

Mekas v Maya Stendhal Gallery, Inc.
2010 NY Slip Op 33916(U)
December 7, 2010
Supreme Court, New York County
Docket Number: 650190/2010
Judge: James A. Yates
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

James A. Yates

PART 49

PRESENT:

Index Number : 650190/2010
MEKAS, JONAS
 VS.
MAYA STENDHAL GALLERY,
 SEQUENCE NUMBER : 005
 COMPEL DISCLOSURE

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: ☒ **Yes** ☐ **No**

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING
 DECISION AND ORDER, DATED 12-7-10.**

Dated: 12-7-10
 DEC 07 2010

James A. Yates

Check one: ☐ **FINAL DISPOSITION** ☒ **NON-FINAL DISPOSITION**

Check if appropriate: ☐ **DO NOT POST** ☐ **REFERENCE**

☐ **SUBMIT ORDER/ JUDG.**

☐ **SETTLE ORDER/ JUDG.**

**MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
 FOR THE FOLLOWING REASON(S):**

-----X
JONAS MEKAS and ANTHOLOGY FILM :
ARCHIVES, INC., :
 :
Plaintiffs, : Order and Decision
 : Motion Seq.005
 :
v. :
 :
MAYA STENDHAL GALLERY, INC., PAIZA :
LLC and HARRY STENDHAL, : Index No. 650190-2010
 :
 :
Defendants. :
-----X
Hon. James A. Yates, J.S.C.

Plaintiffs Jonas Mekas and Anthology Film Archives Inc. move, pursuant to CPLR 3124 and 3126, for an order compelling compel defendants to provide supplementary answers to their interrogatories and produce all remaining responsive documents to their first and second document requests. Defendants cross-moved for an order modifying and extending the discovery schedule.

The motion and cross-motion are decided as follows.

BACKGROUND

In this action, plaintiffs seek, among other relief, the return of approximately \$10 million in artwork and other property in possession of defendants, damages for conversion of over \$450,000.00 in sales proceeds belonging to Mr. Mekas, an accounting, the transfer of certain Internet domains, a finding of trademark infringement and unfair competition, damages for the violation of New York Civil Rights Law § 51, and various forms of injunctive relief following the August 2009 termination of the Artist Gallery Contract with Record of Consignment, dated October 18, 2005 (the "Artist-Gallery Agreement"), between Mr. Mekas and defendant Maya Stendhal Gallery, Inc. (the "Gallery").

Pursuant to the Court's Preliminary Conference Order dated May 7, 2010, plaintiffs issued Plaintiffs' Request for Production of Documents on June 16, 2010, Plaintiffs' Interrogatories to Defendants on June 17, 2010, and Plaintiffs' Second Request for Production of Documents on July 2, 2010.

Plaintiffs contend that defendants made an untimely production of documents in response to plaintiffs' document requests on August 6, 2010, along with a supplementary document production on August 11, 2010. Plaintiffs also contend that defendants made an untimely submission of Defendants' Answers to Plaintiffs' Interrogatories on August 19, 2010. Plaintiffs further contend that the responses are non-responsive. They seek supplementary answers to their interrogatories and various documents. Defendants seek an order extending the discovery schedule.

DISCUSSION

CPLR 3101 (a) provides for full disclosure of all information that is material and necessary to the defense or prosecution of an action. "The words, 'material and necessary,' are, in our view, to be interpreted liberally to require disclosure, upon request, of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity. The test is one of usefulness and reason." *Allen v Crowell-Collier Publ. Co.*, 21 NY2d 403, 406 (1968). A conditional order of preclusion or other appropriate sanction may be imposed upon a party's failure to provide responsive answers (see *Kihl v Pfeffer*, 94 NY2d 118, 122-123[1999]).

In view of Mr. Mekas' right to 50% of the proceeds from the sale of his artwork pursuant to an Artist-Gallery Agreement, plaintiffs are entitled to all documents and information concerning all sales by defendants of any artwork by, or provided by, Mr. Mekas.

Pursuant to the parties' discussions after the December 1, 2010 hearing before the Court on plaintiffs' motion to compel, counsel for the parties narrowed down the issues and the substance of their agreement was set forth in a letter to the Court, dated December 6, 2010.

The Court directs defendants to fully respond in accordance with the December 6 letter and as set forth in the Motion to Compel, including providing information on:

1. Sales of Plaintiffs' Artworks.
2. Proceeds of On-line Sales
3. Relationship between the Maya Stendhal Gallery and the George Maciunas Foundation, Inc.
4. The Identify and Handling of all Artworks Provided by

Plaintiffs during the term of the Artest-Gallery Agreement which the Gallery reproduced.

5. Deals for Licensing and Publication of Mr. Mekas' Works.

6. Documents related to the Grapefruit Cards.

8. Emails and Facebook Messages of Harry Stendhal, the Gallery and Maya Stendhal.

The Court further directs that proper responses from defendants must be submitted to plaintiffs by January 3, 2010, including where appropriate, affidavits of non-availability with an explanation of due diligence.

Any failure to provide outstanding document discovery or the appropriate affidavit in accordance with this Order and the December 6 letter will result in appropriate sanctions (see CPLR 3126; *Curtis Properties Corp. Vv Grief Companies*, 236 AD2d 237, 239 [1st Dept 1997]).

CONCLUSION

Accordingly, it is hereby

ORDERED that plaintiffs' motion is granted to the extent of directing defendants to fully respond to plaintiffs' interrogatories and document demands as modified in accordance with the parties' December 6, 2010 letter (see attached); and it is further

ORDERED that defendants' motion to modify or extend the discovery is granted in accordance with this Court's directions and directives; and it is further

ORDERED that defendants' counsel will provide the outstanding discovery and affidavits to plaintiffs' counsel by January 3, 2011; and it is further

ORDERED that documents and affidavits, so produced be organized in accordance with the provisions of CPLR 3122 (b) and (c) wherein the party providing the responsive materials must delineate, in a clear and organized manner, which items are responsive to which document request number or interrogatory question; and it is further

ORDERED that the parties are directed to appear in Part 49 on January 5, 2010 at 3:00 pm for a status conference to review any outstanding discovery issues.

This constitutes the Decision and Order of the Court.

Dated: December 7, 2010

DEC 07 2010

ENTER:

James A. Yates, J.S.C.

James A. Yates