

Aicon Contemporary v Dutta

2025 NY Slip Op 35060(U)

December 30, 2025

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

-----X

AICON CONTEMPORARY,

Plaintiff,

- v -

PRAJIT DUTTA, HARRY HUTCHISON, AICON ART LLC,

Defendant.

INDEX NO. 650500/2023

MOTION DATE 12/17/2025

MOTION SEQ. NO. 007

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 007) 179, 180, 181, 182, 183, 184, 185, 186, 188, 190 were read on this motion to/for RENEW/VACATE.

Defendants’ motion to vacate is granted as described below.

Background

Plaintiff alleges that defendants took a painting in which defendants had no interest, which plaintiff itself was holding on consignment from a third party. Plaintiff brings causes of action for replevin, conversion, and tortious interference with a contract. Recently, plaintiff moved the Court for sanctions, and the Court struck defendants’ answer in a decision and order dated November 7, 2025 (NYSCEF Doc. No. 173), and plaintiff filed a note of issue for inquest on November 13, 2025 (NYSCEF Doc. No. 175). In the instant motion, defendants move to renew or vacate the decision which struck their answer and to permit the parties to complete discovery, including defendants’ depositions.

Defendants claim that they were only made aware of the Court’s sanctions order after they were alerted by a friend. They blame their former attorney for their repeated failure to comply with this Court’s orders. Defendants point to two defenses which could mitigate

plaintiff's claims for damages. As to plaintiff's claims for conversion and tortious interference with contract, defendants allege that the parties had an unwritten agreement which allowed defendants to take possession of plaintiff's property to reconcile debts related to other works or expenses. Defendants further claim that the work at issue was a fake, and if this suspicion turns out to be true, this would drastically reduce plaintiff's damages.

Plaintiff's opposition first points to the fact that when this motion was filed, defendants had not formally changed attorneys. Plaintiff continues that defendants did not meet their burden of demonstrating a reasonable excuse for their failure to follow the Court's orders and did not show that they have a meritorious defense. Essentially, plaintiff argues that defendants' recourse is against their previous attorney, and that while it may be unfortunate that he did not keep them apprised of the developments on this case, that is not an acceptable excuse for vacating the order. Plaintiff continues that defendants have not adequately pled that they have a meritorious defense and that the affirmations submitted by defendants on this motion do not address their defenses.

In reply, defendants point to the affirmation of defendant Dutta which was submitted in relation to plaintiff's summary judgment motion in which defendant Dutta detailed the alleged agreement between himself and plaintiff and his contentions that the work was fake (NYSCEF Doc. No. 28).

Discussion

Trial courts have the inherent power to vacate their previous orders in the interest of justice, under the courts' broad equity powers, and pursuant to CPLR 5015 (a) (*Alliance Prop. Mgt. & Dev., Inc. v Andrews Ave. Equities, Inc.*, 70 NY2d 831 [1987]). Furthermore, it is axiomatic that courts have a strong public policy favoring the resolution of disputes on the merits.

Here, at the last conference, with defendants' new attorney, more progress was made than has been made in the years prior. Shortly after the conference, the parties informed the Court that the painting was returned to the owner, who agreed to allow various experts examine it for discovery purposes in this case.

Now that there is no longer the urgent issue of returning the painting to the owner, all that is left is cleaning up the mess and figuring out damages. The Court finds that defendants have shown adequate cause to vacate the Court's previous order which struck their answer. Defendants have sworn that they were unaware of the Court's discovery orders and appear to at least listen to their new attorney's advice to take court orders seriously. And, on the merits, defendants have still not had the chance to fully flesh out their defenses which, if proven true, could significantly mitigate the damages claimed by plaintiff.

Accordingly, it is hereby

ORDERED that the Court's decision which struck defendants' answers at NYSCEF Doc. No. 173 is hereby vacated; and it is further

ORDERED that the note of issue is stricken and this case is therefore stricken from the inquest/trial calendar; and it is further

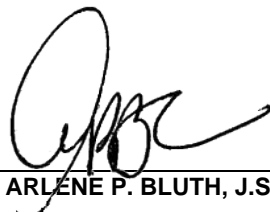
ORDERED that, within 15 days from the entry of this order, movants shall serve a copy of this order with notice of entry on all parties and upon the Clerk of the General Clerk's Office, who is hereby directed to strike the case from the trial calendar and make all required notations thereof in the records of the court; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office 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)].

There is currently a pre-inquest conference scheduled for February 24, 2026 at 10 a.m. This is converted to a discovery conference. On or before February 17, 2026, the parties shall upload a stipulation about discovery to NYSCEF which shall include hard deadlines (no “on or before” dates) for all remaining discovery, and particularly for the completion of defendants’ depositions. Given the age and procedural history of this case, the depositions shall all take place on or before March 27, 2026. If the parties are in agreement and the stipulation complies with the above-detailed directions, the Court will so order the stipulation and adjourn the conference. If the parties cannot agree, they shall write individual letters explaining their positions, and the Court will either issue an order resolving the dispute or order that the parties appear for the conference.

12/30/2025
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"/>	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