

INDEX NO. 655489/2016
FILED: NEW YORK COUNTY CLERK 04/05/2018 10:00 AM

NYSCEF Docketed Document
SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

HON. ANDREA MASLEY
J.S.C.

PRESENT: _____
Justice

PART 48

Index Number : 655489/2016
MAYOR GALLERY LTD
vs.
AGNES MARTIN CATALOGUE
SEQUENCE NUMBER : 001
DISCONTINUE

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

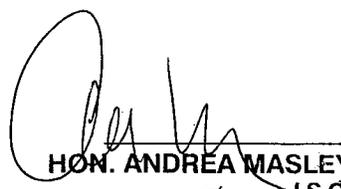
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____
Answering Affidavits — Exhibits _____ | No(s). _____
Replying Affidavits _____ | No(s). _____

Upon the foregoing papers, it is ordered that this motion is

*Motion is decided in accordance
with accompanying memorandum
decision in motion sequence..... 1001*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 4/3/18


_____, J.S.C.
HON. ANDREA MASLEY

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL PART 48

THE MAYOR GALLERY LTD.,

Plaintiff,

-against-

Index No.: 655489/2016

Mot. Seq. No.: 001

THE AGNES MARTIN CATALOGUE RAISONNÉ LLC,
ARNOLD GLIMCHER, TIFFANY BELL, MEMBERS
OF THE AUTHENTICATION COMMITTEE OF THE
AGNES MARTIN CATALOGUE RAISONNÉ, *i.e.*,
John Doe or Jane Doe ##1-6,

Decision and Order

Defendants.

Masley, J.:

Defendants, The Agnes Martin Catalogue Raisonné LLC (AMCR), Arnold Glimcher, Tiffany Bell, and Members of the "Authentication [sic] Committee of the Agnes Martin Catalogue Raisonné" (Committee), *i.e.*, John Doe or Jane Doe ##1-6,¹ move, pursuant to CPLR 3211 (a) (1), (a) (3), and (a) (7), to dismiss the amended complaint of plaintiff, The Mayor Gallery Ltd., an international art dealer and gallerist organized under the laws of the United Kingdom.

This action arises from the submission of 13 artworks to AMCR, a private non-profit organization that authenticates and compiles a catalogue of works by deceased artist Agnes Martin, which is periodically updated and published online (Catalogue). Prior to the formation of AMCR in 2012, plaintiff had sold those artworks, purportedly created by Martin, to four separate private art collectors.

¹ Plaintiff has learned the identities of the Committee members, denoted "John Doe or Jane Doe ##1-6," however, the parties stipulated that "[t]he identities of the John Doe/Jane Doe defendants shall remain Attorneys' Eyes Only" until five business days after this motion to

After AMCR was founded, the collectors each submitted their purchased artworks to AMCR to be included in the Catalogue, but AMCR declined after examining the works and the collectors' accompanying applications. After AMCR declined to include one particular work—a painting entitled *Day and Night*—plaintiff refunded its purchaser, retook possession of the work, and resubmitted the painting to AMCR, which again declined to include the artwork in the Catalogue. In sum, plaintiff refunded two of the collectors and accepted the return of two works; the two remaining collectors retained possession of their respective 11 artworks, but plaintiff alleges that it has agreed to refund those collectors if it does not prevail in this action.

Background

The following allegations are taken from the amended complaint, except as otherwise noted.

A "catalogue raisonné" is a collection of a specific artist's artworks that have been authenticated by some designated person or group, and which often takes the form of a continuously-updated, published compilation that identifies and records (i.e., photographically) the accepted works of the artist (see plaintiff's amended complaint [compl.] ¶¶ 2-3).

Martin was an abstract expressionist and minimalist artist whose artworks "regularly sell at auction and worldwide for hundreds of thousands to millions of dollars" (see *id.* ¶¶ 1, 7). The amended complaint challenges, among other things, the policies and procedures of AMCR, which created and maintains the Catalogue, a digitally-published compilation of Martin's paintings and works on paper, and the Committee,

which authenticates and compiles those works for inclusion in the Catalogue.

According to plaintiff, Christie's and Sotheby's—"the two dominate [sic] auction houses in the United States and the world"—recognize the Catalogue "as the definitive compilation of authentic artworks of Agnes Martin;" thus, plaintiff alleges that the Committee's decision to not include a work in the Catalogue is "recognized in the worldwide marketplace as a conclusive statement to the public that the artwork is a fake," and such works are rendered "worthless" and unsaleable (*id.* ¶¶ 16-18).

The Parties

Plaintiff is an international art dealer and gallerist that sells works of art at auction and in private sales (*id.* ¶ 6). Its principal is James Mayor.

According to plaintiff, individual defendant Glimcher is "the primary if not the exclusive owner and manager and Chairman" of the Pace Gallery (Pace), "a leading . . . international art dealer and gallery" (*id.* ¶ 9), the founding member of AMCR, as well as the founder, and current member of, the Committee (*see id.* ¶¶ 6-8, 13). Pace and Glimcher "claim that they have represented Agnes Martin . . . from 1975 to the present," and presently represent her estate (*id.* ¶ 10). AMCR is a New York company formed in November 2012, eight years after Martin's death, to authenticate Martin's paintings and works on paper and to compile and maintain the Catalogue (*see id.* ¶¶ 7, 13). Individual defendant Bell is the editor of the Catalogue and a member of the Committee. Plaintiff alleges that the four remaining members of the Committee—whose identities are kept secret from the public—were revealed to plaintiff only through documents produced in this action (*id.* ¶ 14).²

Submissions to the Catalogue

Plaintiff alleges that “collectors have no choice but to submit their Agnes Martin artworks to defendants for vetting,” and “[c]ollectors are required” to complete a “non-negotiable” “Examination Agreement” (Agreement) for each work submitted (*id.* ¶ 19). After reviewing the submitted work, “[t]he defendants then take only one of two actions: they either accept or reject the artwork for inclusion in the [Catalogue],” and the collector is notified of the decision by a “cursory form letter, without any explanation of any kind” (*id.* ¶ 20). Plaintiff alleges that “defendants also refuse to answer . . . reasonable inquiries from the owners of rejected artworks who[] . . . seek an opportunity for rebuttal and detailed information” (*id.* ¶ 21). However, nothing in the Agreements requires AMCR, or any defendant, to provide such opportunities or information (*see e.g.* plaintiff’s exhibits B, D, E, F, G).

1. Levy’s and plaintiff’s submissions of *Day and Night*

Plaintiff alleges that it sold a painting, *Day and Night*, to private collector Jack Levy for \$2.9 million in September 2010. On May 1, 2014, Levy submitted the work to AMCR with a completed Agreement. Levy was informed by AMCR, via “Notification Letter,” dated September 25, 2014, that *Day and Night* would not be included in the Catalogue (compl. ¶¶ 22-25; plaintiff’s exhibit [ex.] D). Plaintiff thereafter refunded the sale price and sales tax to Levy, and accepted the return of the painting.

On May 14, 2015, Plaintiff submitted its own Agreement—which corrected “a number of important errors” made by Levy—to AMCR for *Day and Night*, along with additional documents supporting the work’s exhibition history, photographs of Martin with the work, and radiocarbon test results for its canvas; plaintiff did not, however,

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