

New York Appellate Court Limits the Manhattan DA's Use of Criminal Turnover Orders to Resolve Disputed Art Ownership

On September 17, 2026, the New York Appellate Division, First Department, issued a major decision in *In the Matter of an Application for a Search Warrant to Search the Premises Located at The Art Institute of Chicago*. The court considered whether N.Y. Penal Law § 450.10, a criminal turnover statute, authorizes a court to adjudicate disputed ownership of property and order its surrender without affording the holder full civil due process (and instead proceeding by way of a summary proceeding in criminal court). The First Department unanimously held that it does not, vacating a seizure warrant and turnover orders that had directed the Art Institute of Chicago (“AIC”) to surrender a painting to the heirs of a Holocaust victim. (Slip Op. 2).

This decision is especially striking because the Manhattan District Attorney’s (“DANY”) Antiquities Trafficking Unit has long used Section 450.10 to effectuate restitution and repatriation of art and antiquities, even where ownership of the object is hotly contested. As DANY argued to the First Department, “[c]ourts in New York County have signed over 100 turnover orders in art-trafficking cases, returning more than 4,000 antiquities and artworks” under Section 450.10. (Slip Op. 13). Absent further appellate review by the Court of Appeals, DANY will only be able to take these actions unilaterally if the present possessor of the object or artwork consents and does not wish to have their day in court.

The case grew out of an investigation by DANY into the provenance of *Russian War Prisoner*, a work by Egon Schiele that has been in AIC’s permanent collection since 1966. DANY alleged the work was stolen from Fritz Grünbaum, a Jewish Viennese art collector who was imprisoned by the Nazis in 1938 and killed in a concentration camp in 1941. (Slip Op. 2-3). Grünbaum’s heirs filed a civil action in federal court in New York seeking to have AIC return the painting, and also asked DANY to investigate the theft of Grünbaum’s Schiele collection, which led to DANY’s efforts to seize and turn over the work to Grünbaum’s heirs. (Slip Op. 5-6).

After authorizing DANY to seize the work and conducting a limited turnover proceeding under Section 450.10, the trial court ordered AIC to surrender the painting to Grünbaum’s heirs. DANY filed no criminal charges against AIC, and the trial court never held an evidentiary hearing or trial, instead permitting DANY to argue that Grünbaum’s heirs had a superior claim to ownership of the painting based solely on an attorney affidavit and with attached exhibits. (Slip Op. 7-8, 12-13). The Grünbaum heirs’ civil suit in federal court remains pending.

AIC argued that Section 450.10 does not authorize a criminal court to resolve a disputed question of title between private parties. AIC said that the statute only provides a procedure for returning property to its readily identifiable owner in connection with a pending criminal case. The relevant statute, as drafted, is meant to facilitate the return of property to its rightful owner when there is no debate over ownership, such as a stolen car or jewelry taken from a person in a stick-up robbery. It does not contemplate the return of property where the present possessor insists that it is not stolen property.

AIC also argued that it was denied due process because it never had a chance to conduct full discovery, hold an evidentiary hearing, or go to trial, and that the trial court never spelled out the applicable burden of proof or procedures. (Slip Op. 12-13). AIC pointed to two New York trial court decisions declining to decide contested issues of ownership in Section 450.10 turnover procedures as further support for their position that Section 450.10 lacked appropriate due process protections. (Slip Op. 14). DANY countered that the proceedings used “familiar summary judgment-like procedures”

sufficient to resolve questions of disputed ownership and provide adequate process, and cited its longstanding use of Section 450.10 in art-trafficking cases. (Slip Op. 13, 15-16).

The court sided with AIC. It found that the proceeding at the trial court “bore few of the marks of summary judgment practice” and provided for inadequate due process: there were no pleadings, no joinder of issue, no meaningful discovery, no clearly defined burdens or standards of proof, and no avenue for direct appeal. (Slip Op. 15-16). The court grounded its decision in the New York Court of Appeals’ 1913 decision in *People ex rel. Simpson Co. v. Kempner*, 208 N.Y. 16 (1913), which addressed the precursor law to Section 450.10, and held that when two parties each claim ownership over the same property, that dispute “cannot be determined upon a criminal process” but rather “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.” (Slip Op. 13). While two state trial courts indicated that *Kempner* was controlling, both cases ended with a voluntary turnover to DANY before a court conducted a hearing and before DANY could take an appeal.

Applying *Kempner*, the First Department concluded that “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.” (Slip Op. 16). The court was careful to note that its decision “should in no way be construed as a determination as to the rightful owner of the Work,” and would not prejudice DANY in continuing its investigation into Grünbaum’s Schiele collection. (Slip Op. 16-17). In other words, it may ultimately turn out that the artwork does not belong to AIC. However, this will need to await civil litigation, which is how disputes over property ownership are typically decided in our courts in the absence of a criminal prosecution.

This decision matters for museums and collectors. DANY’s Antiquities Trafficking Unit has for years used Section 450.10, with its limited due process rights, to repatriate and restitute allegedly stolen works—even where title to the work is sharply contested. The First Department’s decision provides those seeking to contest title to the allegedly stolen works with their day in court. Any institution or individual facing a turnover application under Section 450.10 may now insist on full civil process, including discovery, an evidentiary hearing, and a jury trial if demanded, before being required to surrender property whose ownership is genuinely disputed.

That said, contesting a turnover order will not always be the right call. Even where the law clearly provides for the right to full civil process, many museums and collectors will still choose to voluntarily return objects. In the first instance, ethical considerations and industry best practices lead many museums, institutions, and collectors to repatriate or restitute a work when presented with sufficient evidence that the object was in fact stolen and the claimant is entitled to the work’s return, even without a legal decision declaring who owns the work. Additionally, before choosing to insist on a civil proceeding to determine ownership, museums and collectors should consider litigation costs, the reputational risks that come from fighting a claim for restitution or repatriation, and other institutional considerations, such as donor relations, insurance implications, possible criminal investigation, and the broader cultural mission of the institution. The First Department’s decision reinforces that those in possession of disputed property are entitled to the procedural protections the Constitution requires. But it does not relieve them of the responsibility to evaluate each situation with counsel on a case-by-case basis, considering the full suite of factors—legal and non-legal alike—relevant to deciding complex questions of restitution and repatriation.

The court’s full opinion is available [here](#).

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