

Baradel v Edelman

2024 NY Slip Op 32131(U)

June 20, 2024

Supreme Court, New York County

Docket Number: Index No. 653717/2019

Judge: Louis L. Nock

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

PRESENT: HON. LOUIS L. NOCK PART 38M

Justice

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MARC BARADEL,

Plaintiff,

- v -

ASHER EDELMAN, EDELMAN ARTS, INC., HUB
INTERNATIONAL NORTHEAST LIMITED, and THOSE
UNDERWRITERS AT LLOYD'S LONDON WHO
SUBSCRIBE TO THE POLICY OF
INSURANCE/CERTIFICATE NUMBERED, etc.,

Defendants.

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INDEX NO. 653717/2019

MOTION DATE 05/23/2023

MOTION SEQ. NO. 010

**ORDER – AMENDED AND
SUPPLEMENTAL**

The following e-filed documents, listed by NYSCEF document numbers (Motion 010) 399, 400, 401, 402, 403, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 443, 444, 545, 547, and 550

were read on this motion to SEAL.

LOUIS L. NOCK, J.S.C.

By decision and order dated May 9, 2024, the court, in furtherance of an order dated April 27, 2023, ordering that plaintiff facilitate defendants’ inspection of that certain collection of sculptures being held in a warehouse located in Paris, France, belonging to Chenue, S.A. (Mot. Seq. No. 395), directed that said inspection be conducted over a maximum of three days on or before July 9, 2024, and made further specifications regarding those persons who may attend the inspection. The court also directed that any “records, films or photographs” taken during the inspection be kept confidential (*id.* at 2).

Defendant Underwriters at Lloyd’s London (“Underwriters”), by letter dated June 10, 2024, now applies to, in effect, modify certain of the court’s directives regarding the time in which the inspection must take place, and who may view materials generated during the

inspection. Regarding the timing, Underwriters asserts that it is unable to retain a photographer and videographer with sufficient experience in art examination during the timeframe when its experts are also available to inspect the collection. Moreover, Underwriters asserts that its efforts have been hampered by the limited cooperation it has received from plaintiff and plaintiff's counsel. Finally, the pending Olympic and Paralympic Games being held in Paris this summer present logistical problems for the logistical steps necessary to conduct the inspection during the summer. Plaintiff objects to this request and asserts that he has been cooperating as required. In the interest of ensuring that the inspection is conducted in a timely manner, the court grants the request to extend the time in which to conduct the inspection through September 13, 2024. No further extensions of time will be granted.

Turning to the confidentiality provision, Underwriters asks to modify the provision to allow Underwriters to show pictures, videos, and documents generated during the inspection to other experts as part of their defense. At a conference held before the court on June 5, 2024, plaintiff suggested that any other person not specified in the court's order be required to sign a confidentiality agreement before they can view any materials generated during the inspection. The court finds this to be a reasonable compromise. Accordingly, the confidentiality provision is modified to provide that, in addition to the up-to-three experts who Underwriters may bring to the inspection, Underwriters may also show any photos and videos of the inspection to additional experts as part of its defense of the action, but only on condition that said experts sign a confidentiality agreement prior to reviewing said materials.

Finally, Underwriters raises a concern that plaintiff may be in the process of attempting to sell *Le Poisson*, the sculpture at the center of this action, which would make it unavailable for

inspection before and during trial. To the extent Underwriters seeks an order restraining plaintiff from taking any action with respect to *Le Poisson*, it may do so by appropriate motion practice.

Accordingly, it is hereby

ORDERED that the court's prior decision and order of May 9, 2024, is amended and supplemented as follows:

1. Paragraph 2 is supplemented to provide that defendants may, as part of their defense of the action, share photos, videos, and other documents generated during the inspection with other experts not present at the inspection, on condition that defendants may not do so prior to said experts signing a confidentiality agreement meant to prevent such documentation from becoming known to parties unconnected to the litigation. Defendants shall also disclose to plaintiff the identity and professional background of any additional expert whom defendants wish to share the documentation with.
2. Paragraph 4 is amended to provide that the inspection will conclude no later than September 13, 2024. No further extensions of this time will be given.
3. A conference shall be conducted on July 31, 2024, at 10:00 a.m., at the Courthouse, 111 Centre Street, Room 1166, New York, New York, to discuss the progress of implementation of these and other directives as set forth in the court's orders of May 9, 2024, and June 5, 2024.

This order shall amend and supplement the prior decision and order of the court.

Louis L. Nock

<u>6/20/2024</u> DATE		<u>LOUIS L. NOCK, J.S.C.</u>
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE