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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 SAFFLANE HOLDINGS LTD., and
4 ROBERT WYLDE,

5 Plaintiff,

6 v.

11 CV 1679

7 CHARLES COWLES,

8 Defendant.

9 New York, N.Y.
10 October 14, 2011
12:00 Noon

11 Before:

12 HON. DENISE COTE,

13 District Judge

14 APPEARANCES

15 AARON RICHARD GOLUB, ESQ.
16 Attorney for Plaintiff

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1 (In open court; defendant present)

2 THE CLERK: Please be seated.

3 In the matter of Safflane against Charles Cowles, is
4 counsel for plaintiff ready to proceed?

5 MR. GOLUB: Yes.

6 THE COURT: Hello, Mr. Golub.

7 MR. GOLUB: How are you, your Honor.

8 THE COURT: Good, thank you.

9 So I understand that the complaint in this case was
10 served July 21st and an affidavit of service was filed with the
11 clerk of court on August 10th. And, that the defendant,
12 Mr. Cowles, has not yet filed an answer.

13 I understand, also, that you have served the order to
14 show cause on Defendant Cowles on September 9. And did you do
15 that by certified mail; is that correct?

16 MR. GOLUB: That, I'm not sure if it was certified
17 mail. We have a mailing receipt that -- I had it in front of
18 me a second ago. It was just in front of me. But it was
19 served by --

20 THE COURT: By mail?

21 MR. GOLUB: By mail. And it --

22 THE COURT: Have you heard anything from Mr. Cowles or
23 any representative on his behalf indicating that he intends to
24 answer or participate in this litigation?

25 MR. GOLUB: Absolutely not.

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1 Your Honor, it's September 9, I found it. September
2 9, 2011 we served the OSC with all of the exhibits on Charles
3 Cowles at his address.

4 THE COURT: Thank you so much. So I find a default.
5 I understand that this is not for sum certain and, therefore, I
6 will refer it for an inquest on damages. But I enter a default
7 against Mr. Cowles. The record should indicate that this
8 matter was set for noon, it's now ten after 12:00 noon, and Mr.
9 Cowles has not appeared in the courtroom.

10 Mr. Golub, is there anything else we need to do?

11 MR. GOLUB: Your Honor, the matter was partially
12 settled this week, which I'm -- I -- we settled the Gagosian
13 case. And we are in the process of settling The Met case,
14 except for the -- the Cowles -- as you know, Jan Cowles and the
15 Metropolitan Museum sued my clients, Safflane and Mr. Wylde.
16 We have signed settlement documents with the Gagosian Gallery.
17 And we have a conference scheduled for 11:00 on Tuesday with
18 Magistrate Dolinger.

19 In the interim, The Met and my clients have settled.
20 We are just finishing up the settlement papers. We have not
21 settled with Cowles. But, as you know it, is a replevin case
22 and there is only two claims in that action, declaratory
23 judgment and replevin. So if we can't settle with Jan Cowles,
24 the case will be deemed moot anyway, because we're returning
25 the painting to The Met. And there is nothing left in that

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1 case. So we'll move for summary judgment, or we'll ask -- I
2 don't know whether it is appropriate to ask this Court for a
3 stay, because there is a time period during which Gagosian has
4 to make full the payments for the settlement, which the last
5 payment is December 26th. There is no point in going forward
6 with that case because all of the issues are moot, so -- or
7 should I bring it up with the magistrate and ask for a stay on
8 Tuesday.

9 THE COURT: And are you talking about a stay with
10 respect to the inquest or further proceedings against Charles
11 Cowles?

12 MR. GOLUB: No, I'm talking about a stay in all of the
13 proceedings of The Met case, not a stay of the --

14 THE COURT: Okay, well -- thank you.

15 I don't have the other parties here in the courtroom
16 before me. I would be the one who have to enter any stay,
17 because I have entered the scheduling order with respect to the
18 litigation. So if you think that there is an application to be
19 made to me for an adjustment of the schedule, the appropriate
20 thing to do is to talk with the other parties in the litigation
21 and see if you can get a stipulation or joint application to
22 me, or otherwise make your separate application in a letter no
23 longer than two pages indicating that your adversaries do not
24 support your application.

25 MR. GOLUB: Well, just one adversary. We have no

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1 dialogue. The problem is that with the -- the person
2 representing Jan Cowles and I have no dialogue at all. But,
3 with The Met, we do have a dialogue. And they have filed the
4 same complaint, so the issues are identical.

5 So I will make an application for stay of all
6 proceedings until the Gagosian settlement is fully performed
7 and there is nothing left in the case. And why should this
8 Court be bothered with unnecessary litigation.

9 THE COURT: Well, I just -- without -- I just can't
10 address this in an ex parte way.

11 MR. GOLUB: I understand, your Honor. I was just --

12 THE COURT: Thank you so much.

13 MR. GOLUB: -- edifying you about the fact that this
14 case has been essentially settled. But we were going to put
15 that on the record with Magistrate Dolinger on Tuesday.

16 THE COURT: Thank you.

17 So I have entered a default against Charles Cowles in
18 this matter.

19 Thank you very much.

20 THE CLERK: All rise.

21 (Adjourned)