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## A Billionaire Art Collector's Lawsuit Against Gagosian Over Delayed Jeff Koons Works Can Proceed, a Judge Rules

Steve Tananbaum is awaiting completion of several Koons sculptures worth a combined \$13 million.

**Eileen Kinsella**, September 3, 2019



Steve Tananbaum. Image courtesy of LinkedIn.

Billionaire financier and Museum of Modern Art trustee Steven Tananbaum’s lawsuit against dealer Larry [Gagosian](#) over the delayed delivery of a multi-million-dollar sculpture by [Jeff Koons](#) can proceed, a New York state supreme court judge has ruled.

Tananbaum initially filed suit April 2018 after waiting several years—much longer than he says he expected—for three sculptures by Koons that he agreed to purchase, starting in 2013.

Gagosian Gallery attempted to dismiss Tananbaum’s claims, asserting that he is a “highly sophisticated art collector” who was aware of Koons’s reputation as “a perfectionist who often takes years” to complete works.



Larry Gagosian, 2019, in New York City. Photo by Patrick McMullan via Getty Images.

The judge, Saliann Scarpulla, denied some of Tananbaum’s claims, including breach of good faith, but said that his argument for breach of contract could move forward.

The case hinges largely on a legal technicality over whether the sculptures—titled *Venus*, *Eros*, and *Diana*—should be considered “limited-edition multiples,” “fine art,” or “copies,” which are subject to different disclosure requirements under the New York Arts and Cultural Affairs Law (NYACAL).

“Gagosian moves to dismiss the NYACAL claims on the basis that the Works at issue are fine art, which excludes multiples,” Scarpulla wrote. For one of the works, *Venus*, she agrees that the purchase agreement made clear that it’s not a copy. But the others “may qualify as limited-edition multiples,” she wrote. “Tananbaum has sufficiently alleged that NYACAL’s disclosure requirements apply to *Eros* and *Diana*.”

Neither attorneys for Tananbaum nor Gagosian responded to requests for comment. Tananbaum’s attorney told [Bloomberg](#) that her client was pleased with the decision.

According to court papers, Tananbaum first agreed to buy Koons’s *Balloon Venus Hohlen Fels (Magenta)* in September 2013 for \$8 million, plus tax. While waiting for the sculpture’s completion and making payments as agreed upon, he also visited Koons in his studio and agreed to acquire two other work, *Eros* and *Diana*.

Tananbaum eventually demanded photos of the works in production, he alleges in his complaint. After Gagosian failed to provide photos, Tananbaum purportedly exercised his

option to cancel” purchase agreement for *Diana*. Gagosian declined this request as premature.

*Venus* was estimated to have been completed by the end of last month while *Eros* is estimated to be completed by October. *Diana* has no specified delivery date and, the complaint says, is “indefinitely delayed.”



Jeff Koons with *Rabbit* (1986). Photo ©David Fisher, 2019.

Koons [cemented his position](#) as the most expensive living artist—once again—this past May, when his shiny stainless-steel sculpture *Rabbit* (1986), estimated at \$50 million to \$70 million, soared to a final price of \$91 million with premium at Christie’s. The allure of *Rabbit*, which is considered the holy grail of Koons works among top collectors, was further burnished by its longtime ownership by the late publishing magnate S.I. Newhouse.

The final price far surpassed the previous Koons record of \$58.4 million and put the artist back on top as the most expensive living artist, a title he briefly lost to [David Hockney](#).

Depositions in the Tananbaum case are due by December 19 and expert disclosure must be completed in February 2020.