

Artemus USA LLC v AOI Asset Fund 2017, LLC

2024 NY Slip Op 33774(U)

October 18, 2024

Supreme Court, New York County

Docket Number: Index No. 653543/2018

Judge: Joel M. Cohen

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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ARTEMUS USA LLC, EDELMAN ARTS, INC., ASHER EDELMAN <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">- v -</p> AOI ASSET FUND 2017, LLC, <p style="text-align: center;">Defendant.</p>	<table border="1"> <tr> <td>INDEX NO.</td> <td style="text-align: center;">653543/2018</td> </tr> <tr> <td>MOTION DATE</td> <td style="text-align: center;">08/26/2024</td> </tr> <tr> <td>MOTION SEQ. NO.</td> <td style="text-align: center;">010</td> </tr> <tr> <td colspan="2" style="text-align: center;">DECISION + ORDER ON MOTION</td> </tr> </table>	INDEX NO.	653543/2018	MOTION DATE	08/26/2024	MOTION SEQ. NO.	010	DECISION + ORDER ON MOTION	
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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 010) 220, 221, 222, 223 were read on this motion to LIFT STAY AND DISMISS ACTION.

Defendant/counterclaim-plaintiff AOI Asset Fund 2017 LLC (“AOI AF”) moves for an Order granting AOI AF’s motion to lift the Automatic Stay and Dismiss this Action with prejudice. No parties have opposed this motion. For the following reasons, AOI AF’s motion is granted.

As relevant here, this Action was initiated on July 17, 2018, when Artemus USA, LLC (“Artemus”), Edelman Arts, Inc. (“Edelman Arts”) and Asher Edelman (“Edelman,” and together with Artemus and Edelman Arts the “Plaintiffs”) asserted claims against AOI AF. AOI AF subsequently asserted counterclaims against Artemus, Edelman Arts, and Edelman.

On April 5, 2022, counsel for Plaintiffs filed a “Suggestion of Bankruptcy,” informing the court that Artemus had filed for bankruptcy protection in the United States Bankruptcy Court for the District of Delaware, in the proceeding captioned *In re Artemus USA LLC*, Case No. 22-10281-JKS (the “Artemus Bankruptcy Case”) (NYSCEF 209), resulting in an Automatic Stay.

On June 3, 2024, AOI AF, Edelman Arts, and Edelman, filed a stipulation of discontinuance, dismissing with prejudice: (a) all of Edelman and Edelman Arts claims against AOI AF; and (b) all of AOI AF's counterclaims against Edelman Arts and Edelman (NYSCEF 215). 8. On June 4, 2024, the Court so-ordered the stipulation (NYSCEF 216). Therefore, the only claims remaining in the Action are Artemus's claims against AOI AF, and AOI AF's counterclaims against Artemus.

According to the Affirmation filed by Daniel Finnegan, counsel for AOI AF, a trustee was appointed to operate Artemus in the Artemus Bankruptcy Case (the "Artemus Trustee") (NYSCEF 221 ["Finnegan Affirm"] ¶6). On June 21, 2024, the Artemus Trustee filed a Notice of Abandonment in the Artemus Bankruptcy Case, in which the Artemus bankruptcy estate provided notice of its intention, pursuant to 11 U.S.C. Section 554 and Rule 6007 of the Federal Rules of Bankruptcy Procedure, to abandon its "rights and claims as a plaintiff" in the Action (NYSCEF 222). On July 18, 2024, the Bankruptcy court in the Artemus Bankruptcy Case approved the abandonment (NYSCEF 223).¹

DISCUSSION

"The filing of a bankruptcy petition automatically stays the commencement of any action or proceeding to recover a claim against the debtor that arose before the commencement of the bankruptcy proceeding" (*Levant v Natl. Car Rental, Inc.*, 33 AD3d 367, 368 [1st Dept 2006], citing 11 USC § 362[a]1). The stay continues "until the earliest of ... the time the [bankruptcy]

¹ On August 12, 2024, counsel contacted the Court, informing the Court that Artemus had formally abandoned its claims against AOI AF in the Artemus Bankruptcy Action (NYSCEF 218). The Court so-ordered the correspondence, informing AOI AF that it would need to "file a motion to lift the bankruptcy stay and dismiss" the Action (NYSCEF 219).

case is closed; ... the time the case is dismissed; or ... the time a discharge is granted or denied” (11 USC § 362(c)(2)).

Here, the Artemus Trustee filed a Notice of Abandonment providing that it was abandoning the Property known as “[t]he Estate’s rights and claims as a plaintiff in and to the action styled *Artemus USA LLC, Edelman Arts, Inc. and Asher Edelman v. AOI Asset Fund 2017, LLC*, bearing Index Number 653543/2018, and pending in the Supreme Court for the State of New York, County of New York” on “the grounds that the property is of inconsequential value and benefit to the Estate and/or attempts at liquidation of same by the Trustee would require a greater expenditure of time and funds than could be realized by the Estate” (NYSCEF 222). The Bankruptcy Court then entered an Order directing that this Property “is hereby abandoned pursuant to 11 U.S.C. § 554” (NYSCEF 223).

Based on this evidence in the record, the automatic stay is lifted and Artemus’s claims against AOI AF are dismissed with prejudice.

Furthermore, AOI AF submits that since Artemus has abandoned its claims against AOI AF, AOI AF wishes to discontinue its counterclaims against Artemus. Accordingly, AOI AF’s counterclaims against Artemus are dismissed.

As noted, no parties have opposed this motion. Therefore, this motion is granted.

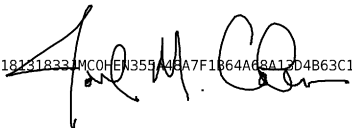
Accordingly, it is

ORDERED that AOI AF’s motion is **GRANTED**, and the Automatic Stay is lifted, and this Action is dismissed in its entirety with prejudice and the Clerk is directed to enter judgment accordingly.

IT IS FURTHER ORDERED that counsel for AOI AF shall serve a copy of this Order with Notice of Entry upon the County Clerk within five (5) days of the date of this Order; it is further

ORDERED that service upon the County Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website).

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

10/18/2024
DATE

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE