

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

CITY OF BIRMINGHAM, )  
)  
Plaintiff, )  
)  
v. )  
)  
RICHARD T. DARDEN, et al., )  
)  
Defendants. )

Case No.: 2:16-cv-00333-SGC

**MEMORANDUM OPINION**<sup>1</sup>

This is a statutory interpleader action initiated by the City of Birmingham concerning the ownership of an oil painting by William Merritt Chase, entitled Shinnecock Hills (the "Painting"). Presently pending are a motion to strike filed by defendant John Bertalan (Doc. 56) and three motions filed by defendant Donald Dufek: a motion to dismiss (Doc. 53); a motion for summary judgment (Doc. 48); and a motion to strike (Doc. 57). This Memorandum Opinion and accompanying Final Order memorialize the orders given from the bench during the October 31, 2016 hearing, which all parties attended.<sup>2</sup> As ordered during the hearing, Dufek's motion for summary judgment is due to be granted and all other pending motions are moot.

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<sup>1</sup> The parties have unanimously consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c). (Doc. 38).

<sup>2</sup> Pro se defendant John Seto participated by telephone.

The City deposited the Painting with the registry of the court prior to the October 31, 2016 hearing. (See Doc. 64). During the hearing, all parties reaffirmed that the Painting has, at most, two owners: Donald Dufek and Fidelity Asset Resources, LLC.<sup>3</sup> Each of the other named claimants—Charles Perry, John Bertalan, Branko Medenica, John Seto, and Richard Darden—averred that their only ownership interest in the Painting flows from their membership in Fidelity. Accordingly, the undersigned dismissed the non-owner parties and the hearing proceeded with the Painting's owners: Dufek and Fidelity.

Dufek and Fidelity, through counsel, each repeated their requests that the Painting be released to Dufek. Because the parties seek the same relief, the undersigned found the claimants were not adverse to each other. See 28 U.S.C. § 1335 (a)(1). Accordingly, the undersigned released the painting to Dufek. For the foregoing reasons and for the reasons stated on the record during the hearing, there are no genuine issues of material fact and Dufek's motion for summary judgment (Doc. 48) is due to be granted. All other pending motions (Docs. 53, 56-57) are **DENIED** as **MOOT**. A separate order will be entered.

**DONE** this 31st day of October, 2016.

  
STACI G. CORNELIUS  
U.S. MAGISTRATE JUDGE

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<sup>3</sup> There is some disagreement regarding whether Mr. Dufek is a member of Fidelity. However, regardless of the answer to this question, it is undisputed that no owners exist aside from Fidelity and Dufek.