

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Moulton, J.P., Friedman, Higgitt, Rosado, O'Neill Levy, JJ.

5746 &		Index No. SMZ-70042-
5754	In the Matter of AN APPLICATION FOR A SEARCH	24/01
M-06429	WARRANT TO SEARCH THE PREMISES LOCATED	Case Nos. 2025-02524
	AT THE ART INSTITUTE OF CHICAGO,	2025-04174
	Respondent-Appellant.	2025-04175
		2025-04496

In the Matter OF THE ART INSTITUTE OF
CHICAGO,
Petitioner,

-against-

THE HONORABLE ALTHEA E.M. DRYSDALE et al.,
Respondents.

ASSOCIATION OF ART MUSEUM DIRECTORS AND
AMERICAN ALLIANCE OF MUSEUMS,
Amici Curiae.

McDermott Will & Emery, New York (Edward B. Diskant of counsel), for appellant.

Alvin L. Bragg, Jr., District Attorney, New York (Cecelia Chang of counsel), for the District Attorney, respondent.

Vedder Price P.C., New York (Daniel R. Alonso and Daniel C. Green of counsel), and Hahn Loeser & Parks LLP, Cleveland, Ohio (Stephen J. Knerly, Jr., Dennis R. Rose, Katie L. Steiner of counsel) for amici curiae.

Appeal from order, Supreme Court, New York County (Althea E.M. Drysdale, J.), entered on or about April 23, 2025, which granted the application of the New York County District Attorney for a turnover order ordering that *Russian War Prisoner* by Egon Schiele (the Work) be relinquished to the heirs of Fritz Grünbaum; order, same

court and Justice, entered on or about April 23, 2025, which ordered respondent-petitioner The Art Institute of Chicago (AIC) to surrender the Work to a designated Homeland Security Investigations (HSI) agent on or before May 2, 2025; and order, same court and Justice, entered on or about April 23, 2025, which ordered the People to transfer custody of the Work to the heirs of Fritz Grünbaum, all unanimously dismissed, without costs, as taken from nonappealable orders; and petition pursuant to CPLR article 78 for a writ of prohibition seeking review of the decision and turnover orders concerning the Work, unanimously granted, without costs, and the orders and underlying seizure warrant vacated. Enforcement of this order is stayed for 30 days.

The decision and orders on appeal, which are also challenged in the CPLR article 78 petition before us, concern a painting by Austrian artist Egon Schiele, *Russian War Prisoner*, which is the subject of a seizure-in-place order and in the physical possession of AIC. On April 23, 2025, following oral argument and submissions by the parties as to legal title, Supreme Court granted the application to return the Work to the legal heirs of Franz Fredrich (Fritz) Grünbaum (the Heirs). For the reasons that follow, we conclude that the appeals from the orders must be dismissed, and the CPLR article 78 petition should be granted.

I. Factual Background

Fritz Grünbaum was a Jewish Viennese cabaret artist and art collector who owned a collection of works by avant-garde Austrian artists, including *Russian War Prisoner* and dozens of other pieces by Schiele. *Russian War Prisoner* is one of a number of Schiele works that have been subject to litigation in both criminal and civil courts in recent years (see e.g. *Reif v Nagy*, 175 AD3d 107 [1st Dept 2019], *lv dismissed* 35 NY3d 986 [2020]; *Bakalar v Vavra*, 619 F3d 136 [2d Cir 2010]).

Grünbaum was arrested by the Gestapo on March 22, 1938, and sent to the Dachau Concentration Camp. Grünbaum's art collection was seized by the Nazis prior to his death in Dachau in 1941, inventoried, and deposited with a Nazi-affiliated shipping company. The Nazi inventory listed 81 pieces of Schiele artwork, though it did not expressly list the Work by name. Although that Nazi-affiliated shipping company applied for an export license for Grünbaum's wife, Elisabeth, known as Lilly, it was never granted, and Lilly was ultimately killed at the Maly Trostinec death camp in 1942.

Grünbaum's Schiele collection disappeared from any records from 1938 until 1956 (*see Reif*, 175 AD3d at 114-115), when pieces from his collection, including the Work, surfaced at a Swiss auction house, Gutekunst & Klipstein, later known as Galerie Kornfeld, controlled by art dealer Eberhard Kornfeld. Throughout 1955 and 1956, Kornfeld sold 63 Schiele pieces; at least 21 of those pieces, including *Russian War Prisoner*, were purchased by Otto Kallir, an Austrian art dealer, and ended up in his Manhattan gallery, Galerie St. Etienne. There is no allegation that the Work was transported to New York on behalf of AIC. From there, in 1957, Kallir sold the Work to a Connecticut-based private collector, David Kimball, who subsequently sold it to Leo Askew, a collector believed to have resided in Louisiana. In 1966, AIC purchased the Work from B.C. Holland, a Chicago gallery, for \$5,500. An Illinois donor, Dr. Eugene Solow, funded AIC's acquisition of the Work in honor of his late wife. Although the State Department issued repeated warnings to check the provenance of art sold after World War II, there is no record of a provenance check by AIC in 1966.

The Work has been in AIC's permanent collection since 1966. In 1980, AIC loaned the Work back to Galerie St. Etienne for a brief exhibition in Manhattan after Kallir's death. The work was subsequently returned to AIC.

In 1997, the Museum of Modern Art (MOMA) presented a major Schiele exhibition. That exhibition led families of the original Jewish owners of Schiele works to recognize their family's artwork on display, and those families, which included the Heirs, began to make claims to recover the lost Schiele works (*see e.g. Matter of Grand Jury Subpoena Duces Tecum Served on Museum of Modern Art*, 93 NY2d 729, 733 [1999] [*People v MOMA*]). Soon thereafter, Swiss media reports exposed Kornfeld as a central figure in laundering Nazi-looted art. Kornfeld announced that he had obtained Grünbaum's Schiele pieces from Lilly's sister, Mathilde Lukacs, who had fled Austria before World War II began.

Reif v Nagy was commenced in New York State Supreme Court, Civil Term by the Heirs against an art dealer and his gallery, asserting a right of replevin and conversion, as well as a violation of New York General Business Law § 349, and seeking a declaratory judgment that the Heirs had ownership of certain other Schiele works. Upon the appeal by the art dealer in that case, this Court did not credit Kornfeld's explanation that he had received pieces from Mathilde (*see Reif*, 175 AD3d at 123-124). There was no documentation of any transfer of artwork from Grünbaum to Mathilde; Mathilde was not listed in any of the original sale or exhibition catalogues as provenance for the works; and Kornfeld made this claim only several decades after the alleged sale (*see id.*).

In 2002, AIC assigned an intern to contact Kornfeld to ask if he could confirm that Mathilde had sold *Russian War Prisoner*. In a letter, Kornfeld replied: "We had bought the Grünbaum collection from Mrs. Lukacs, the sister from the widow Grünbaum. The collection of Grünbaum was never seized by Nazi authorities. The widow could keep it and give it to her sister. The sister kept the collection until 1955 and

sold it thereafter in different parts.” There is no record that AIC ever tried to independently verify Kornfeld’s story.

In 2006, the Heirs wrote to AIC seeking return of the Work. They forwarded evidence that the Work was stolen, and that Kornfeld had forged the evidence purporting to show that the Schiele works in the Grünbaum collection were obtained from Mathilde. AIC wrote back rejecting the Heirs’ claims and declining to return *Russian War Prisoner* and other works it possessed.

II. Procedural Background

In 2022, the Heirs asked the New York County District Attorney’s Office to investigate the theft of Grünbaum’s Schiele collection. The joint investigation by the People and the Department of Homeland Security found that 11 works, including *Russian War Prisoner*, were either located in New York County or had been offered for sale in New York County. A grand jury investigation into the target works was opened.

In December 2022, before impanelment of the grand jury for this case, the Heirs commenced an action in New York state court seeking return of the Work from AIC (see *Reif v The Art Institute of Chicago* [index No. 654836/2022]). AIC removed the case to federal court on diversity grounds, without contesting New York’s jurisdiction. On or about November 24, 2023, the federal district court granted AIC’s motion to dismiss the Heirs’ claims as barred by the statute of limitations and laches (see *Reif v Art Inst. of Chicago*, 703 F Supp 3d 427 [SD NY 2023]). On March 11, 2025, the Second Circuit reversed, finding that AIC had not “conclusively established” a limitations defense, and that laches was improper because “AIC is not an ‘ordinary non-merchant purchaser’ ” but a “sophisticated purchaser” with expertise in investigating provenance of Nazi-looted art (*Reif v Art Inst. of Chicago*, 2025 WL 763424, at *3-4, 2-25 US App LEXIS

5586, *9-10 [2d Cir Mar 11, 2025, No. 24-809-CV]). The Second Circuit remanded the matter to the district court for further proceedings, with instructions to permit the filing of plaintiffs' proposed second amended complaint. On June 12, 2025, the district court stayed the federal action pending a decision of this Court on the "appeal of the criminal proceeding relating to *Russian War Prisoner*" (*Reif v Art Inst. of Chicago*, [SD NY, June 12, 2025, No. 23-cv-2445 (JGK)]).

In September 2023, Supreme Court issued search warrants in this action for three works, including *Russian War Prisoner*, located outside New York, based on a detailed affidavit from an HSI agent. The basis for the warrant was to investigate the crime of criminal possession of stolen property. The People also notified AIC of their intention to make a turnover application, seeking a court order under Penal Law § 450.10 to return *Russian War Prisoner* to the Heirs. AIC's counsel waived the step of getting an Illinois warrant and agreed to accept service of the New York warrant by email. Counsel for all three target institutions, including AIC, stated that by accepting service and waiving out-of-state warrants, their clients were not waiving the right to contest jurisdiction, seizure, or disposition of the three works they possessed. However, the other two institutions agreed to return the target Schiele works; only AIC contested whether the Heirs had title. Thereafter, AIC joined applications for Supreme Court to continue the seizure-in-place under the September 2023 warrant.

To date, the People have brought no criminal charges against AIC in connection with the Work. AIC maintains that it has legal title to the Work. It challenges Supreme Court's jurisdiction and argues, among other things, that there is no evidence that the Work was ever physically seized by the Nazis. AIC denies the existence of any conspiracy and contends that Mathilde sold the Work to Kornfeld. AIC argues that the work was

sold at least three separate times between Kallir's 1957 sale and AIC's 1966 acquisition in a transaction that had no connection with New York.

III. Supreme Court's Orders

In its April 23, 2025 decision, following oral argument but without an evidentiary hearing or trial, Supreme Court granted turnover of *Russian War Prisoner* to the Heirs, concluding that the record established that the Work had been stolen from Grünbaum and remained stolen property thereafter. The court noted that other courts, including this Court in *Reif v Nagy*, all had rejected the claim that Mathilde transferred good title to the Schiele works by sale to Kornfeld in the 1950s. The court rejected AIC's assertion that turnover was barred because AIC had conducted a reasonable inquiry into the Work's provenance. It also rejected AIC's arguments that application of Penal Law § 450.10 was improper because no criminal offense had occurred in New York or that all potential criminal charges were time-barred. The court further rejected AIC's procedural challenges to the turnover proceeding, finding that Penal Law § 450.10 authorized a "civil-like proceeding" to return stolen property to rightful owners, to be held "prior to, or during the pendency of a criminal proceeding . . . regardless of the outcome of the People's case." The court found that the turnover record established that stolen property had been sold and possessed in New York County, and thus, the turnover proceeding was related to both a prospective criminal action and a pending criminal investigation of stolen property laundered through New York County, within the scope of Penal Law § 450.10.

Finally, the court denied AIC's request for an evidentiary hearing. The court noted that it had reviewed "voluminous filings and records," and listened to over 10 hours of evidence-based oral arguments. The court reviewed the original records

detailing the voluntary leasing of *Russian War Prisoner*, the involuntary cataloging and storage of the Work at Nazi-controlled facilities during the war, and subsequent letters and invoices detailing the Work's sale and transport to New York City after the war and later sales. The court concluded that it would serve no purpose to hold a formal evidentiary hearing, as all witnesses who could provide first-hand knowledge of the events had died, and all pertinent evidence had been submitted to the court as exhibits attached to filings. AIC appeals two additional orders issued: one directing AIC to surrender the Work to a designated HSI agent on or before May 2, 2025, and a second ordering the People to transfer custody of the Work to the Heirs. By May 1, 2025 order of this Court, the decision and orders were stayed, on consent, pending resolution of AIC's appeal pursuant to CPL § 460.50. The Work remains subject to a seizure-in-place order.

IV. Appeal and CPLR Article 78

AIC filed a direct appeal of the decision and orders, and an article 78 petition against Justice Drysdale and the New York County District Attorney seeking review of the decision and orders and a writ of prohibition or mandamus. On appeal and in its article 78 petition, AIC claims the court erred in finding that Penal Law § 450.10 authorized resolution of a dispute over title in the absence of a criminal proceeding; that the proceeding deprived AIC of due process; that the court lacked jurisdiction to authorize seizure of the Work and to resolve a title dispute over property purchased and possessed in Illinois; that the statute of limitations barred the Heirs' claims; and that the court erred in concluding that the Work was stolen and that AIC did not conduct a reasonable inquiry into its provenance. The People oppose.

V. Analysis

a. Direct Appeals

AIC's challenges to Supreme Court's initial search warrant authorizing seizure of the Work and its decision and order under Penal Law § 450.10 returning the Work to the Heirs are not reviewable on direct appeal. No provision of the CPL expressly authorizes an appeal from a decision determining the validity of a search warrant or a turnover order under Penal Law § 450.10 (*see Matter of People v Juarez*, 31 NY3d 1186, 1187 [2018] ["[N]o appeal lies from an order arising out of a criminal proceeding absent specific statutory authorization"]). There is likewise no provision of the CPL that authorizes an appeal from an order denying a motion to vacate a search warrant (*see Matter of 381 Search Warrants Directed to Facebook, Inc. [New York County Dist. Attorney's Off.]*, 29 NY3d 231, 243 [2017]). Furthermore, an order denying a party's challenge to the court's direction that certain property be distributed pursuant to Penal Law § 450.10 is not appealable (*see Matter of Warrant to Search Premises at 15 Meleny Rd., Locust Val., N.Y.*, 19 AD3d 107 [1st Dept 2005]). Rather, the proper avenue for the return of the property is an article 78 proceeding for a writ of mandamus, or a plenary action for replevin (*see id.*).

b. CPLR Article 78

1. Generally

Recognizing that the Court may not find a direct appeal permissible here, AIC seeks relief in the alternative pursuant to article 78. AIC argues that Supreme Court exceeded its jurisdiction and authority and therefore seeks an order vacating the decision and orders in their entirety; directing that the seizure warrant be vacated; and confirming that AIC has established satisfactory proof of title. AIC requests that this Court issue a writ of prohibition, a writ of mandamus, or both.

The People argue that AIC failed to establish the violation of a clear legal right or cognizable prohibition injury, or that the extraordinary remedy of prohibition is equitable under the circumstances of this case.¹

2. Applicability of Prohibition

Because of its extraordinary nature, prohibition under article 78 is available only where there is a clear legal right, and then only when a court acts or threatens to act either without jurisdiction or in excess of its authorized powers in a proceeding over which it has jurisdiction (*see Matter of Holtzman v Goldman*, 71 NY2d 564, 569 [1988]; *Matter of Rush v Mordue*, 68 NY2d 348, 352 [1986]); CPLR 7803[2]). The primary function of prohibition is to prevent “an abrogation of power in violation of a person’s rights, particularly constitutional rights” (*Matter of Vinluan v Doyle*, 60 AD3d 237, 244 [2d Dept 2009]). Prohibition will not lie simply to correct erroneous rulings (*see Matter of Holtzman*, 71 NY2d at 569; *Matter of Rush*, 68 NY2d at 348). Even if prohibition lies and an act in excess of power is perceived, the remedy is granted only in the sound discretion of the reviewing court (*see Matter of Soares v Herrick*, 20 NY3d 139, 145 [2012]; *Matter of Rush*, 68 NY2d at 353).

We find that this proceeding involves a clear legal right, and implicates a fundamental constitutional right under New York and federal law: the right against deprivation of property without due process of law (*see* NY Const, art I, § 6 “[n]o person shall be deprived of life, liberty or property without due process of law”]; US Const Amend XIV, § 1 [same]; *see also Fuentes v Shevin*, 407 US 67, 80-82 [1972]).

¹ Justice Drysdale has elected, pursuant to CPLR 7804(i), not to appear in this proceeding, resting upon “all rulings, orders, or judgments in the underlying action” which are the April 23, 2025 decision and orders.

Prohibition is particularly appropriate here where AIC does not have the ability to challenge the decision and orders on direct appeal.

3. Timeliness

The People assert that the petition is untimely as to the initial search warrant because it was filed more than four months after the initial warrant was issued on September 12, 2023, at which point AIC had notice of the court’s allegedly improper exercise of jurisdiction, and seven warrant extension orders, all made on consent, had been signed. They further argue that the petition is untimely as to the Penal Law § 450.10 decision, as the petition must have been filed within four months of AIC receiving notice of the challenged exercise of jurisdiction—namely, the intended turnover proceeding (*see 15 Meleny Rd.*, 19 AD3d at 107). They maintain that if AIC’s claim was that no turnover proceedings should have occurred, AIC should have pursued relief from this Court at that time, instead of waiting until the proceedings concluded.

AIC timely commenced this article 78 proceeding to challenge the April 23, 2025 decision and order. “A challenged determination is final and binding when it ‘has its impact’ upon the petitioner who is thereby aggrieved” (*Matter of Edmead v McGuire*, 67 NY2d 714, 716 [1986]). From the beginning of this matter, AIC made clear that it was challenging the application for a turnover order and whether the court had the authority to conduct the turnover proceeding, or in other words, what happened after the warrant was issued. In its April 23, 2025 decision and order, Supreme Court determined that it had jurisdiction over this matter; that Kallir knowingly possessed the Work in New York County while he knew, or should have known, that it was stolen; that due to a failure to conduct proper provenance research at the time of acquisition or any point thereafter, AIC also possessed the Work while it knew, or should have known, that the Work was

stolen; and that a theory of continuing conspiracy was established. The article 78 petition was filed within four months after the determination to be reviewed became “final and binding upon the petitioner” (CPLR 217[1]).

4. Penal Law § 450.10

AIC argues that prohibition is appropriate because Supreme Court lacked jurisdiction to adjudicate a dispute over AIC’s title to property that it purchased and possessed in Illinois and that the court acted in excess of its jurisdiction and authority in conducting a “civil-like proceeding” to resolve a title dispute. The People argue that AIC consented to jurisdiction. While AIC initially consented to seizure and thereafter joined in the requests for an extension of the seizure-in-place orders, it did so while expressly reserving its right to challenge jurisdiction with respect to the initial warrant.

AIC argues that Penal Law § 450.10 did not authorize the court to determine title to the Work. Rather, AIC maintains, the statute provides a procedure to be used to return property to its owner in connection with a pending criminal case, but not for resolving disputes between private parties as to title. AIC argues that the proceedings did not comport with constitutional due process in that AIC was not afforded the opportunity for complete discovery, an evidentiary hearing and, if needed, a trial on the merits. AIC asserts that it was not afforded an opportunity to call witnesses or examine the People’s asserted sources of information, including the claimants or any law enforcement officers involved in the grand jury investigation. AIC argues that the claimants submitted nothing demonstrating their asserted proof of title to the Work. AIC further points out that the court did not clarify what law, burden of proof, or procedures it would use in resolving the factual or legal issues raised in the turnover application. It argues that the court permitted the People to proceed solely on the basis

of a hearsay affidavit from an attorney with no firsthand knowledge of the factual issues.

AIC relies on *People ex rel Simpson Co. v Kempner*, (208 NY 16 [1913]), in which the Court of Appeals held that a dispute between a pawnbroker and the asserted owner as to title to property “cannot be determined upon a criminal process. It is a matter wholly between the contending parties and of no direct concern to the state. It 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” (*id.* at 25). AIC argues that the *Kempner* Court held that section 687 of the Code of Criminal Procedure, the substantively identical predecessor statute to Penal Law § 450.10, did not authorize a criminal court, in the absence of a criminal action, to resolve a dispute between private parties as to title. AIC also points to an advisory opinion from New York’s Attorney General concluding that where “there has been no criminal action commenced by the filing of an accusatory instrument . . . no court has jurisdiction to order any disposition pursuant to Article 450” (1973 NY Op Atty Gen No. 160).

The People state that trial courts in New York County have signed over 100 turnover orders in art-trafficking cases, returning more than 4,000 antiquities and artworks upon applications by the People to return stolen property pursuant to Penal Law § 450.10.

Whether Penal Law § 450.10 permits a court to determine title is central to the issue of whether Supreme Court acted in excess of its authority. Penal Law § 450.10(5) provides that “[i]f stolen property comes into the custody of a court, it must . . . be delivered to the owner, on satisfactory proof of his title” The statute does not expressly authorize a court to determine whether such property is stolen or who has superior title to property, and does not explicitly concern property that comes into the

custody of a court by seizure warrant. It does not set forth any applicable procedures or the burden of proof. Ultimately, Penal Law § 450.10(5) was designed to provide an expedient means for the return of stolen property to the readily identifiable owner of that property; it was not designed to address complicated, disputed issues of ownership. Thus, Penal Law § 450.10 does not provide for adjudication of disputed property rights.

AIC notes that in *People v Matter of Persian Guard Relief* (SCID #30219/17, Dec. 18, 2017 order, at 2 [Jackson, J.], available at <https://culturalpropertynews.org/wp-content/uploads/2028/02/District-Attorneys-request-to-return.pdf> [last accessed July 23, 2026]), Supreme Court (Melissa Jackson, J.) concluded that it did not have jurisdiction where there was no pending criminal prosecution and no larceny or criminal possession of stolen property charges had been lodged. There the court declined to proceed under Penal Law § 450.10(5) where “none of the parties has submitted satisfactory proof of their title to the property,” and concluded that “a more appropriate forum, such as a court with civil jurisdiction,” should determine ownership (*id.* at 2). Several months later, the People moved for reconsideration based on newly discovered evidence of criminality. After Supreme Court indicated it would hear the motion, opposing counsel *consented* to the repatriation of the work in question and the court issued a turnover order. AIC also points to *Matter of the Safani Gallery Inc. Search Warrant* (GJF2017-1121F, tr of Nov. 13, 2019 hearing at 51-52 [Farber, J.], attached as exhibit H to declaration of Corey S. Schoock in support of motion to dismiss the second amended complaint in *Safani Gallery Inc. v Italian Republic* [available at SD NY, 19-cv-10517 (VSB), docket no. 83]), where Supreme Court (Thomas Farber, J.) denied the turnover order until ownership was determined in an ongoing federal civil proceeding.

The People argue that there was “no . . . controlling authority that clearly barred Justice Drysdale from authorizing the seizure of the painting and consequently presiding over turnover proceedings under Penal Law § 450.10.” They point to language in *People v MoMA* (93 NY2d 729, 740 [1999]), a case arising from another art-trafficking investigation, where a New York County grand jury issued subpoenas for two Schiele paintings on short-term loan to MoMA, including *Dead City III*, which was owned by Fritz Grünbaum and allegedly stolen by Nazi agents or collaborators after Grünbaum was arrested. MoMA moved to quash the subpoenas on the ground that section 12.03 of the Arts and Cultural Affairs Law protected from seizure works on loan from nonresidents to be exhibited at cultural institutions in New York. The People and MOMA thereafter entered into an agreement providing that MoMA would maintain custody of the works until the conclusion of the litigation over the subpoena. Supreme Court granted the motion to quash but the Appellate Division reversed, holding that the statute applied only to civil disputes and therefore did not limit a grand jury’s subpoena powers. The Court of Appeals reversed, rejecting the People’s claim that the subpoenas entitled them to retain the paintings while the grand jury continued to investigate. The Court held that Arts and Cultural Affairs Law § 12.03 was not limited to civil proceedings but rather encompassed the subpoena.

Even assuming the dicta in *MoMA* supports the conclusion that Supreme Court is authorized to conduct a “civil-like proceeding” to determine title to the Work, here a determination as to title was made without an evidentiary hearing but rather following oral argument and submission of papers, and only after a limited exchange of discovery. The People argue that the court employed “familiar summary judgment-like procedures” in making its determinations. In reality, the procedure employed by

Supreme Court bore few of the marks of summary judgment practice: there were no pleadings and therefore no joinder of issue, there was no meaningful discovery, there were no clearly defined burdens and standards of proof, and there was no avenue for a direct appeal from the resulting orders.

As noted above, the Court of Appeals in *Kempner* held that a determination of title must be made in a civil action (*see Kempner*, 208 NY 16 at 25). While in *Kempner*, the People were not involved in obtaining the private warrant and had not requested return of the property, the principles articulated by the Court apply. The Court's holding in *Kempner* leads to the conclusion that in this case, where the issue of the identity of the rightful owner was sharply contested, proceedings in a civil forum and a jury trial, if demanded, were warranted before AIC could be divested of its property.

This decision should in no way be construed as a determination as to the rightful owner of the Work, whether there was in fact a conspiracy leading to AIC's procurement of the Work, or whether AIC made reasonable inquiries into the provenance of *Russian War Prisoner*. It is made without prejudice to the People continuing the grand jury investigation. We find that the issue of title to *Russian War Prisoner* would be properly determined in the earlier-filed civil lawsuit currently pending before the United States District Court for the Southern District of New York (*Reif v The Art Institute of Chicago*,

No. 24-809-CV) where the dispute may be fully litigated.

**M-2025-06429—*In the Matter of the Application of the
Art Institute of Chicago***

Motion by the Association of Art Museum Directors and American Alliance of Museums for leave to file an amicus curiae brief, granted.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: September 17, 2026

A handwritten signature in black ink, reading "Susanna Molina Rojas". The signature is written in a cursive, flowing style with a large initial "S".

Susanna Molina Rojas
Clerk of the Court