

Aicon Contemporary v Dutta

2025 NY Slip Op 34304(U)

November 7, 2025

Supreme Court, New York County

Docket Number: Index No. 650500/2023

Judge: Arlene P. Bluth

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**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,

Defendants.

INDEX NO. 650500/2023
MOTION DATE 11/7/2025
MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 163, 164, 165, 166, 167, 168, 169, 170, 171

were read on this motion to/for SANCTIONS

Upon the foregoing papers plaintiff’s motion for sanctions is granted as described below.

Background

Plaintiff is an art gallery; its managing member, Projjal Dutta, is the brother of defendant Prajit Dutta. Although plaintiff and defendants operate separate art galleries, they operate in the same space at 35 Great Jones Street in Manhattan.

Plaintiff claims that it received a piece of artwork by the artist S.H. Raza called *Germination* on consignment from the painting’s owner. Plaintiff contends that although defendants have no interest in the work at all, they took the painting and refused to return it to plaintiff. Plaintiff brings three causes of action for replevin, for conversion, and for tortious interference with contract. Defendants admit that they took the painting from a common storage area and refuse to return the painting. They contend that they were justified in doing so, as they believe the work is a forgery.

On February 6, 2025, this Court held an in-person conference in which the parties indicated that settlement discussions were under way, so the Court gave the parties until April 10, 2025 to work on settlement (NYSCEF Doc. No. 144). The Court instructed the parties to update the Court about the status of the case by April 3, 2025 (*id.*). The parties asked the Court for another extension to try to work on settling the case, so the Court adjourned the conference to June 11, 2025 with a June 4 update deadline (NYSCEF Doc. No. 145). The Court also warned that if no update was uploaded it might order that a note of issue be filed (*id.*).

The parties ignored the deadline, so the Court ordered that a note of issue be filed on or before June 27, 2025 (NYSCEF Doc. No. 146). Counsel for plaintiff then uploaded a letter apologizing for missing the deadline, indicated that no discovery had been done, and said that the case had not settled (NYSCEF Doc. No. 147). Plaintiff asked the Court to vacate the note of issue deadline and restore the case to the Court's active calendar (*id.*).

The Court rejected that request and observed that the parties could make a motion to vacate that order if they desired (NYSCEF Doc. No. 148). About a week later, the parties sent another letter requesting that the note of issue deadline be extinguished (NYSCEF Doc. No. 149), and the Court again rejected this letter request (NYSCEF Doc. No. 150). Plaintiff then successfully moved to extend the note of issue deadline, which the Court set for July 31, 2025 (NYSCEF Doc. No. 156). In that order, the Court told the parties that they had until the end of July to finish discovery and stated that no further adjournments would be granted (*id.*).

Plaintiff then promptly moved to compel discovery, defendants did not submit opposition, and the Court ordered defendants to sit for their depositions on or before July 31, 2025 in the decision and order at NYSCEF Doc. No. 161. In that decision, the Court also stated that if defendants did not comply, plaintiff could make another motion for sanctions (*id.*).

Plaintiff brings the instant motion pursuant to CPLR 3126 and asks the Court to impose sanctions on defendants for disregarding the Court's order to appear for the depositions. Plaintiff asks the Court to strike defendants' answer or, alternatively, to preclude defendants from offering testimony, including affidavits, in support of their defenses.

Plaintiff claims that, despite the Court's order that defendants sit for their depositions on or before July 31, 2025, defendants' counsel emailed on July 24, 2025 saying that Defendant Prajit Dutta was in London until the 31st. Plaintiff points out that no excuse was provided for why the deposition of Defendant Harry Hutchison could not proceed. Plaintiff's managing member Projjal Dutta provides an affirmation at NYSCEF Doc. No. 167 wherein he swears that he saw defendant Harry Hutchison at the gallery space that the parties still share on July 29 and July 30.

Defendants' attorney's affirmation states that while he understands plaintiff's frustration, he would "prefer to settle the matter and avoid expensive and time-consuming discovery" (NYSCEF Doc. No. 170 at ¶ 4). Defendants' attorney states that he has been extremely busy and lists the cases he has had to go to trial for since May of this year. The attorney asks the Court to recall that he tried "...at least two cases before Your Honor prior to your current assignment in the Commercial Division. I hope that you recall I am not an attorney who is looking to drag out litigation and avoid" (*id.* at ¶ 6).

Defendants' attorney states that whenever he had a moment, he would contact plaintiff's attorneys to work on settling this case, as well as a related case where Aicon Contemporary is a defendant, index number 650580/2023, *Aicon Art LLC v. Aicon Contemporary LLC*. Defendants' attorney stated that when he wrote the affirmation, defendant Prajit Dutta was in Peru, that he

would be back after Labor Day, and that “Hopefully I will have an exact number as to what he believes is owed on the painting sale and the common charges” (*id.* at ¶ 8).

Defendants’ attorney then says that “Should plaintiff insist on deposing my clients, they will be available anytime after Labor Day. Defendants were never seeking to avoid depositions (*id.* at ¶ 9). He finishes by saying “...In his notice of motion, Mr. Wertheim is seeking sanctions. In his memorandum of law he is seeking preclusion or striking of the answer. I am not sure which remedy he is looking for, but both should be denied” (*id.* at ¶ 10).

The Court must also note that the non-party owner of the artwork in question, Molly Aitken, submitted an affirmation in support of plaintiff’s motion (NYSCEF Doc. No. 169). There, she asks the Court to include in its decision an order directing the artwork be immediately returned to her (*id.*). Ms Aitken brought her own action to try to recover the artwork, index number 654049/2024, *Aitken, et al. v. Aicon Contemporary, et al.*; Ms. Aitken affirms that she has been holding that case in abeyance due to representations by both plaintiff and defendants that settlement is imminent (*id.*).

Discussion

“Striking the answer of a party is an extreme and drastic penalty, warranted where the conduct is clearly deliberate or contumacious” (*Hunter Mech. Corp. v Salkind*, 237 AD2d 180, 180, 654 NYS2d 381 [1st Dept 1997] [internal quotations and citations omitted]).

Defendants’ Noncompliance with the Court’s Order

Defendants offer no solid grounds for ignoring the plain language of this Court’s decision which ordered them to sit for depositions on or before July 31, 2025. Defendants’ attorney says that he was busy, he has a good reputation, he would prefer to settle this case, and that first defendant Dutta was in London (conveniently – until July 31, the deadline for him to be

deposed), and then defendant Dutta was in Peru. No excuse is offered as to why defendant Hutchison could not be deposed by July 31, and plaintiff's affirmation that he saw Mr. Hutchison on July 29 and 30 is not rebutted. It truly seems defendants have no interest in advancing this case. Meanwhile the owner of the painting, Ms. Aitken, has been stuck in legal limbo for years as she has relied on representations by the parties that this family feud would be imminently settled.

In his affirmation submitted in opposition to this motion, defendants' counsel claimed that his client would be back after Labor Day (September 1, 2025) and that if plaintiff's counsel *insisted* that the Court-ordered deposition take place, that defendant Dutta would be available then. The fact that plaintiff's attorney is *insisting* on getting depositions that were ordered by the Court and which are necessary to proving his client's case simply means that plaintiff's lawyer is doing his job – advocating for this client and trying to comply with the Court's orders. Two months have passed since defendant Dutta was due to return from Peru at which point he would allegedly deign to sit for his deposition. Certainly, any attorney would promptly supply any information to the Court that would render moot a serious sanctions motion against his client; yet, the Court sees no evidence that defendants were deposed.

Enough is enough. While it is a drastic remedy, the Court finds that sufficient grounds certainly exist to grant plaintiff's motion for sanctions and strike defendants' answer. Defendants' behavior was deliberate and contumacious. They did not even attempt to offer legitimate excuses for missing the Court's deadlines over and over and over and they acted as if the Court's latest order was just a suggestion that they could comply with if and when they felt like it. While the Court understands that no one wants to litigate when they can settle, these defendants are not doing anything – except ignoring Court orders.

The Court therefore grants the part of plaintiff’s motion for sanctions to the extent that defendants’ answer is stricken.


Ms. Aitken’s Request

The Court has great sympathy for Ms. Aitken. She is an innocent bystander, and her asset has been held up for years due to a sad family drama – and it is not even her family. However, the Court cannot order the return of her painting to her based on this motion for sanctions in a case to which she is not a party. Now that the answer is stricken, however, things should move faster.

Accordingly, it is hereby

ORDERED that plaintiff’s motion is granted to the extent that defendants’ answer is stricken; plaintiff shall file a note of issue for inquest on or before November 14, 2025.

11/7/2025
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
		<input type="checkbox"/>	DENIED	<input type="checkbox"/>
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
				<input type="checkbox"/>
				OTHER