

**Rappoport v Nye**

2022 NY Slip Op 32091(U)

July 4, 2022

Supreme Court, New York County

Docket Number: Index No. 653166/2020

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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<p>JAY RAPPOPORT and JAY RAPPOPORT AS  SUCCESSOR ADMINISTRATOR OF THE ESTATE OF  SEYOUR RAPPOPORT,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">- v -</p> <p>JOHN NYE, NYE &amp; COMPANY, THE LEIDEN  COLLECTION, THOMAS KAPLAN, WENDY SAUL, LOUIS  SAUL, NATHANIEL NED LANDAU, STEVEN LANDAU,  ROGER LANDAU, TALABARDON &amp; GAUTIER, ILONA  VAN TUINEN, and JOHN DOES 1 THROUGH 20</p> <p style="text-align: center;">Defendants.</p>	<p><b>INDEX NO.</b>            <u>653166/2020</u></p> <p><b>MOTION DATE</b>        _____</p> <p><b>MOTION SEQ. NO.</b>    <u>005</u></p> <p style="text-align: center;"><b>DECISION + ORDER ON  MOTION</b></p>
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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 54, 55, 56, 57, 58, 59, 60, 61, 62, 64, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 104, 105, 106, 116, 126

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, it is

In motion sequence number 005, defendants The Leiden Collection, Thomas Kaplan, Ilona van Tuinen, Nathaniel Landau, Steven Landau, and Roger Landau<sup>1</sup> move to dismiss the amended complaint pursuant to CPLR 3211 (a)(2), (3), (5) (8), and (10), and the laches doctrine<sup>2</sup>.

Background

Unless indicated otherwise, the following facts are taken from the amended complaint and for the purposes of this motion are accepted as true.

<sup>1</sup> The other named defendants in this action submitted separate motions to dismiss. Plaintiff failed to respond to the submissions even after an extension was granted. (See motion sequences 001, 002, 003, 004, and 006.)

<sup>2</sup> Plaintiff does not address the laches doctrine argument in his opposition.

Plaintiff is the son of the late Seymour Rappoport's (Seymour), the Successor Administrator of the Seymour estate, and grandson of the late Minnie Rappoport (Minnie). (NYSCEF Doc No. [NYSCEF] 2, Amended Complaint ¶ 2.) Defendants Nathaniel Landau, Steven Landau, and Roger Landau (collectively, the Landaus) are brothers, the sons of Lila Landau, and the grandchildren of Minnie. (*Id.* ¶¶ 9-11.) The Leiden Collection is a private art collection owned by defendant Thomas Kaplan. (*Id.* ¶¶ 5-6.) Defendant Ilona van Tuinen was the Assistant Curator at The Leiden Collection between 2011 and 2014. (*Id.* ¶ 13.)

This action concerns a painting that was in the possession of Minnie beginning in 1961. (*Id.* ¶ 18). Plaintiff claims to remember seeing the painting hanging in Minnie's home. (*Id.* ¶ 20.) In December of 1969, Minnie suffered a stroke. (*Id.* ¶ 22.) At some point between January and March of 1970, Lila Landau removed the painting from Minnie's home. (*Id.* ¶ 23.) In April of 1970, a ten-year-old Steven Landau allegedly showed the painting, identified as a Rembrandt with the initials "RHF," to plaintiff during a Passover gathering at the Landaus' home. (*Id.* ¶¶ 19-20.)

In November of 1974, Minnie passed away and designated in her will that her estate, "consisting of real, personal and mixed, that I may have at the time of my death or which shall accrue to me thereafter," be divided amongst her three children equally, except for a cash sum to be distributed to Seymour's sister, Rosalie Saul. (*Id.* ¶¶ 25-26.) Plaintiff alleges Seymour did not receive one third of the estate, as the other siblings removed various valuable items from Minnie's home without permission, including the painting. (*Id.* ¶¶ 26-27.)

In 2009, a photograph was taken of plaintiff at the Landaus' home with the painting in the background. (*Id.* ¶ 29.) Lila Landau passed away in 2010, prompting

Seymour to write to the Landaus' father to request the return of the painting and other items. (*Id.*). The painting was not returned. (*Id.*)

Seymour passed away in June of 2015. (*Id.* ¶ 30.) In September 2015, the Landaus put various items up for auction through Nye & Company, including the painting which eventually sold for \$870,000. (*Id.* ¶¶ 30-31.) Plaintiff maintains that Seymour held at least a one-third interest in the painting. (*Id.* ¶ 38.) The winning bid was by defendant Talabardon & Gautier in Paris, France. (*Id.* ¶ 32.) Talabardon & Gautier allegedly contacted van Tuinen to connect with The Leiden Collection and Kaplan. (*Id.* ¶¶ 33-34.) Plaintiff claims the painting was restored and sold to The Leiden Collection for \$4 million. (*Id.* ¶ 34.)

Plaintiff contends that defendants conspired to conduct a sham auction to sell the stolen painting to Kaplan, the owner of the largest Rembrandt collection in the world. (*Id.* ¶¶ 39-40.) On July 23, 2019, plaintiff sent a letter to The Leiden Collection and Kaplan after learning of the sale, demanding the painting be returned. (*Id.* ¶ 48; NYSCEF 75, Demand Letter.)

On July 22, 2020, plaintiff commenced this action. On September 24, 2020, plaintiff filed an amended complaint alleging claims for (1) an injunction against The Leiden Collection and Kaplan directing that they return the painting; (2) declaratory judgment against all defendants; (3) conversion against all defendants; (4) aiding and abetting conversion against all defendants; (5) civil conspiracy to convert plaintiff's personal property against all defendants; (6) replevin against The Leiden Collection and Kaplan; and (7) unjust enrichment against all defendants. (*Id.* ¶¶ 49-97.)

## Discussion

Moving defendants assert that this court does not have subject matter jurisdiction over this action concerning the property of a New Jersey resident or of her estate as provided for in her will executed in New Jersey. Moving defendants argue that this action must be brought in a New Jersey Probate Court.

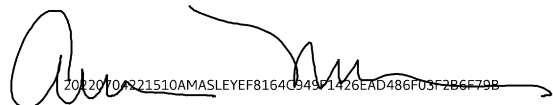
This court is one of general jurisdiction that is competent to adjudicate all causes of action that are not specifically granted to an alternate court. (*Sohn v Calderon*, 78 NY2d 755, 766 [1991], citing *Thrasher v U. S. Liab. Ins. Co.*, 19 NY2d 159, 166 [1967].) Subject matter jurisdiction is the “power to adjudge concerning the general question involved and is not dependent upon the state of facts which may appear in a particular case, arising, or which is claimed to have arisen, under that general question.” (*Thrasher*, 19 NY2d at 166, quoting *Hunt v Hunt*, 72 NY 217, 229 [1878].) Contrary to moving defendants’ assertion, this court, a court of general jurisdiction, is not required to remove actions involving the administration of a decedent’s estate to Surrogate Court. (*Benjamin v Morgan Guar. Tr. Co. of New York*, 173 AD2d 373, 374 [1st Dept 1991].) The motion to dismiss the amended complaint pursuant to CPLR 3211 (a) (2) is denied.

To prevail on a CPLR 3211 (a) (3) motion to dismiss the plaintiff must “show injury in fact, that is, an actual stake in the matter to be adjudicated, so as to ensure that the party has some concrete interest in prosecuting the action, and the court must have before it a justiciable controversy.” (*Lucker v Bayside Cemetery*, 114 AD3d 162, 169 [1st Dept 2013] [citations omitted].) “[A] beneficiary, absent extraordinary circumstances . . . , cannot act on behalf of [an] estate or exercise [a] fiduciary’s rights with respect to estate property.” (*Stallsworth v Stallsworth*, 138 AD3d 1102, 1102 [2d Dept 2016] [internal quotation marks and citations omitted].) While plaintiff, as

administrator of Seymour’s estate has the legal capacity to enforce Seymour’s claims on behalf of his estate (*Rodriguez v Riv. Val. Care Ctr., Inc.*, 175 AD3d 432, 433 [1st Dept 2019] [citations omitted]), here, plaintiff’s claims arise from the alleged theft of the painting from Minnie during her lifetime. Thus, like the plaintiffs in *Stallsworth*, our plaintiff lacks standing to commence this action to recover an asset alleged to have been wrongfully taken from the Minnie estate prior to her death. (*Stallsworth*, 138 AD3d at 1103.) As an individual beneficiary of Seymour's estate, plaintiff has “no independent right to maintain an independent cause of action for the recovery of [Minnie’s] property, as such a right belonged to the personal representative of [Minnie's] estate. (*Id.*)

Accordingly, it is

ORDERED that the motion of defendants The Leiden Collection, Thomas Kaplan, Ilona van Tuinen, Nathaniel Landau, Steven Landau, and Roger Landau to dismiss the complaint herein is granted and the complaint is dismissed in its entirety as against the defendants, with costs and disbursements to the defendant as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of the defendants.



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7/4/2022  
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE
		<input type="checkbox"/>	DENIED	