

Assembly Bill No. 2765

Passed the Assembly August 30, 2010

Chief Clerk of the Assembly

Passed the Senate August 25, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 338 of the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 2765, Committee on Judiciary. Civil actions: statutes of limitation: theft.

Existing law provides that a civil action, in the case of a theft, shall be commenced within 3 years. Existing law provides that in the case of a theft of any article of historical, interpretive, scientific, cultural, or artistic significance, a cause of action is not deemed to have accrued until the discovery of the whereabouts of the article by the aggrieved party, his or her agent, or a law enforcement agency.

This bill would authorize a civil action against a museum, gallery, auctioneer, or dealer for the recovery of works of fine art that were unlawfully taken or stolen, including a taking or theft by means of fraud or duress, to be commenced within 6 years of the actual discovery by the claimant or his or her agent of the identity and whereabouts of the work of fine art and information or facts that are sufficient to indicate that the claimant has a claim for a possessory interest in the work of fine art. This bill would apply to pending and future actions commenced on or before December 31, 2017, and would include any actions that were dismissed based on the expiration of statutes of limitation in effect prior to the date of the enactment of this bill if, prior to that date, the judgment in the action was not final or the time for filing an appeal from a decision on that action had not expired, provided that the action concerns a work of fine art that was taken within 100 years prior to the date this bill is enacted.

This bill contains the Legislature's findings and declarations in support of a finding that this bill is in agreement and conformity with a specified court decision.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares the following:

(1) California’s interest in determining the rightful ownership of fine art is a matter of traditional state competence, responsibility, and concern.

(2) Because objects of fine art often circulate in the private marketplace for many years before entering the collections of museums or galleries, existing statutes of limitation, which are solely the creatures of the Legislature, often present an inequitable procedural obstacle to recovery of these objects by parties that claim to be their rightful owner.

(3) Decisions from California’s intermediate appellate courts have reached differing conclusions as to whether the statute of limitation based upon the “discovery of the whereabouts of the article by the aggrieved party” rule in subdivision (c) of Section 338 of the Code of Civil Procedure was intended to apply to property stolen prior to 1983, when the express discovery rule was enacted. In *Naftzger v. American Numismatic Society* (1996) 42 Cal.App.4th 421, the court held that the discovery rule applies to actions to recover property stolen prior to 1983 because there was a discovery rule implicit in the prior version of that statute.

(b) The Legislature finds and declares that the court’s decision in *Naftzger v. American Numismatic Society* properly construed the Legislature’s intent, as to the applicability of the discovery rule for thefts occurring before 1983, and the Legislature hereby abrogates any contrary holding.

(c) In enacting an “actual discovery” rule for actions against a museum, gallery, auctioneer, or dealer to recover fine art, the Legislature finds and declares that:

(1) Museums and galleries have played, and continue to play, an important role in making information about their collections, exhibitions, and acquisitions publicly available and have invested significant resources in the care, conservation, study, and display of art objects for the benefit of the public. Museums and galleries have also increasingly and voluntarily made archives, databases, and other resources more accessible to individuals and organizations seeking information about the location and history of particular art objects, thereby assisting the rightful owners of

works of fine art who may have a claim for the recovery of these works.

(2) The application of statutes of limitations and any affirmative defenses to actions for the recovery of works of fine art should recognize this public role taken by museums and galleries and should provide incentives for research and publication of provenance information about these art works, in order to encourage the prompt and fair resolution of claims.

(3) In the establishment of an “actual discovery” rule for the commencement of a statute of limitations for these actions, it is appropriate to provide that, in addition to any legal defenses and doctrines currently available to parties under California law, all equitable affirmative defenses and doctrines are available to the parties, including, without limitation, laches and unclean hands, in order to permit the courts to take all equitable considerations in either party’s favor into account.

SEC. 2. Section 338 of the Code of Civil Procedure is amended to read:

338. Within three years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

(b) An action for trespass upon or injury to real property.

(c) (1) An action for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property.

(2) The cause of action in the case of theft, as described in Section 484 of the Penal Code, of any article of historical, interpretive, scientific, or artistic significance is not deemed to have accrued until the discovery of the whereabouts of the article by the aggrieved party, his or her agent, or the law enforcement agency that originally investigated the theft.

(3) (A) Notwithstanding paragraphs (1) and (2), an 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.

(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.

(C) For purposes of this paragraph:

(i) “Actual discovery,” notwithstanding Section 19 of the Civil Code, does not include any constructive knowledge imputed by law.

(ii) “Auctioneer” means any individual who is engaged in, or who by advertising or otherwise holds himself or herself out as being available to engage in, the calling for, the recognition of, and the acceptance of, offers for the purchase of goods at an auction as defined in subdivision (b) of Section 1812.601 of the Civil Code.

(iii) “Dealer” means a person who holds a valid seller’s permit and who is actively and principally engaged in, or conducting the business of, selling works of fine art.

(iv) “Duress” means a threat of force, violence, danger, or retribution against an owner of the work of fine art in question, or his or her family member, sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act that otherwise would not have been performed or to acquiesce to an act to which he or she would otherwise not have acquiesced.

(v) “Fine art” has the same meaning as defined in paragraph (1) of subdivision (d) of Section 982 of the Civil Code.

(vi) “Museum or gallery” shall include any public or private organization or foundation operating as a museum or gallery.

(4) Section 361 shall not apply to an action brought pursuant to paragraph (3).

(5) A party in an action to which paragraph (3) applies may raise all equitable and legal affirmative defenses and doctrines, including, without limitation, laches and unclean hands.

(d) An action for relief on the ground of fraud or mistake. The cause of action in that case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.

(e) An action upon a bond of a public official except any cause of action based on fraud or embezzlement is not deemed to have accrued until the discovery, by the aggrieved party or his or her agent, of the facts constituting the cause of action upon the bond.

(f) (1) An action against a notary public on his or her bond or in his or her official capacity except that any cause of action based on malfeasance or misfeasance is not deemed to have accrued until discovery, by the aggrieved party or his or her agent, of the facts constituting the cause of action.

(2) Notwithstanding paragraph (1), an action based on malfeasance or misfeasance shall be commenced within one year from discovery, by the aggrieved party or his or her agent, of the facts constituting the cause of action or within three years from the performance of the notarial act giving rise to the action, whichever is later.

(3) Notwithstanding paragraph (1), an action against a notary public on his or her bond or in his or her official capacity shall be commenced within six years.

(g) An action for slander of title to real property.

(h) An action commenced under Section 17536 of the Business and Professions Code. The cause of action in that case shall not be deemed to have accrued until the discovery by the aggrieved party, the Attorney General, the district attorney, the county counsel, the city prosecutor, or the city attorney of the facts constituting grounds for commencing the action.

(i) An action commenced under the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code). The cause of action in that case shall not be deemed to have accrued until the discovery by the State Water Resources Control Board or a regional water quality control board of the facts constituting grounds for commencing actions under their jurisdiction.

(j) An action to recover for physical damage to private property under Section 19 of Article I of the California Constitution.

(k) An action commenced under Division 26 (commencing with Section 39000) of the Health and Safety Code. These causes of action shall not be deemed to have accrued until the discovery by the State Air Resources Board or by a district, as defined in Section 39025 of the Health and Safety Code, of the facts constituting grounds for commencing the action under its jurisdiction.

(l) An action commenced under Section 1603.1, 1615, or 5650.1 of the Fish and Game Code. These causes of action shall not be deemed to have accrued until discovery by the agency bringing the action of the facts constituting the grounds for commencing the action.

(m) An action challenging the validity of the levy upon a parcel of a special tax levied by a local agency on a per parcel basis.

(n) An action commencing under Section 51.7 of the Civil Code.

Approved _____, 2010

Governor