

Middendorf v American Numismatic Society
2022 NY Slip Op 31202(U)
April 11, 2022
Supreme Court, New York County
Docket Number: Index No. 159534/2021
Judge: David B. Cohen
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAVID B. COHEN PART 58

Justice

-----X

INDEX NO. 159534/2021

J. WILLIAM MIDDENDORF,

MOTION SEQ. NO. 001

Plaintiff,

- v -

**DECISION + ORDER ON
MOTION**

THE AMERICAN NUMISMATIC SOCIETY,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 28

were read on this motion to/for DISMISS.

In this replevin action, the American Numismatic Society (“Defendant”) moves, pursuant to CPLR 3211(a)(1), (5), and (7), to dismiss the Complaint with prejudice. Ambassador J. William Middendorf (“Plaintiff”) opposes the motion. After consideration of the parties’ contentions, as well as a review of the relevant statutes and case law, the motion is decided as follows.

I. Factual and Procedural Background

Plaintiff, a leading collector of early American imprints and documents, sued Defendant, a not-for-profit numismatic institution, for declaration of title and replevin, alleging that an engraved plate for an eighteenth-century 42-shilling note that was acquired by Defendant in 1965 as part of its permanent collection (“the Copper Plate”) is property that he acquired in 1959 and owned until 1962, when it was stolen from his car (Compl. ¶¶ 1, 2, 10, 11, 12, 13, 31, 42).

On August 11, 2014, Plaintiff wrote to Defendant as follows:

Some time ago I was in touch with your director about the Revere Currency Plate that was stolen from my car a number of years ago and I was told to get back to you having more information... The plate was stolen from my [car] after I gave a lecture on it at the

New York Historical Society and shortly thereafter it was purchased by one of your curators I understand. It was only fairly recently that I discovered this in one of your publications that you were in possession of the plate. This letter is a request to have the plate returned to my collection.

(Doc 9).

By letter dated June 28, 2016, Defendant, through its Executive Director, responded to Plaintiff as follows:

“...I have now carefully reviewed all papers, but even with the new material in hand, we still do not see any proof that the item was stolen from you before it was acquired by the Society. As it is clear from our detailed online description, the plate was acquired as a counterfeit and even today all experts seem to agree on this. Furthermore, I would like to emphasize that the Society has made this plate available for study and publication almost immediately after it was acquired. It has been published several times in important reference works over the last few decades.

As much as I would like to believe your story, we need actual proof that the item was stolen from you. Without any such documentation, we are unable to fulfill our own fiduciary responsibility to our governing board of trustees and to the state of New York, which require us to care for the collections that we have purchased. If you have any such documentation, please forward it to me.

I look forward to hearing from you.”

(Doc 10).

On January 5, 2017, Plaintiff communicated with Defendant again regarding the Copper Plate (Docs 11).

On January 26, 2017, Defendant, through its attorney, responded to Plaintiff as follows:

... As [Defendant] has previously advised [Plaintiff], before the Society can entertain his, or any, request that an object in its collection be released upon the demand of a claimant, it is incumbent upon the claimant to document the facts supporting his claim with good and sufficient evidence and provide same to the [Defendant].

Previously, [Defendant] has suggested that [Plaintiff] might accomplished [sic] this, under the circumstances of the alleged theft of the Plate from his automobile in the 1960s, by producing a contemporaneous police report, a filed insurance claim or the like. As yet, no such evidence has been presented to [Defendant] for its consideration. In the absence of such evidence it is just a likely that [Plaintiff] either disposed or sold the [Copper] Plate himself as that the [p]late was stolen.

Under these circumstances ... [Defendant], mindful of its fiduciary and legal obligations, cannot and will not release the [Copper] Plate on the basis of the information presented to date on behalf of the [Plaintiff].

Once [Plaintiff] locates evidence supportive of his claim that the Plate was stolen, please do not hesitate to share it with [Defendant]. Upon receipt of such evidence, [Defendant] will review it promptly and, thereafter, be willing to work with you to address the [Plaintiff's] claim.

(Doc 12).

II. The Parties' Contentions

In support of its motion, Defendant argues that: (1) Plaintiff's replevin claim is untimely insofar as it is subject to a three-year statute of limitations and New York's demand-and-refusal rule; (2) the declaratory judgment claim is likewise barred by the same statute of limitations; (3) the claims fail under the equitable doctrine of laches; and (4) the declaratory judgment claim is subject to dismissal because it is duplicative of his claim for replevin.

In opposition, Plaintiff argues that (1) the complaint is timely since Defendant's requests for more information and the opportunity to investigate the ownership rights did not constitute a refusal under New York's demand-and-refusal rule and/or it did not condition the return of the Copper Plate on other matters; (2) Defendant is equitably estopped from asserting a statute of limitations defense; (3) his claims are not barred by laches since Defendant has failed to demonstrate injury, change of position, loss of evidence or disadvantage, and a laches defense is unavailable to Defendant under the doctrine of unclean hands; and (4) his declaratory judgment claim is not duplicative.

In further support of its motion, Defendant argues that (1) it effectively refused Plaintiff's demands for the Copper Plate in 2016 and 2017, which commenced the running of the three-year statute of limitations that expired prior to the filing of the Complaint in October 2021; and that (2) equitable estoppel does not apply to bar Defendant from asserting its statute of limitations

defense since there is no evidence that it sought to dupe Plaintiff into delaying, for years, the filing of this lawsuit that his own attorneys first threatened with in 2017; (3) assuming, arguendo, that the claims are not time-barred, they must be dismissed on the basis of laches because, after more than fifty years, Defendant is plainly prejudiced by the loss of witnesses and the fading of memories relevant to its defense; and (4) the doctrine of unclean hands does not apply to bar dismissal of Plaintiff's claims on the basis of laches.

III. Standards of Review

In determining the legal sufficiency of a claim pursuant to 3211(a)(7), the facts alleged in the complaint will be assumed to be true, given all favorable inferences, and only then considered to see whether they fit “within any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). The plaintiff may submit affidavits and evidentiary material on a CPLR 3211 (a)(7) motion “to remedy defects in the complaint” (*Kenneth R. v Roman Catholic Diocese of Brooklyn*, 229 AD2d 159, 162 [2d Dept 1997] [internal quotations marks and citations omitted]; see also *Warberg Opportunistic Trading Fund, LP. v GeoResources, Inc.*, 112 AD3d 78, 84 [1st Dept 2013]).

“On a pre-answer motion to dismiss pursuant to CPLR 3211(a)(1), a dismissal is proper only when the documentary evidence submitted establishes a defense to the asserted claims as a matter of law” (*Bonnie & Co. Fashions v Bankers Trust Co.*, 262 AD2d 188, 189 [1st Dept 1999] [internal quotation marks and citations omitted]; see also *Goshen v Mut. Life Ins. Co.*, 98 NY2d 314, 326 [2002]). The party seeking dismissal has the burden of submitting documentary evidence resolving “all factual issues as a matter of law, and conclusively dispos[ing] of the plaintiff's claim” (*Sullivan v State*, 34 AD3d 443, 445 [2d Dept 2006] [internal quotation marks

and citations omitted]; *see also* *Bronxville Knolls v Webster Town Ctr. Partnership.*, 221 AD2d 248, 248 [1st Dept 1995]).

“On a motion to dismiss a cause of action pursuant to CPLR 3211 (a)(5) as barred by the applicable statute of limitations, a defendant must establish, *prima facie*, that the time within which to sue has expired. Once that showing has been made, the burden shifts to the plaintiff to raise a question of fact as to whether the statute of limitations has been tolled, an exception to the limitations period is applicable, or the plaintiff actually commenced the action within the applicable limitations period” (*O’Reilly v Klar*, 167 AD3d 920 [2d Dept 2018] [internal citations omitted]).

IV. Legal Conclusions

“Replevin and conversion claims are governed by the three-year Statute of Limitations of CPLR 214 (3)” (*Feld v Feld*, 279 AD2d 393, 394 [1st Dept 2001] [internal citations omitted]). “An innocent purchaser of stolen goods becomes a wrongdoer only *after* refusing the owner’s demand for their return” (*Grosz v Museum of Modern Art*, 772 F Supp 2d 473, 482 [SDNY 2010], *affd*, 403 Fed Appx 575 [2d Cir 2010] [applying New York state law]). “A demand need not use the specific word ‘demand’ so long as it clearly conveys the exclusive claim of ownership” (*Feld*, 279 AD2d at 394). “A demand consists of an assertion that one is the owner of the property and that the one upon whom the demand is made has no rights in it other than allowed by the demander (*id.* at 394-5 [internal citations omitted]). “By the same reasoning, a refusal need not use the specific word ‘refuse’ so long as it clearly conveys an intent to interfere with the demander’s possession or use of his property” (*id.* at 395 [internal citations omitted]).

Here, the three-year statute of limitations expired prior to the commencement of Plaintiff’s action in October 2021, (*see* CPLR 214 [3]), and Plaintiff’s action is time-barred

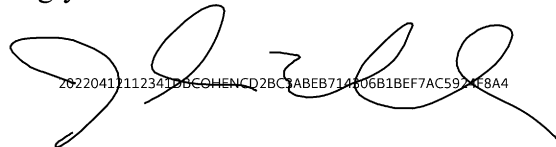
under New York’s demand-and-refusal rule (*Feld*, 279 AD2d at 394). “[B]ecause Defendant retained the disputed property and indicated that he would not return it unless [its] demands were met, [its] conduct was inconsistent with a plaintiff’s claim of ownership, and so constituted a ‘refusal,’ thus causing [Plaintiff’s] cause of action to accrue” (*Grosz*, 772 F Supp 2d at 484).

Because the parties’ dispute over the Copper Plate can be resolved on the replevin claim, which is subject to a specific statutory limitation period, the Complaint’s claim for declaratory judgment is also subject to the same three-year limitation period and is also dismissed. “The statute of limitations applicable to declaratory judgment actions depends upon the claim out of which the request for a judgment arises” (*Royal York Owners Corp. v Royal York Assoc., L.P.*, 8 Misc 3d 1002(A) [Sup Ct 2005]).

This Court finds that the parties’ remaining arguments are unavailing and/or moot in light of this Decision and Order.

Accordingly, it is hereby:

ORDERED that the defendant’s motion to dismiss is granted and the complaint is dismissed, and the Clerk is to enter the judgment accordingly.



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DAVID B. COHEN, J.S.C.

4/11/2022
DATE

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