

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LOUIS L. NOCK **PART** **38M**

Justice

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REIS FAMILY 1995 TRUST **INDEX NO.** 155112/2018
MOTION DATE 11/30/2021
Plaintiff, **MOTION SEQ. NO.** 002

- v -

THE LACHAISE FOUNDATION,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80

were read on this motion to/for SUMMARY JUDGMENT (AFTER JOINDER).

Upon the foregoing documents, the motion is denied. This matter concerns competing claims to a sculpture known as “Garden Figure” or “Standing Woman.” The Court assumes familiarity with the facts and procedural history of this matter as set out in its decision resolving motion sequence no. 001 (NYSCEF Doc. No. 54).

Plaintiff Reis Family 1995 Trust (“plaintiff”), in moving for summary judgment dismissing defendant the Lachaise Foundation’s (“defendant”) counterclaim for a judgment declaring that defendant owns the sculpture, argues that the claim is time-barred. A claim for replevin of chattel has a three-year statute of limitations (CPLR 214). As the parties both state, *Solomon R. Guggenheim Found. v Lubell* (77 NY2d 311 [1991]), controls when the cause of action accrues. In *Lubell*, the Court of Appeals considered competing claims to a gouache stolen from the Guggenheim Museum and later purchased in good faith by the defendant. The Court stated that the rule in New York “is that a cause of action for replevin against the good-faith purchaser of a stolen chattel accrues when the true owner makes demand for return of the chattel and the person in possession of the chattel refuses to return it” (*Lubell*, 77 NY2d at 317-18). In

other words, “the timing of the museum's demand for the gouache and the appellant's refusal to return it are the only relevant factors in assessing the merits of the Statute of Limitations defense” (*id.* at 315). The Court of Appeals relied on this accrual rule in remanding a later case for determination by the Supreme Court in the first instance whether a defendant was a bona fide purchaser of the goods in question, stating that “[i]f so, the State's claim will have accrued only after demand and refusal” (*State v Seventh Regiment Fund, Inc.*, 98 NY2d 249, 261 [2002]; *see also In re Peters*, 34 AD3d 29, 34 [1st Dept 2006] [“Demand upon, and refusal of, the person in possession of the chattel to return it being essential elements of a cause of action in replevin”]).

Applying this accrual rule to the present case, the Court finds that plaintiff has not met its burden of establishing a prima facie case to dismiss the counterclaim. Plaintiff argues that defendant engaged in various acts demonstrating its claim to ownership of the sculpture, including by making a claim in a bankruptcy proceeding against the gallery that wrongfully sold the sculpture to plaintiff, and by demanding that various galleries refrain from exhibiting or selling the sculpture (NYSCEF Doc. No. 69-71). Leaving aside, for the moment, the potential hearsay nature of plaintiff's proffered evidence, plaintiff essentially argues that defendant has publicly claimed ownership of the sculpture, and has been on notice that either “the Trust or the Reis Family have had possession of and claimed ownership of” the sculpture since at least 2013 (NYSCEF Doc. No. 72). As the above stated case law sets forth, however, the rule in New York is not a discovery rule (*Lubell*, 77 NY2d at 319 [“New York has already considered--and rejected--adoption of a discovery rule”]). Nowhere in plaintiff's submission is there any evidence that defendant made a demand upon the person or entity in possession of the sculpture (allegedly, plaintiff), that such demand was refused, and that the demand and refusal took place more than three years prior to when defendant interposed its counterclaim in this action. Indeed, as

defendant argues, plaintiff will not even confirm that plaintiff currently possesses the sculpture, and, if it does not, where it is presently located. Because plaintiff has failed to show evidence of demand and refusal, it is not entitled to summary judgment dismissing defendant's counterclaim.

Accordingly, it is

ORDERED that the motion is denied; and it is further

ORDERED that plaintiff shall respond to defendant's outstanding discovery demands within thirty days of service of a copy of this order with notice of entry; and it is further

ORDERED that the parties shall appear for a status conference in Room 1166, 111 Centre Street on September 28, 2022 at 10:00 AM.

This constitutes the Decision and Order of the Court.

8/22/2022
DATE

Louis L. Nock
LOUIS L. NOCK, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER FIDUCIARY APPOINTMENT REFERENCE

INCLUDES TRANSFER/REASSIGN

