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U.S. DISTRICT COURT  
FILED  
MAR 26 2003

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CHARLOTTE KRUMAN, CHARLES TABACHNICK, :  
MORTAB LIMITED, SOPHIE S. McGEE, TIMOTHY :  
STOHERT, MAGGS BROS. LTD, RONALD W. :  
BURKLE and NICOLA SMITH, individually and on :  
behalf of a class of persons similarly situated, :  
:

Plaintiffs,

v.

CHRISTIE'S INTERNATIONAL PLC, CHRISTIE'S :  
INC., SOTHEBY'S HOLDINGS, INC. SOTHEBY'S :  
INC., SIR ANTHONY J. TENNANT, CHRISTOPHER :  
M. DAVIDGE, CHRISTOPHER J. BURGE, STEPHEN :  
S. LASH, PATRICIA G. HAMBRECHT, DANIEL P. :  
DAVISON, FRANCOIS CURIEL, A. ALFRED :  
TAUBMAN, DIANA D. BROOKS, MAX M. FISHER, :  
MICHAEL AINSLIE, and KEVIN A. BOUSQUETTE, :

Defendants. :  
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JUDGE KAPLAN'S CHAMBERS

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00 Civ. 6322  
(LAK)

DOC # 68

**PRELIMINARY ORDER IN CONNECTION  
WITH SETTLEMENT PROCEEDINGS**

Lewis A. Kaplan, District Judge

The Court having made a preliminary review of the proposed settlement of this action, makes the following findings and establishes the following schedules:

WHEREAS, on March 11, 2003, the parties to the above-entitled action (the "Action") entered into Settlement Agreements (the "Settlement Agreement") which are subject to review under Rule 23 of the Federal Rules of Civil Procedure ("Fed.R.Civ.P.") and which, together with the exhibits thereto, set forth the terms and conditions for the proposed settlement of the claims alleged in the Complaint on the merits and with prejudice upon the terms and conditions set forth in the Settlement Agreements; and the Court, having read and considered the Settlement

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Agreements and the accompanying documents; and the parties to the Settlement Agreements having consented to the entry of this Order, and all capitalized terms used herein having the meanings defined in the Settlement Agreements:

NOW, THEREFORE, IT IS HEREBY ORDERED, this 17 day of March

2003 that:

1. ~~The term "Class," for purposes of this Order means~~  
~~Pursuant to Fed.R.Civ.P. 23(b)(3), and for the purposes of the settlement only,~~

~~this Action is hereby preliminarily certified as a class action on behalf of all persons who: (i) sold any items through an auction (excluding internet transactions) conducted outside of the United States by any Christie's Entity or any Sotheby's Entity between September 1, 1995 and February 7, 2000, and/or (ii) purchased any items at an auction (excluding internet transactions) conducted outside of the United States by any Christie's Entity or any Sotheby's Entity between January 1, 1993 and February 7, 2000. Excluded from the Class are the Christie's Defendants, Sotheby's Defendants, Christie's Entities or Sotheby's Entities (as those terms are defined in the Settlement Agreements), parents, subsidiaries, and/or affiliates of any Christie's Entity or Sotheby's Entity, or any of their present and former officers, directors, and employees (to the extent that the claims of such persons are based on auction transactions conducted while they were officers, directors or employees during the Class periods).~~

~~2. The Court preliminarily finds that the prerequisites for a class action under Fed.R.Civ.P. 23(a) and (b)(3) have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the named representatives are typical of the claims of the Class they seek to represent; (d) the Plaintiffs will fairly and adequately represent the interests of the Class; (e) the questions of law and fact common to the members of the Class predominate over any questions affecting only individual members of the Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the~~

~~controversy.~~

3. Pursuant to Fed.R.Civ.P. 23, Plaintiffs ~~Charlotte Kruman, Charles Tabaknick, Morrah Limited, Sophie S. McGee, Timothy Stothert, Maggs Bros. Ltd., Ronald W. Burkle and Nicola Smith~~ are preliminarily certified as Class Representatives. A

4. A hearing (the "Settlement Fairness Hearing") pursuant to Fed.R.Civ.P. 23(e) is hereby scheduled to be held before the Court on May 19, 2003, at 10:30 a.m. in Courtroom 120, United States District Court, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007, for the following purposes: A

(a) to ~~finally~~ determine whether this Action satisfies the applicable prerequisites for class action treatment under Fed.R.Civ.P. 23(e) and (b); A

(b) to determine whether the proposed Settlement is fair, reasonable, and adequate, and should be approved by the Court;

(c) to determine whether the Order and Final Judgment as provided under the Settlement Agreements should be entered, dismissing the Complaint filed herein, on the merits and with prejudice, and to determine whether the release by the Class, as set forth in the Settlement Agreements, should be provided to the Released Parties;

(d) to determine whether the proposed allocation formulas for the proceeds of the Settlement are fair and reasonable, and should be approved by the Court;

(e) to consider Plaintiffs' Counsel's application for an award of attorneys' fees, expenses and costs; and

(f) to rule upon such other matters as the Court may deem appropriate.

5. The Court approves the form, substance, and requirements of the Notice of Pendency of Class Action, Proposed Class Settlement And Hearing (the "Notice"), annexed hereto as Exhibit 1.

6. The Court approves the selection of The Garden City Group, Inc. by Plaintiffs'

Counsel as the Claims Administrator. The Claims Administrator, under Plaintiffs' Counsel's supervision, in coordination with Defendants' Counsel, shall cause the Notice, substantially in the forms annexed hereto, to be mailed, by first class mail, postage prepaid, on or before April 14, 2003, to all Class Members based upon the records of Christie's and Sotheby's.

6. The Claims Administrator shall likewise use reasonable efforts to give notice to any known Agents who purchased or sold items in affected auctions on behalf of potential Class Members during the Class Period. Such Agents are directed to either forward copies of the Notice to their principals within seven (7) days of receipt of the Notice, or to provide the Claims Administrator with lists of the names and addresses of the principals, and the Claims Administrator is ordered to send the Notice promptly to such principals. Additional copies of the Notice shall be made available to any Agent requesting such for the purpose of distribution to principals. Plaintiffs' Counsel shall, at or before the Settlement Fairness Hearing, file with the Court proof of mailing of the Notice and Proof of Claim.

7. The Court preliminarily approves the form of Summary Notice Of Pendency Of Class Action, Proposed Settlement And Settlement Hearing (the "Summary Notice") in substantially the form and content annexed hereto as Exhibit 2, and directs that Plaintiffs' Counsel shall cause the Summary Notice to be published in (i) the Financial Times; (ii) the International Herald Tribune; (iii) The Wall Street Journal, National Edition; (iv) The Wall Street Journal, Asian Edition; and (v) The Art Newspaper within ten (10) days of the mailing of the Notice. Plaintiffs' Counsel shall, at or before the Settlement Fairness Hearing, file with the Court proof of publication of the Published Notice.

8. The Court preliminarily finds the form and method set forth herein of notifying the Class of the Settlement and its terms and conditions meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, constitute the best notice practicable under the

circumstances, and shall constitute due and sufficient notice to all persons and entities entitled thereto.

9. <sup>in the event the Class is certified,</sup> Class Members shall be bound by all determinations and judgments in this Action, whether favorable or unfavorable, unless such persons request exclusion from the Class in a timely and proper manner, as hereinafter provided. A Class Member wishing to make such request must do so in writing, by first class mail postmarked no later than ~~April 30~~ <sup>May 5</sup> 2003 to the address designated in the Notice. Such request for exclusion shall clearly indicate the name, address, and telephone number of the person seeking exclusion, that he or she requests to be excluded from the Class in the case of Kruman v. Christie's International plc C.A. No. 6322 (LAK), and must be signed by such person. The request for exclusion shall not be effective unless it provides the required information, and is provided within the time stated above, or the exclusion is otherwise accepted by the Court.

10. Class Members requesting exclusion from the Class shall not be entitled to receive any payment out of the Settlement Fund as described in the Settlement Agreements and the Notice.

11. The Court will consider comments and/or objections to the Settlement, the allocation formulas, the award of attorneys' fees and reimbursement of expenses and costs, only if such comments or objections, and any supporting papers, are filed in writing with the Clerk of the Court, United States District Court, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007, and copies of all such papers are served, <sup>at</sup> ~~on~~ or before <sup>at</sup> ~~on~~ <sup>4 p.m.</sup> ~~at~~ <sup>May 9</sup>, 2003, upon each of the following:

J. Douglas Richards, Esq.  
Milberg Weiss Bershad  
Hynes & Lerach LLP  
One Pennsylvania Plaza  
New York, New York 10119-0165

Karen L. Morris, Esq.  
Morris and Morris LLC  
Counselors At Law  
1105 North Market Street, Suite 803  
Wilmington, Delaware 19801

Michael D. Hausfeld, Esq.  
Cohen, Milstein, Hausfeld & Toll  
West Tower, Suite 500  
1100 New York Avenue, NW  
Washington, D.C. 20005

Shepard Goldfein, Esq.  
Skadden, Arps, Slate, Meagher  
& Flom LLP  
Four Times Square  
New York, New York 10036-6522

Steven Alan Reiss, Esq.  
Weil, Gotshal & Manges LLP  
767 5<sup>th</sup> Avenue  
New York, NY 10153

12. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement, the allocation formulas, and/or the request for attorneys' fees, expenses and costs are required to indicate in their written objection their intention to appear at the hearing. Persons who intend to object to the Settlement, the allocation formulas, and/or counsel's application for an award of attorneys' fees, expenses and costs, and who desire to present evidence at the Settlement Fairness Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Settlement Fairness Hearing. Class Members do not need to appear at the hearing or take any other action to indicate their approval.

13. Pending final determination of whether the Settlement should be approved, the Plaintiffs, all Class Members, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence or prosecute any action which asserts settled claims against any Released Party.

14. If: (a) the Settlement is terminated by Defendants pursuant to paragraphs 30, 34,


or 36 of the Settlement Agreements; (b) any specified condition to the Settlement set forth in the Settlement Agreements is not satisfied and the satisfaction of such condition is not waived in writing by Plaintiffs' Counsel and Counsel for the Defendants; (c) the Court rejects, in any respect, the Order and Final Judgment in substantially the form and content annexed to the Settlement Agreements as Exhibit D, and/or Plaintiffs' Counsel and Counsel for the Defendants fail to consent to the entry of another form of order in lieu thereof; (d) the Court rejects the Settlement Agreements, including any amendment thereto approved by Plaintiffs' Counsel and Counsel for the Defendants; or (e) the Court approves the Settlement Agreements, including any amendment thereto approved by Plaintiffs' Counsel and Counsel for the Defendants, but such approval is reversed on appeal and such reversal becomes final by lapse of time or otherwise, then, in any such event, the Settlement Agreements, including any amendment(s) thereof, ~~and this Preliminary Order certifying the Class and the Class Representatives for purposes of the~~ ~~Settlement~~ shall be null and void, of no further force or effect, and without prejudice to any party, and may not be introduced as evidence or referred to in any actions or proceedings by any person or entity, and each party shall be restored to his, her or its respective position as it existed prior to the execution of the Settlement Agreements.

15. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement.

Dated: March 25, 2003

Copies mailed 3/26/03  
Chambers of Judge Kaplan

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UNITED STATES DISTRICT JUDGE

It is ORDERED that counsel to whom this Order is sent is responsible for fixing a copy to all counsel and retaining verification of such in the case file. Do not fix such verification in Chambers.