

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

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BLAIR THURMAN,

Plaintiff,

- against -

NAM JUNE PAIK, SHIGEKO KUBOTA and  
KEN HAKUTA,

Defendants.  
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COMPLAINT

Index No. 602282/02

Plaintiff, by his attorneys Segal, Stewart, Cutler, Lindsay, Janes & Berry, PLLC and the Heiman Law Group, P.C., as and for his complaint against the defendants, alleges as follows:

INTRODUCTION

1. This is an action based on (a) the breach of several contracts and agreements that were negotiated and executed in the State of New York and County of New York by the Plaintiff and Defendants Nam June Paik ("Paik") and Shigeko Kubota ("Kubota"), (b) actions taken by Defendant Ken Hakuta ("Hakuta") in the State of New York and County of New York that interfered with the Plaintiff's rights under his contract with Defendants Paik and Kubota, and (c) additional causes of action as set forth below. Plaintiff seeks specific performance, compensatory, punitive and quantum meruit damages, commission fees and reimbursements.

PARTIES

2. At all times herein, plaintiff, Blair Thurman, ("Plaintiff") was a resident of the County of New York, State of New York.

3. Upon information and belief, at all relevant times, Defendants Paik and Kubota were residents and conducted business in the County of New York, State of New York.

4. Upon information and belief, at all relevant times, Defendant Ken Hakuta (hereinafter "Hakuta") conducted business in the County of New York, State of New York.

#### JURISDICTION AND VENUE

5. Jurisdiction over the parties and the Plaintiff's claims rests with this court. Venue is proper in this court as all defendants reside or are engaged in business in New York County and as the main events arising to the causes of action set forth below took place in New York County.

#### BACKGROUND FACTS

6. Plaintiff is an artist, sculptor, and agent.

7. Paik is a renowned artist and sculptor. Paik's artwork (the "Artwork") is exhibited in major museums in New York and worldwide. Kabuta is Paik's wife. Paik and Kabuta manage the business aspects relating to the Artwork jointly as a partnership, for creating, controlling and operating the Artwork. Such partnership shall be referred to herein as "NJP". Paik and Kabuta have unlimited access to the funds and benefits of NJP and Paik and Kabuta give authorizations, instructions and orders to employees, contractors and agents on behalf of NJP.

8. Hakuta is an agent and representative of NJP and acts, de facto, as a consultant and business manager of NJP.

9. Between 1991 and December 2001, Plaintiff worked exclusively for NJP and handled various tasks including design, fabrication, marketing and selling of the Artwork. Specifically, Plaintiff's responsibilities included:

9.1 Creating conceptual ideas for new Artwork.

9.2 Conducting sessions with Paik to discuss the creative aspects of conceptual designs developed either by Paik or by Plaintiff.

9.3 Developing and translating the conceptual ideas to descriptive designs.

9.4 Obtaining the necessary components, raw material and equipment to fabricate the Artwork.

9.5 Fabricating the Artwork in accordance with the creative guidelines of Paik.

9.6 Presenting completed Artwork to Paik for his final approval, signature and authentication.

9.7 Installing, displaying and supervising the installation of exhibits of Paik's Artwork in galleries and museums worldwide.

9.8 Installing, displaying and supervising the installation of large-scale Artwork in various locations worldwide (the "Projects").

9.9 Conducting sales efforts for pre-fabricated, in-progress or completed Artwork and maintaining contacts with buyers, dealers, galleries and museums to market and sell the Artwork.

9.10 Negotiating contracts with museums, dealers, buyers and galleries in respect to the Artwork.

9.11 Handling general tasks assigned by Paik or Kubota not relating to a specific Artwork or Project, including participating in general meetings with NJP and other employees, contractors and advisors and maintaining NJP's studio in New York, including taking care of Paik's pet cat.

9.12 Handling various financial matters of NJP including incurring of expenses on behalf of NJP in connection with the duties and responsibilities of the Plaintiff and

Projects in which Plaintiff was involved and the disbursement of funds for expenses of the same.

10. Plaintiff and NJP entered into several oral and written arrangements setting forth the manner in which Plaintiff was to be compensated for his work relating to Projects, specific Artwork and general work (the "Agreements").

11. Pursuant to the Agreements, Plaintiff was to receive: (i) full reimbursement for any expenses, components, raw material and/or equipment purchased in respect to the Artwork; (ii) a production budget (separately negotiated) for each Artwork which Plaintiff was authorized to fabricate; (iii) 10% of the sale price of Artwork designed, developed or fabricated by Plaintiff; (iv) compensation (separately negotiated) for each Project constructed or supervised by Plaintiff; (v) payment based on a per-hour rate for time spent by Plaintiff on general tasks not related to specific Artwork or Projects; and (vi) compensation in the form of certain completed Artwork to be signed and authenticated by Paik (the "Artwork Compensation").

12. On or about December 14, 2001, in breach of the Agreements, NJP refused to accept further performance by Plaintiff, failed to pay Plaintiff moneys owed and prevented Plaintiff from completing certain Artworks, all of which were approved or should have been approved by NJP. In addition, Paik refused to sign and authenticate the Artwork Compensation, significantly reducing its value and salability.

13. At all times herein, Plaintiff was ready, willing, and able to complete Artwork previously authorized by Paik and otherwise perform all of his obligations pursuant to the Agreements.

FIRST CAUSE OF ACTION  
(AGAINST PAIK AND KUBOTA FOR  
BREACH OF CONTRACT)

14. Plaintiff repeats paragraphs 1 through 13 as if fully alleged herein.
15. NJP undertook to pay Plaintiff compensation in various forms as listed and set forth in Section 11(i) to 11(v) above.
16. Plaintiff performed all of the obligations required of him under the terms of the Agreements.
17. NJP failed to fully pay Plaintiff such agreed-upon payments.
18. By reason of NJP's breach of contract, Plaintiff has sustained damages in the sum to be determined at trial but believed to be not less than \$300,000.00.

SECOND CAUSE OF ACTION  
(AGAINST PAIK AND KUBOTA FOR  
BREACH OF CONTRACT)

19. Plaintiff repeats paragraphs 1 through 18 as if fully alleged herein.
20. NJP undertook to sign and authenticate the Artwork comprising of the Artwork Compensation.
21. Plaintiff performed all of the obligations required of him under the terms of the Agreements.
22. Paik failed to sign and authenticate such Artwork.
23. By reason of Paik's failure to sign and authenticate such Artwork and because of the unique nature of the Plaintiff's artistic talents and skills, no legal remedy will be adequate to result in the completion of these Artworks in such a way as to make them marketable at their full potential value.

24. Plaintiff seeks possession and control of such Artworks from NJP, and specific performance of the Agreements by ordering Paik to sign and authenticate such Artwork.

25. if injunctive relief is not granted on the second cause of action, Plaintiff seeks compensatory damages in an amount to be determined at trial believed to be not less than \$300,000.00 against both Paik and Kubota, jointly and severally.

THIRD CAUSE OF ACTION  
(AGAINST PAIK AND KUBOTA FOR  
UNJUST ENRICHMENT)

26. Plaintiff repeats paragraphs 1 through 25 as if fully alleged herein.

27. At NJP's request, Plaintiff rendered NJP a significant amount of hours of services without receiving compensation and spent significant amounts of money for NJP without being reimbursed.

28. NJP received such services and financial benefits and as a result of the same, enjoyed financial improvement and enrichment.

29. Plaintiff had the legitimate expectancy to receive full compensation for the Services provided and moneys spent.

30. The fair and reasonable compensation for the services provided by Plaintiff and money spent is to be determined at trial but is believed to be no less than \$600,000.00.

31. By reason of NJP's unjust enrichment, Plaintiff is entitled to damages in the sum to be determined at trial but believed to be not less than \$600,000.00.

FOURTH CAUSE OF ACTION  
(AGAINST HAKUTA AND KUBOTA FOR  
INTERFERENCE WITH CONTRACT)

32. Plaintiff repeats paragraphs 1 through 31 as if fully alleged herein.

33. Hakuta had knowledge that NJP had executed the Agreements with Plaintiff.

34. Hakuta intentionally, knowingly, and without reasonable justification or excuse, interfered with the contractual relationship between Plaintiff and NJP and induced NJP to breach the Agreements with Plaintiff, thereby causing Plaintiff to suffer a loss of income and valuable business opportunities.

35. By reason of Hakuta's interference, Plaintiff has sustained damages in the sum to be determined at trial but believed to be not less than \$600,000.00.

36. In addition, by reason of the actions described above, Plaintiff demands exemplary and punitive damages against Hakuta in the sum of \$500,000.00.

37. If the court shall determine that a contractual relationship existed between Paik and Plaintiff, but not between Kubota and Plaintiff, this fourth cause of action shall be deemed pled, for all intent and purposes, against Kubota and Hakuta jointly and severally.

FIFTH CAUSE OF ACTION  
(AGAINST PAIK, HAKUTA AND KUBOTA FOR  
WANTON AND RECKLESS MISCONDUCT)

38. Plaintiff repeats paragraphs 1 through 37 as if fully alleged herein.

39. From on or about December 14, 2001, Defendants, with premeditation, knowledge, consciousness, intent and willfulness, undertook or failed to undertake various actions to cause injury to Plaintiff, his business, his business connections, his name, his professional reputation and his goodwill.

40. By reason of Defendants' actions, Plaintiff has sustained damages in the sum to be determined at trial but believed to be not less than \$500,000.00.

41. In addition, by reason of the actions described above, Plaintiff demands exemplary and punitive damages against Defendants, jointly and severally, in the sum of \$500,000.00.

WHEREFORE, the Plaintiff demands entry of a Judgment, as follows:

a. on the first cause of action against defendants Paik and Kubota, jointly and severally, in an amount to be determined at trial but not less than the sum of \$300,000.00; in addition

b. on the second cause of action against defendants Paik and Kubota, jointly and severally, injunctive relief requiring Paik and Kubota to hand over the possession and control of Artworks and ordering Paik to sign and authenticate such Artwork; alternatively

c. if injunctive relief is not granted on the second cause of action, awarding Plaintiff compensatory damages of \$300,000.00 against both Paik and Kubota, jointly and severally; alternatively

d. on the third cause of action against defendants Paik and Kubota, jointly and severally, in an amount to be determined at trial but not less than the sum of \$600,000.00; alternatively

e. on the fourth cause of action against defendant Hakuta or alternatively against defendants Kubota and Hakuta jointly and severally, in an amount to be determined at trial but not less than the sum of \$600,000.00 for compensatory damages and an additional amount to be determined at trial but not less than the sum of \$500,000 for exemplary and punitive damages; and in addition

f. on the fifth cause of action against defendants Paik, Kubota and Hakuta jointly and severally, in an amount to be determined at trial but not less than the sum of \$500,000.00 for compensatory damages and an additional amount to be determined at trial but not less than the sum of \$500,000 for exemplary and punitive damages;

In addition, Plaintiff is entitled to legal interest from the date hereof, the fees, costs and disbursements of this action and such other and further relief as this Court shall deem just and proper.

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