

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**
Case No. 08-21711-CIV-UNGARO

PWG FLORIDA, INC.,

Plaintiff,

v.

FINE ART REGISTRY, et al.,

Defendants.

ORDER OF DISMISSAL

THIS CAUSE is before the Court upon *sua sponte*. On February 3, 2009, the Court ordered Plaintiff to file a written memorandum setting forth the basis for Plaintiff's legal status as a real party in interest in this action, pursuant to Fed. R. Civ. P. 17, on or before February 6, 2009. (D.E. 47.) On February 6, 2009, Plaintiff filed a Response and Memorandum to Order Requiring Response. (D.E. 49.)

THE COURT has reviewed Plaintiff's Response and the pertinent portions of the record and is otherwise fully advised in the premises. In its Order Requiring Response, the Court explained that a review of the Amended Complaint and the exhibits attached thereto appeared to show that all allegedly wrongful actions and statements made and/or taken by Defendants referenced therein were made and/or taken by Defendants against Park West Galleries, Inc., not PWG Florida, Inc. The Court further noted that none of the "articles" referenced in the Amended Complaint makes any mention of PWG Florida, Inc., and that each article instead references Park West Galleries, Inc., a non-party to this action. Finally, the Court remarked upon Plaintiff's representation to the Court that PWG Florida, Inc., and Park West Galleries, Inc., are separate legal entities. (*See* D.E. 4.)

Rule 17(a) of the Federal Rules of Civil Procedure specifies that "[a]n action must be prosecuted in the name of the real party in interest." Fed. R. Civ. P. 17(a). "The real party in interest is the person holding the substantive right sought to be enforced, and not necessarily the person who will ultimately benefit from the recovery." *Weiburg v. GTE Southwest, Inc.*, 272

F.3d 302, 306 (5th Cir. 2001) (citation and quotations omitted).

In its Response, Plaintiff argues that Defendants have defamed both PWG Florida, Inc., and Park West Galleries, Inc., because Defendants' alleged attacks against Park West Galleries, Inc., sometimes utilize the name "PWG," leading Defendants' readers to "logically blur the distinction and conclude that Park West Gallery and an entity called PWG are the target of the defamation." (Pl.'s Resp. 1.) Plaintiff further states that "the [D]efendants have blurred any line as between Park West Galleries, Inc.[,] and PWG Florida, Inc.[,] in the public domain and at times, whether intentionally or inadvertently, published and disseminated their slander and libel in a way that harms both entities." The Court disagrees.

Plaintiff is unable to point to any writing in which any of the Defendants even mentions PWG Florida, Inc. Thus, it would be highly unlikely for any reader to confuse Park West Galleries, Inc., and PWG Florida, Inc., as the existence of PWG Florida, Inc., as a separate entity has never been hinted at, much less established, by Defendants in any of the allegedly defamatory materials. It is clear to this Court, as it likely would be to any reader of Defendants' allegedly defamatory materials, that the "PWG" mentioned in the allegedly defamatory materials is a partial acronym for Park West Galleries, Inc.—not a reference to the unnamed entity PWG Florida, Inc. In fact, the recent posting on Defendant Fine Art Registry's website referenced in Plaintiff's Response demonstrates that the moniker "PWG" is used as a partial acronym for Park West Galleries, Inc. (See Pl.'s Resp. 1 ("... Park West Gallery and its henchpeople, we decided it was high time to begin letting all those nasty skeletons out of the PWG (Park West Gallery) closet.")) As such, the Court finds that Plaintiff is not the real party in interest, as all of Defendants' allegedly injurious actions were taken against Park West Galleries, Inc. It is

ORDERED AND ADJUDGED that this action is DISMISSED pursuant to Fed. R. Civ. P. 17 for failure to prosecute in the name of the real party in interest.¹

¹ Ordinarily, the Court would be required to allow a reasonable amount of time for the real party in interest (Park West Galleries, Inc.) to be substituted as the plaintiff. *See* Fed. R. Civ.

DONE AND ORDERED in Chambers at Miami, Florida, this 10th day of February,
2009.



URSULA UNGARO
UNITED STATES DISTRICT JUDGE

cc: counsel of record

P. 17(a)(3). However, given that (1) Park West Galleries, Inc., was the original plaintiff in this action (prior to the substitution of PWG Florida, Inc.) and (2) venue would likely not be proper in this district were Park West Galleries, Inc., to prosecute this action (*see* 28 U.S.C. § 1391), the Court sees no reason not to dismiss this action at the present time.