

EXPRESS ORDER

Safflane Holdings Ltd. et al v. Gagosian Gallery, Inc.

Doc. 99

Since Gagosian has served the Safflane papers on Mr. Cowles by regular mail, we will allow Mr. Cowles until Feb. 8, 2012 to January 31, 2012 serve and file responding papers. If he does, Gagosian may reply by Feb. 10, 2012.

Withers Bergman LLP

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Via Facsimile

The Honorable Michael Dolinger
United States District Court
Southern District of New York
500 Pearl Street, Room 17D
New York, NY 10007

JAN 31 2012

[Handwritten signature]
2/1/12
RECEIVED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
JAN 31 2012

Re: Safflane Holdings Ltd. and Robert Wylde v. Gagosian Gallery, Inc.; No. 11-CV-1679 2/2/12

Dear Judge Dolinger:

We write on behalf of our client, Gagosian Gallery, Inc. ("Gagosian"), in connection with the above-referenced action.

On January 9, 2012, the Court reset the deadline for Charles Cowles to file a response, if any, to Gagosian's Motion for Default Judgment in the *Gagosian Gallery, Inc. v. Charles Cowles* proceeding (the "Motion for Default Judgment"), directing him to do so by January 26th. In addition, by Order of that same date, the Court ordered Gagosian to submit affidavits demonstrating the damages it is seeking in the *Safflane Holdings Ltd. and Robert Wylde v. Gagosian Gallery, Inc.* proceeding (the "Safflane Inquest Proceeding") by January 19, 2012, and ordered Mr. Cowles to submit a response, if any, by no later than January 26, 2012.

As reflected by the Court's docket, Mr. Cowles has not filed any response to Gagosian's Motion for Default Judgment. Based on the foregoing, Mr. Cowles clearly has chosen not to oppose Gagosian's Motion for Default Judgment, which was served on him almost two months ago.¹ As such, we respectfully submit that Gagosian's Motion for Default Judgment is ripe for a decision by the Court.

As for the Safflane Inquest Proceeding, on January 19th, Gagosian filed affidavits and accompanying exhibits demonstrating its damages in the Safflane Inquest Proceeding. On the same day, we served those affidavits and accompanying exhibits on Mr. Cowles by Federal Express overnight mail to his address at 84 Mercer Street in New York -- the same address to which we previously successfully sent overnight other documents to him in this action. Yesterday afternoon, however, Federal Express returned the package containing Mr. Cowles' service copy of the

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admitted in New York

document number: NY23802/0015-US-1373880/2

The Honorable Michael Dolinger
January 31, 2012
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affidavits to our offices, noting that it made three separate attempts to deliver these papers to Mr. Cowles, but was unsuccessful. We do not know if these failed attempts are the result of Mr. Cowles evading service or whether he in fact was not home on each of those dates on which attempted service was made.

Despite the return of the service copy of Gagosian's affidavits and accompany exhibits, it is worth noting that Mr. Cowles was well aware from his participation in the pre-inquest conference before your Honor that affidavits concerning damages would be submitted by Gagosian no later than January 19th, but we are aware of no effort by him to obtain those documents. Nevertheless, as repeated attempts were made to serve Mr. Cowles at his last known address, we respectfully submit that the inquest proceeding is ripe for a determination by the Court as to Gagosian's damages.²

Respectfully submitted,



Dara G. Hammerman

cc: Charles Cowles (via U.S. mail with enclosures)
Aaron Richard Golub, Esq. (via electronic mail) (counsel for plaintiffs)
Nehemiah S. Glanc, Esq. (via electronic mail) (counsel for plaintiffs)

¹ Before affording Mr. Cowles with yet another opportunity to file an opposition to Gagosian's Motion for Default Judgment by January 26th, the Court previously allowed Mr. Cowles (after he appeared unsolicited before the Court), to make a written request if he sought to oppose the Motion after the original deadline to do so had passed. Mr. Cowles, however, never made such a request.

² Note that we have served this letter on Mr. Cowles by First Class U.S. mail and have included another copy of our affidavits in support of the damages requested in the Safflane Inquest Proceeding.

FAX Cover Sheet

Date: February 1, 2012

To:

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And by U.S. Mail to:

Mr. Charles Cowles
84 Mercer St.
New York, NY 10012

Re: Safflane Holdings, Ltd., et ano. v. Gagosian Gallery, Inc., et ano.
11 Civ. 1679 (MHD)

Text of endorsed order enclosed: "Since Gagosian has served the Safflane papers on Mr. Cowles by regular mail, we will allow Mr. Cowles until Feb. 8, 2012 to serve and file responding papers. If he does, Gagosian may reply by Feb. 10, 2012."

From: Magistrate Judge Michael H. Dolinger
United States District Court
Southern District of New York
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This document contains 2 pages, including this cover sheet.