

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEPHEN A. BUCARIA

Justice

MARGARET TANCHUCK, as Successor
Executrix for the Estate of John M. Caggiano,
as the Successor Trustee of the John M.
Caggiano Revocable Trust of February 6, 2008,
and as Executrix of the Estate of Barbara M.
Caggiano,

TRIAL/IAS, PART 1
NASSAU COUNTY

INDEX No. 602132/15

MOTION DATE: Jan. 8, 2016
Motion Sequence # 003

Plaintiff,

-against-

THE NEW YORK PUBLIC LIBRARY and
WILLIAM DOYLE GALLERIES, INC.,

Defendants.

The following papers read on this motion:

Notice of Motion..... X
Affirmation in Support..... X
Amended Reply..... X

Motion by plaintiff Margaret Tanchuck for leave to reargue defendant New York Public Library's motion to dismiss plaintiff's second cause of action for a declaratory judgment is **denied**.

This is an action for a declaratory judgment that plaintiff Margaret Tanchuck is the owner of certain rare bibles and a historic record of Benjamin Franklin, which were previously owned by defendant New York Public Library. The Franklin work book was given to the Library in 1929 by the philanthropist Edward Harkness. The Library claims that

the bibles were part of its research collections beginning in the early 1900's, and that several of the bibles were received in 1895 from the predecessor Lenox Library.

Tanchuck is the daughter of John Caggiano, who died in September 2009, and Barbara Caggiano, who died in August 2013. Tanchuck is the successor trustee of a revocable trust created by her father on February 6, 2008. Tanchuck is also the executrix for both of her parents' estates. Tanchuck received letters testamentary for John Caggiano's estate on December 23, 2009.

Prior to his death, John Caggiano operated a jewelry store in Glen Head, New York. Aside from jewelry, Caggiano also dealt in other valuable items. Tanchuck alleges that around 1990 her father stated that he owned some extremely valuable books, bibles, and other rare documents that he was keeping in the jewelry store. Tanchuck claims that over the years Caggiano made passing references to these items from time to time.

Tanchuck alleges that in the course of inventorying the assets of her parents' estates she discovered in the jewelry store seven rare bibles dating from the seventeenth and eighteenth centuries. With the bibles, was a work book from Benjamin Franklin's print shop which dates from 1759. When Tanchuck discovered the bibles and work book is unclear. However, an inventory which John Caggiano's estate filed with the Surrogate's Court on August 20, 2013 does not list any of these items of personal property.

In July 2014, Tanchuck delivered the eight items to defendant William Doyle Galleries, Inc. for appraisal and potential sale (Amended complaint ¶ 19). Doyle informed Tanchuck that it had questions concerning the provenance of the items. Doyle noted that New York Public Library call numbers appear on the spines of certain of the books, and one of the books contains the Library's ownership stamp. Doyle then notified the Library that it was in possession of the items, without disclosing its principal. Tanchuck alleges that she authorized Doyle's communication with the Library (Amended complaint at ¶ 21).

On July 22, 2014, the Library's deputy general counsel wrote to Doyle, claiming that each of the items belonged to the Library and had not been deaccessioned from its collections. The Library estimated that the Benjamin Franklin manuscript was taken sometime between 1988 and 1991.

The present action was commenced on April 3, 2015. In the amended complaint, plaintiff alleges that she lacks knowledge of how the items came into her family's possession (Amended complaint at ¶ 3). In the first cause of action in the amended complaint, Tanchuck

seeks a declaratory judgment that she is the owner of the contested items because the Library's claim is barred by laches. In the second cause of action, Tanchuck seeks a declaratory judgment that she is the owner of the items because the Library's claim is barred by the statute of limitations. The third cause of action against Doyle for breach of the consignment agreement, and the fourth cause of action against Doyle for replevin, were discontinued with prejudice on August 3, 2015.

It appears that the Library informed the U.S. Attorney's office that the items were in Doyle's possession before the present action was filed. The U.S. Attorney then opened a grand jury investigation concerning potential violations of federal law prohibiting theft of objects of cultural heritage from a museum, as well as concealment of such items with knowledge that they were stolen or obtained by fraud (See 18 U.S.C. § 668). On April 14, 2015, the Government took possession of the items pursuant to a grand jury subpoena. On April 28, 2015, Tanchuck's motion to quash or modify the subpoena was denied by United States District Judge Sidney Stein.

By notice of motion dated May 28, 2015, defendant New York Public Library moved to dismiss Tanchuck's second cause of action for failure to state a cause of action. By order dated August 27, 2015, the court granted defendant New York Public Library's motion to dismiss the second cause of action to the extent of issuing a declaratory judgment that the Library was not barred from any claim of title by the statute of limitations.

CPLR § 214(3) provides that an action to recover a chattel must be commenced within three years. When the property was stolen and is in possession of a good faith purchaser for value, the cause of action for return of the property accrues when the true owner makes demand for return of the chattel and the person in possession of the chattel refuses to return it (*Guggenheim Foundation v Lubell*, 77 NY2d 311, 317-18 [1991]). The purpose of the rule is to protect the right of the owner whose property has been stolen to recover it (Id). However, when the stolen object is in the possession of the thief, the statute of limitations runs from the time of the theft, even if the property owner was unaware of the theft at the time that it occurred (Id at 318). In *Guggenheim*, the Court of Appeals noted that it was "seemingly anomalous," for the cause of action to accrue earlier when the property was in possession of the thief, rather than a good faith purchaser for value. Nevertheless, the Court of Appeals has not changed the rule which applies in those circumstances.

"[W]hen legal principles governing accrual have appeared to cause anomalous or unfair results, courts have applied equitable principles to prevent a party that steals or breaches trust, or the successor to such a party, from benefitting from its wrong" (*New York*

v. Seventh Regiment Fund, 98 NY2d 249, 261 [2002]). Thus, equitable principles may estop a party from asserting the statute of limitations.

While Tanchuck did not concede that her father was a possessor of stolen property, she offered no evidence that he was a good faith purchaser for value of these historic treasures. Possession suffices to permit an inference that the possessor knows what he possesses, particularly when the possession is on the person's premises (*People v Diaz*, 24 NY3d 1187, 1190 [2015]). Because an inference arose that Caggiano, a dealer in rare items, knew that the artifacts were stolen, the court held that the three year statute of limitations ran from the date when the rare bibles and Franklin work book were stolen from the Library. However, in view of the value and cultural significance of the property, the Library's capacity as a public custodian, the strength of the Library's title, and the vague and unspecified nature of Tanchuck's claim to title, the court determined that it would be inequitable to permit Tanchuck to assert the statute of limitations.

By notice of motion dated September 11, 2015, plaintiff Tanchuck moves for leave to reargue defendant's motion to dismiss the second cause of action. Plaintiff argues that there must be a showing of "affirmative wrongdoing" on her part for her to be estopped from asserting the statute of limitations. Additionally, plaintiff argues that the equities are in her favor because the Library "utterly failed to protect" the rare books and manuscripts. In opposition, the Library argues that the three years from demand rule applies because there is no evidence that Caggiano actually stole the property.

In *Seventh Regiment*, the Court of Appeals stated that equitable principles may prevent a party that steals, "*or the successor to such a party*," from benefitting from its wrong, with respect to the accrual of the true owner's cause of action (98 NY2d at 261, emphasis supplied). The successor to a party who steals is a possessor of stolen property. If a demand rule applied to the owner's cause of action for replevin against the possessor of stolen property, there would be no need to apply equitable principles to prevent accrual of the cause of action. Since the Court of Appeals stated that equitable principles may prevent the possessor of stolen property from asserting the statute of limitations, the demand rule does not apply to the true owner's cause of action against a possessor of stolen property.

In *Matter of Flamenbaum*, 22 NY3d 962 [2013]) a case where a public custodian sought to recover a rare artifact and the party in possession asserted the affirmative defense of laches, the Court of Appeals stated that the defense requires, "a showing that the museum failed to exercise reasonable diligence to locate the tablet and that such failure prejudiced the estate" (Id at 965). The diligence referred to by the court was diligence to locate a missing

article, rather than diligence with respect to safeguarding it in the first instance. To discourage illicit trafficking in stolen artifacts or works of art, inaction alone on the part of the true owner does not give rise to prejudice, at least where the possessor has reason to know the true owner of the property (Id at 966).

In the amended complaint, plaintiff does not allege any facts showing a lack of diligence to locate the artifacts on the part of the Library, once the Library was aware that the items were missing. Nevertheless, plaintiff is entitled to discovery with respect to this issue. The parties are directed to complete discovery on this issue within 90 days from the e-filing of this order.

The court notes that the parties have identified three categories of “confidential information” in the proposed stipulation for the exchange of confidential information, (i) the Library’s security measures, (ii) non-public information concerning Library holdings which have “gone missing, were stolen, or were otherwise removed without authorization,” (iii) personnel records concerning employee theft or wrongdoing. Categories (i) and (iii) do not relate to diligence on the part of the Library after the subject artifacts were discovered missing. As to category (ii), discovery may be conducted only as to the items which are the subject of the present action. Because the proposed stipulation for exchange of confidential information covers material which is not discoverable, it has not been so-ordered by the court.

So ordered.

Dated

13 January '16

Stephen A. Bucaria
J.S.C.