Richter Work under the Settlement Agreement and the Guarantee Agreement. In addition, Mr. Zhang was forced to pay a second buyer’s premium of \$2,664,608 for “winning” the Second Auction.

41. Further, even though Phillips had approximately \$18 million from Mr. Zhang in its accounts, and even though it has promised to release the Bacon Work given this sum it had been paid, Phillips refused to release the Bacon Work after the Second Auction. Phillips was holding hostage both the Richter Work and Bacon Work, while holding approximately \$18 million of Mr. Zhang’s cash as well.

42. After the Second Auction, Phillips demanded payment of the remainder of the Settlement Amount, plus interest on the same under the terms of the Settlement Agreement, as well as the additional \$2,664,608, the second “buyer’s premium.” Mr. Zhang had already paid a “buyer’s premium” as part of the Settlement Amount in relation to the original auction.

43. Phillips refused to “finalize” the Richter Work transaction and refused to return the Bacon Work to Mr. Zhang unless Mr. Zhang “acknowledged” that he owed the additional \$2,644,608 buyer’s premium.

44. Phillips would only release the Bacon Work if Mr. Zhang signed and acknowledged that he owed \$11,649,429.92 to Phillips (which included the \$2,644,608 second buyer’s premium) (the “Acknowledgement”).

45. Mr. Zhang signed the Acknowledgement under duress, and in exchange for no additional consideration from Phillips, as Phillips was already obligated by the Settlement Agreement to deliver the Richter Work to Mr. Zhang upon payment of the \$26 million Settlement

Amount, and return the Bacon Work.

46. The Bacon Work was returned to Mr. Zhang on March 28, 2019, more than 20 days after the \$15 million payment was made to Phillips, and only after Mr. Zhang had signed the Acknowledgement under duress.

47. Phillips would not release the Richter Work until Mr. Zhang had paid the \$11,649,429.92 demanded by Phillips in full.

48. Mr. Zhang paid the \$11,649,429.92 to Phillips (including the \$2,644,608 additional amount in excess of the Settlement Agreement, as well as interest for late payment of the Settlement Amount under the Settlement Agreement) in two payments on July 12, 2019 and July 17, 2019 respectively.

49. Thus, Mr. Zhang paid Phillips a total of approximately \$29,649,429 (approximately \$3 million in 2018, \$15 million in March 2019 and \$11,649,429.92 around July 10, 2019).

50. Only after Mr. Zhang has paid the total of \$29,649,429 to Phillips did Phillips deliver the Richter Work to Mr. Zhang.

**COUNT I**

**BREACH OF CONTRACT**

51. Plaintiff incorporates Paragraphs 1-50 of this Complaint as if set forth fully herein.

52. Under the terms of the Settlement Agreement, Mr. Zhang was entitled to the Richter Work in exchange for the payment of the Settlement Amount of \$26 million (plus any accrued interest).

53. Phillips breached the Settlement Agreement, and its duty of good faith and fair dealing in connection thereto, by forcing the Richter Work to be offered at the Second Auction and by forcing Mr. Zhang in fact to pay \$28,644,608 (plus accrued interest), for the Richter Work

and the return of the Bacon Work, in excess of the \$26,000,000.00 that Mr. Zhang was obligated to pay under the Settlement Agreement for the return of both works.

54. As a direct and proximate cause of Phillips' breach, Mr. Zhang suffered damages in the amount of \$2,644,608, as well as other damages, including special and consequential damages, such as the loss in value to the Richter Work and Bacon Work, and attorneys' fees as provided in the Settlement Agreement.

## **COUNT II**

### **UNJUST ENRICHMENT**

55. Plaintiff incorporates Paragraphs 1-54 of this Complaint as if set forth fully herein.

56. Mr. Zhang was entitled to the Richter Work in exchange for the payment of the Settlement Amount of \$26 million plus any accrued interest.

57. Phillips unjustly forced the Richter Work to be offered at the Second Auction and unjustly forced Mr. Zhang in fact to pay \$28,644,608 plus accrued interest, under duress, for the Richter Work and the return of the Bacon Work, which he did pay.

58. It would be unjust for Phillips to be permitted to retain the additional \$2,644,608, and equity and good conscience demand that this \$2,644,608 extra that is in excess of the Settlement Amount be returned to Mr. Zhang.

## **COUNT III**

### **DECLARATORY JUDGMENT**

59. Plaintiff incorporates paragraphs 1-58 of this Complaint as if set forth fully herein.

60. Mr. Zhang seeks a declaratory judgment that the Acknowledgement is invalid and unenforceable, and that the additional \$2,644,608 paid to Phillips under the Acknowledgement must be returned to Mr. Zhang.

61. Mr. Zhang paid Phillips \$28,644,608 (plus accrued interest) as a result of Defendant's wrongful threat to sell the Bacon Work in a fire sale, and refusal to return the Richter Work and Bacon Work to Mr. Zhang, in violation of the terms of the Settlement Agreement.

62. Phillips' wrongful threats precluded Mr. Zhang from exercising his free will and forced Mr. Zhang to sign the Acknowledgement, as Mr. Zhang faced certain financial ruin if Phillips carried out its threats to sell the Bacon Work in a "fire sale" and to sell the Richter Work to someone other than Mr. Zhang, after Phillips had already offered the Richter Work at the Second Auction in violation of the Settlement Agreement.

63. Because Mr. Zhang only signed the Acknowledgement under duress, Mr. Zhang seeks a declaratory judgment that the Acknowledgement is not a valid and enforceable agreement.

64. Further, the Acknowledgement is unenforceable for lack of consideration. Phillips was already obligated under the Settlement Agreement to deliver the Richter Work to Mr. Zhang in exchange for the payment of the Settlement Amount, and to return the Bacon Work to Mr. Zhang. Phillips was thus not obligated to do anything in relation to the Acknowledgement that it was not already obligated to do under the Settlement Agreement.

65. Because the Acknowledgement is unsupported by any obligation on the part of Phillips, and therefore lacks consideration, Mr. Zhang seeks a declaratory judgment that the Acknowledgement is not a valid and enforceable agreement.

66. Because the Acknowledgement is unenforceable, Mr. Zhang seeks a declaratory judgment that the additional \$2,644,608 paid to Phillips under the Acknowledgement must be returned to Mr. Zhang.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that this Court:

- A. Enter judgment that Defendant has breached the Settlement Agreement, or otherwise violated Zhang's rights, or has been unjustly enriched;
- B. Enter judgment that the Acknowledgement is not a binding and enforceable agreement;
- C. Find that Defendant's breaches were intentional, willful and wanton, and/or in reckless disregard of Zhang's rights;
- D. Award Plaintiff his damages in the amount \$2,664,608, and other damages to be proven at trial, including special and consequential damages;
- E. Award Plaintiff punitive damages;
- F. Award Plaintiff prejudgment interest and post judgment interest on its damages, attorneys' fees (as provided for in the Settlement Agreement) and cost; and
- G. Award Plaintiff such other and further relief as this Court deems just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all issues triable to a jury in this case.

Dated: December 29, 2020

Respectfully submitted,

/s/ Matthew J. Weldon

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