

**Aicon Contemporary v Dutta**

2024 NY Slip Op 30044(U)

January 3, 2024

Supreme Court, New York County

Docket Number: Index No. 650500/2023

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. ARLENE P. BLUTH PART 14**

*Justice*

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AICON CONTEMPORARY,

Plaintiff,

- v -

PRAJIT DUTTA, HARRY HUTCHISON, AICON ART LLC,

Defendant.

-----X

INDEX NO. 650500/2023

MOTION DATE 01/02/2024

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 97, 100, 101, 102, 103, 104, 105, 106, 107, 108 were read on this motion to/for CONTEMPT.

Defendants’ motion to hold non-party Molly Emma Aitken in contempt is denied. Her cross-motion for a protective order is also denied.

**Background**

Plaintiff is an art gallery in Manhattan. It claims that it received a piece of artwork by the artist S.H. Raza entitled “Germination” on consignment from the artwork’s owner. Plaintiff alleges that it had a consignment agreement with the owner in anticipation of a possible resale. It contends that although defendants have no interest in the work at all, they have taken the artwork and refused to return it to plaintiff. Plaintiff brings three causes of action for replevin, for conversion and for tortious interference with contract.

This Court previously denied plaintiff’s motion for summary judgment as premature (NYSCEF Doc. No. 98).

In this motion, defendants seek to hold Molly Emma Aitken (“Owner”), the owner of the artwork in contempt for not complying with a non-party subpoena for *inter alia* the production of

documents and for a deposition. Defendants want information about the consignment agreement between the Owner and plaintiff, information about the provenance (as defendants claim the artwork is not authentic) as well as details about her ownership stake in the painting.

The Owner seeks a protective order and claims that she is not in contempt. She insists that she is the victim of a crime and that she has provided everything that she has with respect to the painting. The Owner submits an affidavit in which she admits she purchased the subject work (“Germination”) in November 2020 and consigned it to plaintiff on August 17, 2022 (NYSCEF Doc. No. 104, ¶ 3). She insists that she purchased the work from a private collector, who insisted it was authentic, but that she has no other documents about the artwork’s authenticity (*id.*).

In reply, defendants focus on the fact that the Owner did not deny the account of a conversation she allegedly had with one of defendants’ investigators about the authenticity of the painting and the fact that an Indian family allegedly maintains some ownership in the painting.

### **Discussion**

The Court denies defendants’ request to hold the Owner in contempt. She has now responded with what she knows about the artwork and defendants have a copy of the consignment agreement (*see* NYSCEF Doc. No. 107). The Owner admits that she thinks the artwork is authentic but that she does not have any other documents about the authenticity. The Court cannot force her to produce documents she does not possess.

Given the fact that she is the Owner of the subject painting, defendants are entitled to take her deposition in accordance with the directives below. As the Court noted in the previous decision, the fact is that plaintiff insists that it is entitled to \$750,000 in damages based on the value of this artwork. That makes its authenticity relevant to the issue of damages and the Owner’s perspective about the provenance (or alleged lack therefor) is obviously relevant.

That said, the Owner's deposition will occur only *after* paper discovery is completed and after the depositions of the parties in this case (which have yet to be scheduled). In this Court's view, the issue of authenticity (at least at this early stage) is limited to the question of damages. The key question in discovery is whether or not there was an unwritten agreement between plaintiff and Aicon Art. That means that this discovery should take place first; the deposition of the Owner is not as important as exploring both plaintiff and defendants' allegations about their business dealings.

The Court recognizes that the Owner is upset that she was contacted by defendants' investigator. But, unfortunately, she entered into a consignment agreement about artwork she owns with an entity in the middle of a dispute between feuding brothers. Therefore, her involvement in this action is unavoidable. To the extent that the Owner claims she is the victim of a crime, those claims are beyond the scope of this decision. The Owner can, of course, make whatever complaints she deems appropriate; but this Court is only concerned with the litigation before it.


Accordingly, it is hereby

ORDERED that plaintiff's motion to hold non-party Molly Emma Aitken in contempt is denied; and it is further

ORDERED that non-party Molly Emma Aitken's cross-motion for a protective order is denied; and it is further

ORDERED that the Court finds that non-party Molly Emma Aitken has sufficiently responded to the information subpoena via her responses in this motion and that she shall sit for a non-party deposition to be held after both paper discovery and party depositions are completed.

The Court observes that there have now been two motions filed before a single conference has been held. While the parties are free to litigate this matter by motion, the upcoming conference scheduled for February 29, 2024 is a chance to reset the trajectory of this action. The parties should be able to agree to a preliminary conference order (and upload it by February 22, 2024) that sets forth a discovery schedule in accordance with this decision and order. Uploading a stipulated discovery schedule may obviate the need for an in-person conference and focus this dispute on the merits, not on motion practice. If the parties cannot agree on a schedule, the Court will not hesitate to hold an in-person conference and pick dates for the parties.

1/3/2024 DATE					 ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/>	REFERENCE