

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

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JAMES MONTROSE SANSUM,

Plaintiff,

- against -

HELEN COSTANTINO FIORATTI, ARIANNA
FIORATTI LORETO, L'ANTIQUAIRE AND THE
CONNOISSEUR,

Defendants

**AMENDED
COMPLAINT**

Index: 604989/01

FILED
JAN 18 2007
NEW YORK
COUNTY CLERK'S OFFICE

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Plaintiff, by and through his attorneys of record, Shanahan & Associates, P.C.,
does hereby allege of the Defendants and Counterclaim Defendant as follows;

1. Plaintiff James Montrose Sansum ("Sansum") is a resident of the State of New York, County of New York. Sansum is the owner of six-percent of the outstanding shares in the Defendant corporation.

2. Defendant Helen Costantino Fioratti ("Fioratti") is a resident of the State of New York, County of New York. Fioratti is a shareholder in the Defendant corporation.

3. Defendant Arianna Fioratti Loreto ("Loreto") is a resident of the State of New York, County of New York. Loreto is a shareholder in the Defendant corporation.

4. Defendant L'Antiquaire and the Connoisseur ("LAC") is a corporation duly organized pursuant to the laws of the State of New York with its principle place of business located at 36 East 73rd Street, New York, New York 10021.

5. Upon information and belief, LAC has three shareholders, Sansum and the

two Defendants named individually in this action.

6. Venue is proper in New York County as New York is the County in which the cause of action accrued and the parties reside.

7. The principal assets of LAC include but are not limited to: the townhouse located at 36 East 73rd Street; inventory of LAC; substantial contents of an apartment owned by Fioratti located at 555 Park Avenue; substantial contents of residences located in Fiesole and Radi di Montagna, Italy; funds in corporate accounts; funds in off-shore accounts maintained by individual defendant Helen Costantino; and accounts receivable which upon information and belief exceed \$500,000.00.

8. Upon the death of Ruth Costantino, a non-party hereto, the assets of The Connoisseur, Inc. were merged into the corporate Defendant. Upon information and belief, the corporate assets of The Connoisseur, comprising substantial personal assets of Ms. Costantino were transferred to LAC consistent with the policy and practice of Ms. Costantino and the collective Defendants herein to avoid estate and inheritance taxes. Upon information and belief, the majority of assets of The Connoisseur, Inc. are presently located in the personal residences of the individual Defendants herein.

9. In June 1989, Fioratti hired Sansum to work at LAC.

10. Sansum was employed by LAC from June 1989 until June 2001.

11. Over the course of his employment, Sansum made valuable contribution to expanding the scope of the business of LAC.

12. In consideration for his efforts on behalf of LAC, from 1996 to 1999, Sansum became a six-percent shareholder in LAC pursuant to an undated Shareholder Agreement.

Fioratti and Loreto own the remainder of all outstanding shares of LAC.

13. Prior to employing Sansum, other individuals were responsible for performance of the functions which Sansum performed commencing in 1989.

14. Sansum was instructed and trained in the method to complete his job duties by Fioratti upon commencing employment with LAC in 1989 consistent with the corporate Defendants' policies and procedures utilized prior to Sansum's employment.

15. Upon information and belief, it was the policy and practice of Fioratti, Loreto and LAC prior to employing Sansum to engage in business practices including but not limited to: cash sales which were not reported for tax purposes; payment directly to Fioratti to avoid credits to the corporate books and records; payment directly to off-shore accounts by wire-transfer; payment of personal expenses through LAC; providing fraudulent shipping information to facilitate tax avoidance for clients; under-reporting of LAC profit to the IRS and State of New York; and under-reporting her income and that of employees such as Sansum.

15a. Fioratti has plead guilty to criminal conduct involving her actions as an officer and shareholder of LAC. LAC has plead guilty to criminal conduct and paid monies in excess of \$700,000.00 in back taxes, penalties and interest as a result of this criminal conduct.

16. During the employment of Sansum, Fioratti instructed Sansum to conduct business consistent with the policies and practices of LAC prior to his employment including but not limited to the methods described in the foregoing paragraph.

17. During the course of his employment, Sansum did not receive a raise in salary

at the specific direction of Fioratti.

18. During the course of his employment, Sansum received additional compensation for his services at the direction of Fioratti by and through the use of corporate credit cards to charge personal items. The personal charges by Sansum on the LAC corporate account were permitted by Fioratti and increased over the course of his employment.

19. During the course of his employment, Sansum was required to reside in an apartment located above the LAC gallery located at 36 East 73rd Street, New York, New York 10021 for the convenience of his employer. Sansum did not pay rent on said premises.

20. In late 1999 or early 2000, the relationship between Fioratti and Sansum began to dissolve based upon numerous factors including but not limited to Sansum engaging in a homosexual relationship to Fioratti's dislike and confronting Fioratti over the business practices of LAC as specified herein.

21. After Sansum disclosed his homosexuality to Fioratti on or about late 1999 or early 2000, Fioratti began to make anti-gay or homophobic remarks pertaining to Sansum and his boyfriend to employees of LAC.

22. As a result of the deteriorating relationship between Fioratti and Sansum, Fioratti began to question the job performance of Sansum and his overall management of LAC affairs.

23. As a result of the deteriorating relationship between Fioratti and Sansum, Fioratti began to question his previously approved personal charges to the corporate

accounts of LAC.

24. As a direct result of Sansum demanding an increase in salary consistent with industry practices for a person of his education and experience, Fioratti began a pattern of actions designed to infer wrongful conduct on the part of Sansum relating to the affairs of LAC.

25. As a result of the conduct of Fioratti, Sansum was forced to resign from LAC.

26. Sansum resigned his employment from LAC on June 14, 2001 and offered to continue until a replacement was located to insure a smooth transition.

27. On June 25, 2004, Sansum was locked out of LAC by Fioratti and his employment terminated.

28. Upon his resignation from LAC, Sansum demanded payment of his interest in LAC of six-percent of the outstanding shares of the corporation.

29. After leaving LAC, Sansum demanded payment for his ownership interest in LAC.

30. Although demanded, the collective Defendants have refused to compensate Sansum for his ownership interest in LAC equal to six-percent of the outstanding shares of the corporation.

THE SHAREHOLDER AGREEMENT RELEVANT HEREIN

31. The Agreement by and through its terms detrimentally impact Sansum including but not limited to: the failure to adequately protect the Sansum's minority interest in a closely held-corporation; failure to explain the legal ramifications and

detriment of the restrictions on the transfer of shares by Sansum; computation of fair market value based upon estate tax value which the collective Defendants knew or should have known was potentially worthless for the reasons that follow; the legal ramifications and detriment to Sansum and legal benefit to the collective Defendants of the purported Covenant Not to Compete, §9; the legal ramifications and detriment Sansum and legal benefit to the collective Defendants of the Enforcement Provisions, §9; and the legal ramifications and detriment Sansum and legal benefit to the collective Defendants of the Liquidated Damages clause and other Penalty provisions, §10.

32. Sansum executed the Agreement without the advice of counsel and under circumstances constituting undue duress and intentional misrepresentation.

FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty - Against Defendants LAC, Fioratti and Loreto)

33. The allegations of Paragraphs one through thirty-two are repeated herein fully by reference.

34. Fioratti, Loreto and Sansum were each shareholders in LAC, Fioratti a majority holder and Sansum a minority holder.

35. Fioratti and Loreto as majority holders in control of the business practices of LAC intentionally diverted corporate assets and profits from LAC to the detriment of the corporation and minority holder Sansum as established in the allegations set forth herein.

36. Fioratti and Loreto as majority holders in control of the business practices of LAC, intentionally established a business plan which had the effect of diminishing the value of LAC to the detriment of the corporation and minority shareholder Sansum as

established in the allegations set forth herein.

37. Fioratti and Loreto owed Sansum a fiduciary duty as both were shareholders and officers in LAC.

38. Based upon their conduct, Fioratti and Loreto breached the fiduciary duty each owed to Sansum and the corporate Defendant. Sansum has been damaged in an amount currently unknown and to be determined in discovery.

SECOND CAUSE OF ACTION
(Accounting - - Against Defendants LAC, Fioratti and Loreto)

39. The allegations of Paragraphs one through thirty-eight are repeated herein fully by reference.

40. The Agreement provides for valuation of the corporate assets and payment of fair market value for the six-percent interest of Sansum pursuant to the terms of the Agreement.

41. Based upon the diversion of corporate assets by Fioratti and Loreto, it is difficult if not impossible to value the shares owned by Sansum and the overall value of LAC.

42. Sansum is therefore entitled to a full accounting of the assets and value of LAC, the cost of which is born by LAC pursuant to the Shareholder Agreement entered into by the parties.

THIRD CAUSE OF ACTION
(Breach of Duty of Good Faith and Fair Dealing - - Against Defendants LAC, Fioratti and Loreto)

43. The allegations of Paragraphs one through forty-two are repeated herein fully

by reference.

44. Inherent in the Agreement is a duty for each shareholder to engage in good faith and fair dealing with each other and on behalf of the corporation.

45. By and through the conduct of Fioratti and Loreto as alleged in this complaint, they have breached the duty of good faith and fair dealing owed to Plaintiff.

46. As a result of the actions of Fioratti and Loreto, Sansum has been damaged in an amount currently unknown and to be determined in discovery.

**FOURTH CAUSE OF ACTION
(Declaratory Judgment - - Against Defendants LAC, Fioratti and Loreto)**

47. The allegations of Paragraphs one through forty-six are repeated herein fully by reference.

48. The parties dispute the ownership of certain items of artworks, books and other possessions currently in the sole and exclusive possession of Sansum.

49. Sansum alleges that the foregoing items are exclusively owned by him and were transferred to him by Defendants in lieu of compensation for services performed by Sansum on behalf of LAC.

50. Sansum prays for a declaratory judgment that the items of artwork, books and other possessions currently in storage in the joint possession of the parties hereto are his personal property.

**FIFTH CAUSE OF ACTION
(Declaratory Judgment - Against Defendants LAC, Fioratti and Loreto)**

51. The allegations of Paragraphs one through fifty are repeated herein fully by reference.

52. Sansum has previously supplied the list of items and objects which he, upon information and belief, alleges were paid for and owned by the LAC and which comprise corporate assets.

53. Upon information and belief, the individual Defendants, in an intentional pattern and based upon long-standing business practices, have used corporate assets and funds to obtain said objects for their individual use and benefit.

54. Upon information and belief, the individual Defendants have exercised dominion and control over the items in dispute for their own personal benefit to the detriment of LAC and Sansum.

55. Upon information and belief, the individual Defendants have exercised dominion and control over these items for their own personal benefit to the detriment of LAC and the Sansum by conduct including but not limited to: locating said items in their personal residences; failing to make said items available for sale to the general public in the LAC gallery; using the items in their personal residences even though owned by LAC to evade personal liability for estate taxes; and intentionally denying that said items are LAC assets even though purchased at auction or otherwise with corporate funds.

56. Sansum prays for a declaratory judgment declaring that these items are the property and assets of LAC for purposes of valuation, an accounting and determining the financial worth of Sansum's minority interest in LAC.

**SIXTH CAUSE OF ACTION
(Corporate Dissolution)**

57. The allegations of Paragraphs one through fifty-six are repeated herein fully

by reference.

59. By reason of the allegations contained herein, Sansum is entitled to an order dissolving the corporate Defendant and appointing a receiver of its property and effects.

60. Sansum has no adequate remedy at law absent the granting of the foregoing relief.

WHEREFORE, Sansum prays for an order of the Court as follows on the foregoing causes of action:

ON THE FIRST CAUSE OF ACTION, for damages in an amount currently unknown and to be determined in discovery;

ON THE SECOND CAUSE OF ACTION, an accounting of all corporate assets of LAC which have been diverted by and through the conduct of the collective defendants;

ON THE THIRD CAUSE OF ACTION, for damages in an amount currently unknown and to be determined in discovery;

ON THE FOURTH CAUSE OF ACTION, for a declaratory judgment that Sansum is the owner of legal title to the items referenced herein, title of which has been questioned by the collective Defendants.


ON THE FIFTH CAUSE OF ACTION, for a declaratory judgment that the items specified are the property of the corporate Defendant herein;

ON THE SIXTH CAUSE OF ACTION, for an order dissolving the corporate Defendant and appointing a receiver to wind-up its affairs;

WHEREFORE, Sansum prays for an order of this Court granting the

foregoing relief and such other, different and further relief as is deemed just, equitable and proper.

Dated: New York, New York
January 10, 2006

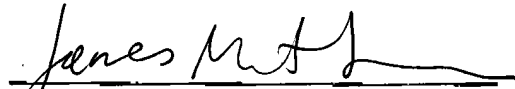


Thomas D. Shanahan
Counsel for Plaintiff Sansum
SHANAHAN & ASSOCIATES, P.C.
2 Rector Street, 20th Floor
New York, New York 10006
(212) 766-5777

VERIFICATION

James Sansum, the Plaintiff in this action has reviewed the foregoing Amended Complaint and knows the allegations contained thereto to be true subject to penalty of perjury except those allegations prefaced by Upon information and belief. For those allegations, Plaintiff believes them to be true.

Dated: New York, New York
January 10, 2007


James Sansum

SWORN TO BEFORE THIS 10TH DAY
OF JANUARY, 2006


Thomas D. Shanahan

THOMAS D. SHANAHAN
Notary Public, State of New York
No. 02SH5033105
Qualified in Richmond County
Commission Expires August 4, 2009

AFFIDAVIT OF SERVICE BY REGULAR MAIL


STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Peter Middleton Johnson, being duly sworn, deposes and says:

I am not a party to the action, am over 18 years of age and reside at Brooklyn, New York.

On January 17, 2007, I served a true copy of the annexed AMENDED COMPLAINT by regular mail on January 17, 2007, mailing the same in a sealed, envelope with postage thereon in a post office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

Richard Gold, Esq.
Morelli & Gold
605 Third Avenue
New York, New York 10158



PETER MIDDLETON

SWORN TO BEFORE ME THIS
17th DAY OF JANUARY, 2007.

NOTARY PUBLIC

THOMAS D. SHANAHAN
Notary Public, State of New York
No. 02SH5083106
Qualified in Richmond County
Commission Expires August 4, 2009

JAMES MONTROSE SAMSUN,
Plaintiff,
- against -
HELEN CONSTANTINO FIORATTI, et al.
Defendant.

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COUNTY CLERK'S OFFICE

AMENDED COMPLAINT

SHANAHAN & ASSOCIATES, P.C.

Attorney(s) for
Plaintiff
Office and Post Office Address, Telephone
2 Rector Street, 20th Floor
NEW YORK, NEW YORK 10006
PHONE (212) 766-5777
FAX (212) 587-0075

To _____ Signature (Rule 130-1.1-a)
Print name beneath

Service of a copy of the within is hereby admitted.

Attorney(s) for _____ Dated: 1/10/07

PLEASE TAKE NOTICE:

NOTICE OF ENTRY

that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within named court on

NOTICE OF SETTLEMENT

that an order of which the within is a true copy
will be presented for settlement to the HON. one of the judges of the
within named Court, at
on _____ at _____ M.

staple
here

staple
here



1. Place cover this side up on top of first page of document. Staple as indicated.



2. Lift bottom of cover up and over top, folding on top score line



3. Fold cover down behind papers on remaining score line.

Note: Address area on back middle panel appears in window in a No. 10 envelope

STATE OF NEW YORK, COUNTY OF

ss.:

I, the undersigned, an attorney admitted to practice in the courts of New York State,

Certification By Attorney

certify that the within

NEW YORK

604989/01

Check Applicable Box

Attorney's Affirmation

has been compared by me with the original and found to be a true and complete copy.

state that I am

the undersigned ~~AMENDED COMPLAINT~~ SAMSUN,

in the within

action; I have read the foregoing

and know the contents thereof;

the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters

I believe it to be true. The reason this verification is made by me and not by

- against -

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

HELEN CONSTANTINO FIORATTI, et al.

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated: Defendant.

.....
The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

ss.:

I, the undersigned, being duly sworn, depose and say: I am

Individual Verification

in the action; I have read the foregoing **AMENDED COMPLAINT**

and know the contents thereof; the same is true to my own knowledge, except

Check Applicable Box

Corporate Verification

as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

the of

a corporation and a party in the within action; I have read the foregoing

and know the contents thereof; and the same is true to my own knowledge,

except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. This

verification is made by me because the above party is a corporation and I am an officer thereof.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Plaintiff

Sworn to before me on

.....
The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

ss.:

(If more than one box is checked—indicate after names type of service used.)

I, the undersigned, being sworn, say: I am not a party to the action, am over 18 years of age and reside at

On

I served the within

Service By Mail

by mailing a copy to each of the following persons at the last known address set forth after each name below.

Personal Service on Individual

by delivering a true copy of each personally to each person named below at the address indicated. I knew each person served

to be the person mentioned and described in said papers as a party therein:

Service by Electronic Means

by transmitting a copy to the following persons by FAX at the telephone number set forth after each name below E-MAIL

Service by Electronic Means

at the E-Mail address set forth after each name below, which was designated by the attorney for such purpose, and by mailing a

Overnight Delivery Service

copy to the address set forth after each name.

Overnight Delivery Service

by dispatching a copy by overnight delivery to each of the following persons at the last known address set forth after each name

below.