

Welsh-Ovcharov v Stein
2017 NY Slip Op 32619(U)
December 18, 2017
Supreme Court, New York County
Docket Number: 657211/2017
Judge: O. Peter Sherwood
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

At IAS Part 49 of the Supreme Court of the State of New York, Commercial Division, County of New York, at the courthouse hereof, 60 Centre Street, New York, on the 18th day of December, 2017.

PRESENT: O. PETER SHERWOOD, JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X

BOGOMILA M. WELSH-OVCHAROV, : Index No.: 657211/2017

Plaintiff, : Motion Seq. No. 1

- against - :

DUSTIN ADAM STEIN, and : **ORDER**

326 GALLERY, :
Defendants. :

----- X

PLAINTIFF, having moved this Court by Order to Show Cause for an Order, preliminarily enjoining Defendants. (a) ordering Defendants and others (as listed below) to refrain from removing from the State of New York a painting identified in Plaintiff's moving papers (the "Work");¹ (b) ordering Defendants to safeguard the Work pending a final determination by the U.S. Bankruptcy Court with respect to the rightful possession and ownership of the Work; (c) ordering Defendants to deliver the Work into the possession of UOVO Art, LLC, a custodian designated by the Trustee in Bankruptcy for Chowaiki & Co. Fine

¹ The term "**Work**," as used in this Order and in the documents submitted by Plaintiff's counsel in support of the Order to Show Cause, means the painting by Piet Mondrian entitled *Broekzijder Mill in the Evening*, circa 1906 Oil on canvas 133/4 x 193/4 in. (35 x 50 cm.), signed *Piet Mondrian* in the lower right-hand corner.

Art, Ltd.,² by December 21, 2017 at 3:00 p.m., subject to and without prejudice to, the claims of any party to this proceeding or those of the Trustee in Bankruptcy, and (d) ordering Defendant Dustin Adam Stein to response to Plaintiff's First Request for the Production of Documents and Notice of Deposition in accordance with this Order;

Upon reading and filing of the (1) Affidavit of Plaintiff Bogomila M. Welsh-Ovcharov, dated December 4, 2017; (2) Affirmation of George Brunelle, Plaintiff's counsel, dated December 4, 2017; (3) Memorandum of Law in Support of Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction, dated December 5, 2017; and (4) all other papers and proceedings in this action, it is hereby:

ORDERED, under CPLR §§ 6301, 6313(a) and 7109, that **DUSTIN ADAM STEIN**, and his agents, employees, affiliates, business partners, alter egos, any persons acting in concert with him, and any related business entities,³ including without limitation the business known as "326 Gallery," be, and they hereby are, preliminarily enjoined to safeguard the Work from damage, loss or destruction, and to refrain from removing the Work from the State of New York, or from transferring, selling, pledging, or otherwise encumbering or disposing of the Work; and

AND IT IS FURTHER ORDERED, pending a final determination with respect to the rightful possession and ownership of the Work, made by this Court, the Bankruptcy Court (see Footnote 2 above), or other Court of competent jurisdiction, **DUSTIN ADAM STEIN**, and his agents, employees, affiliates, business partners, alter egos, any persons acting in concert with

² The requested Temporary Restraining Order and requested Preliminary Injunction are not intended to apply to Chowaiki & Co. Fine Art Ltd., whose Chapter 7 case is pending in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), Case No. 17-13228 (MKH).

³ The requested Temporary Restraining Order and requested Preliminary Injunction are not intended to apply to Chowaiki & Co. Fine Art Ltd. (the "Gallery"), whose Chapter 7 case is pending in the United States Bankruptcy Court for the Southern District of New York, Case No. 17-13228 (MKH).

him, and any related business entities, including without limitation the business known as “326 Gallery,” are hereby **ORDERED** to deliver the Work into the possession of UOVO ART, LLC, a custodian designated by the Trustee in Bankruptcy for Chowaiki & Co. Fine Art, Ltd., by **December 21, 2017 at 3:00 p.m.**, subject to, and without prejudice to, the claims of any party to this proceeding or those of the Trustee in Bankruptcy;

AND IT IS FURTHER ORDERED, pending a final determination with respect to the rightful possession and ownership of the Work, made by this Court, the Bankruptcy Court (see Footnote 2 above), or other Court of competent jurisdiction, that **DUSTIN ADAM STEIN**, and his agents, employees, affiliates, business partners, alter egos, any persons acting in concert with him, and any related business entities, including without limitation the business known as “326 Gallery,” are hereby **PRELIMINARILY ENJOINED** from causing or permitting damage, loss or destruction of the Works, their removal from the State of New York, or their transfer, sale, pledge or other encumbrance or disposal of the Work;

AND IT IS FURTHER ORDERED that Defendant **DUSTIN ADAM STEIN** shall respond to the Plaintiff’s **First Request for the Production of Documents**, in the form attached as **Exhibit 4** to the December 4, 2017 Affirmation of George Brunelle (“Brunelle Affirmation”), and that he do so by electronic mail addressed to counsel for the Plaintiff, George Brunelle, Esq., directed to gbrunelle@brunellelaw.com, no later than **December 29, 2017 at 10:00 a.m.**;

AND IT IS FURTHER ORDERED that Defendant **DUSTIN ADAM STEIN** appear and testify at a deposition upon oral examination, in accordance with a **Notice of Deposition** in the form attached as **Exhibit 5** to the Brunelle Affirmation, on **December 29, 2017 at 10 a.m.**;

{00104144}

AND IT IS FURTHER ORDERED that service as follows, of a copy of this Order and Plaintiff's First Request for the Production of Documents and a Notice of Deposition made in conformity with this Order, by e-mail by 5 p.m. on December 18, 2017, and by process server by December 21, 2017 at 3:00 p.m. be made upon the Defendants or their counsel to the following addresses shall be deemed good and sufficient service:

Dustin Adam Stein, Esq.
326 Gallery
326 7th Avenue
New York, NY 10001
dustinadamstein@yahoo.com
ds@326gallery.com
dstein@ssteinlawfirm.com

326 GALLERY
326 7th Avenue
New York, NY 10001
ds@326gallery.com

ENTER:


O. PETER SHERWOOD, J.S.C. 12/18/17