

TURNOVER, OVERTURNED!

Art Law: New York Appellate Division Vacates Turnover Order in Nazi-Looted Art Dispute (Appellate Division, First Judicial Dept. Case Nos. 2025-02524 et seq.)

Case Overview

On September 17, 2026, the Appellate Division, First Department issued a decision in *In the Matter of an Application for a Search Warrant to Search the Premises Located at the Art Institute of Chicago*, involving a dispute over ownership of *Russian War Prisoner*, an Egon Schiele painting held by The Art Institute of Chicago ("AIC").

The heirs of Fritz Grünbaum, a Jewish Viennese art collector and Holocaust victim, sought recovery through the New York County District Attorney's Office. The lower court granted a turnover order under Penal Law § 450.10, directing AIC to surrender the painting. AIC appealed, challenging the court's jurisdiction to resolve a contested title dispute through criminal proceedings.

The Appellate Division vacated the turnover order and seizure warrant, holding that the lower court exceeded its authority by adjudicating a contested ownership dispute through criminal rather than civil proceedings.

Key Facts

Fritz Grünbaum was a Jewish Viennese cabaret artist who owned a significant Schiele collection. Arrested by the Gestapo on March 22, 1938, he was sent to Dachau, where he died in 1941. His art collection was seized by the Nazis. His wife, Elisabeth (Lilly), was killed at Maly Trostinec in 1942.

The collection disappeared from records until 1956, when pieces resurfaced at a Swiss auction house controlled by dealer Eberhard Kornfeld. Kornfeld claimed he obtained the works from Lilly's sister, Mathilde Lukacs, who fled Austria before the war. Courts have consistently rejected this explanation: there was no documentation of any transfer from Grünbaum to Mathilde, she was not listed as provenance in original catalogues, and Kornfeld made this claim only decades later. In 1957, dealer Otto Kallir purchased *Russian War Prisoner* and sold it through his Manhattan gallery. After several sales, AIC acquired the Work in 1966 for \$5,500. Despite State Department warnings about post-WWII art provenance, there is no record of a provenance check by AIC at acquisition.

In 2006, the heirs sought return of the Work, providing evidence of theft and forged provenance; AIC rejected the claim. In 2022, the heirs asked the District Attorney to investigate. A parallel federal civil suit was dismissed on limitations grounds in 2023, but the Second Circuit reversed in March 2025, finding AIC was a "sophisticated purchaser" that had not "conclusively established" a limitations defense.

Holdings & Reasoning

Direct Appeals Dismissed. No CPL provision authorizes appeal from a search warrant decision or turnover order under Penal Law § 450.10. The proper avenue is an Article 78 proceeding or plenary replevin action.

Article 78 Petition Granted. The court granted AIC's petition, finding prohibition appropriate because the proceeding implicated a fundamental constitutional right: protection against deprivation of property without due process under both New York and federal law.

Penal Law § 450.10 Does Not Authorize Title Adjudication. The statute provides that stolen property "must . . . be delivered to the owner, on satisfactory proof of his title," but does not authorize courts to determine whether property is stolen or who has superior title. The court reasoned that the statute "was designed to provide an expedient means for the return of stolen property to the readily identifiable owner—not to address complicated, disputed issues of ownership."

Due Process Concerns. The lower court's procedure "bore few of the marks of summary judgment practice": no pleadings, no joinder of issue, no meaningful discovery, no clearly defined burdens of proof, and no avenue for direct appeal. AIC could not call witnesses or examine the People's sources, and the People proceeded solely on a hearsay affidavit.

Reliance on Kempner. The court relied on the Court of Appeals' 1913 decision in *People ex rel Simpson Co. v. Kempner*, holding that title disputes "cannot be determined upon a criminal process" but "must be determined in a civil action, in which the parties are by Constitution entitled to notice and a hearing, and, if demanded, to a trial of the issue by a jury."

No Determination on Ownership. The decision "should in no way be construed as a determination as to the rightful owner" or whether AIC made reasonable provenance inquiries. The ownership dispute should be resolved in the pending federal civil lawsuit, and the grand jury investigation may continue.

Practical Implications

The Egon Schiel painting is a Holocaust art recovery case. But, this holding's reach extends far beyond Holocaust restitution. While the facts of this case—a Jewish collector murdered at Dachau, his art stolen by the Nazis, his heirs seeking recovery decades later—carry undeniable moral weight, the legal principle applies with equal force to antiquities disputes. Disputed ownership is the norm in antiquities litigation. Nearly every significant recovery case involves a possessor who claims to have acquired valid title through a chain of transactions, whether from dealers, auction houses, or prior collectors. These are precisely the disputes which the First Department held that Penal Law § 450.10 cannot resolve. Under this decision, the DA's turnover mechanism is limited to cases where the owner is "readily identifiable"—a circumstance that rarely describes antiquities disputes.

The most significant practical consequence of this decision is that the New York County District Attorney's Office has been effectively sidelined from most of the antiquities recovery business. For years, the DA's Office operated as a de facto repatriation authority, using Penal Law § 450.10 turnover proceedings to return thousands of cultural objects to claimants—often without the procedural safeguards of civil litigation. This decision draws a firm boundary. Where ownership is disputed, an expedited process under Penal Law § 450.10 cannot be used. Criminal proceedings are not a permissible shortcut around civil adjudication of ownership and title.

Holocaust recovery cases, while historically significant, represent a relatively small percentage of cases in relation to the antiquities docket. Far more common are disputes involving ancient artifacts with contested provenance—Greek vases, Roman sculptures, Mesopotamian tablets, and Pre-Columbian objects—where source countries assert patrimony claims and possessors assert lawful acquisition. The First Department's holding, while applying specifically to a Holocaust restitution matter, applies equally to cultural heritage appropriation cases. Where the museum, gallery, or collector contests the claim and asserts valid title, the DA cannot simply order a turnover. The dispute must proceed in civil court.

Museums and Institutional Collectors: Museums cannot be forced to relinquish works through criminal turnover proceedings when ownership is genuinely disputed; contested title disputes require civil litigation with full due process protections. This decision guarantees what the Constitution requires: notice, an opportunity to be heard, discovery, the ability to call witnesses, clearly defined burdens of proof, and—if demanded—a jury trial. The lower court proceedings here offered none of these protections: AIC received no meaningful discovery, could not cross-examine the People's sources, faced no defined standard of proof, and had no right to appeal. However, museums face scrutiny as “sophisticated purchasers” expected to conduct thorough provenance research. AIC failed to conduct a provenance check at acquisition and later declined to return the Work when presented with evidence of theft.

Private Collectors and Galleries: Criminal investigations remain viable for identifying looted art and antiquities, even if ownership must be adjudicated in civil court. Grand jury inquiries may continue, and criminal charges remain available where the evidence supports them. But investigation is not adjudication: where a possessor contests ownership—and in antiquities cases, they almost always will—the DA cannot short-circuit the dispute by resorting to Penal Law § 450.10. The decision preserves grand jury investigations and does not preclude criminal charges. Collectors acquiring works with provenance gaps should conduct rigorous due diligence and document their inquiries.

Claimants: While a procedural setback, this decision does not resolve the underlying ownership dispute. The court directed that the matter proceed in federal civil court, where the Second Circuit has reversed a prior dismissal. Courts continue to scrutinize “sophisticated purchaser” provenance claims, and the grand jury investigation continues. Claimants should understand, however, that enlisting the DA's Office is not a substitute for civil litigation when a possessor contests title. Claimants must do what every other plaintiff must do: file a civil complaint, conduct discovery, meet the applicable burden of proof, and persuade a court or jury of superior title.

Prosecutors: The expedited § 450.10 turnover process is appropriate only where ownership is uncontested or readily identifiable. While New York County courts have signed over 100 turnover orders returning more than 4,000 artworks, prosecutors must now bring criminal charges or defer to civil litigation where ownership is sharply disputed. This decision recalibrates expectations for all parties: the DA's expedited turnover track is closed when title is genuinely in dispute, and both sides should prepare for the full rigors of civil litigation—pleadings, discovery, motions practice, and trial.

Conclusion

This decision clarifies the procedural limits of art and antiquities recovery in New York: prosecutors may investigate and charge criminal conduct, but contested ownership disputes must be resolved through civil litigation with full constitutional protections. The practical effect is to restore due process to a field where it had been eroding.

Open questions remain. The federal civil litigation is ongoing, the grand jury investigation continues, and the 30-day enforcement stay suggests further appellate review may be sought. How courts apply this decision to future cases—particularly those involving less sophisticated possessors or clearer evidence of theft—remains to be seen. What is clear is that possessors asserting a defense, even a colorable one, now trigger constitutional protections that the turnover process previously denied.

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