

Stancioff v Danielson
2018 NY Slip Op 33412(U)
December 31, 2018
Supreme Court, New York County
Docket Number: 162883/2015
Judge: Shlomo S. Hagler
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 17**

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**ANDREW STANCIOFF, DIMITRI JAMES
STANCIOFF, NADEJDA STANCIOFF, ALEX
STANCIOFF, ANNA STANCIOFF BIERMAN,
NADEJDA STANCIOFF MISHKOVSKY,
ALEXANDRA RACOTTA as the legal guardian of
ANDRES ROSENZWEIG DIAZ STANCIOFF, ANNE
MUHEIM, COUNTESS FELICIA VON ABENBERG
UND TRAUN, and IVAN NICHOLAS STANCIOFF,**

Index No. 162883/2015

Mot. Seq. Nos. 004 and 005

Plaintiffs,

- against -

DECISION/ORDER

**ESTATE of BARBARA DANIELSON and
CHRISTIE'S, INC.,**

Defendants.

----- X

SHLOMO S. HAGLER, J.S.C.:

In motion sequence 004, defendant the Estate of Barbara Danielson (the "Estate") moves for an order of summary judgment pursuant to CPLR 3212 dismissing the claims against it. In motion sequence 005, defendant Christie's, Inc. ("Christie's") moves for the same relief. At oral argument, held on December 11, 2017, plaintiffs conceded on the record that Christie's is not a necessary party to this matter and Christie's represented that it would hold the disputed property at issue in this case until such time as the Court reaches a final resolution as to its ownership and would then turn over the property to its rightful owner (12/11/2017 tr., NYSCEF Doc. No. 140, pp. 25-27). Although the matter against Christie's will now be dismissed, Christie's has consented to this Court maintaining jurisdiction over it with respect to the property at issue (*id.*,

pp. 28-29). Accordingly, motion sequence 005 is resolved as indicated on the record at oral argument and herein, and the claims against Christie's are dismissed with prejudice. Motion sequence 004 is denied for the reasons explained below.

Background

This is an action to recover a bejeweled, nineteenth-century Russian imperial snuff box purportedly given by Emperor Nicholas II to a prominent Bulgarian minister named Dimitri Stancioff on the occasion of a certain Conference of Peace held in St. Petersburg in 1899 (the "snuff box") (second amend. compl., ¶ 1). Dimitri Stancioff died in 1940. Plaintiffs are Stancioff's living heirs and descendants who claim that the snuff box was "stolen or otherwise misappropriated" from their family sometime during World War II or its aftermath (*id.*, ¶ 27). Everyone with any first hand knowledge of these events is now deceased.¹ Indeed, not much was known about the whereabouts of the snuff box until 2014, when the Estate consigned the box to Christie's for sale at auction. Barbara Danielson, who died in 2013, inherited the snuff box from her mother, Rosemary Danielson, who died sometime in 1981 (Tenille aff., ¶¶ 3-4). It is not known how Rosemary came to possess the snuff box except that, when Christie's received the item for auction, a document was apparently contained inside bearing the letterhead of one Waldo Frank Perez de Leon, describing, in great detail, a "[r]ectangular gold presentation snuffbox" and listing the price of \$8,000 (Kratenstein affirmation, exhibit B at 50-52; exhibits M-N; Moehrke aff., ¶ 4). No other information such as the buyer, the seller or a date of sale is contained on this purported "invoice." According to Christie's research into the matter, Perez de

¹ Plaintiffs Andrew and Nadejda Stancioff were small children during some of the events at issue in this matter. Based on their deposition testimony it does not appear they have any first hand knowledge concerning the circumstances of the snuff box's disappearance.

Leon was the proprietor of an interior design shop in Miami, Florida, active at least during the mid-to-late 1960s (Kratenstein affirmation, exhibit O). Perez de Leon died in 1982.

Christie's initially appraised the snuff box at \$120,000 - \$180,000. However, at auction in May of 2015, the box sold for \$680,000 (Tenille aff., ¶ 5). Plaintiffs initially took no issue with the sale and even provided Christie's with photographs of Dimitri Stancioff to use in its catalogue and promotional materials, allegedly believing that the item was being auctioned at the behest of a Stancioff family member. However, by email dated June 3, 2015, plaintiffs Nadejda and Alex Stancioff contacted Christie's to assert that the snuff box had been stolen from their family and cautioning Christie's not to disburse the proceeds of the sale (Kratenstein affirmation, exhibits E-F). Christie's agreed to hold back the sale until it could investigate the claim (*id.*, exhibit F). As indicated, the snuff box continues to be in Christie's possession pending the resolution of this matter.

The Complaint

The second amended complaint asserts two claims of replevin and conversion against each of the defendants, the Estate (the first and second cause of action) and Christie's (the third and fourth cause of action).

Additional Historical Background

Dimitri Stancioff was a Bulgarian diplomat who served in the government of the Bulgarian king and gained some international prominence for his service (Andrew Stancioff aff., ¶ 7). Dimitri's son Ivan followed in his father's footsteps, serving Bulgaria as a diplomat up to and during World War II (*id.*, ¶ 8). Although initially neutral during World War II, in 1941, Bulgaria aligned with the Axis Powers and permitted Nazi forces to occupy its cities (*id.*, ¶ 9).

In 1944, Soviet forces invaded Bulgaria, forcing out the Nazis and beginning their occupation. Ivan's service to Bulgaria ended in 1945 after the Bulgarian Communist Party seized control of the government during the final days of World War II (*id.*, ¶ 12).

Plaintiffs contend that Dimitri Stancioff's son, Ivan Stancioff, inherited the snuff box upon Dimitri's death in 1940 (Kratenstein affirmation, exhibit H, response to interrogatory no. 1; exhibit I, pp. 42-43). The snuff box is not mentioned in Dimitri's will (*see* Kratenstein affirmation, exhibit T). However, plaintiffs contend that, "[t]raditionally, in Bulgarian culture, items such as the Snuff Box are inherited by the eldest male child," which in this case would be Ivan (*id.*, exhibit H, response to interrogatory 1). Plaintiffs claim that Dimitri "would not have sold a gift of such personal significance, [and] therefore it [must have] passed to Ivan" (*id.*; Andrew Stancioff aff., ¶ 31-32). Ivan died in 1972 (Andrew Stancioff Aff., ¶ 38).

Plaintiffs claim that, "the Snuff Box was just one of many valuable possessions that were stolen from the Stancioff family during World War II and after the war" as the Stancioffs "were forced to flee their home in Sofia, Bulgaria in 1943 when it came under bombardment by U.S. planes" (*id.*, response to interrogatory no. 6; Andrew Stancioff Aff., ¶ 17). According to plaintiffs, the family always intended to return to Bulgaria and, thus, left behind many of their valued possessions. However, their home in Sofia was badly damaged during this time and they were forced to move many of their valuables into the home of their friends, the Peev family, located in Boyana, Bulgaria (*id.*; Andrew Stancioff aff., ¶ 20). The home in Sofia remained unsecured for an "extended period of time" and whatever items remained in it were allegedly pillaged and/or stolen (*id.*).

The Peev family house, meanwhile, was rented and occupied by a U.S. Diplomat and member of the Office of Strategic Services (“OSS”), Gratian Yatsevitch and his family. Plaintiffs speculate that Yatsevitch took many of the Peevs’ and Stancioffs’ belongings, including the snuff box and shipped these to the United States (*id.*). Plaintiffs attempt to connect Barbara Danielson to Yatsevitch by pointing out that her father, James Deering Danielson, and Yatsevich were both members of the OSS, and its successor, the Central Intelligence Agency, in Istanbul at or near the same time in the early to mid-1950s (Kratenstein affirmation, exhibit H, response to interrogatory no. 11). Yatsevitch’s daughter, Gael May McKibber, who lived in the Peev house with her father, attests that while she does not recall seeing this particular snuff box, “it would not have been out of character for [her] father to have taken certain objects he discovered in the Peev House that might have belonged to the Stancioff family with the final intent of ultimately returning them to the Stancioffs” (McKibber aff., ¶¶ 12, 11).

According to Andrew Stancioff, son of Ivan and grandson of Dimitri, his parents “made sustained and repeated efforts to recover [their] stolen property after they were forced to flee Bulgaria,” including efforts by his mother, Marion, to regain “a substantial amount of artwork” in the decades after the war (Andrew Stancioff aff., ¶¶ 41-42). According to the Estate, however, Stancioff family members’ own words and deeds contradict their present claims, at least with respect to the snuff box. Specifically, the Estate relies on a memoir by Dimitri’s son, Ivan, titled *Diplomat & Gardner*. In it, Ivan wrote about returning to Sofia in 1944 during the war: “Although everything stood open, nothing was missing, for immediately after the first bad bombing, the government had taken strict measures to prevent looting” (Kratenstein affirmation, exhibit K at CHR 0051). In the same book, Ivan also wrote that, in early 1945, “when I got back

to [Istanbul], I began to sort and pack my few possessions. I had very little money. Everything I could sell I sold” (*id.* at CHR 0061). The Estate cites this last sentence as evidence of the fact that the snuff box was likely sold off by Ivan during the war.

As concerns plaintiffs’ claim that Marion and the children fled Bulgaria under duress, the Estate claims Ivan’s memoir also contradicts any such thing. Ivan writes:

“[W]hen I met my family at Bucharest ... I was surprised by the quantity and curious appearance of their luggage. Thirty seven small pieces ranging from shiny cardboard suitcases to explosive knapsacks, littered the platform. Marion explained that after having carefully packed four Vuitton trunks and a few respectable bags, she heard that heavy luggage would be not be handled in Hungary or Austria; so wishing to spare [Ivan’s sons] Dimitri (not yet 17) and Johnny (not yet 14) she had gone out and bought half a dozen cheap suitcases and filled them and every bag she could find in the house with the contents of the trunks ...”

(*id.* at CHR 0041).

Although the Estate points to this passage in Ivan’s memoir as evidence to contradict plaintiffs’ characterization of their family’s departure from Bulgaria as being “under duress,” the same passage also notes all the possessions Marion “regretted” not being able to take, including the “beautiful robe the children had all worn at their christening,” some miniature paints, and her wedding dress among others. “In such cases,” Ivan wrote in the book, “one rarely makes exactly the right choice of things to be ‘saved’” (*id.*).

The family initially learned of the Christie’s auction when a representative from Christie’s contacted Alexandra Stancioff looking for photographs of Dimitri. Alexandra referred the representative to Ivan’s daughter, Nadejda, and Nadejda provided several photographs. She claims that:

“... because Christie’s had contacted Alexandra looking for photos of my grandfather and Alexandra passed that request on to me, I had the impression that my family was somehow involved in the transaction, and to that extent I let my guard down regarding the matter. It did not occur to me that the Snuff Box was being sold by a stranger. Had I known that I would have suspected a theft and would not have sent the photos of my grandfather. Christie’s never disclosed the identity of the seller to me or any information regarding the provenance of the Snuff Box.”

(Nadejda Stancioff aff., ¶ 30).

Between June 2015 and January 2016, after the Stancioffs contacted Christie’s to stop the sale, Christie’s conducted an investigation into the snuff box’s provenance (the “investigation”). The investigation was led by Antonia Bartoli, a researcher with a Masters of Fine Arts in World War II-era art who has conducted many similar investigations (Bartoli EBT, Kratenstein affirmation, exhibit B, pp. 10; 20-23). As part of the investigation, Bartoli and her team reviewed, among other things, *Diplomat & Gardner*, the aforementioned memoir by Ivan Stancioff, as well as *Diplomats & Dreamers*, a history of the Stancioff family by historian Dr. Mari Furcation. Neither book mentions the snuff box. Additionally, Christie’s reviewed information concerning Waldo Frank Perez de Leon and reviewed several internal and external databases for evidence of the snuff box’s provenance and found nothing (*id.*, pp. 23-24, 28-29; 42-44, 101-15, 127, 135). Christie’s also reviewed its “Red Flags” and “Sensitive Names” database, which contains a list of works that may have been misappropriated during World War II and names of victims and potential perpetrators (*id.*, pp. 23, 29, 68; exhibit G at CHR 0095). Finally, Christie’s reviewed public databases on family history and looted art: ancestry.com, fold3.com, and lootedart.com. At the end, Christie’s concluded that there was “no information or supporting documentation to show that the snuff box was stolen or looted during or after WWII”

(Bartoli EBT, Kratenstein affirmation, exhibit B, pp. 64-66, 90-92; exhibit O at CHR 0126).

However, Bartoli testified that she had planned to continue her research but stopped because she believed the matter between the parties was resolved.

Discussion

Summary Judgment Standard

It is well-settled that on a motion for summary judgment, a court's function is one of issue finding, not of issue determination (*Ruttenberg v Davidge Data Sys. Corp.*, 215 AD2d 191, 193 [1st Dept 1995]). The burden is on the movant to establish its entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issue of fact (*Voss v Netherlands Ins. Co.*, 22 NY3d 728, 734 [2014], citing *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). All favorable inferences are to be drawn in favor of the non-moving party.

Replevin and Conversion

"A cause of action sounding in replevin must establish that the defendant is in possession of certain property of which the plaintiff claims to have a superior right" (*Nissan Motor Acceptance Corp. v Scialpi*, 94 AD3d 1067, 1068 [2d Dept 2012], citing *Batsidis v Batsidis*, 9 AD3d 342 [2d Dept 2004]). Likewise, for a claim of conversion, the defendant, "intentionally and without authority," must "assume[] or exercise[] control over personal property belonging to someone else, interfering with that persons right of possession" (*Colavito v New York Organ Donor Network, Inc.*, 8 NY3d 43, 49-50 [2006], citing *State of New York v Seventh Regiment Fund*, 98 NY2d 249 [2002]). The key elements of this tort are: (1) the plaintiff's ownership or

superior right of possession to the property at issue, and (2) the defendant's interference with that right (8 NY2d at 50 [citations omitted]).

The Estate argues that the claims against it fail as a matter of law because: (1) plaintiffs cannot establish a superior right to the snuff box, and (2) in any event, plaintiffs claim to the snuff box is barred by the doctrine of laches. As concerns the former, the Estate relies primarily on the "invoice" discovered by Christie's inside the snuff box as well as the excerpts from Ivan Stancioff's memoir. With regard to the latter, the Estate contends, among other things, that plaintiffs have made no effort to locate the snuff box in all of the many decades between the alleged loss during the war and the auction in 2015, which has prejudiced the Estate's ability to now establish ownership. Plaintiffs counter that their ownership of the snuff box is plainly established by the box's inscription because no one in the Stancioff family would ever sell such an important heirloom. At the very least, plaintiffs argue, the inscription and surrounding circumstances create an issue of fact as to the snuff box's ownership, precluding a grant of summary judgment for the Estate.

The relevant, undisputed facts in this case are limited to the following: (1) the snuff box was gifted to Dimitri Stancioff at the Hague in 1899, (2) the box ended up in the Estate of Barbara Danielson in Florida in 2014, and it was (3) auctioned by Christie's in New York in 2015. All theories as to how the snuff box ended up in Florida are based entirely on speculation. Contrary to plaintiffs' argument, the snuff box's inscription alone does not establish their superior right of possession as a matter of law. All the inscription establishes is that, presumably, at some point the snuff box was gifted to Dimitri Stancioff by Czar Nicholas II, a fact that the Estate does not contest. Moreover, although plaintiffs' theory of the case assumes

that the Snuff Box was inherited by Ivan Stancioff in 1940 as part of his father's estate, Dimitri Stancioff's will does not actually mentions the snuff box or any other personal item (*see* Kratenstein affirmation, exhibit T). As such, it is unknown what may have happened to the snuff box in the 40-plus years between 1899 and the events of World War II that forced the Stancioffs from their family home in Bulgaria.

It is well-settled under the clear framework of CPLR 3212, the burden is on the movant to establish its entitlement to judgment as a matter of law and all favorable inferences must be granted to the party opposing the motion. Here, the Estate has not unequivocally established that the snuff box was not wrongfully taken from the Stancioffs or that the Danielson family was a good faith purchaser (*Solomon R. Guggenheim Found. v Lubell*, 77 NY2d 311, 321 [1991] [burden of proving that the painting was not stolen properly rests with the alleged good faith purchaser]. The so-called invoice from Waldo Frank Perez de Leon is hardly dispositive. As noted, it lists no date, no transferor, no purchaser, and no place of purchase. It could be an appraisal document just as easily as it could be an invoice. It is also unclear why this invoice was only discovered by Christie's *after* the box was consigned and seemingly unknown to the Estate that was consigning it. Moreover, even if this document is admissible as evidence of the Danielson family's status as good-faith purchaser, under New York law, the good faith purchaser for value still has the burden of proving the item was not stolen in a replevin action by the alleged true owner (*id.* at 321). To the extent that the Estate relies on excerpts from Ivan Stancioff's memoir for the notion that Ivan voluntarily sold off all his possessions - and, thus, presumably also sold the snuff box - the memoir is inadmissible hearsay and, in any event, the excerpt is, at best, ambiguous.

To the extent that the Estate relies on the absence of the snuff box from the claims submitted by Marion Stancioff to support the notion that the box was sold, this is also hardly dispositive as Andrew explains in an affidavit that the claims filed by his mother only concerned items that personally belonged to her because whereas she was a U.S. citizen before the war, Ivan did not become a citizen until after (Andrew Stancioff aff., ¶ 45). As such, Ivan was precluded from either seeking recovery of his property or seeking restitution by submitting claims to the United States government pursuant to the terms of the treaty entered into between the U.S. and Bulgaria at the end of the war (Andrew Stancioff aff., ¶ 44-45). Indeed, a claim form filed by Marion with the Foreign Claims Settlement Commission of the United States:

“The house in Sofia was my husbands [sic] property but most of the furniture belonged to me. None of my husbands’ [sic] property is mentioned in this claim as he became a U.S. Citizen in 1948 a few months after the confiscation of our property by the communist Government of Bulgaria.”

(Andrew Stancioff aff., exhibit D2 at STAN-235). Ultimately, whether the absence of the snuff box from the claim forms is evidence of the fact that the Stancioffs sold the box is another issue for trial.

Laches

The affirmative defense of laches may be asserted where neglect in promptly asserting a claim for relief results in prejudice to a defendant and, in such cases, will operate as a bar to the relief sought (*Moreschi v DiPasquale*, 58 AD3d 545, 545 [1st Dept 2009]). Here, to the extent that plaintiffs may have neglected to promptly assert their claim, the Estate has not established how this resulted in prejudice to it since anyone with first hand knowledge of the underlying facts has been deceased for far longer than the Estate has been in possession of the snuff box. Mere

inaction or delay in bringing a proceeding, without a showing of prejudice, is insufficient to constitute laches (*Haberman v Haberman*, 216 AD2d 525, 527 [2d Dept 1995]). Rather, to preclude a claim on this ground, there must be a showing not merely of delay, but also of injury, a change of position or some other disadvantage resulting from the delay (*Bank of Am. N. A. v Lam*, 124 AD3d 430, 431 [2015]).

Moreover, whereas an “owner of property who has knowledge of its location cannot unreasonably delay making demand upon the person possessing the property” (*Martin v Briggs*, 235 AD2d 192, 198 [1st Dept 1997]), whether plaintiffs even had any means of making a claim prior to the auction is a question of fact for trial. After all, “[l]aches cannot be said to exist where a party is ignorant of his rights, or where though apprehensive of them, there is such an obscurity in the transaction that he must, with painstaking, gather the facts or the evidence of them upon which the successful prosecution of the action must depend” (*Platt v Platt*, 13 Sickels 646, 646 [1874]).

Likewise, it is unclear how far back such action would have needed to be taken to enable the Estate to escape the prejudice resulting from the delay. In this regard, *Matter of Flamenbaum* is instructive (22 NY3d 962, 965 [2013]). There, a German museum sought recovery of an ancient archeological artifact that went missing during World War II and resurfaced as part of a Holocaust survivor’s estate some sixty years later. The Court of Appeals held that the doctrine of laches could not stand as a bar to the museum’s recovery of the item because although the museum:

“could have taken steps to locate the tablet, such as reporting it to the authorities or listing it on a stolen art registry ... the Estate provided no proof to support its claim that, had the Museum taken such steps, the Museum would have

discovered, prior to the decedent's death, that he was in possession of the tablet"

(*id.* at 965).

Here, the Estate similarly fails to offer any such proof. While the snuff box came into Rosemary Danielson's possession, it was never advertised for sale and appears to have been displayed only in Danielson's home. This is markedly different from, *e.g.*, *Wertheimer v Cirker's Hayes Stor. Warehouse*, (300 AD2d 117, 118 [1st Dept 2002]), where laches barred recovery of a painting that was advertised for sale by a New York gallery in a prominent art journal nearly fifty years prior to when action for replevin was commenced, the deceased "rightful owner" lived in New York at the time, had previously commenced and abandoned a French legal proceeding to recover the painting, and the judgment entered in that proceeding (in his absence) indicated that he had been compensated by third parties for certain unspecified property that was misappropriated. The remaining cases cited by the Estate in support of their laches argument are also distinguishable. *Matter of Peters*, 34 AD3d 29 (1st Dept 2006) was decided in the context of a petition for pre-action disclosure pursuant to CPLR 3102 (c), where the burden is on the petitioner to establish a meritorious cause of action, not on a motion for summary judgment where the burden to establish entitlement to judgment is on the movant and every favorable inference must be granted to the non-moving party, and, in any event, predates the Court of Appeals decision in *Matter of Flamenbaum*, *supra*, 22 NY3d 962. Similarly, the federal cases cited by the Estate arise in a different procedural context and are, in any event, not binding on this Court, (*Bakalar v Vavra*, 500 Fed Appx 6 [2d Cir 2012] [declaratory judgment after bench trial]; *DeWeerth v Baldinger*, 836 F2d 103 [2d Cir 1987] [parties submitted case to judge for bench decision on the record]).

Conclusion

Accordingly, it is

ORDERED that the motion of defendant the Estate of Barbara Danielson (mot. seq. no. 004) seeking summary judgment dismissal of the claims asserted against it (first and second causes of action) is denied; and it is further


ORDERED that the motion of defendant Christie's, Inc. (mot. seq. no. 005) seeking summary judgment dismissal of the claims asserted against it (third and fourth causes of action) is granted and the complaint is dismissed against Christie's, Inc.; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the action shall continue as to the first and second causes of action against the Estate of Barbara Danielson.

Dated: December 31, 2018

ENTER:



J.S.C.
SHLOMO HAGLER
J.S.C.