UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **CV 07-2866-JFW (JTLx)** Date: April 2, 2015

Title: Marei von Saher *-v-* Norton Simon Museum of Art At Pasadena, et al.

PRESENT:
HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

Shannon Reilly	**None Present**
Courtroom Deputy	**Court Reporter**

ATTORNEYS PRESENT FOR PLAINTIFFS:	**ATTORNEYS PRESENT FOR DEFENDANTS:**
None	None

PROCEEDINGS (IN CHAMBERS): **ORDER DENYING DEFENDANTS' MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6) FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED [filed 3/2/2015; Docket No. 112]**

On March 2, 2015, Defendants Norton Simon Museum of Art at Pasadena and The Norton Simon Art Foundation (collectively, "Defendants" or "Norton Simon") filed a Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) for Failure to State a Claim Upon Which Relief Can Be Granted ("Motion to Dismiss"). On March 9, 2015, Plaintiff Marei von Saher ("Plaintiff") filed her Opposition. On March 16, 2015, Defendants filed a Reply. On March 25, 2015, the Court ordered the parties to file supplemental briefs. In accordance with the Court's order, on March 26, 2015, Defendants and Plaintiff filed their respective Supplemental Briefs. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court found that oral argument would not be of assistance to the Court and found the matter appropriate for submission on the papers without oral argument. The matter was, therefore, removed from the Court's March 30, 2015 hearing calendar and the parties were given advance notice. After considering the moving, opposing, reply, and supplemental papers, and the arguments therein, the Court rules as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND[1]

Plaintiff seeks to recover the diptych entitled "Adam and Eve," a pair of sixteenth century oil paintings on wood panels by Lucas Cranach the Elder (the "Cranachs"), which were taken by the

[1]The Court, as required, accepts the factual allegations in Plaintiff's First Amended Complaint as true, and construes them in the light most favorable to Plaintiff. The Court has elected to provide a brief and succinct statement of the relevant facts necessary to its ruling on this motion. The factual and procedural history has been exhaustively set forth in Plaintiff's First Amended Complaint, the Ninth Circuit's opinions, 592 F.3d 954 (2010) and 754 F.3d 712 (2014), and this Court's prior orders [Docket Nos. 47 and 88].

Nazis during World War II from Plaintiff's father-in-law, Jacques Goudstikker, in a forced sale. The Cranachs were acquired by Norton Simon from George Stroganoff-Scherbatoff in 1971 and Norton Simon has possessed them ever since. The Cranachs are currently on display at the Norton Simon Museum of Art in Pasadena, California.

A. The Paintings and Their History

In 1931, the Soviet government held an art auction in Berlin titled the "Stroganoff Collection," which featured artworks formerly in the collection of the Stroganoff family as well as other artworks that were never owned by the Stroganoff family. The Cranachs were among the auctioned works and Plaintiff claims that they were not part of the Stroganoff family's collection. Jacques Goudstikker ("Goudstikker"), a prominent Dutch art dealer and Plaintiff's predecessor-in-interest, purchased the Cranachs at the 1931 art auction.

Nazi Germany invaded and conquered the Netherlands in May 1940. Because he was Jewish, Goudstikker fled with his wife and son, Desi and Edo, to South America by ship. Although Goudstikker was forced to leave his art gallery and all of its assets behind, including more than 1,200 artworks, Goudstikker brought with him a black notebook (the "Blackbook") which contained descriptions of the artworks in the Goudstikker collection at that time. The Cranachs were among the artworks listed in the Blackbook. Unfortunately, Goudstikker died in a ship-board accident.

After the Goudstikkers escaped, Nazi Reichsmarschall Herman Göring, and his cohort, Aloïs Miedl, looted Goudstikker's assets through two forced "sales," in which they paid only a fraction of the assets' value. Miedl took Goudstikker's real property, the art dealership, and personal property, whereas Göring took most of the dealership's inventory of art, including the Cranachs.

In May 1945, the Allied Forces recovered Göring's collection of looted artworks, and sent them to the Munich Central Collection Point, where the works from the Goudstikker collection were identified, including the Cranachs. On July 29, 1945, at the Potsdam Conference, President Truman formally adopted a policy of "external restitution," which governed looted artwork found within the United States' zone of occupation. Under this policy, the United States determined that looted art should be returned to the countries of origin, not to individual owners, thereby allowing the newly liberated governments to restitute the art to individual owners. Pursuant to this policy of external restitution, in or about 1946, the Allied Forces formally returned the Goudstikker artworks, including the Cranachs, to the Netherlands to be returned to their lawful owners.

B. Desi Goudstikker's Post-War Restitution Claim

In 1946, Desi Goudstikker ("Desi") returned to the Netherlands intending to seek restitution of her family's property. However, Dutch restitution law required claimants who had received money from the Nazis in forced sales to return that money as a condition of recovering their property. In addition, the Dutch government took the position that the Göring and Miedl transactions were voluntary sales undertaken without coercion and that it had no obligation to restore the looted property to the Goudstikker family.

In light of the Dutch government's position, Desi decided not to file a restitution claim for the works taken in the Göring transaction. Instead, Desi filed a restitution claim that only sought the return of the property taken in the Miedl transaction in an attempt to recover at least her home and some of her personal possessions. Ultimately, in 1952, Desi agreed to settle her claim and she entered into a settlement agreement with the Dutch government, covering only the Miedl transaction. As part of that settlement, Desi "repurchased" the property taken by Miedl for an amount she could then afford. The agreement expressly stated that Desi was entering into the settlement agreement because of her frustration with the restitution process, her desire to avoid years of expensive litigation, and her dissatisfaction with the fact that the Dutch government would not compensate her for the extraordinary losses that the Goudstikker family suffered at the hands of the Nazis.

The settlement of her claim did not cover any of the works taken in the Göring transaction, such as the Cranachs. Although the Dutch government included provisions in a draft of the settlement agreement whereby Desi would have waived her claims with respect to the Göring transaction, Desi objected and those provisions were deleted from the final agreement. Because Desi believed, given the Dutch government's hostile position, that a restitution claim for the Göring-looted works would not be successful, she never filed a restitution claim for those works.

The Netherlands kept the Göring-looted works in the Dutch National Collection. In the 1950s, the Dutch government auctioned off at least 63 of the Goudstikker paintings recovered from Göring. Those paintings did not include the Cranachs.

C. The Transfers of the Cranachs

In May 1961, one of the Stroganoff heirs, George Stroganoff-Scherbatoff ("Stroganoff"), filed a claim with the Dutch government for the return of the Cranachs and other paintings, claiming that they belonged to his family and that the Dutch government had no right, title, or interest to, or in, them. On July 22, 1966, the Dutch government transferred the Cranachs and a third painting to Stroganoff in exchange for a monetary payment. The Dutch government did not notify the Goudstikker family that Stroganoff had made a claim to the Cranachs or that it intended to transfer the Cranachs to him. Norton Simon purchased the Cranachs from Stroganoff in 1971, and has possessed them ever since.

In 1996, Desi and her son Edo both died, leaving Plaintiff as the sole Goudstikker heir. At the time of their deaths, Desi and Edo believed that the Göring-looted works, including the Cranachs, were still in the possession of the Dutch government. On or about October 25, 2000, Plaintiff discovered, for the first time, that the Cranachs were on display at the Norton Simon Museum of Art in Pasadena, California.

D. History of this Litigation

On May 1, 2007, Plaintiff filed a Complaint against Defendants to recover the Cranachs, relying on the provisions of California Code of Civil Procedure § 354.3, which extended the statute of limitations for the recovery of Holocaust-era art until 2010. In a written decision, this Court held that California Code of Civil Procedure § 354.3 was "facially unconstitutional" under the foreign affairs doctrine, and that Plaintiff's claims were otherwise time-barred. In a published opinion, *Von*

Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954 (9th Cir. 2010), the Ninth Circuit affirmed this Court's decision that § 354.3 was preempted under the foreign affairs doctrine. However, the Ninth Circuit remanded the action to allow Plaintiff an opportunity to amend her Complaint "to allege the lack of reasonable notice to establish diligence" under California Code of Civil Procedure § 338, California's general three-year statute of limitations for the recovery of personal property.

On February 25, 2010, six weeks after the Ninth Circuit issued its 2010 *Von Saher* opinion, the California State Assembly's Committee on Judiciary introduced Assembly Bill 2765 ("AB 2765"),[2] which amended California Code of Civil Procedure § 338 for claims seeking the recovery of artwork from museums. California Code of Civil Procedure § 338, as amended by AB 2765:[3] (1) retroactively extends the statute of limitations for specific recovery of a work of fine art from three to six years if the action is brought against a museum, gallery, auctioneer or dealer; and (2) clarifies that such claims do not accrue until "actual discovery" rather than "constructive discovery" of both the identity and whereabouts of the work and information supporting a claim of ownership.

On November 8, 2011, Plaintiff filed a First Amended Complaint again seeking to recover the Cranachs from Defendants and alleging the following state-law claims for relief: (1) Replevin; (2) Conversion; (3) Damages under California Penal Code § 496; (4) Quiet title; and (5) Declaratory relief. In her First Amended Complaint, Plaintiff relied on the amended statute of limitations provisions in California Code of Civil Procedure § 338, and alleged that her claims did not accrue until she actually discovered that the Cranachs were on display at the Norton Simon Museum of Art in Pasadena, California on October 25, 2000.

On December 27, 2011, Defendants moved to dismiss the First Amended Complaint, in relevant part, on the grounds that Plaintiff's action was preempted because the claims and remedies she sought conflicted with the United States' express policy on Nazi-looted art as outlined in a Supreme Court amicus brief filed by the Solicitor General in this case. This Court agreed, and on March 22, 2012, granted Defendants' motion and dismissed Plaintiff's First Amended Complaint with prejudice. Although Defendants relied on several other grounds in their motion to dismiss, including the act of state doctrine and the timeliness of Plaintiff's action, the Court found it unnecessary to reach those issues.

On June 6, 2014, in a second published opinion, 754 F.3d 712 (9th Cir. 2014), the Ninth Circuit, in a 2-1 decision, reversed this Court's Order granting Defendants' motion to dismiss, and held that Plaintiff's claims and the remedies she seeks do not conflict with the United States' policy on the restitution of Nazi-looted art. The Ninth Circuit also addressed but did not rule on Defendants' argument relating to the "act of state" doctrine and remanded the action for further development of the record on this issue.

Because the Court concluded that Defendants were entitled to a ruling on the issues not resolved by the Court's March 22, 2012 Order granting Defendants' motion to dismiss, the Court

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[2]Although the bill was introduced by the Committee on Judiciary, the "idea" for the bill came from Randol Schoenberg, whose law firm represents Plaintiff in this action.

[3]2010 Cal. Stat. c. 691, § 2.

gave Defendants permission to file a new motion to dismiss. However, the Court advised Defendants that the Court had tentatively concluded that many of the unresolved issues were more appropriately resolved on a motion for summary judgment. Accordingly, on March 2, 2015, Defendants filed a carefully-tailored Motion to Dismiss, raising only a discrete issue. Specifically, Defendants argue that, based on the allegations of Plaintiff's First Amended Complaint, Plaintiff's action is time-barred under California Code of Civil Procedure § 338, as amended by AB 2765.

II. LEGAL STANDARD

A motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the claims asserted in the complaint. "A Rule 12(b)(6) dismissal is proper only where there is either a 'lack of a cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable legal theory.'" *Summit Technology, Inc. v. High-Line Medical Instruments Co., Inc.*, 922 F. Supp. 299, 304 (C.D. Cal. 1996) (quoting *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988)). However, "[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations and alterations omitted). "[F]actual allegations must be enough to raise a right to relief above the speculative level." *Id.*

In deciding a motion to dismiss, a court must accept as true the allegations of the complaint and must construe those allegations in the light most favorable to the nonmoving party. *See, e.g., Wyler Summit Partnership v. Turner Broadcasting System, Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). "However, a court need not accept as true unreasonable inferences, unwarranted deductions of fact, or conclusory legal allegations cast in the form of factual allegations." *Summit Technology*, 922 F. Supp. at 304 (citing *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981) *cert. denied*, 454 U.S. 1031 (1981)).

"Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n. 19 (9th Cir. 1990) (citations omitted). However, a court may consider material which is properly submitted as part of the complaint and matters which may be judicially noticed pursuant to Federal Rule of Evidence 201 without converting the motion to dismiss into a motion for summary judgment. *See, e.g., id.*; *Branch v. Tunnel*, 14 F.3d 449, 454 (9th Cir. 1994).

Where a motion to dismiss is granted, a district court must decide whether to grant leave to amend. Generally, the Ninth Circuit has a liberal policy favoring amendments and, thus, leave to amend should be freely granted. *See, e.g., DeSoto v. Yellow Freight System, Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). However, a Court does not need to grant leave to amend in cases where the Court determines that permitting a plaintiff to amend would be an exercise in futility. *See, e.g., Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) ("Denial of leave to amend is not an abuse of discretion where the pleadings before the court demonstrate that further amendment would be futile.").

III. DISCUSSION

California Code of Civil Procedure § 338, as amended by AB 2765, provides in relevant part:

> [A]n action for the specific recovery of a work of fine art brought against a museum, gallery, auctioneer, or dealer, in the case of an unlawful taking or theft, as described in Section 484 of the Penal Code, of a work of fine art, including a taking or theft by means of fraud or duress, shall be commenced within six years of the actual discovery by the claimant or his or her agent, of both of the following:
>
> (i) The identity and the whereabouts of the work of fine art. In the case where there is a possibility of misidentification of the object of fine art in question, the identity can be satisfied by the identification of facts sufficient to determine that the work of fine art is likely to be the work of fine art that was unlawfully taken or stolen.
>
> (ii) Information or facts that are sufficient to indicate that the claimant has a claim for a possessory interest in the work of fine art that was unlawfully taken or stolen.

Cal. Civ. Proc. Code § 338(c)(3)(A). This statute of limitations applies retroactively. *See* Cal. Civ. Proc. Code § 338(c)(3)(B) ("The provisions of this paragraph shall apply to all pending and future actions commenced on or before December 31, 2017, including any actions dismissed based on the expiration of statutes of limitation in effect prior to the date of enactment of this statute if the judgment in that action is not yet final or if the time for filing an appeal from a decision on that action has not expired, provided that the action concerns a work of fine art that was taken within 100 years prior to the date of enactment of this statute.").

Defendants argue that Plaintiff's claims are time-barred under California Code of Civil Procedure § 338(c)(3), because Plaintiff's predecessor-in-interest, Desi, actually discovered that the Cranachs were in the possession of the Dutch government some time between 1946 and 1952. Desi deliberately chose not to bring a claim for recovery at that time, and thus, Defendants argue that the applicable statute of limitations expired some time in the 1950s -- six years after Desi's actual discovery of all the relevant facts. For the reasons discussed *infra*, the Court concludes that, based on the allegations of Plaintiff's First Amended Complaint, Plaintiff's claims are timely under California Code of Civil Procedure § 338(c)(3).

A. Plaintiff stands in the shoes of her predecessor-in interest, Desi.

As an initial matter, the Court must address Plaintiff's specious argument that Desi's actual discovery of the identity and whereabouts of the Cranachs is irrelevant under California Code of Civil Procedure § 338(c)(3), because she, not Desi, is the actual or current "claimant." In other words, Plaintiff argues that the statute of limitations resets whenever stale or expired claims pass to a new heir. Plaintiff's proposed construction of California Code of Civil Procedure § 338(c)(3) is unsupported by the text of the statute, and is contrary to the well-accepted principle that an heir stands in the shoes of his or her predecessor-in-interest.

It is black-letter law that an heir stands in the shoes of his or her predecessor-in-interest with respect to the statute of limitations. *See, e.g., Page v. Page*, 143 Cal. 602, 604 (1904), *overruled on other grounds by Davenport v. Davenport Found.*, 36 Cal. 2d 67, 76 (1950) ("[P]laintiff, as his successor in interest, stands in his shoes, and is bound by the same limitation."); 54 C.J.S. Limitations of Actions § 42 (2012) ("A statute of limitations affects heirs who attempt to enforce causes of action belonging to their ancestors to the same extent as it would have bound the ancestors."); 51 Am. Jur. 2d Limitations of Actions § 62 (2012) ("As a general rule, the statute of limitations begins to run against an heir to enforce rights and causes of action belonging to his ancestor at the same time that it begins to run against the ancestor."); Cal. Civ. Proc. Code § 377.20 ("Except as otherwise provided by statute, a cause of action for or against a person is not lost by reason of the person's death, but survives subject to the applicable limitations period."); Cal. Civ. Proc. Code § 366.1 ("If a person entitled to bring an action dies before the expiration of the applicable limitations period, and the cause of action survives, an action may be commenced before the expiration of the later of the following times: (a) Six months after the person's death. (b) The limitations period that would have been applicable if the person had not died.").

Against this backdrop, the California Legislature enacted California Code of Civil Procedure § 338(c)(3). "[T]he Legislature is deemed to be aware of existing laws and judicial decisions in effect at the time legislation is enacted and to have enacted and amended statutes in the light of such decisions . . . .". *People v. Overstreet*, 42 Cal. 3d 891, 897 (1986) (quotations and citations omitted). Accordingly, unless the plain language of the statute clearly indicates otherwise, the Court will construe California Code of Civil Procedure § 338(c)(3) in a manner consistent with established law regarding inherited claims.

Plaintiff argues the California Legislature's use of the term "claimant," rather than "aggrieved party," in California Code of Civil Procedure § 338(c)(3) somehow indicates that the California Legislature intended that the statute of limitations commence six years after the *current* claimant's actual discovery, without regard to any predecessor-in-interest's actual discovery, of the identity and whereabouts of the work of fine art.[4] However, as Defendants correctly point out, the word "claimant" is no more descriptive than the word "aggrieved party." In order to interpret the statute in the manner which Plaintiff suggests, the Court would actually have to rewrite the statute and insert the additional word "current" before the word "claimant." Had the Legislature intended to alter well-settled law, the Legislature could have, and would have, used more precise language in order to accomplish that purpose.[5] Moreover, if the Court were to adopt Plaintiff's strained interpretation, it would lead to absurd results. An expired claim would be revived any time a claimant died and passed that claim to an unknowledgable heir or the claimant assigned that claim to an ignorant third party. Such a result would eviscerate the purpose of a statute of limitations.

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[4]The California Legislature used the term "aggrieved party" in California Code of Civil Procedure § 338(c)(2), (d), (e), and (f).

[5]Moreover, there is absolutely no indication in the legislative history for AB 2765 that the Legislature used the term claimant in an effort to alter well-established law regarding inherited claims.

Accordingly, the Court concludes that Plaintiff stands in the shoes of her predecessor-in-interest, Desi, for the purposes of the statute of limitations in California Code of Civil Procedure § 338(c)(3).

B. The six-year limitations period under California Code of Civil Procedure § 338(c)(3) did not begin to run until Desi (or her heirs) actually discovered that the Cranachs were in Defendants' possession.

In order to determine whether Plaintiff's action is timely, the Court must next determine the most difficult issue presented by Defendants' Motion to Dismiss – when did the six-year limitations period under California Code of Civil Procedure § 338(c)(3) begin to run? Defendants claim that the six-year limitations period began to run when Desi actually discovered that the Cranachs were in the Dutch government's possession some time between 1946 and 1952, whereas Plaintiff claims that the six-year limitations period did not begin to run until she actually discovered that the Cranachs were in Defendants' possession on October 25, 2000.

In resolving this issue, the Court must analyze California law applicable to stolen personal property. Under California law, each time stolen property is transferred to a new possessor, a new tort or act of conversion has occurred. As the California Supreme Court stated in *Harpending v. Meyer*, 55 Cal. 555 (1880), favorably citing the holding of *Wells v. Ragland*, 31 Tenn. 501 (1852):

> [I]t is distinctly held that where the possession of property is obtained from one who had no right to transfer it, a right of action by the owner against the transferee accrues as soon as the latter acquires possession of it; that the bare taking of possession under such circumstances constitutes a new conversion on the part of the person taking it, and that from the time of the commission of that act, the statute will commence running.

Id. at 560; *see also Culp v. Signal Van & Storage*, 142 Cal. App. 2d Supp. 859, 861 (1956) ("One who, though honestly and in good faith, purchases personal property from one having no title thereto or right to sell the same is guilty of conversion."). Accordingly, California courts have held that the statute of limitations in an action seeking to recover stolen property begins to run anew against each subsequent purchaser. *See, e.g., Soc'y of California Pioneers v. Baker*, 43 Cal. App. 4th 774, 782-83 (1996) (holding that the statute of limitations in actions concerning stolen property began to run anew against a subsequent purchaser); *San Francisco Credit Clearing House v. Wells*, 196 Cal. 701, 707 (1925) (holding that a former version of California Code of Civil Procedure § 338, which provided for a three-year statute of limitations, allowed an owner of personal property to commence an action against a wrongful converter at any time within three years from the day the wrongdoer obtained possession of the property). The new or subsequent possessor commits a new act of conversion, and a new statute of limitations begins to run, even if the new possessor purchases the property honestly and in good faith. *See, e.g., First Nat'l Bank v. Thompson*, 60 Cal. App. 2d 79, 82 (1943) ("The facts prove a conversion by respondents though innocent purchasers of the property.").

However, it is an open question in California whether a subsequent possessor who acquires stolen property after the statute of limitations has already expired is subject to a renewed

limitations period.[6] *See Soc'y of California Pioneers v. Baker*, 43 Cal. App. 4th 774, 783 n.4 (1996) ("[W]e need not decide whether a purchaser who acquired the item after the statute expired would be subject to renewal of the limitations period."); *Naftzger v. American Numismatic Soc'y*, 42 Cal. App. 4th 421, 433 (1996) ("We do not decide, for example, if an owner who fails to file a lawsuit under the prior version of section 338, subdivision (c) within three years of discovering the property's whereabouts will be time barred if the thief or subsequent possessor later moves the stolen property to an unknown location, sells, or continues to withhold the stolen property.").

In order to reach its conclusion, the Court considers the well-established rationale for treating each transfer of stolen property as a new act of conversion, as discussed in cases dating back to 1800s. As the Supreme Court of Oregon aptly explained in *Velzian v. Lewis*, 15 Or. 539 (1888):

> At first blush, it may seem strange that one who takes possession of goods or chattels under a contract of purchase from one who had no right to sell should be treated as a wrong-doer, but the explanation of the principle lies in the common-law maxim caveat emptor, which applies to the transfer of personal property. It is the buyer's own fault if he is so negligent as not to ascertain the right of the vendor to sell, and he cannot successfully invoke his bona fides to protect himself from liability to the true owner, who can only be divested of his rights or title to his property by his own act, or by the operation of law. Every person is bound at his peril to ascertain in whom the real title to property is vested, and, however much diligence he may exert to that end, he must abide by the consequences of any mistake. Nothing can be plainer than that no one can sell a right when he himself has none to sell, and that every such wrongful sale, by whomsoever made, whether by thief or bailee, acts in derogation of the rights of the owner, and in hostility to his authority, and consequently can neither acquire themselves, nor confer on the purchaser any right or title of such owner.

Id. at 541-42 (internal citations omitted).

In other words, "a thief cannot convey valid title to an innocent purchaser of stolen property" and "[s]tolen property remains stolen property, no matter how many years have transpired from the date of the theft." *Naftzger v. American Numismatic Soc'y*, 42 Cal. App. 4th 421, 432 (1996). As the California Supreme Court stated: "We are unable to perceive . . . that a person can ever be considered a *bona fide* purchaser of goods from one who has no right to sell, in a case where the rule of *caveat emptor* applies. The law imputes notice to him. Under that rule he is not only put on inquiry, but he is conclusively presumed to have ascertained the true ownership of the property before purchasing it." *Harpending v. Meyer*, 55 Cal. 555, 560 (1880). Accordingly, the subsequent purchaser "has no lawful claim to this property as against the rightful owner." *Strasberg v. Odyssey Group, Inc.*, 51 Cal. App. 4th 906, 921 (1996).

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[6]Although Plaintiff attempts to distance herself from the allegations of her First Amended Complaint, it appears that Desi actually discovered that the Cranachs were in the possession of the Dutch government some time between 1946 and 1952. If Plaintiff's claims had accrued at that time, the statute of limitations would have expired in 1958 at the very latest.

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Consistent with this rationale, the fact that the statute of limitations may have expired as to an owner's claim against the thief (or prior possessor) is irrelevant. Expiration of the statute of limitations merely extinguishes the owner's right to seek a remedy from the thief or possessor; it does not thereby divest the owner of title or convey title to the thief or possessor. *See Western Coal and Mining Co. v. Jones*, 27 Cal. 2d 819, 828 (1946) ("The general rule is that the running of the statutory period does not extinguish the cause of action, but merely bars the remedy."); *In re Marriage of Klug*, 130 Cal. App. 4th 1389, 1399 (2005) ("Statutes of limitation are legislative enactments that limit the time period in which a plaintiff can bring his or her cause of action in court. They do not alter the legal obligation and injury underlying plaintiff's claim."). Accordingly, because the thief cannot convey valid title no matter how much time has passed, the subsequent possessor's acquisition of stolen property constitutes a new conversion.[7] Because a new tort has occurred, the owner is entitled to a new limitations period.

Defendants argue that the plain language of California Code of Civil Procedure § 338(c)(3) is inconsistent with a rule that "resets" or "revives" the statute of limitations each time stolen property is transferred. Specifically, Defendants claim that the plain language of the statute is inconsistent with such a rule because it provides that a looted art claim "*shall be commenced* within six years of the actual discovery by the claimant" of key information about the artwork. However, Defendants fail to appreciate the crucial distinction between the statute of limitations and the law of torts. *Cf. O'Keefe v. Snyder*, 83 N.J. 478, 510 (1980) (Handler, J. dissenting) ("The New York rule of subsequent conversions, rejected by the majority, is not a 'statute of limitations,' but rather is a substantive principle of the law of torts."). Because each transfer of stolen property constitutes a new conversion which creates a new cause of action, the statute of limitations is not "reset" or "revived," but begins anew as to each subsequent possessor.[8]

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[7]California law does not appear to extend the doctrine of adverse possession to personal property. *See San Francisco Credit Clearing House v. C.B. Wells*, 196 Cal. 701, 707-08 (1925). However, this Order does not address, and therefore does not preclude, Defendants from arguing that they have acquired title through adverse possession under California law or that Stroganoff acquired valid title under Dutch law. *See* Joint Rule 26(f) Report [Docket No. 102] at pp. 9-10.

[8]The Court rejects Defendants' remaining arguments for the same reason, as they rely on a similar misconception of California law. Under California law, each transfer of stolen property constitutes a new act of conversion or new tort which triggers a new statute of limitations. *See, e.g., Harpending v. Meyer*, 55 Cal. 555, 561 (1880) ("We shall hold . . . that the defendants having acquired the possession of plaintiff's property by and through the tortious acts of Baux, and not otherwise, such possession was tortious from its commencement, and constituted a conversion of plaintiff's property, for which she might at any time within three years thereafter have maintained an action . . . ."). Contrary to Defendants' argument, such a rule is not a common-law accrual rule that acts as an alternative to the discovery rule, but rather it is based on the substantive law of torts. Although Defendants heavily rely on *O'Keefe v. Snyder*, 83 N.J. 478 (1980), New Jersey law is directly contrary to the law in California and thus inapposite. *Compare O'Keefe*, 83 N.J. 478, 503 (1980) (rejecting the treatment of subsequent transfers of chattel as separate acts of conversion and allowing "tacking") *with San Francisco Credit Clearing House v. Wells*, 196 Cal. 701, 708 (1925) (treating subsequent transfers of chattel as separate acts of conversion and rejecting "tacking").

Accordingly, based on the allegations of the First Amended Complaint, the Court concludes that Plaintiff's claims against Defendants are timely, even if the statute of limitations has expired as to Plaintiff's claims against the Dutch government. Defendants' purchase of the Cranachs from Stroganoff in 1971, even if in good faith, constituted a new act of conversion under California law, and the six-year limitations period did not commence until Desi (or her heirs) actually discovered that the Cranachs were in Defendants' possession. According to Plaintiff's First Amended Complaint, Desi and Edo never discovered that the Cranachs were in Defendants' possession before the time of their deaths, and Plaintiff, as the sole remaining heir, did not actually discover that the Cranachs were on display at the Norton Simon Museum of Art in Pasadena, California until October 25, 2000. Although Plaintiff did not file her initial Complaint in this action until May 1, 2007, in light of the tolling agreement entered into the parties as of September 26, 2003, Plaintiff's action is timely.

Finally, the Court finds that there is nothing unfair about affording Plaintiff an opportunity to pursue the merits of her claims against Norton Simon. As the California Legislature recognized by enacting AB 2765, museums are sophisticated entities that are well-equipped to trace the provenance of the fine art that they purchase. After carefully weighing the equities, the Legislature determined that the importance of allowing victims of stolen art an opportunity to pursue their claims supersedes the hardship faced by museums and other sophisticated entities in defending against potentially stale ones. Plaintiff, whose family suffered terrible atrocities at the hands of the Nazis, will now have an opportunity to pursue the merits of her claims, and Norton Simon will have an opportunity to pursue any and all defenses to those claims.

IV. CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss is **DENIED**.

IT IS SO ORDERED.

Initials of Deputy Clerk sr