

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CARLO M. CROCE
2140 Cambridge Blvd
Columbus, Ohio 43221

:
:

Case No. _____

Judge: _____

v.

Magistrate Judge: _____

SOTHEBY'S FINANCIAL SERVICES INC.
c/o Senior Manager or Chief Executive Officer
1334 York Avenue
New York, New York 10021

:
:
:

**JURY DEMAND ENDORSED
HEREON**

and

:
:

SOTHEBY'S CORPORATION
c/o Statutory Agent Corporation Trust Company
1209 Orange Street
Wilmington, Delaware 19801

:
:

and

**SOTHEBY'S FINANCIAL SERVICES
CALIFORNIA, INC.**
c/o Statutory Agent Corporation Service Company
112 North Curry Street,
Carson City, Nevada 89703

:
:
:

Defendants. :
:

COMPLAINT

I. Preliminary Statement

1. This action arises from Defendants’ misrepresentations, negligent artwork appraisal and disparagement and conflict of interest for their role as lender, appraiser and proposed judgment debtor auctioneer.

II. Jurisdiction

2. This Court has subject matter diversity jurisdiction over this action pursuant to 28 U.S.C. §1332. Complete diversity exists between the parties, and the amount in controversy exceeds \$75,000, exclusive of interests and costs.

3. The Court has personal jurisdiction over Defendants pursuant to Ohio Revised Code § 2307.382 (A)(1), (4) and (6) because Defendants have (1) transacted business in Ohio, (2) caused tortious injury in Ohio to Plaintiff by act (s) inside of Ohio committed with the purpose of injuring the Plaintiff, which they reasonably should have expected would have caused injury in Ohio and (3) regularly does and solicits business, or engages in a persistent course of conduct and derives substantial revenue from goods and services rendered in Ohio.

4. The exercise of jurisdiction over Defendants is consistent with Due Process.

III. Venue

5. This action properly lies in the United States District Court, Southern District of Ohio, Eastern Division, pursuant to 28 U.S.C. § 1391 because all or a substantial part of the events giving rise to the claims alleged in the Complaint occurred in this Judicial District.

IV. **Parties**

6. Plaintiff Carlo Croce (“Croce”) is world renowned cancer scientist and a collector of art internationally. He is a resident of the State of Ohio, County of Franklin.

7. Defendant Sotheby’s Financial Services Inc. is a corporation which has its principle place of business in New York, New York. Defendant Sotheby’s Financial Services Inc. provides financial services to customers and collectors that include, among other services, the provision of financial loans (collateralized by art work) to collectors such as Croce.

8. Defendant Sotheby’s is a Delaware corporation whose principle place of business is New York, New York. Sotheby’s is the world’s largest, most trusted marketplace for art. Defendant Sotheby’s provides a range of services from the valuation of art to the financing of art acquisitions and collateral loans. It performs over 600 auctions annually and performs appraisals of art.

9. Defendant Sotheby’s Financial Services California Inc. is a licensed California finance lender that has its principle place of business in New York, New York.

10. The Defendants Sotheby’s Financial Services Inc., Sotheby’s and Sotheby’s Financial Services California Inc. shall be referred hereinafter both individually in their own name and collectively as “Sotheby’s.”

V. **Facts**

11. On or about August 25, 2022, Plaintiff Croce applied for a \$ 3 million dollar art collateral loan from Sotheby’s based on the Old Master’s Art work in his personal collection.

12. Plaintiff Croce sought the loan from Sotheby’s for its reputation for integrity and expertise in the art market valuations and collateral lending. Sotheby’s is the world’s oldest and

largest internationally recognized fine art and luxury auctioneer. Its Old Masters department “has led the industry as the dominant market force for a generation” and has “seen particular success” in sale of Old Master art work. *See* Exhibit A, Franklin County Common Pleas Court Exhibit to Motion to Sell Private Property (“Franklin County Valuation Document”).

13. Sotheby’s represents on its website and publications and in documents provided to Plaintiff Croce that art collateral loans involve the following terms: (1) loan amount is 50% loan to value (LTV), (2) the loan process would take at least 30 days, (3) that it has expertise in provenance and valuation of Old Master works of art, and (4) that it will adhere to ethical conduct and that its interests will not conflict with its customers.

14. Croce provided an initial group of Old Master work to Sotheby’s that would support a valuation of \$ 6 million or more in order to obtain a 50% LTV loan of \$ 3 million.

15. Croce stated at the outset of the collateral loan process that he was seeking a \$ 3 million loan and he provided an initial list of works supporting such a loan.

16. Given Sotheby’s expertise in Old Master works, Croce and Sotheby’s agreed to go forward with the loan process.

17. Croce’s Old Master collection is well known and well documented by scholars and experts. Accordingly, the valuation should have taken at least 30 days to complete.

18. Croce emphasized in statements to Sotheby’s that he expected the process to take at least 30 days as he needed the funds quickly. Croce provided Sotheby’s with ample information and documents to support a valuation in excess of \$ 6 million with the first 30 days of the loan process.

19. Sotheby’s knew or should have known the works collected for evaluation by them would support an initial valuation in excess of \$ 6 million, as many of the works collected by it

for evaluation had been vetted by world experts and scholarly publications confirming their value and provenance.

20. By September 22, 2022, the valuation and loan process had not been completed as represented by Sotheby's.

21. In October 2022, Sotheby's issued an initial appraisal of works owned by Plaintiff Croce for a total valuation of \$2,510,000, based on the works listed in Schedule A of the valuation statement ("October 2022 initial valuation"). *See* Exhibit B, October 2022 Valuation. Sotheby's submitted the initial appraisal statement to Croce. Based on the Schedule A valuation of the listed works, Croce could only obtain a collateral loan of \$ 1,255,000.

22. The October 2022 initial valuation also listed two works in Schedule B of the valuation statement but provided no valuation. *See* Exhibit B, Schedule B. The two works in Schedule B are the Anthony van Dyck's *Portrait of Giorgio Centurione* and Orazio Gentileschi's *Judith and Her Maidservant*. Sotheby's was supposed to assess the value of both of these works. Sotheby's failed to perform adequate due diligence to assess the value. This failure is striking because Gentileschi's *Judith and Her Maidservant* has an estimated value of up to \$10 million.

23. Further, as to the Van Dyck painting, Apostle stated that he believed it was not by Van Dyck but failed to provide any expert opinion.

24. The October 2022 valuation is riddled with gross errors and mistakes.

25. The portrait of *Man With a Turban by Guercino* has been validated by Dennis Mahon, the world's foremost expert on Guercino. Sotheby's gave it a value of \$300,000 to \$500,000 in their October 2022 valuation statement, but very recently Sotheby's sold an inferior, smaller Guercino for well over \$1 million.

26. Sotheby's October 2022 valuation of Croce's *Modello by Guercino* is fraudulent.

In 2019, Sotheby's valued the *Modello of Guercino* at \$250,000. See Exhibit C, Valuation Statement by Sotheby's dated April 16, 2019. Sotheby's therefore had in its possession a valuation showing its October 2022 valuation of *Modello of Guercino* was false.

27. Indeed, prior to the October 2022 valuation, Croce gave Apostle an original opinion letter from Dennis Mahon, the world's most prominent *Guercino* expert. The original letter was given to Apostle when he came to Croce's home over 6 years ago with a Philadelphia banker. The original letter was never returned by Apostle. Thus, Apostle had in his possession the Mahon letter prior to the October 2022 valuation confirming the value of the work and the fact that the value is well in excess of the amount stated in Schedule A. See Exh. B. In addition, Croce provided to Sotheby's a copy of the Mahon letter at the time of initial valuation in October 2022.

28. In another instance of gross error and mistake, Sotheby's grossly undervalued a work entitled "*Double Portrait of Virginia da Vezzo Vouet*," by Simon Vouet. The work is very important and auction prices for works by Vouet have sold for significantly higher prices than Sotheby's initial valuation.

29. When challenged by Plaintiff Croce as to the reason for the unreasonably low valuations, Sotheby's provided no credible evidence for the low valuations other than the assertion that a lending valuation may be less than the market price. Sotheby's, however, does not disclose to the public and lending clients the distinction between lending and market valuation and its collateral loans are not truly 50% LTV loans. Art customers borrowers would understand 50% LTV to be market value. As a consequence of this deceptive representation, the actual Loan-To-Value is much less than 50%.

30. Although Croce strongly disagreed with the initial valuation provided by

Sotheby's, the parties agreed to evaluate additional works owned by Croce in Columbus, Ohio to reach at least the \$ 6 million valuation.

31. The parties arranged for Sotheby's representatives to come to Columbus, Ohio to perform a further evaluation of Croce's collection in November 2022.

32. Sotheby's Senior Vice President Christopher Apostle ("Apostle") represented to Croce that he would evaluate his collection in Columbus, Ohio. Apostle, not Croce, selected the art work necessary to reach a \$ 6 million valuation. In reliance on this promise, Croce provided full access to his collection in Columbus, Ohio and relied on Sotheby's expertise to appraise the artwork.

33. In November 2022, Apostle visited Croce's collection in Columbus, Ohio and conducted an appraisal of the additional works owned by Croce.

34. Despite evaluating over 200 works in Croce's collection during his November 2022 Columbus, Ohio visit, Sotheby's Apostle selected only the *Costabli Schedoni* by Bartolomeo Schedoni implying it had a valuation of \$3.5 million. Therefore, Sotheby's Apostle knew or should have known that the piece supported a valuation by itself of at least \$ 3.5 million.

35. Croce relied on Apostle's expertise and knowledge when he selected the *Schedoni* to achieve a \$ 6 million valuation.

36. Relying on this representation and Sotheby's reputation, Croce decided not to pursue other options for financing a collateral art loan from his collection.

37. After the Columbus, Ohio valuation visit, Apostle promised Croce that the loan process would be completed soon.

38. In addition, Sotheby's Global Head of Lending, Scott Milleisen likewise promised the loan would be completed shortly.

39. The loan was not completed shortly after the November 2022 visit.

40. Instead, Sotheby's continued to unreasonably delay the loan process despite demands by Croce and the supply of documents and information confirming the value and provenance of his art work.

41. Croce reasonably believes that the *Schedoni* work was valued at \$ 3 to 3.5 million in value. The *Schedoni* work, along with initial valuation, would support a valuation in excess of \$ 6 million and accordingly allow Croce to receive a \$ 3 million collateral loan. The work was from the *Costabilli Schedoni* collection.

42. He provided Sotheby's with two publications produced by two of the world's most preminent scholars on *Schedoni*.

43. Despite two expert publications confirming the value of Croce's *Schedoni*, Sotheby's told Croce that Trinity Fine Art of London had the original *Schedoni* in the *Costabilli Collection* and that Croce's *Schedoni* was worth substantially less.

44. Sotheby's devaluation of Croce's *Schedoni* was wrongful because Sotheby's failed to follow established practices for authentication and valuation. It should have consulted Professor Emilio Negro, the foremost expert on *Schedoni* who stated that the Trinity Fine Art *Schedoni* is a copy of the *Schedoni* painting owned by Croce. Sotheby's did not consult Professor Negro, a clear violation of appraisal standards and practice in the art world.

45. Sotheby's reliance on the gallery curator's assertion does not comport with established standards of appraisal.

46. Sotheby's unsupported conclusion that Croce's *Schedoni* is not the *Constabilli Schedoni* is gross negligence because Croce provided an email from Professor Negro over a year before his art loan application stating that the Trinity Fine Art *Schedoni* is a copy of the Croce's

painting done by a student of Schedoni. Croce's Schedoni is the original Constabili Schedoni. Sotheby's disregarded this key evidence and devalued Croce's Schedoni.

47. Art appraisals generally focus on the history of a work and chain of title. No evidence was provided or cited by Sotheby's indicating Croce's *Schedoni* does not comport with established evidence confirming its inclusion in the *Costabili collection*.

48. By January 2023, having waited for 2 months since Apostle's visit in Columbus, Ohio, Croce again demanded to complete the loan process.

49. Sotheby's responded that additional research must be conducted despite having over 6 months to do so.

50. In April 2023, Sotheby's again stated more research needed to be performed even though Croce provided them with ample evidence that they had access to, or were in possession of evidence supporting the value and provenance of Croce's art work.

51. No one from Sotheby's indicated that they had terminated the loan evaluation process, and Croce certainly believes the process is ongoing.

52. To his surprise and disappointment, Croce was informed Sotheby's had been retained by a Judgement Debtor Creditor as a valuation expert and auctioneer for his art collection for a writ of execution in Franklin County Common Pleas Court in Columbus, Ohio.

53. Indeed, Sotheby's stated in an affidavit submitted in the writ of execution proceedings that their "knowledge of Croce's Old Masters Art Collection" arises from their role as appraiser and as lender in the recent art collateral loan deal with Croce.

54. Sotheby's submitted in the writ of execution proceedings a valuation document produced as a result of Croce's business dealings with them. *See* Exhibit A, Franklin County Common Pleas Court Exhibit to Motion to Sell Private Property ("Franklin County Valuation

Document”). The valuation document is based on confidential information acquired by Sotheby’s from Croce directly and from their November 2022 visit in Columbus, Ohio.

55. The Franklin County Valuation Document, Exhibit A, is a public record that can be accessed by anyone. Upon information and belief, the Judgment Debtor Creditor in the writ of execution proceedings submitted the Franklin County Valuation Document with the consent and approval of Sotheby’s.

56. The publication of Sotheby’s erroneous valuation has disparaged Croce’s art collection. Given Sotheby’s reputation and domination of the art market, Croce’s art work will, in all likelihood, not sell for the art’s true value.

57. The negligent valuation published has caused significant damage and interfered with his ability to sell or use the art work as collateral for another loan based on the art’s true and accurate valuation.

58. Sotheby’s inherent conflict of interest as lender, valuator, and judgment creditor liquidator is clearly contrary to good faith and fair dealing and constitutes a conflict of interest.

59. Croce provided Sotheby’s with full access to his art work and evidence supporting a valuation in excess of \$ 6 million.

60. Sotheby’s has taken advantage of its unique position with Croce and intends to profit by auctioning his art work in connection the Judgement Debtor Sale of his art.

61. As a result of Sotheby’s action, Croce’s collection has been unreasonably devalued and such devaluation is now a matter of public record.

62. Based on good faith business practices, the valuation and documentation provided by Croce should have remained confidential and should not have been used to Croce’s disadvantage by Sotheby’s.

63. Sotheby's enjoys a reputation in the art market for integrity and fair dealing. Its actions against Croce do not constitute good faith and fair dealing. Croce, like other private clients of Sotheby's, has an expectation of privacy and confidentiality and certainly do not expect that information learned during a private client transaction will be used publicly against them.

64. As lender, Sotheby's is in the business of making collateral loans on art and has an incentive to devalue a client's art work to reduce its risk.

65. Business media and other sources indicate that Sotheby's is also engaged in securitization of its art loan portfolio. (devalued art work collateral makes a security more attractive to investors).

66. Sotheby's does not disclose to its prospective clients its conflicting roles as lender, appraiser, and issuer of securities. Croce was not informed of these conflicting roles and would never have consented to Sotheby's serving as a lender, appraiser, and judgement debtor sale auctioneer.

67. All of wrongful conduct against Croce was motivated by malice or was reckless.

**FIRST CAUSE OF ACTION
(Product Disparagement)**

68. Plaintiff avers the forgoing allegations as if fully restated herein.

69. Sotheby's made false and erroneous statements and conclusions about the value and provenance of Croce's works of art.

70. Sotheby's knew or should have known its statements and conclusions were not true regarding the valuation and provenance.

71. Sotheby's published the false and erroneous statements and conclusions to the general public and in particular the art market when it submitted a valuation report that was

confidentially generated for use by Croce. The valuation report is a public record in the Franklin County Common Pleas Court. *See* Exhibit A.

72. Sotheby's publication was made with express or implied malice because the valuation report was procured during a confidential collateral loan process, based on information provided by Croce which included access to his collection in Columbus, Ohio and is now being used by a Judgment Debtor Creditor to sell pieces of Croce's art collection. Sotheby's actions were taken without Croce's consent and are adverse to his interests.

73. As a result of Sotheby's wrongful conduct, the value of the art work cited in Exhibit A has been damaged as to their value and provenance. Sotheby's valuation report, produced by the largest art market maker for Old Master works, has negatively and adversely affected Croce's Old Master works irreparably.

74. As a direct and proximate result of Sotheby's negligence, Croce has suffered damages in an amount to be determined at trial, but in no event will not be less than \$75,000.

**SECOND CAUSE OF ACTION
(Negligent Appraisal)**

75. Plaintiff avers the forgoing allegations as if fully restated herein.

76. Sotheby's performed appraisals of Croce's art collection arising from a lender-borrower relationship. Sotheby's, as the oldest and largest art auctioneer and appraiser, has superior knowledge and expertise in the art field. Thus, Sotheby's knew or should have known that customers, such as Croce, would rely on its appraisals.

77. Sotheby's owes a duty to Croce because it was foreseeable by Sotheby's that Croce would rely on appraisals to secure a collateral loan.

78. Sotheby's breached this duty by negligently appraising Croce's Old Master art collection without performing adequate research, failing to obtain the opinions of recognized

experts for each work, and by disregarding the evidence provided by Croce establishing their value and provenance.

79. Sotheby's private valuation of Croce's Old Master art collection has been disclosed to the public and is now devalued for the foreseeable future.

80. As a direct and proximate result of Sotheby's negligence, Croce has suffered damages in an amount to be determined at trial, but in no event will be less than \$75,000.

**THIRD CAUSE OF ACTION
(NY GBL § 239-c Civil Liability of Appraiser)**

81. Plaintiff avers the forgoing allegations as if fully restated herein.

82. New York GBL Section 239-C imposes liability on an appraiser who knowingly issues a misleading appraisal.

83. Sotheby's knew or should have known the valuations in their report were misleading and false.

84. Sotheby's further made misleading representations to Croce during the collateral loan process. Specifically, Sotheby's falsely stated that they would complete the appraisals and loan process in a short period of time, that the appraisals valuation would be based on its expertise, that it would truly consider credible information by Croce demonstrating provenance and the value of Croce's collection, and rendered conflicting opinions as to certain works.

85. As a direct and proximate result of Sotheby's negligence, Croce has suffered damages in an amount to be determined at trial, but in no event will be less than \$75,000.

**FOURTH CAUSE OF ACTION
(Negligent Misrepresentation)**

86. Plaintiff avers the forgoing allegations as if fully restated herein.

87. Sotheby's has superior expertise in the valuation and provenance of Old Master

art.

88. A special relationship exists between Croce and Sotheby's based on Sotheby's superior knowledge and expertise (appraiser), the close business relationship and dealings between Croce and Sotheby's, and the lender-borrower relationship.

89. Because of these relationships, Sotheby's had a duty to impart correction information to Croce regarding the value and provenance of his Old Master art collection, a duty to perform professional due diligence, and a duty to maintain confidentiality and not use confidential information to Croce's disadvantage.

90. The valuation and provenance information given to Croce by Sotheby's is false.

91. As the world's largest art auctioneer and appraiser, Croce reasonably relied on Sotheby's representations.

92. The erroneous valuations are now public. As a result, the Old Master art works listed in Exhibit A have lost substantial value.

93. As a direct and proximate result of Sotheby's negligence, Croce has suffered damages in an amount to be determined at trial, but in no event will be less than \$75,000.

**FIFTH CAUSE OF ACTION
(Promissory Estoppel)**

94. Plaintiff avers the forgoing allegations as if fully restated herein.

95. Sotheby's promised that (1) the loan process would be completed in at least 30 days, (2) loan would be based on a true 50% LTV, (3) that as an Old Master expert their valuations would be accurate, (4) that it would act ethically regarding its clients (i.e., no conflict of interest).

96. Sotheby's failed to keep these promises.

97. The loan process was not completed in at least 30 days. The reasons for delay by

Sotheby's was unreasonable because Sotheby's, as the world oldest and largest auctioneer and appraiser, had ample information showing the value of Croce's collection. Sotheby's breached its promise to perform adequate due diligence and its promise of confidentiality regarding business dealings with its clients.

98. The erroneous valuations contained in Exhibit A devalued Croce's collection and consequently any collateral loan based on such valuations is not truly a 50% LTV loan as promised by Sotheby's and as commonly understood by consumers such as Croce.

99. Sotheby's valuations were not accurate as promised.

100. Sotheby's promises that on its public website that it will "avoid conflicts of interest, both real and perceived."

101. Despite this promise, Sotheby's has engaged in multiple conflicts of interest. Sotheby's interest as appraiser and lender are in conflict. The job of the appraiser is to provide a true and accurate appraisal of the true value of art work, which did not occur. However, in its role as lender, Sotheby's significantly devalues collateral art to protect its lender interests to the detriment of its customers.

102. Sotheby's role as a judgment debtor valuator and auctioneer for Croce's judgment creditor is certainly a conflict of interest. Sotheby's obtained the valuation information contained in Exhibit A in the course of a customer relationship. It is now using such information, obtained confidentially, for the benefit of itself and Croce's judgment creditor.

103. Croce reasonably relied to his detriment on the aforementioned promises and has suffered damages.

104. As a direct and proximate result of Croce's reliance, Croce has suffered damages in an amount to be determined at trial, but in no event will be less than \$75,000.

**SIXTH CAUSE OF ACTION
(Fraud and Intentional Misrepresentation)**

105. Plaintiff avers the forgoing allegations as if fully restated herein.

106. Sotheby's misrepresented the value of certain works in Croce's collection in its October 2022 valuation report and in its valuation report submitted to Franklin County Common Pleas Court.

107. Sotheby's had information prior to these valuation showing that it knew certain valuations were false.

108. By presenting Croce with these false valuations, with actual knowledge of their falsity, Sotheby's knew Croce would be induced to rely on the valuations, particularly when it knew Croce need collateral funds quickly.

109. Croce's reliance was justified because he believed Sotheby's was reputable company and because his prior business dealings with Sotheby's caused him to believe the valuations would not be false.

110. As a direct and proximate result of Croce's reliance, he was damaged by fraudulent representations as alleged herein.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- (a) money damages in an amount to be proven at trial, but expected to exceed the jurisdictional amount;
- (b) reasonable attorney's fees;
- (c) costs;
- (d) punitive damages;
- (d) any such further compensatory relief which he is entitled to.

Respectfully Submitted,

/s/ William W. Patmon III
William W. Patmon III (0062204)
The Patmon Law Firm LLC
4200 Regent Street Suite 200
Columbus, Ohio 43219
Phone: (614) 944-5786
Fax: (614) 448-4393
wpatmon@patmonlaw.com
Attorney for Plaintiff Carlo Croce

JURY DEMAND

Plaintiff demands a trial by jury by maximum number of jurors allowed by law on all issues so triable.

/s/ William W. Patmon III