

Void Versus Voidable Contracts: The Subtle Distinction That Can Affect Good-Faith Purchasers' Title to Goods

By Melissa Yang

The subtle distinction between a void and a voidable contract for the sale of goods has perplexed practitioners over the years. Understanding the difference becomes significant for good-faith purchasers who later buy those goods and find themselves faced with a challenge as to the validity of title. A review of New York case law indicates that the issue of whether contracts for the sale of goods are void or voidable is most often litigated when duress, fraud, and theft are involved. Given that the New York Pattern Jury Instructions currently lack instructions on this issue, and in response to the confusion that has arisen over the years regarding the difference between void and voidable contracts, this article analyzes how duress, fraud, and theft can affect contracts for the sale of goods and, in turn, good-faith purchasers' title to those goods.

I. The Difference Between Void and Voidable Title

Contracts for the sale of goods involving duress, fraud, and theft may be either void or voidable. On one hand, "[a] void contract is no contract at all; it binds no one and is a mere nullity."¹ On the other hand, a contract is "voidable when one of the parties has the power either to avoid or to validate the agreement."²

For good-faith purchasers of those goods, the distinction between void and voidable contracts is important; it determines whether the good-faith purchaser received valid title to those goods. Good-faith purchasers who buy goods from a party to a *void* contract have no title and must return the goods to the rightful owner upon demand.³ By contrast, good-faith purchasers who buy goods from a party to a *voidable* contract will receive good title to those goods.⁴

The following summary analyzes both case law and the New York Uniform Commercial Code (UCC), and discusses how the existence of duress, fraud, and theft in a contract for the sale of goods can affect a subsequent good-faith purchaser's title to those goods.

A. Duress

Generally, duress occurs when one exerts unlawful force upon a party to induce that party's assent to a contract for the sale of goods.⁵ The unlawful force is usually a threat, communicated through words or actions, either directly or by inference.⁶ To constitute duress, the basis for the party's assent to the contract must be the improper threat.⁷ An improper threat may take the form of either physical or economic compulsion.

1. Physical Duress

When the improper threat takes the form of physical compulsion, the resulting contract is void.⁸ A good-faith purchaser does not take valid title to goods that originated from a contract which a party was physically compelled to execute.⁹

2. Economic Duress

By contrast, a party's assent to a contract through economic compulsion may be voidable under certain circumstances.¹⁰ If the contract for the sale of goods is considered voidable, then a good-faith purchaser may take good title to those goods.¹¹

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Economic compulsion generally occurs when a party refuses to engage in an action, even though he or she is under a legal obligation to act, until the other party agrees to execute a contract or, if a contract already exists, to less favorable terms.¹² A contract is voidable as a result of economic duress only if the following three elements are established: (1) the victim was precluded from exercising free will and agreed to execute the contract as a result of an improper threat; (2) the victim could not obtain the goods from another source or supply; and (3) the victim could not be made whole through ordinary breach-of-contract remedies.¹³ All three elements were present in *Austin Instrument, Inc. v. Loral Corp.*—the seminal case in New York on economic duress.

In *Austin Instrument, Inc.*, plaintiff had a contract to deliver radar sets to the U.S. Navy and sub-contracted with defendant to purchase gear components for the radar sets.¹⁴ Defendant later refused to deliver the gear components unless plaintiff agreed to pay a higher price and award a second subcontract to defendant.¹⁵ The New York Court of Appeals held that plaintiff was subject to economic duress because (1) defendant's refusal to deliver the gear components was a wrongful threat, (2) plaintiff was unable to purchase substitute components from other vendors with the proper specifications and in time to meet its deadline with the U.S. Navy, and (3) plaintiff would be

liable for liquidated damages in its contract with the U.S. Navy for failing to timely deliver gear components, so ordinary breach-of-contract damages were inadequate.¹⁶

To provide further illustration, each element of economic duress is discussed in turn.

a. Economic Duress #1—A Wrongful Threat

A wrongful threat occurs when a party refuses to act, even though he or she is legally required to act, to induce the other party into agreeing to execute a contract, or, if a contract already exists, to agree to less favorable terms.¹⁷ Duress does not exist in the absence of a wrongful act or threat that precluded a party from exercising his free will.¹⁸ Courts have found that no wrongful act or threat has occurred where a party is merely exercising his legal right, e.g., not providing the goods until the other party has provided payment.¹⁹

b. Economic Duress #2—No Alternative Source of Supply

“A threat, even if improper, does not amount to duress if the victim has a reasonable alternative to succumbing and fails to take advantage of it.”²⁰ For example, in cases where a party wrongfully withholds goods until the other party has agreed to an additional demand, courts have held that there is no economic duress if the other party could have obtained those goods from an alternative source.²¹

c. Economic Duress #3—Contract Remedy Inadequate

Courts have held that recovery based upon economic duress is precluded where breach-of-contract damages are sufficient to make the party whole.²² Indeed, if plaintiff could recover contract remedies, then plaintiff is precluded from recovering under quasi-contract or tort theories.²³

d. Economic Duress Involving a Contract Between the Party Exerting Duress and the Victim

Where each of the foregoing elements of economic duress are met, the contract between the party who exerted the duress and the victim of the duress is voidable at the victim’s option.²⁴ The victim of the duress could choose to ratify the contract by simply acquiescing to its terms.²⁵ If the victim ratified the contract, a good-faith purchaser who later buys those goods would receive good title.²⁶

e. Economic Duress Involving a Contract Between the Victim and an Innocent Party

In cases where a third party exerts economic duress to force the victim to enter into a contract with another party, an additional question arises as to whether the contract is voidable at the victim’s option.²⁷ If the other party to the contract is aware of the third party’s duress, then the contract is voidable at the victim’s option.²⁸

However, if the other party does not have knowledge of the third party’s duress, acts in good-faith, and provides value or changes his position materially in reliance on the transaction, then the contract between the other party and the victim is valid and *not* voidable at the victim’s option.²⁹ Given that the contract is valid, it follows that a subsequent good-faith purchaser for value will receive good title.

B. Fraud

Pursuant to UCC § 2-403, a good faith purchaser or a buyer in the ordinary course of business can receive valid title to goods under certain circumstances. The relevant language of UCC § 2-403 is as follows:

Power to Transfer; Good Faith Purchase of Goods; “Entrusting”.

(1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though (a) the transferor was deceived as to the identity of the purchaser, or (b) the delivery was in exchange for a check which is later dishonored, or (c) it was agreed that the transaction was to be a “cash sale,” or (d) the delivery was procured through fraud punishable as larcenous under the criminal law. (2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

Whereas UCC § 2-403(1) applies in contracts for the sale of goods where the buyer makes false and fraudulent misrepresentations, e.g. providing a bad check to the other party, to induce the seller to make the sale,³⁰ UCC § 2-403(2) applies in a bailor/bailee situation, where the seller entrusts the goods to a “merchant who deals in goods of that kind” and the merchant subsequently sells those goods to “a buyer in ordinary course of business.”³¹ Each provision is discussed in turn.

1. UCC § 2-403(1)

UCC § 2-403(1) provides that contracts for the sale of goods procured by fraud are voidable at the option of the party who was defrauded.³² However, the defrauded party must cancel the contract and seek the return of the goods before they have been sold to a good-faith purchaser for value.³³ If the goods were sold to a subsequent

good-faith purchaser, then under UCC § 2-403(1) the good-faith purchaser has valid title to those goods.

Courts have reasoned that the seller's title to the goods passes to the other party upon the unconditional delivery of the goods, even though the contract was induced by fraud.³⁴ The defrauded party, however, has the option at his or her election to rescind the entire contract and demand the return of the goods, unless those goods were sold to a good-faith purchaser for value.³⁵ If the defrauded party still has the opportunity to rescind the contract, the parties would be restored back to their original positions as if the contract had never occurred.³⁶ Here, the defrauded party must rescind the entire contract; he or she cannot affirm the contract in part and rescind in part.³⁷

If the defrauded party chooses to rescind the contract, he or she must not take any course of action that would be inconsistent with the disaffirmance of the transaction, otherwise it could be construed that he or she waived rescission.³⁸ If the party that perpetrated the fraud refuses to return the goods to the defrauded party, then the defrauded party may bring an action for rescission, or defend an action brought against him or her and raise fraud as a defense.³⁹

If the defrauded party chooses to affirm the contract, then he or she could bring an action against the other party for damages, which is measured by "the difference between the value of the subject-matter of the contract as represented and its actual value."⁴⁰ The defrauded party can reclaim the goods sold against anyone except a good-faith purchaser for value who did not have notice of the fraud.⁴¹

2. UCC § 2-403(2)

UCC § 2-403(2) provides that a "buyer in [the] ordinary course of business" may receive valid title to goods when the goods are purchased from "a merchant who deals in goods of that kind." UCC § 2-104(1) defines merchant as,

a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

Courts in New York have held that both the original owner and the buyer in the ordinary course must be aware that the merchant deals in goods of that kind in order for the protections of UCC § 2-403(2) to apply.⁴² In *Porter v. Wentz*, for example, the defendant was not entitled to the protections of UCC § 2-403(2), where he

purchased a painting from a person who was not an art dealer but rather a delicatessen employee.⁴³

A "buyer in [the] ordinary course" is a type of a good-faith purchaser—one that purchases goods from a person whose business it is to deal in goods of that kind.⁴⁴ As defined under UCC § 1-201(9), a "buyer in [the] ordinary course of business" is

a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices.

Courts have held that buyers are *not* entitled to protection under UCC § 2-403(2) if there are "warning signs" or "red flags" surrounding the transaction and the buyer moves forward with the sale without conducting further due diligence.⁴⁵ "Examples of such warning signs include a purchase price that is obviously below market, a sales procedure that differed from previous transactions between the two parties, or any other 'reason to doubt the seller's ownership of the [goods].'"⁴⁶ Moreover, in cases where the buyer is a merchant, courts have imposed a higher standard of good-faith, defined as "honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade[.]"⁴⁷ and have required that the buyer take additional steps to verify the true owner of the goods to receive protection under UCC § 2-403(2).⁴⁸

C. Theft

As opposed to contracts for the sale of goods procured by economic duress and fraud, contracts for the sale of stolen goods are void.⁴⁹ Whereas fraud, economic duress, and theft all involve a wrongful act to procure goods, theft differs because there is no contract and no delivery of the goods with intent to pass title and complete the sale.⁵⁰

At common law, a thief acquires no title to stolen goods and therefore passes no title to a good-faith purchaser of those goods.⁵¹ Because no title can pass, a good-faith purchaser must, upon demand, return the goods purchased to the rightful owner.⁵² If the good-faith purchaser refuses, then the rightful owner may initiate a replevin action seeking the return of his or her goods.⁵³

New York courts view the rightful owner's demand and the good-faith purchaser's refusal to return the goods as a substantive element for a replevin cause of action, because "[the] good-faith purchaser of stolen property commits no wrong, as a matter of substantive law, until

he or she has first been advised of the plaintiff's claim to possession and given an opportunity to return the chattel."⁵⁴ To prevail on a replevin action, the rightful owner must establish that he or she has "legal title or a superior right of possession" over the good-faith purchaser.⁵⁵ Here, the rightful owner is only required to prove good title against the good-faith purchaser; the owner need not prove superior title against the whole world.⁵⁶ In response, the good-faith purchaser may defend his or her title to the goods by, *inter alia*, establishing that the goods were not stolen, or asserting statute of limitations or laches as affirmative defenses.⁵⁷

II. Conclusion

In cases where good-faith purchasers' title to goods are in question, it is important for practitioners to understand and identify whether those goods originated from a void or a voidable contract. The difference is dispositive as to whether that good-faith purchaser has a claim of right to the goods at issue. Because the distinction between void versus voidable contracts is subtle, the New York Pattern Jury Instructions should adopt instructions for good-faith purchasers of goods that emanated from contracts involving duress, fraud, and theft.

Endnotes

1. 22 N.Y. JUR. 2d *Contracts* §8 (2014).
2. *Id.*
3. See RESTATEMENT (SECOND) OF CONTRACTS §174 cmt. b (1981).
4. *See id.*
5. See RESTATEMENT (SECOND) OF CONTRACTS §§ 174, 175 (1981).
6. See *Welford Realty, Inc. v. Brause*, 93 A.D.2d 758, 759, 461 N.Y.S.2d 317, 318 (1st Dep't 1983) ("For duress to void what was done, it must have involved a wrongful act or threat precluding the exercise of free will." (internal quotation marks omitted)); see also RESTATEMENT (SECOND) OF CONTRACTS § 175 cmt. a (1981).
7. Restatement (Second) of Contracts § 175 (1981).
8. See *id.*; RESTATEMENT (SECOND) OF CONTRACTS § 174 (1981); see also *Norton Operating Servs., Inc. v. Perry*, 175 A.D.2d 916, 917, 573 N.Y.S.2d 754, 755 (2d Dep't 1991) (stating that the allegations of physical coercion would render the promissory notes unenforceable).
9. RESTATEMENT (SECOND) OF CONTRACTS § 174 cmt. b (1981) ("[A] good faith purchaser may acquire good title to property if he takes it from one who obtained voidable title by duress but not if he takes it from one who obtained 'void title' by duress.").
10. See RESTATEMENT (SECOND) OF CONTRACTS § 175 (1981).
11. See RESTATEMENT (SECOND) OF CONTRACTS § 174 cmt. b (1981).
12. See *Austin Instrument, Inc. v. Loral Corp.*, 29 N.Y.2d 124, 130-31, 324 N.Y.S.2d 22 (1971); see also *805 Third Ave. Co. v. M.W. Realty Assocs.*, 58 N.Y.2d 447, 451, 461 N.Y.S.2d 778, 780 (1983).
13. *Austin Instrument, Inc.*, 29 N.Y.2d. at 130-31.
14. *Id.* at 128-29.
15. *Id.* at 128.
16. *Id.* at 131-33.
17. *Id.* at 130-31.
18. See *Stewart M. Muller Constr. Co. v. N.Y. Tel. Co.*, 40 N.Y.2d 955, 956, 390 N.Y.S. 817, 817 (1976) ("A contract may be voided on the ground of economic duress where the complaining party was compelled to agree to its terms by means of a wrongful threat which precluded the exercise of its free will."); *Welford Realty, Inc.*, 93 A.D.2d at 759 (dismissing complaint because plaintiff's claims of economic duress resulted from tough negotiations in arm's-length dealing, rather than from wrongful acts or threats).
19. See *805 Third Ave., Co.*, 58 N.Y.2d at 453 (holding defendants' refusal to turn over legal documents did not constitute economic duress because they were not obligated to do so under the contract until plaintiffs provided payment paper which they had not done); *Stewart M. Muller Constr. Co.*, 40 N.Y.2d at 956 (dismissing plaintiff's declaratory judgment action, which sought to void a settlement agreement, holding that claimed duress was merely the proper exercise of rights under termination clause in underlying agreement); *Madey v. Carman*, 51 A.D.3d 985, 987, 858 N.Y.S.2d 784, 786 (2d Dep't 2008) (holding plaintiffs were not entitled to rescind contract on the grounds of economic duress because defendants were exercising a legal right).
20. RESTATEMENT (SECOND) OF CONTRACTS § 175 cmt. b (1981).
21. Compare *Walbern Press, Inc v. C.V. Commc'ns, Inc.*, 212 A.D.2d 460, 461, 622 N.Y.S.2d 951, 952 (1st Dep't 1995) (holding buyer has no claim for economic duress where buyer could have obtained goods through another source); with *Austin Instrument, Inc.*, 29 N.Y.2d at 132 (finding economic duress existed where government contractor could not have obtained suitable substitute gear components in time to make its delivery to the Navy).
22. Compare *Trafigura Beheer B.V. (Amsterdam) v. South Caribbean Trading Ltd.*, 7 Misc. 3d 1010(A), 801 N.Y.S.2d 243, 2004 N.Y. Misc. LEXIS 3060, at *5 (Sup. Ct., N.Y. Co. 2004) (dismissing plaintiff's economic duress claim where plaintiff had an adequate remedy for breach of contract), with *Austin Instrument, Inc.*, 29 N.Y.2d at 131-33 (allowing recovery based on economic duress where breach-of-contract damages were inadequate given government contractor was subject to liquidated penalties for failing to timely deliver gear components).
23. See *id.*
24. RESTATEMENT (SECOND) OF CONTRACTS § 175(1) (1981).
25. See *Benjamin Goldstein Prods., Ltd. v. Fish*, 198 A.D.2d 137, 138, 603 N.Y.S.2d 849, 851 (1st Dep't 1993) (finding plaintiffs ratified settlement agreement by accepting payments for more than a year and therefore could not maintain economic duress claim based on that agreement).
26. RESTATEMENT (SECOND) OF CONTRACTS § 174 cmt. b (1981).
27. See RESTATEMENT (SECOND) OF CONTRACTS § 175(2) (1981).
28. *Id.*; see *Mason v. Ariz. Educ. Loan Mktg. Assistance Corp.*, 300 B.R. 160, 165, 167-68 (Bankr. D. Conn. 2003) (allowing plaintiff to void consolidated debt loan because lender either knew third-party callers threatened plaintiff with incarceration if plaintiff did not agree to the consolidated loan, or ratified the third-party callers' conduct).
29. See RESTATEMENT (SECOND) OF CONTRACTS § 175(2) (1981); see, e.g., RESTATEMENT (SECOND) OF CONTRACTS § 175 cmt. e, ill. 10 (1981) ("A, who is not C's agent, induces B by duress to contract with C to sell land to C. C, in good faith, promises B to pay the agreed price. The contract is not voidable by B."); see also *Aylaian v. Town of Huntington*, 459 Fed. Appx. 25, 27 (2d Cir. 2012) (summary order) (finding plaintiff cannot void resignation agreement and waiver of liability on the basis of third-party duress, because defendant had no knowledge of duress and paid value for agreement and waiver).
30. See, e.g., *Davis v. Gifford*, 182 A.D. 99, 100-01, 169 N.Y.S. 492 (1st Dep't 1918) (stating that defendant had power to rescind contract to purchase shares of stock, if exercised promptly, as a result of plaintiff's false and fraudulent misrepresentations); *Sheridan*

- Suzuki, Inc. v. Caruso Auto Sales, Inc.*, 110 Misc. 2d 823, 824-25, 442 N.Y.S.2d 957, 959 (Sup. Ct., Erie Co. 1981) (motorcycle purchased with dishonored check resulted in voidable title).
31. See, e.g., *Peters v. Sotheby's Inc.*, 34 A.D.3d 29, 821 N.Y.S.2d 61 (1st Dep't 2006) (decendent's estate initiated replevin action to recover painting that was left in the care of decendent's brother-in-law who subsequently sold it).
 32. See *Davis*, 182 A.D. at 101 ("A contract induced by false and fraudulent representations is not void, but voidable."); *Sheridan Suzuki, Inc.*, 110 Misc. 2d at 824 ("The law is clear that a person receiving goods incident to a transaction involving a dishonored check and a fraud receives only voidable title, at best.").
 33. See UCC § 2-403(1).
 34. See *Stevens v. Hyde*, 32 Barb. 171, 180 (Sup. Ct., N.Y. Co. 1860).
 35. *Id.* at 179 (stating that the contract is voidable at the defrauded party's election, the contract is enforceable against the party who committed the fraud); UCC § 2-403(1).
 36. *Stevens*, 32 Barb. at 181 (stating that the seller's title in the goods would be restored and the consideration provided in exchange for the goods would be returned to the other party).
 37. *Id.* at 182.
 38. *Davis*, 182 A.D. at 101.
 39. *Id.*
 40. *Id.*
 41. UCC § 2-403(1); *Stevens*, 32 Barb. at 177 (noting that the seller who was defrauded should disaffirm the contract at the earliest practicable moment).
 42. *Dorothy G. Bender Found., Inc. v. Carroll*, 40 Misc. 3d 1231(A), 975 N.Y.S.2d 708, 2013 N.Y. Misc. LEXIS 3711, at *9-10 (Sup. Ct., N.Y. Co. 2013).
 43. *Porter v. Wertz*, 68 A.D.2d 141, 145-46, 416 N.Y.S.2d 254, 257 (1st Dep't 1979).
 44. *Atlas Auto Rental Corp. v. Weisberg*, 54 Misc. 2d 168, 171, 281 N.Y.S.2d 400, 404-05 (Civ. Ct., N.Y. Co. 1967) (stating that "a buyer in the ordinary course of business" is more restrictive than a "good faith purchaser for value").
 45. *Dorothy G. Bender Found, Inc.*, 2013 N.Y. Misc. LEXIS 3711, at *19.
 46. *Id.* (quoting *Joseph P. Carroll Ltd. v. Baker*, 889 F. Supp. 2d 593, 604 (S.D.N.Y. 2012)); see also *Atlas Auto Rental Corp.*, 54 Misc. 2d at 171-72 (defendant did not see bill of sale or owner's registration at the time he purchased a car for \$300 that he was able to resell immediately for \$1,200).
 47. UCC § 2-103(1)(b).
 48. See, e.g., *Porter*, 68 A.D.2d at 145-47 (defendants-merchants were not "buyers in [the] ordinary course of business," because they failed to investigate whether they were purchasing a painting from an art dealer, and to verify whether seller had title to the painting or was authorized to sell it); *Dorothy G. Bender Found., Inc.*, 2013 N.Y. Misc. LEXIS 3711, at *27-28 (defendant, a sophisticated art dealer, did not observe commercially reasonable standards in failing to investigate the seller's authority to sell the painting in a transaction where the painting was grossly undervalued); *Kozar v. Christie's, Inc.*, 31 Misc. 3d 1228(A), 929 N.Y.S.2d 200, 2011 N.Y. Misc. LEXIS 2350, at *27 (Sup. Ct., Westchester Co. 2011) (defendant merchant failed to observe reasonable commercial standards of fair dealing where defendant paid a bargain price and failed to conduct "a good-faith investigation into the painting's ownership").
 49. *Stevens*, 32 Barb. at 176 ("A thing is void which is done against the law at the very time of doing it, and when no person is bound by the act." (internal quotation marks omitted)).
 50. *Compare Stevens*, 32 Barb. at 179 (finding that a party has void title where "[n]o contract has been consummated, no delivery had been made with the intent to pass the property and complete the sale"), with *id.* at 176 (stating that a person obtains voidable title through a contract of sale that was sufficient in law to vest the property and make good title but for the false and fraudulent pretenses), and *Austin Instrument, Inc.*, 29 N.Y.2d at 130-31 (stating that a person obtains voidable title through a contract of sale procured by economic duress).
 51. *Stevens*, 32 Barb. at 178 ("[N]o one can convey to another a better title than he has himself."); *Sheridan Suzuki, Inc.*, 110 Misc. 2d at 824 (noting the distinction between a "transfer[]" as part of a transaction involving a bad check[,] " which is governed by UCC § 2-403(1), and a transfer that results from "a direct larceny or burglary[,] " which is void as a matter of law).
 52. *Stevens*, 32 Barb. at 178 ("[T]here is no general principle in the law that the equity of a bona fide purchaser from one destitute of title, shall overrule the prior legal right of the owner." (internal quotation marks and citations omitted)); see, e.g., *DiLorenzo v. Gen. Motors Acceptance Corp.*, 29 A.D.3d 853, 854, 814 N.Y.S.2d 750, 750 (2d Dep't 2006) (innocent good-faith purchaser had no title to stolen property and cannot maintain action for value of said goods against the rightful owner); *Candela v. Port Motors, Inc.*, 208 A.D.2d 486, 487, 617 N.Y.S.2d 49, 50 (2d Dep't 1996) (plaintiff had void title to vehicle purchased from defendant who purchased said vehicle from a thief or successor of a thief); *Green v. Arcadia Fin. Ltd.*, 174 Misc. 2d 411, 413, 663 N.Y.S.2d 944, 946 (Sup. Ct., Erie Co. 1997) (same), *aff'd*, 261 A.D.2d 896, 689 N.Y.S.2d 596 (1999); *Johnny Dell, Inc. v. N.Y. State Police*, 84 Misc. 2d 360, 363, 375 N.Y.S.2d 545, 548 (Sup. Ct., Onondaga Co. 1975) (same).
 53. See, e.g., *Matter of Flamenbaum*, 27 Misc. 3d 1090, 1097, 899 N.Y.S.2d 546, 552 (Sur. Ct., Nassau Co. 2010) (museum initiated replevin action against decendent's estate, to recover gold tablet that disappeared from museum's collection during World War II), *rev'd on other grounds*, 95 A.D.3d 1318, 945 N.Y.S.2d 183 (2d Dep't 2012), *aff'd*, 22 N.Y.3d 962, 978 N.Y.S.2d 708 (2013); *Solomon R. Guggenheim Found. v. Lubell*, 153 A.D.2d 143, 147, 550 N.Y.S.2d 618, 620 (1st Dep't 1990) (museum initiated replevin action to recover stolen painting, which was purchased by defendants), *aff'd*, 77 N.Y.2d 311, 569 N.Y.S.2d 426 (1991).
 54. *Solomon R. Guggenheim Found.*, 153 A.D.2d at 147; see also *Matter of Flamenbaum*, 27 Misc. 3d at 1097 ("Under New York law, a cause of action to recover a chattel against a party who has lawfully obtained the property arises not when the property is initially taken, but, rather, when there is a demand for the return of the property and the demand is refused.").
 55. *Matter of Flamenbaum*, 27 Misc. 3d at 1096.
 56. *Id.* at 1097.
 57. See, e.g., *Peters*, 34 A.D.3d at 36-37 (holding that the statute of limitations expired over 70 years ago and that petitioner's action is barred by laches for failing to conduct due diligence regarding artwork's whereabouts); but see *Matter of Flamenbaum*, 22 N.Y.3d at 965-66 (holding that estate failed to establish affirmative defense of laches to the museum's failure to report missing gold tablet to authorities); cf. *Solomon R. Guggenheim Found.*, 153 A.D.2d at 153 (holding that the good-faith purchaser bears the burden of proving the painting was not stolen and therefore falls under UCC § 2-403(1)).

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