

<b>Jonas Mekas v Maya Stendhal Gallery, Inc.</b>
2011 NY Slip Op 34015(U)
October 13, 2011
Sup Ct, New York County
Docket Number: 650190/2010
Judge: Eileen Bransten
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: \_\_\_\_\_

PART 3

Justice

Index Number : 650190/2010  
**MEKAS, JONAS**  
 vs.  
**MAYA STENDHAL GALLERY,**  
 SEQUENCE NUMBER : 006  
 DISM ACTION/INCONVENIENT FORUM

INDEX NO. 650190/2010  
 MOTION DATE 2/06/2011  
 MOTION SEQ. NO. 006  
 MOTION CAL. NO. \_\_\_\_\_

this motion to/for Dismiss

notice of motion/ order to show cause \_\_\_\_\_ Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED	
1	_____
2	_____
3	_____

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

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

Dated: 10-13-11

E. Lee Bark  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.  SETTLE ORDER/ JUDG.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART THREE

-----X  
JONAS MEKAS, ANTHOLOGY FILM ARCHIVES,  
INC. and BILLIE MACIUNAS,

Plaintiffs,  
  
-against-

Index No.: 650190/2010  
Motion Date: 06/06/2011  
Motion Seq. No.: 006

MAYA STENDHAL GALLERY, INC., PAIZA, LLC,  
HARRY STENDHAL and THE GEORGE MACIUNAS  
FOUNDATION, INC.,

Defendants.

-----X  
PRESENT: EILEEN BRANSTEN, J:

Defendants Maya Stendhal Gallery, Inc., Paiza, LLC and Harry Stendhal (“Defendants”)<sup>1</sup> contend that non-party Yoko Ono has an interest in property at issue in this action, the “Grapefruit Cards.” Defendants thus argue that Ms. Ono is a necessary party under CPLR § 1001 to accord complete relief in this action. On that basis, Defendants move to dismiss the Amended Complaint in its entirety or to sever and dismiss Plaintiffs’ causes of action that implicate the Grapefruit Cards. Alternatively, Defendants move for an order compelling Plaintiffs to name Ms. Ono as a defendant.

**ANALYSIS**

Defendants correctly argue that the “main purpose of the rule requiring joinder of necessary parties is to avoid a multiplicity of lawsuits and to protect the rights of non-parties

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<sup>1</sup> Defendant George Maciunas Foundation, Inc. does not join in Defendants’ motion. See Notice of Motion to Dismiss, p. 1. The court’s decision is therefore not binding on the George Maciunas Foundation, Inc.

whose rights should not be jeopardized with respect to the subject matter of an action or particular claim.” Defendants’ Memo, p. 3, citing *New York County Lawyers’ Ass’n v. State*, 745 N.Y.S.2d 376, 381(Sup. Ct. N.Y. County 2002); *see also* CPLR § 1001 (a) (stating that “[p]ersons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action shall be made plaintiffs or defendants”).

The Grapefruit Cards comprise the original manuscript for Ms. Ono’s literary work “Grapefruit.” Plaintiffs’ possessory rights in the Grapefruit Cards are implicated by their eighth, ninth, tenth, eleventh, fourteenth and fifteenth causes of action.

Defendants contend that Ms. Ono, “has though her lawyer asserted her ownership rights in the [Grapefruit] Cards.” Defendants’ Memorandum of Law in Support of Motion to Dismiss Amended Complaint (“Defendants’ Memo”), p. 2. On that basis, Defendants contend that Ms. Ono is a necessary party.

Defendants’ sole support for its claim that Ms. Ono has asserted her ownership rights to the Grapefruit Cards are two emails between non-parties Jonas Herbsman and Maya Stendhal. *See* Affirmation of Marc E. Elliot in Support of Motion to Dismiss (“Elliot Affirm.”), Ex. C. The first email is from Ms. Stendhal to Mr. Herbsman and is dated November 29, 2006. The second email is from Mr. Herbsman to Mrs. Stendhal and is dated December 12, 2006.

While Mr. Herbsman's December 12, 2006 email was sent in reply to Ms. Stendhal's email, the two address different subject matter. Ms. Stendhal's email makes no reference of any kind to the Grapefruit Cards. Rather, Ms. Stendhal explores her interest in creating an exhibition to correspond to the release of Ms. Ono's album, "Yes, I'm a Witch."

By contrast, Mr. Herbsman's email states:

Dear Maya -

Yoko is not interested in paying \$1,000,000 for the "Grapefruit" manuscript. Additionally, we do not acknowledge that Ms. Ono transferred any ownership rights in such material to any third party.

Sincerely,

Jonas Herbsman

Mr. Herbsman's email is wholly non-responsive to Ms. Stendhal's email and is devoid of context. Further, Mr. Herbsman's declining to acknowledge whether or not Ms. Ono transferred ownership in the Grapefruit Cards does not constitute an affirmative assertion of Ms. Ono's ownership interest therein.

In opposition to Defendants' motion, Plaintiffs submit Ms. Ono's sworn, notarized affidavit (the "Ono Affidavit"). Ms. Ono acknowledges that ownership of the Grapefruit Cards is at issue in this action. Ono Affidavit, ¶¶ 1 & 2. Ms. Ono states that while she continues to claim

all rights customarily withheld in and to the underlying literary work 'Grapefruit,' my friend [the late] George Maciunas has, with my authorization, been in possession of the Grapefruit Cards since the mid-1960's. *I do not assert any claim to ownership of the Grapefruit Cards. Id.*, ¶ 3 (emphasis supplied).

Ms. Ono is thus aware of the Grapefruit Cards' role in this litigation and nonetheless expressly disclaims her ownership interest in the Grapefruit Cards. The basis for Defendants' argument for Ms. Ono as a necessary party therefore falls.

On reply, Defendants argue that the Ono Affidavit does not have the same effect as a general release of liability arising from the Grapefruit Cards, that Ms. Ono may later change her mind as to her ownership of the Grapefruit Cards, and that, "to date, no one, including Ms. Ono has supplied a Bill of Sale, a Deed of Gift, a receipt or any other document or writing of any kind to explain how the Grapefruit Cards came to be in the hands of George Macunias [sic] in the first place." Affirmation of Marc. E. Elliot in Further Support to Defendants' Motion to Dismiss Amended Complaint, ¶ 8.

Defendants' arguments are without merit. The issue before the court is whether Ms. Ono is a necessary party under CPLR § 1001. Defendants have not shown that she is, and Defendants' motion to dismiss is denied.

It is therefore

ORDERED that Defendants' motion to dismiss or, in the alternative for an order compelling Plaintiffs to name Yoko Ono as a defendant is DENIED; and it is further

ORDERED that Defendants are to answer the Amended Complaint within twenty days after service upon them of a copy of this decision and order with notice of entry.

This constitutes the decision and order of the court.

Dated: New York, New York  
October 13, 2011

ENTER



Hon. Eileen Bransten, J.S.C