SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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EDWARD W. GREASON,

Plaintiff,

- v -

DAVID NAHMAD, INTERNATIONAL ART CENTER, S.A.,

Defendants.

INDEX NO. 650646/2014

MOTION DATE 05/20/2025

MOTION SEQ. NO. 041

DECISION + ORDER ON MOTION

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 041) 2912, 2913, 2914, 2915, 2916, 2917, 2918, 2923, 2924, 2925, 2926, 2927, 2928, 2929, 2930, 2931, 2932, 2933, 2934, 2935, 2936, 2937, 2938, 2939, 2940, 2941, 2942, 2943, 2947, 2948, 2949, 2950, 2951, 2952, 2953, 2954, 2955, 2956, 2957, 2958, 2959, 2960, 2961, 2962, 2963, 2964, 2966, 3349, 3350, 3351, 3516, 3517

were read on this motion to PRECLUDE.

Upon the foregoing documents, and for the reasons stated on the record following oral argument on November 17, 2025, and as further stated below, it is

ORDERED that Defendants' Motion to Preclude from evidence at trial various iterations of a handwritten note, in French, marked "volé," and any translation thereof (the "Note", e.g., NYSCEF 2729, 2914, 2925) is **DENIED**; it is further

ORDERED that Plaintiff's Cross-Motion is **GRANTED IN PART** insofar as the Court finds that Defendants should have produced the Note in response to Plaintiff's document requests, however at this time the Court does not find that an adverse inference is appropriate as a sanction. Instead, the Court denies Defendants' request that they be permitted to pursue further fact and expert discovery relating to the Note and orders that, within fourteen days of the date of this Order, Defendants produce any and all correspondence Defendants and their agents had with

any auction house, gallery, collector or art dealer concerning the Painting that has not previously been produced; and it is further

ORDERED that the parties upload a copy of the transcript of the proceedings to NYSCEF upon receipt.

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DISCUSSION

As discussed on the record, the Court finds that Plaintiff has made a sufficient showing that the ancient documents exception to the hearsay rule applies to the Note. Under that exception, a record or document which is found to be more than 30 years of age and which is proven to have come from proper custody and is itself free from any indication of fraud or invalidity "proves itself"" (*Tillman v Lincoln Warehouse Corp.*, 72 AD2d 40, 44 [1st Dept 1979]). Further, "[i]f the genuineness of an ancient document is established, it may be received to prove the truth of the facts that it recites" (*id.* at 45). As the Court of Appeals long ago observed, "[i]t is usually impossible to establish a very ancient possession of property by the testimony of persons having knowledge of the fact, and when a deed forming part of a chain of title is so ancient that there can be, in the nature of things, no living persons who can testify to acts of ownership by the grantor or grantee, it may be received in evidence without such proof." (*Greenleaf v Brooklyn, F. & C. I. R. Co.*, 132 NY 408, 414 [1892]). In the present context, the ancient document exception essentially relieves Plaintiff from having to prove the Note is a business record of the producing party because, due to the passage of 75 years since its creation, there are no witnesses available to provide an evidentiary foundation.[1]

[1] In another case involving purportedly stolen artwork, the First Department noted that "in an effort to 'ensure that laws governing claims to Nazi-confiscated art and other property further

The record indicates that the Note was part of the archives and files maintained by the Wildenstein entities, there is no indication of fraud or invalidity, and it is more than thirty years old, as it states it was filed in 1950 (not long after the conclusion of WWII). Plaintiff submits evidence from which the jury could conclude that the Note was written by Doris Koren while she was working as a secretary for Wildenstein & Co.; that Ms. Koren and George Wildenstein traveled to France in 1950; that it was a regular task of Ms. Koren to manage photographic materials and make notes on them; and that the Note remained in Wildenstein's files (and the files of related entities) until being produced in this case. Therefore, there is evidence of "proper custody" and reliability. The jurors will hear the "foundation" evidence offered by Plaintiff regarding the Note, as well as any evidence tendered by Defendant to rebut it, which they can evaluate and decide what weight (if any) to give the Note at trial (*see United States v Portrait of Wally*, 663 F Supp 2d 232, 255 [SDNY 2009] [noting that objections of lack of credibility and

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United States policy,' and that 'claims to artwork and other property stolen or misappropriated by the Nazis are not unfairly barred by statutes of limitations,' Congress enacted the Holocaust Expropriated Art Recovery Act of 2016 (HEAR Act) (Pub L No 114-308 § 3 [1], [2] [2016]). In promulgating the HEAR Act, Congress found that (1) the Nazis 'confiscated or otherwise misappropriated hundreds of thousands of works of art" (HEAR Act § 2 [1]) from Jews and others they persecuted, and that many works "were never reunited with their owners' (§ 2 [2]); and (2) the Nazi victims and heirs have sought legal relief to recover artwork, but they 'must painstakingly piece together their cases from a fragmentary historical record ravaged by persecution [and] war' (§ 2 [6]). The tragic consequences of the Nazi occupation of Europe on the lives, liberty and property of the Jews continue to confront us today. We are informed by the intent and provisions of the HEAR Act which highlights the context in which plaintiffs, who lost their rightful property during World War II, bear the burden of proving superior title to specific property in an action under the traditional principles of New York law. We also note that New York has a strong public policy to ensure that the state does not become a haven for trafficking in stolen cultural property, or permitting thieves to obtain and pass along legal title" (*Reif v Nagy*, 175 AD3d 107, 131-32 [1st Dept 2019]). "One of the stated purposes of the HEAR Act is to ensure that claims to recover art lost in the Holocaust era are 'resolved in a just and fair manner'" (*Zuckerman v Metro. Museum of Art*, 928 F3d 186, 195 [2d Cir 2019]; *see also Matter of Art Inst. of Chicago*, 85 Misc 3d 1265(A) [Sup Ct, NY County 2025] [discussing the HEAR Act]).

incompleteness to an authenticated ancient document under the Federal Rules of Evidence go to the "weight the trier of fact chooses to accord to the document, not to its admissibility"]).

However, as discussed at oral argument, the Note cannot be offered as evidence that the Painting *was* stolen (there is no suggestion that the writer would have known that one way or the other), but instead at most that the "Stettiner family" in or around 1950 was *claiming* that the Painting was stolen and were looking for it in America. The Note may also be offered for the non-hearsay purpose of responding to Defendants' affirmative defense that they "did not know, and with the exercise of reasonable care could not have known, of the Plaintiffs' purported claim to the Painting" (NYSCEF 1820 ¶69).

As to Plaintiff's cross-motion, the Court finds that Defendants were aware of and should have produced the Note and related correspondence during discovery in this action. Defendant's counsel affirmation contending that the Note was not within the scope of Plaintiff's 2016 document requests (NYSCEF 2950) is unavailing given that the requests sought all documents and communications Defendants had or obtained from any source relating to the Painting or its provenance, and their communications with any auction house, gallery, collector or art dealer concerning the Painting (NYSCEF 2937, Request 32-33, Requests 28-31). The Note and related communications between counsel, Sotheby's and Wildenstein are clearly responsive and should have been produced. Indeed, correspondence involving Defendants' counsel regarding the Note arose in the context of litigation regarding the Painting and the related Federal lawsuit filed in 2011, further undermining any suggestion that the Note was beyond the reasonable scope of discovery in this case.

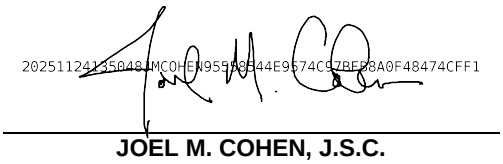
However, the Court is not persuaded that the adverse inference sought by Plaintiff is an appropriate remedy. As noted above, it would not be reasonable to infer that the painting *was*

stolen. The Court may consider an instruction to the finders of fact that they may make an adverse inference as to the authenticity of the Note (given that the passage of time may have impaired Plaintiff's ability to obtain additional evidence of authenticity) or as to Defendants' knowledge of its contents based on Defendants' failure to produce the Note in this litigation. The Court will defer on the appropriate instruction (if any) until trial.

At a minimum, the Court is persuaded that Defendants are not entitled to any additional follow-up discovery regarding the Note. If the Note had been produced in a timely manner, all parties would have had ample time to complete such discovery. Additionally, given Defendants' incorrect position that the Note and corresponding communications were not responsive to Plaintiff's discovery requests, the Court also directs Defendants to promptly search for and produce any and all correspondence Defendants and/or their agents had with any auction house, gallery, collector or art dealer concerning the Painting, including communications with Sotheby's, Christies, and the Wildenstein entities, and including their side of the correspondence and attachments recently produced by Wildenstein. The record reflects that Defendants were aware of and potentially in possession of the Note by 2011 at the latest.

Finally, after the hearing on this motion the Court received a request from Defendants for leave to retain a Handwriting Expert for trial regarding the Note (NYSCEF 3520) and Plaintiff's response (NYSCEF 3521-3522). The report of Mr. Smith, Plaintiff's handwriting expert, was served September 30, 2024, in rebuttal to Defendants' expert reports addressing the purported lack of authenticity or credibility of the Note (*see* NYSCEF 3522). Defendants could have engaged and disclosed a handwriting expert in a timely manner, but chose not to do so. At this point, is too late.

This constitutes the Decision and Order of the Court.



11/24/2025
DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:		**CASE DISPOSED**		[X]	**NON-FINAL DISPOSITION**		
	[ ]	**GRANTED**	[ ] **DENIED**	[X]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**