

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 62

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THE PEOPLE OF THE STATE OF NEW YORK

DECISION AND ORDER
SCID #30219/17

- against -

IN THE MATTER OF PERSIAN GUARD RELIEF,

Defendant.

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Melissa C. Jackson, J.:

The District Attorney applied to this Court for a search warrant pursuant to CPL § 690.35 upon probable cause that evidence of a crime would be found at The Park Avenue Armory located at 643 Park Avenue, New York, New York 10065. The probable cause rested upon the representation that the above antiquity was stolen property belonging to the government of Iran. On October 27, 2017, the warrant was executed at the Park Avenue Armory and the property brought before this Court.

An informal conference with Assistant District Attorney Matthew Bogdanos and attorneys representing the interested parties was held before this Court on November 14, 2017, whereupon it was apparent that ownership of the property was contested. The parties asserting ownership are the government of the Islamic Republic of Iran and, Rupert Wace Ancient Art Ltd. (hereinafter “Wace”), and Sam Fogg Ltd. (hereinafter “Fogg”), who claim they acquired good title from AXA Art Insurance UK SE (hereinafter “AXA”). The parties demanding possession of the Persian Guard Relief are the Islamic Republic of Iran and Wace.

On November 20, 2017, this Court heard oral argument and accepted memoranda from all interested parties. Counsel for Wace, who was also substituted as counsel for Fogg, filed a

supplemental memorandum on December 11, 2017.

The Court notes that there is no criminal prosecution pending against Mssrs. Wace or Fogg; no larceny or criminal possession of stolen property charges have been lodged. Nor do any appear to be forthcoming. Hence, this Court does not have jurisdiction to determine the issue of ownership. *People ex rel. Simpson Co. v. Kempner*, 208 NY 16 (1913). This Court is not persuaded by the People's assertion to the contrary. All cases cited by them are distinguishable upon this basis alone. Furthermore, the People's reliance on the word "owner" is misplaced under the circumstances of this case where the very fact of ownership is in dispute. Put another way – there are several potential victims of this alleged theft.

The plain meaning of PL § 450.10(5) controls. The statute reads:

If stolen property comes into the custody of a court, it must, unless temporary retention be deemed necessary in furtherance of justice, be delivered to the owner, on satisfactory proof of his title, and on his paying the necessary expenses incurred in its preservation, to be certified by the court.

It is clearly in the "interests of justice" that the issue of ownership be determined before this Court releases this property. Notably, none of the parties has submitted satisfactory proof of their title to the property. Accordingly, this Court directs the District Attorney's Office to maintain custody of the Persian Guard Relief until such time that ownership is determined. In order for that to be accomplished, a more appropriate forum, such as a court with civil jurisdiction, can determine all the relevant issues involving conflict of law and title. *People v. Museum of Modern Art (In re Grand Jury Subpoena Duces Tecum)*, 93 NY2d 729, 740 (1999).

Furthermore, there is a clear directive in CPL §690.55(1)(b) that property seized upon a search warrant shall:

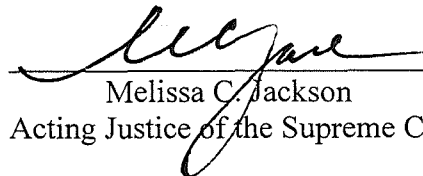
... be held in the custody of the person who applied for the warrant,

or of the police officer who executed it, or of the government or official agency or department by which either such public servant is employed, upon consideration that upon order of such court such property be returned thereto or delivered to another court.

WHEREFORE, it is the order of this Court that the Persian Guard Relief be held in the custody of the People upon condition that upon order of the Court, the property will be returned thereto or delivered to another court.

The foregoing is the decision and order of the Court.

Dated: New York, New York
December 18, 2017


Melissa C. Jackson
Acting Justice of the Supreme Court