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NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re
ART & ARCHITECTURE BOOKS OF THE
21st CENTURY,
Debtors.

SAM LESLIE, PLAN AGENT FOR ART &
ARCHITECTURE BOOKS OF THE 21st
CENTURY,

Plaintiff,
vs.

ACE GALLERY NEW YORK
CORPORATION, a California corporation;
ACE GALLERY NEW YORK, INC., a
dissolved New York corporation; ACE
MUSEUM, a California corporation;
DOUGLAS CHRISMAS, an individual; 400 S.
LA BREA, LLC, a California limited liability
company,

Defendants.

Case No. 2:13-bk-14135-RK

Chapter 11

Adv No. 2:15-ap-01679-RK

Consolidated with Adv. No. 2:14-ap-01771-RK

**ORDER DENYING MOTION FOR
PROTECTIVE ORDER TO STAY
DISCOVERY, OR IN THE ALTERNATIVE
MOTION TO ALLOW COUNSEL TO
WITHDRAW AS COUNSEL FOR ACE
GALLERY NEW YORK CORPORATION
AND ACE MUSEUM CORPORATION**

Hearing:

Date: October 17, 2018

Time: 11:00 a.m.

Courtroom: 1675

FILED & ENTERED

OCT 18 2018

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY bakchell DEPUTY CLERK

1 400 S. LA BREA, LLC, a California limited
2 liability company,

3 Cross-Complainant,

4 vs.

5 ACE GALLERY NEW YORK
6 CORPORATION, a California corporation;
7 ACE GALLERY NEW YORK, INC., a
8 dissolved New York corporation; ACE
9 MUSEUM, a California corporation;
10 DOUGLAS CHRISMAS, an individual; SAM
11 LESLIE AS TRUSTEE OF THE PLAN
12 TRUST FOR ART & ARCHITECTURE
13 BOOKS OF THE 21ST CENTURY,

14 Cross-Defendants.

15 The Motion for Protective Order to Stay Discovery, or in the Alternative Motion to Allow
16 Counsel to Withdraw as Counsel for Ace Gallery New York Corporation and Ace Museum
17 Corporation (the “Motion”) [Dkt. No. 409], filed by Ace Gallery New York Corporation (“Ace
18 NYC”) and Ace Museum (collectively, the “Movants”), came on for hearing in this Court on
19 Wednesday, October 17, 2018, at 11:00 a.m. This Court having considered the Motion, the
20 opposition brief filed by Plaintiff Sam S. Leslie (the “Plan Agent”), Plan Agent for the post-
21 confirmation chapter 11 estate of Art & Architecture Books of the 21st Century (the “Debtor”), the
22 reply brief filed by Movants, the limited objection filed by 400 S. La Brea, LLC, and the
23 declarations and exhibits filed in support of each of the foregoing, the parties having submitted on
24 this Court’s tentative ruling dated October 16, 2018 (the “Tentative Ruling”), and good cause
25 appearing therefor,

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IT IS HEREBY ORDERED that the Motion is denied for the reasons stated in the Court's Tentative Ruling, which is adopted as the court's final ruling on the Motion, a copy of which is attached hereto.

Date: October 18, 2018

Robert Kwan
United States Bankruptcy Judge

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Wednesday, October 17, 2018

Hearing Room 1675

11:00 AM

2:13-14135 Art and Architecture Books of the 21st Century

Chapter 11

Adv#: 2:15-01679 THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF T v.

#5.00 Cont'd hearing re: Motion for protective order to stay discovery, or in the alternative motion to allow counsel to withdrawal as counsel for Ace Gallery New York corporation fr. 10/3/18

Docket 409

Tentative Ruling:

Deny defendants' motion to protective order to stay discovery for insufficient showing under Keating v. United States, 45 F.3d 322 (9th Cir. 1995) that a stay of proceedings is justified. While defendant Christmas might properly invoke a Fifth Amendment self-incrimination privilege in these civil proceedings, the basis for staying these civil proceedings is significantly diminished because he has not been charged with any crime, that is, there is no pending indictment against him and it is not even clear whether there is any pending criminal investigation against him. General Electric Co. v. Liang, 2014 WL 1089264 (C.D. Cal. 2014). A stay of proceedings will be prejudicial to plan agent and the other parties in litigating these proceedings because the matter is being actively litigated, and delay might well make it difficult to litigate due to lapse of witness memories and unavailability of documentary evidence over time and will slow down and impede the efforts of the plan agent to seek recoveries in litigation to pay creditors under the confirmed reorganization plan. While defendant Christmas may be burdened to invoke the Fifth Amendment privilege in these civil proceedings to avoid testifying or disclosing information which may be used against him in a criminal prosecution, it is permissible to conduct civil proceedings at the same time as a related criminal proceeding in which he may have to invoke the privilege, and indeed, it may be permissible for a trier of fact to draw adverse inferences from the invocation of the Fifth Amendment privilege. *Id.* Any of Christmas' Fifth Amendment concerns can be addressed during discovery through appropriate objections on a question by question basis and through motions in limine why the trier of fact should not be made aware that he invoked the privilege or should not draw an adverse inference that he has

**United States Bankruptcy Court
Central District of California
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CONT... Art and Architecture Books of the 21st Century Chapter 11

invoked the privilege. *Id.* The factor of convenience of the court and judicial efficiency weighs against a stay here because the court has an interest in clearing its docket, particularly here where there is no pending indictment and no way to predict when a criminal investigation will end. The court is unaware of any nonparties whose interests would be affected by the court's decision on granting a stay or not. The factor of interest of the public is neutral because while there is a public interest in ensuring that the criminal process is not undermined by civil proceedings, there is a public interest in speedy resolution of a plaintiff's civil claim. *Id.* On balance, given the lack of a criminal indictment or any information concerning the status or scope of a criminal investigation, the various Keating factors weigh against granting a stay of proceedings here.

Deny alternative motion of counsel for defendants Ace Museum and Ace Gallery New York to withdraw. Since the court is not granting plan agent's request to appoint counsel as the agent for these defendants to respond to discovery, there is no risk of engaging in making disclosures that might incriminate their other client, defendant Christmas, whom they represent in a personal capacity.

Appearances are required on 10/17/18.

Party Information

Debtor(s):

Art and Architecture Books of the

Represented By
Thomas M Geher
David W. Meadows
Jerome S Cohen
Carolyn A Dye

Defendant(s):

Ace Gallery New York Corporation,

Represented By
Alan W Forsley

Shirley Holst

Represented By
Susan I Montgomery