

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
Patrick Cariou,

Plaintiff,

Case No. 08 CIV 11327 (DAB)

-against-

ANSWER

Richard Prince, Gagosian Gallery, Inc.,  
Lawrence Gagosian, and Rizzoli International  
Publications, Inc.,

Defendants.

-----X

Defendant Rizzoli International Publications, Inc., ("Rizzoli") for its answer to the amended complaint by its attorneys, Weisman Celler Spett & Modlin, P.C., respectfully alleges:

WITH RESPECT TO THE FIRST CLAIM

1. Denies the allegations of paragraph 1 of the amended complaint except admits that plaintiff claims that this court has jurisdiction of this matter under U.S. copyright law and denies knowledge or information sufficient to form a belief as to the truth of the allegation that the copyrighted works at issue are registered with the U.S. Copyright Office.

2. Admits the allegations of paragraph 2 of the amended complaint.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 3 and 4 of the amended complaint.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the amended complaint.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 6 of the amended complaint.

6. Denies the allegations of paragraph 7 of the amended complaint except admits Defendant Rizzoli is a corporation organized and existing under the laws of the State of New York and having its principal place of business in the County and City of New York.

7. Denies the allegations of paragraph 8 of the amended complaint.
8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the amended complaint.
9. Denies the allegations of paragraphs 10, 12, and 14 of the amended complaint.
10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the amended complaint.
11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13 of the amended complaint, except denies the allegations that Defendants' conduct was and continues to be in willful disregard of plaintiff's rights under the Copyright Act.
12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 15, 16, 17 and 18 of the amended complaint.
13. Denies the allegations of paragraph 19 of the amended complaint except admits that the book *Canal Zone* contains copyright notices in favor of Prince and Gagosian Gallery, and respectfully refers the court to the said notices for all the terms and provisions thereof.
14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20 of the amended complaint, except denies Rizzoli engaged in any distribution of Plaintiff's Photographs.
15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 21 and 22 of the amended complaint.
16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 23 of the amended complaint except admits that Rizzoli never asked for or received permission to use the photographs and alleges that such permission was not required.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24 of the amended complaint, except denies that Rizzoli distributes the *Canal Zone* book, and except admits that Rizzoli received on or about December 11, 2008 a certain letter from Plaintiff's counsel, and respectfully refers the court to said letter for all the terms and provisions thereof.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 25 of the amended complaint.

19. Repeats and realleges the responses to the paragraphs incorporated by reference in paragraph 26 of the amended complaint.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 27 and 28 of the amended complaint.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 29 of the amended complaint.

WITH RESPECT TO THE SECOND CLAIM FOR RELIEF

22. Repeat and realleges its responses to the paragraphs incorporated by reference in paragraph 30 of the amended complaint.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 31 and 32 of the amended complaint.

24. Denies the allegations of paragraph 33 of the amended complaint.

WITH RESPECT TO THE THIRD CLAIM FOR RELIEF

25. Repeats and realleges its responses to the paragraphs incorporated by reference in paragraph 34 of the amended complaint.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 35 and 36 of the amended complaint.

27. Denies the allegations of paragraph 37 of the amended complaint.

WITH RESPECT TO THE FOURTH CLAIM FOR RELIEF

28. Repeats and realleges its responses to the paragraphs incorporated by reference in paragraph 38 of the amended complaint.

29. Denies the allegations of paragraphs 39, 40 and 41 of the amended complaint.

WITH RESPECT TO THE FIFTH CLAIM FOR RELIEF

30. Repeats and realleges its responses to the paragraphs incorporated by reference in paragraph 42 of the amended complaint.

31. Denies the allegations of paragraphs 43, 44 and 45 of the amended complaint.

FIRST AFFIRMATIVE DEFENSE

32. Rizzoli never distributed *Canal Zone* or the photographs of the paintings, or the photographs included within the paintings.

SECOND AFFIRMATIVE DEFENSE

33. Any publication or distribution of plaintiff's photographs constituted fair use and accordingly, did not amount to an infringement of any of plaintiff's copyrights.

THIRD AFFIRMATIVE DEFENSE AND CROSS CLAIM AGAINST DEFENDANTS

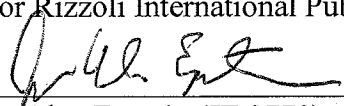
34. If it is found that plaintiff sustained damages as alleged in the complaint and if it is found that Rizzoli is liable to plaintiff for all or any part of such damages, then Rizzoli is entitled to indemnification from and judgment over against the co-defendants for all or any verdict or judgment that the plaintiff may recover against Rizzoli, based on the co-defendants' culpable conduct and/or contractual agreement.

WHEREFORE, Rizzoli demands judgment dismissing the complaint with costs and further demands judgment that, in the event the plaintiff recovers against Rizzoli, then Rizzoli

has judgment over against the co-defendants for all or part of that verdict or judgment, together with the costs and disbursements of this action.

WEISMAN CELLER SPETT & MODLIN, P.C.  
Attorneys for Rizzoli International Publications, Inc.

By: \_\_\_\_\_

  
Jesse Alan Epstein (JE 2770)  
445 Park Avenue – Suite 1500  
New York, New York 10022  
(212) 371-5400

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

Donna Libbey, being duly sworn, deposes and says: Deponent is not a party to the action, is over 18 years of age, and resides in Queens, New York.

On February 26, 2009, deponent served a true copy of the Answer of defendant,

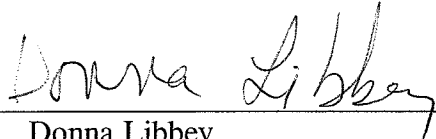
Rizzoli International Publications, Inc. upon:

Schnader Harrison Segal & Lewis LLP  
Attorneys for Plaintiff  
Attn.: Daniel J. Brooks, Esq.  
140 Broadway, Suite 3100  
New York, NY 10005-1101

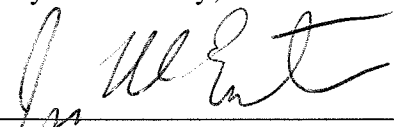
Withers Bergman LLP  
Attorneys for Defendants Gagosian Gallery, Inc.  
and Lawrence Gagosian  
Attn.: Dara Gilwit Hammerman, Esq.  
430 Park Avenue, 10<sup>th</sup> Floor  
New York, NY 10022-3505

Hanly Conroy Bierstein Sheridan  
Fisher & Hayes LLP  
Attorneys for Richard Prince  
Attn.: Steven M. Hayes, Esq.  
112 Madison Avenue  
New York, NY 10016-7416

the addresses designated by said parties for that purpose by depositing true copies thereof, enclosed in post-paid envelopes, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

  
\_\_\_\_\_  
Donna Libbey

Sworn to before me this  
26<sup>th</sup> day of February, 2009

  
\_\_\_\_\_  
Jesse Alan Epstein  
Notary Public, State of New York  
No. 02EP6194860  
Qualified in New York County  
Commission Expires July 31, 2010