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Court of Appeal, First Appellate District, Division
Three – Nos. A127001/A127444

S190040
IN THE SUPREME COURT OF CALIFORNIA
En Banc

JOHN KARLS, Plaintiff and Appellant,

v.

MELLON CAPITAL MANAGEMENT
CORPORATION et. al., Defendants and
Respondents

AND CONSOLIDATED CASE

The petition for review is denied.

Corrigan, J., was recused and did not participate.

SUPREME COURT
FILED

MAR 16 2011

Frederick K. Ohlrich Clerk

Deputy

CANTIL-SAKAUYE
Chief Justice

- 2a -

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Filed
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SUPERIOR COURT OF THE STATE OF
CALIFORNIA

COUNTY OF SAN FRANCISCO

JOHN S. KARLS) Case No. CGC-09-
	) 489460
Plaintiff (Pro Per))
	) ORDER SUSTAIN-
	) ING THE BANK
	) OF NEW YORK

v.	) MELLON (SIC)
	) DEFENDANTS'
	) DEMURRER TO
	) PLAINTIFF'S
THE BANK OF NEW YORK;	) FIRST AMENDED
BNY MELLON PERFOR-	) COMPLAINT
MANCE & RISK ANALYTICS,)
INC.; MELLON CAPITAL	) Hearing Date:
MANAGEMENT CORPORA-	) November 12, 2009
TION; MELLON FINANCIAL)
SERVICES CORPORATION	) Time: 9:30 a.m.
#1; MELLON LEASING COR-)
PORATION; MELLON VEN-	) Department: 302
TURES, INC.; THE DREYFUS	) (Law and Motion)
SERVICE ORGANIZATION,)
INC.; MBSC SECURITIES	) Judge: Hon. Char-
CORPORATION; URDANG	) lotte Walter
CAPITAL MANAGEMENT,	) Woolard
INC.)
	) Trial Date: None
Defendants.	) set

Defendants The Bank of New York Mellon (sic) (f/k/a The Bank of New York), BNY Mellon Performance & Risk Analytics, Inc.; Mellon Capital Management Corporation; Mellon Financial Services Corporation #1, Mellon Leasing Corporation; Mellon Ventures, Inc.; The Dreyfus Service Organization, Inc.; MBSC Securities Corporation; and Urdang Capital Management, Inc. (collectively "BNYM") Demurrer to the First Amended Complaint for Failure to State a Claim Re: The Conversion of an Idea came on regularly for hearing on November 13, 2009 at 9:30 am in Department 302 of the San

Francisco Superior Court, the Honorable Charlotte Walter Woolard presiding.

Having considered the pleadings and the exhibits, and the arguments of the parties, **IT IS HEREBY ORDRED** that the Demurrer is **SUSTAINED** for the following reason:

Plaintiff has not alleged facts showing the claim is not preempted by state and federal intellectual property law or that the property converted was tangible property. No reasonable probability that the defect can be cured by amendment. Plaintiff's claim for conversion of an idea is therefore dismissed with prejudice because Plaintiff can plead no facts that would state a claim for relief.

DATED: NOV 12 2009

/s/: Charlotte Walter Woolard
The Honorable Charlotte Walter Woolard

Filed 12/15/10 Karls v. Mellon Capital Management
CA 1/3

**NOT TO BE PUBLISHED
IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE**

JOHN S. KARLS,)
Plaintiff and Appellant,	) A127001
v.	) (San Fran-
MELLON CAPITAL MANAGEMENT	) cisco County
CORPORATION et al.,	) Super. Ct.
Defendants and Respondents.	) No. 489458)
<hr/>	
JOHN S. KARLS,	) A127444
Plaintiff and Appellant,	) (San Fran-
v.	) cisco County
THE BANK OF NEW YORK et al.,	) Super. Ct.
Defendants and Respondents	) No. 489460

Appellant John S. Karls sued various financial institutions for conversion in 16 different lawsuits, claiming the institutions had converted an idea he conceived that would allow them to achieve tax savings through the use of foreign tax credits. On

appeal from orders dismissing two of the lawsuits, Karls contends the trial court erred in dismissing certain defendants, arguing that “a group of corporations” that files consolidated tax returns exists as a separate legal entity capable of being sued. He also contends the trial court erred in concluding that his claim for conversion of an idea is preempted by state and federal intellectual property law and that he failed to state a claim for conversion of tangible property. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On June 15, 2009, Karls filed a complaint alleging a single cause of action for conversion against Mellon Capital Management Corporation and other entities claimed to have been part of the “Mellon Financial Corporation U.S.-Tax ‘Consolidated Group’ of Corporations” (the Mellon action).¹ On that same date, Karls filed a virtually identical complaint against The Bank of New York and other entities claimed to have been part of “The Bank of New York U.S.-Tax ‘Consolidated Group’ of Corporations” (The BNY action). All of the entities that were defendants in the Mellon action – with the sole exception of The Mellon Financial Corporation U.S.-Tax “Consolidated Group” of Corporations –

¹ The other entities named as defendants were Mellon Financial Services Corporation [sic] #1, Mellon Leasing Corporation, Mellon Ventures, Inc., and the Mellon Financial Corporation U.S.-Tax “Consolidated Group” of Corporations.

were also defendants in the BNY action. In addition, the BNY action included a number of defendants that were not named in the Mellon action.²

Each of the Mellon action complaint and the BNY action complaint states a single claim for conversion and alleged the defendants made use of confidential and proprietary “intellectual property” belonging to Karls. The complaints describe the property, in general, as “an idea” that Karls “invented” to generate tax savings for two different groups of companies. More precisely, “[t]he [p]roperty was the idea that two different groups of companies could claim a tax advantage from combining the separate income taxes that each would otherwise pay on a portion of their income into a single tax for which both could claim benefit.” To secure this advantage, the parties would create a “joint structure [that] would be subject to income tax in two different jurisdictions, one of which would grant a credit (or tax reduction) for the tax paid to the other jurisdiction.”

By some means not alleged in the complaints, the defendant financial institutions appropriated Karls’ idea and used it to obtain foreign tax credits. Karls seeks compensatory damages in the amount of the foreign tax credits that defendants have been claiming and will be able to claim in the future as a

² The other entities named as defendants in the BNY action were The Bank of New York, BNY Mellon Performance & Risk Analytics, Inc., The Dreyfus Service Organization, Inc., MBSC Securities Corporation, Urdang Capital Management Inc., and The Bank of New York U.S.-Tax “Consolidated Group” of Corporations.

result of their use of his idea, as well as punitive damages equal to three times the amount of the compensatory damages. Attached to the complaints in both the Mellon action and the BNY action is a copy of a newspaper article published on June 30, 2006 in the Wall Street Journal. The article discusses a scheme similar to [sic – complaint alleges the two were the same] that described by Karls and explains that it had been used by Barclays Capital Limited in various deals with nine other financial institutions. The article describes the scheme as “tax arbitrage,” which “plays off one nation’s tax system against another to reduce the banks’ tax bills.”

The complaint in the Mellon action contains an allegation that the “Mellon Financial Corporation U.S.-Tax ‘Consolidated Group’ of Corporations was formed by its members for the purpose of reducing their combined U.S. income tax liability.” The complaint describes this “ ‘Consolidated Group’ of Corporations” as an “unincorporated association, acting as a common-law partnership.” The complaint alleges that this purported entity is described in section 1504 of the Internal Revenue Code, which defines an “affiliated group” that may choose to file a consolidated income tax return. (26 U.S.C. §§ 1501, 1504(a).) In effect, therefore, the complaint alleges that a group of corporations choosing to file a consolidated tax return as an affiliated group constitutes a separate legal entity that is capable of being sued as such. The BNY action contains similar allegations with respect to the “Bank of New York U.S.-Tax ‘Consolidated Group’ of Corporations,” which was allegedly formed for the purposes of reducing its members’ tax

liability. For the sake of brevity, we shall refer to the alleged entities that filed consolidated tax returns on behalf of their members as the “Mellon tax return group” and the “BNY tax return group.”³

Aside from the fact the Mellon action refers to the Mellon tax return group and the BNY action refers to the BNY tax return group, the allegations in the two complaints are identical. Indeed, as reflected in the record on appeal and in a summary provided by Karls, he filed a total of at least 16 lawsuits against various financial institutions alleging conversion of his “idea.” He claims his “property was stolen by Barclays Capital Ltd. from whom the 16 different groups of Defendants acquired the property.”

The defendants in the Mellon action filed a demurrer and motion to dismiss in which they argued that the court lacks jurisdiction over the Mellon tax return group, which they claimed does not exist as a separate legal entity and cannot be sued as such. In the alternative, the defendants sought to quash service of process with respect to the Mellon tax return group. Further, the defendants argued the Mellon action is entirely duplicative of the BNY action, which contains the same claim and includes all of the defendants named in the Mellon action following dismissal of the Mellon tax return group from the Mellon action. The defendants

³ Thus, “Mellon tax return group” is shorthand for “Mellon Financial Corporation U.S.-Tax ‘Consolidated Group’ of Corporations,” and “BNY tax return group” is an abbreviated version of “Bank of New York U.S.-Tax ‘Consolidated Group’ of Corporations.”

sought to dismiss the Mellon action with prejudice under Code of Civil Procedure section 430.10, subd. (c).)

In an order dated September 14, 2009, the trial court granted the defendants' motion and dismissed the Mellon action in its entirety with prejudice. Specifically, the court ruled that it lacked jurisdiction over the Mellon tax return group because that "Defendant is not an existing legal entity or person that can sue or be sued." Further, the court concluded the Mellon action "is identical to and duplicative of" the BNY action with respect to the remaining defendants. Karls filed a timely notice of appeal from the order of dismissal in the Mellon action.

In the BNY action, the defendants filed a demurrer for failure to state a claim as to the conversion cause of action. The defendants argued that federal and state intellectual property laws preempt a common law cause of action for conversion of intangible intellectual property. The defendants also sought to dismiss the BNY tax return group or, alternatively, to quash service of process on the ground that no such legal entity exists.

In its September 14, 2009 order, the trial court dismissed with prejudice all claims against the BNY tax return group, reasoning that no such legal entity exists. The court sustained the demurrer to the conversion cause of action without prejudice and granted Karls 10 days to file an amended complaint. The court's order states that the conversion claim as pleaded was preempted by federal and state intellectual property laws. Nevertheless, the court permitted Karls an opportunity to amend his complaint to "demonstrate his claim is not

preempted under California [or] federal law and that his conversion claim is for tangible property.”

On September 24, 2009, Karls filed what he entitled a “First Amendment to Plaintiff’s Complaint for Conversion” in the BNY action. This “first amended complaint” primarily consists of legal arguments explaining why Karls’s claims are not preempted and why his cause of action contains a claim for conversion of tangible property. Among other things, Karls asserted that the “idea” allegedly converted “is so complicated that it cannot be understood without being embodied in a ‘written presentation.’”

The defendants in the BNY action demurred to the first amended complaint, contending that it still failed to state a cause of action for conversion. The defendants argued that federal and state intellectual property laws preempt Karls’s claims and that he failed to plead the requisite elements of a conversion claim. The defendants also argued Karls’s action was barred under principles of res judicata in view of the fact that identical claims against other defendants (in some of the 14 similar cases) had been dismissed with prejudice for failure to state a cause of action.

By order dated November 12, 2009, the trial court sustained the defendants’ demurrer to the first amended complaint without leave to amend in the BNY action. The court stated that Karls “has not alleged facts showing the claim is not preempted by state and federal intellectual property law or that the property converted was tangible property.” The court further stated there was no reasonable probability the defect could be cured by amendment. The court’s order dismissed the action with prejudice

as to the remaining defendants. On January 6, 2010, Karls filed a timely notice of appeal in the BNY action from the court's order dated November 12, 2009. At the urging of the defendants, we consolidated the appeals in the Mellon action and the BNY action for purposes of oral argument and decision.

DISCUSSION

I. *Standard of Review*

We apply an independent review to the question of whether a defendant has the legal capacity to be sued. (*People ex rel. Totten v. Colonia Chiques* (2007) 156 Cal.App.4th 31, 38 (Totten); *Barr v. United Methodist Church* (1979) 90 Cal.app.3d 259, 263-264 (Barr).) We also apply a de novo standard of review to an order sustaining a demurrer without leave to amend, "i.e., we exercise our independent judgment about whether the complaint states a cause of action as a matter of law." [Citation.] (*Santa Teresa Citizen Action Group v. State Energy Resources Conservation & Development Com.* (2003) 105 Cal.App.4th 1441, 1445.) " " "We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed." [Citation.]" (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112,1126.) "We affirm if any ground offered in support of the demurrer was well taken but find error if the plaintiff has stated a cause of action under any possible legal theory. [Citations.] We are not bound by the trial court's

stated reasons, if any, supporting its ruling; we review the ruling, not its rationale. [Citation.]” (*Mendoza v. Town of Ross* (2005) 128 Cal.App.4th 625, 631.) We review the court’s refusal to allow leave to amend under the abuse of discretion standard. (*Zelig v. County of Los Angeles, supra*, 27 Cal.4th at p. 1126.)

II. *Dismissal of Non-Existent Entities*

It is well established that “[a] civil action can be maintained only against a legal person, i.e., a natural person or an artificial or quasi-artificial person, a nonentity is incapable of suing or being sued. [Citations.] Where a suit is brought against an entity which is legally nonexistent, the proceeding is void *ab initio* and its validity can be called to the attention of the court at any stage of the proceeding. [Citations.]” (*Oliver v. Swiss Club Tell* (1963) 222 Cal.App.2d 528, 537-538.) The commonsense rationale of this rule is that courts sit to settle disputes between existing parties, and when a plaintiff or defendant does not exist, no lawful judgment can be rendered for or against such a party. (*Id.* at . 538.)

Karls contends the court erred in dismissing the Mellon tax return group and the BNY tax return group, respectively, from the Mellon action and the BNY action. He argues that the question of whether an entity has a separate legal existence is one of fact. Further, he contends the defendants offered no evidence to support their assertion that the Mellon tax return group and the BNY tax return group have no independent legal existence.

While it may be true in general that the question of a party's ability to sue or be sued as a separate legal entity turns on the facts of the case, the question here is fundamentally one of law. Karls does not allege that the Mellon tax return group or the BNY tax return group has a purpose aside from permitting the filing of consolidated tax returns to achieve tax savings. The question is therefore one of law: does the filing of a consolidated tax return by a group of affiliated corporations—without more—create a new, distinct entity that is capable of being sued under California law? As we explain, the mere fact of filing a consolidated federal tax return does not transform a group of affiliated corporations into an unincorporated association or a common law partnership under California law.

A partnership or an unincorporated association, “whether organized for profit or not, may sue and be sued in the name it has assumed or by which it is known.” (Code Civ. Proc., § 369.5, subd. (a).) To qualify as an unincorporated association, there must be “ ‘(1) a group whose members share a common purpose, and (2) who function under a common name under circumstances where fairness requires the group be recognized as a legal entity.’ [Citation.]” (*Totten, supra*, 156 Cal.App.4th at pp. 38-39.) Labor unions, political parties, social clubs, religious organizations, environmental societies, athletic organizations, condominium owners, lodges, gangs, stock exchanges, and veterans are common types of unincorporated associations. (*Barr, supra*, 90 Cal.App.3d at p. 266; *Totten, supra*, at p. 38-39.)

Here, Karls fails to satisfy the second prong of California's two-prong test. Specifically, the

complaint does not contain an allegation that anyone has joined together to function under the common names “Mellon Financial Corporation U.S.-Tax ‘Consolidated Group’ of Corporations” or “Bank of New York U.S.-Tax ‘Consolidated Group’ of Corporations.” Karls does not allege that these affiliated groups, which exist solely to permit the filing of consolidated tax returns, are recognized by any common name, much less by the lengthy names that Karls has chosen to confer on them in the Mellon action and the BNY action.

Further, Karls fails to establish why fairness requires that these defendants be recognized as legal entities for purposes of being sued, especially in light of the fact that he already sued all of the business entities that comprise both the Mellon tax return group and the BNY tax return group. It is unclear what detriment Karls would suffer if he were unable to sue a purported unincorporated association comprised of entities that he has already sued. Indeed, principles of fairness weight against treating affiliated groups that have no relationship other than filing consolidated tax returns as unincorporated associations. If such affiliated tax groups were treated as unincorporated associations, a corporation could potentially be exposed to liability for the actions taken by every other corporation that is part of the same affiliated tax group, even though

their only relationship is through a common parent.⁴ Notably, Karls has failed to provide any legal authority to support his allegation that the mere filing of a consolidated tax return creates a common law partnership or unincorporated association under California law.

We conclude that the trial court did not err in dismissing the Mellon tax return group and the BNY tax return group, respectively, from the Mellon action and the BNY action. The mere fact that those affiliated groups are alleged to have filed consolidated tax returns does not make them

⁴ United States Code section 1504(a)(1) is the definitional section of the federal statutory scheme permitting a group of companies sharing a common parent to file a consolidated tax return. That section provides: “Affiliated group defined. [¶] (1) In general. [¶] The term ‘affiliated group’ means [¶] (A) 1 or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation, but only if—[¶](B)(i) the common parent owns directly stock meeting the requirements of paragraph (2) in at least 1 of the other includible corporations, and [¶] (ii) stock meeting the requirements of paragraph (2) in each of the includible corporations (except the common parent) is owned directly by 1 or more of the other includible corporations.”

unincorporated associations capable of being sued in California.⁵

III. *Dismissal of Duplicative Action*

Karls contends the court erred in dismissing the Mellon action as duplicative of the BNY action, arguing that the parties in the two cases are not the same. He points out that the BNY action includes additional defendants not named in the Mellon action.

Code of Civil Procedure section 430.10, subdivision (c) codifies the common law plea of abatement and permits a court to dismiss an action when to separate actions are “pending . . . ‘between the *same parties* on the *same cause of action*.’ [Citation.]” (See *People ex rel. Garamendi v. American Autoplan, Inc.* (1993) 20 Cal.App.4th 760, 770.) In determining whether two actions are duplicative, courts analyze (1) the parties named in the complaints, and (2) whether the causes of action alleged in the actions arise from the same primary rights. (*Besos v. Bank of America* (2003) 105 Cal.app.4th 378, 397.)

Here, each of the defendants in the Mellon action—other than the Mellon tax return group, which was properly dismissed—is named by Karls as a defendant in the BNY action. The single cause of action in each complaint is effectively identical. The mere fact that the BNY action names additional defendants is irrelevant. Consider a plaintiff who sued a single defendant for fraud. If that plaintiff filed a second, identical fraud complaint but added an additional defendant to the second complaint, no one would dispute that the first complaint is now

entirely duplicative of the second complaint. The same is true here. After the dismissal of the Mellon tax return group from the Mellon action, that lawsuit is entirely superfluous because its claims and parties are included within the BNY action.

To the extent Karls argues the Mellon action and the BNY action allege different means to achieve the alleged conversion of his idea—through different affiliated groups organized to file consolidated tax returns—the argument falls short. The primary rights violation in both of the actions is the alleged conversion of an idea. Whether the defendants in the Mellon action achieved the supposed conversion through the formation of the Mellon tax return group, the BNY tax return group, or some other affiliated group of companies, the fact remains that those parties allegedly converted Karls’s idea in different ways amounts to nothing more than “different ways of committing the same wrongs. [Citation.]” (*Bescos v. Bank of America, supra*, 105 Cal.App.4th at p. 297.) Accordingly, we conclude the trial court did not err in dismissing the Mellon action as duplicative of the BNY action.

⁵ Even if the Mellon tax return group and the BNY tax return group were proper parties to the Mellon action and the BNY action, we would still conclude that the complaints are subject to dismissal as a whole because Karls has failed to state a cause of action for conversion, as explained in section IV., *post*.

IV. *Failure to State a Claim for Conversion*

Conversion is generally described as the wrongful exercise of dominion over the personal property of another. (*Gruber v. Pacific States Sav. & Loan Co.* (1939) 13 Cal.2d 144, 148.) The basic elements of the tort are (1) the plaintiff's ownership or right to possession of personal property; (2) the defendant's disposition of the property in a manner that is inconsistent with the plaintiff's property rights; and resulting damages. (*Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, 1066.)

Defendants assert that Karls's conversion claim fails as a matter of law because the alleged converted property is not tangible property, the claim is preempted by federal and state intellectual property statutes, and there is no allegation that the defendants deprived Karls of the use of his alleged property. As explained below, we agree.

A. *Conversion of an Idea*

Historically, a claim for conversion arose out of the wrongful control of tangible property capable of identification and taken into actual possession. (*Payne v. Elliot* (1880) 54 Cal. 339, 340.) While over time the tangibility requirement has been relaxed somewhat, “ ‘Courts have traditionally refused to recognize as conversion the unauthorized taking of intangible interests that are not merged with, or reflected in, something tangible. [Citations.] And Dean Prosser has cautioned against scuttling conversion's tangibility requirement altogether, recommending instead the use of other remedies to protect intangible interests. [Citation.]’ ” (*Fremont*

Indemnity Co. v. Fremont General Corp. (2007) 148 Cal.App.4th 97, 119-120.)

Under California law, “[t]he tort of conversion does not apply to ideas. [Citations.] (*Melchior v. New Line Productions, Inc.* (2003) 106 Cal.App.4th 779, 793 (*Melchior*)). In *Melchior*, an author brought an action against the assignee of the film production company to which he had optioned his rights to *Lost in Space*, a motion picture based on his story. (*Id.* at pp. 783-784.) He alleged that he was the creator and owner of the property, *Lost in Space*, and that the assignee defendant had converted his property for its own use. (*Id.* at p. 791.) The Court of Appeal held the plaintiff could not state a claim for conversion of the idea upon which the movie was based. (*Id.* at p. 793.) Likewise, in *Dielsi v. Falk* (C.D. Cal. 1996) 916 F.Supp. 985, 992, the court held that a plaintiff could not state a claim for conversion against a defendant who allegedly copied ideas from a television script for the defendant’s own use.

Here, Karls’s claim fails because it is premised upon the conversion of an idea. Nevertheless, Karls contends the subject of his lawsuit is properly brought as a claim for conversion because it cannot “‘exist separate and apart from the paper on which it is written, or the physical substance in which it is embodied.’ ” He contends his tax-saving concept, like Leonardo da Vinci’s painting the Mona Lisa, is an “intangible idea” that cannot be understood without reference to the tangible written presentation that he prepared before the defendants’ alleged conversion.

The analogy to the Mona Lisa is inapt. The complaint explicitly identifies the property at issue as an “idea.” An “idea” does not qualify as property

subject to conversion, even if the idea is complicated and is reduced to writing. Further, the value of the Mona Lisa is in the physical substance in which it is embodied. A photocopy of the Mona Lisa would have a marginal value, at best. By contrast, a photocopy of Karls's complicated tax scheme would presumably have as much value as the original to anyone who might be interested in the scheme. Thus, unlike the value of the Mona Lisa, the value of Karls's idea does not inhere in the tangible substance on which the idea is expressed.

In sum, while an action for conversion may be entirely appropriate in the context of paintings and other tangible media of artistic expression, the tort is not available to plaintiffs suing for infringement of their intellectual property rights, regardless of whether the concepts at issue have been memorialized in a writing.

B. Substantial Interference with Property Rights

An essential element for establishing a claim for common law conversion is proving the plaintiff was deprived of use of the property as a result of the alleged wrongdoing. (*Jordan v. Talbot* (1961) 55 Cal.2d 597, 610.) Defendants correctly observe there can be no substantial interference with Karls's right to his own written presentation because he still retains the presentation and the ideas behind it.

The gist of a conversion action is "the wrongful interference with the owner's right of dominion and possession of his property." (*Chatterton v. Boone* (1947) 81 Cal.App.2d 943, 946.) To state a claim for conversion, a plaintiff must

allege an intention on defendant's part to " 'convert the owner's property, or to exercise some act of ownership over it, or to prevent the owner's taking possession of his property. [Citation.]' [Citations.]" (*Simonian v. Patterson* (1994) 27 Cal.App.4th 773, 782.)

Even if Karls had identified a form of property susceptible to conversion, the first amended complaint in the BNY action contains no allegations as to how defendants substantially interfered with his personal use or possession of the property in issue. The first amended complaint essentially relates that his corporate tax strategy was utilized by defendants, but says nothing more. He never alleges how any of the defendants substantially interfered with his own use or possession of this corporate tax-reduction concept. Failure to allege substantial interference with possession or right to possession permits rejection of the conversion claim. (*Zaslow v. Kroenert* (1946) 29 Cal.2d 541, 550.)

C. Federal Copyright Preemption

A state law cause of action is preempted by federal copyright law if (1) the rights alleged are equivalent to those protected by federal copyright law, and (2) the work involved falls within the "subject matter" of the federal Copyright Act (17 U.S.C. § 101 et seq.). (*Kodadek v. MTV Networks, Inc.* (9th Cir. 1998) 152 F.3d 1209, 1212.) " 'To survive preemption, the state cause of action must protect rights which are qualitatively different from copyright rights. The state claim must have an extra element which changes the nature of the action.' [Citations.]" (*Laws v. Sony Music*

Entertainment, Inc. (9th Cir. 2006) 448 F.3d 1134, 1143.)

Section 106 of the Copyright Act confers upon copyright owners the exclusive rights to reproduce, to distribute, and to display original works of authorship, and to prepare works derived from the originals. (17 U.S.C. § 106.) Section 106 also gives copyright owners the exclusive right to authorize such reproduction, distribution, display, and preparation. (*Ibid.*)

Karl's (sic) claims fall squarely within the confines of the federal Copyright Act. He attempted to assert a conversion claim based on the allegation that he had reduced a creative idea to a tangible writing that others wrongfully used, reproduced, or distributed. Because the report was an original work of authorship, fixed in a tangible medium, and manifesting plaintiff's creativity, the conditions for preemption are satisfied. (See *Melchior, supra*, 106 Cal.app.4th at pp. 791-792.)

Relying on *Gladstone v. Hillel* (1988) 203 Cal.App.3d 977 (*Gladstone*), Karls claims his action contains the "extra element" that allows his claim to avoid federal copyright preemption. We are unpersuaded.

In *Gladstone*, the defendants had taken the plaintiff's unique jewelry molds, claiming they were collateral for plaintiff's alleged debt, and changed the locks to his jewelry workshop. (*Gladstone, supra*, 203 Cal.App.3d at pp. 984-985.) The plaintiff successfully sued for equitable relief to recover possession of his molds, and for damages based on theories of conversion and fraud. (*Id.* at p. 981.) The appellate court found the conversion claim was not preempted by the Copyright Act: "Under the extra

element test, it is clear that federal copyright law does not preempt state causes of action alleging fraud or conversion – the two theories pleaded in the complaint. Fraud involves ‘the extra element of misrepresentation.’ [Citation.] Conversion entails the ‘wrongful possession of the tangible embodiment of a work.’ [Citations.]” (*Gladstone, supra*, at p. 987.)

Here, unlike in *Gladstone*, the alleged conversion does not involve wrongful possession of a “tangible embodiment” of Karls’s idea. As discussed above, the value of Karls’ idea is in the abstract thought or scheme that he has allegedly reduced to writing. The paper or other medium on which the idea is recorded does not have intrinsic value, unlike the “unique jewelry molds” described in *Gladstone*. Karls’s conversion cause of action therefore lacks the “extra element” that would cause the claim to avoid federal copyright preemption.⁶

Furthermore, because Karls failed to demonstrate a reasonable probability that he could cure the numerous defects in the first amended complaint by amendment, we conclude that the trial court did not abuse its discretion in denying him further leave to amend his complaint in the BNY action.

D. Equal Protection

Finally, Karls contends that the trial court’s decision amounts to an unconstitutional denial of equal protection for American inner-city children. This unusual claim, as best we can understand, turns on the following contentions: (1) Karls has pledged the proceeds of his tax-savings idea to a foundation that assists in educational efforts directed at inner-city

children, (2) his claim that financial institutions have converted his idea is functionally equivalent to a claim that Nazis stole fine art from Holocaust victims' families and Holocaust survivors, because the supposed conversion of his tax scheme is like the theft of fine art, and (3) it is a denial of equal protection to allow Holocaust victims' families and Holocaust survivors to recover stolen art but not allow inner-city children to recover damages resulting from the theft of his idea.

To state an equal protection claim, one must show that the state has adopted a classification that treats two or more similarly situated groups in a different manner. (*Walgreen Co. v. City and County of San Francisco* (2010) 185 Cal.App.4th 424, 434.) Here, Karls has failed to demonstrate that inner-city children who would supposedly benefit from his idea are similarly situated to Holocaust victims' families and Holocaust survivors who had fine art stolen from them, much less that there is a legislative classification that treats these two groups differently. As discussed above, Karls's tax scheme is not the equivalent of fine art work. Persons who claim that a third party has stolen an idea from them are not similarly situated to persons who have suffered a theft of fine art. Thus, Karls's equal protection claim fails at the threshold.

⁶ Because we conclude that Karls's claim is preempted by federal copyright law, we need not address whether his common law claim is also preempted by the California Uniform Trade Secrets Act (Civ. Code, § 3426 et seq.).

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DISPOSITION

The judgments are affirmed. Respondents shall be entitled to recover their costs on appeal.

McGuinness, P.J.

We concur:

Pollak, J.

Jenkins, J.

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Summons Issued
Filed
San Francisco Superior Court
June 15 2009
Gordon Park-Li, Clerk
By: P. Natt, Deputy Clerk

John S. Karls, Plaintiff, Pro Se
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State Bar Membership No. = N/A (Pro Se)

Superior Court of California – County of San Francisco

John S. Karls	)	Case CGC-09-489460
vs.)	
The Bank of New York,	)	Plaintiff's Complaint
BNY Mellon Perfor-	)	For Conversion
mance & Risk Analy-)	
tics, Inc., Mellon Calital)	
Management Corpora-)	
tion, Mellon Financial)	
Services Corporation #1,)	
Mellon Leasing Corpor-)	
tion, Mellon Ventures,)	
Inc., The Dreyfus Ser-)	
Vice Organization, Inc.,)	
MBSC Securities Cor-	)	Judge _____
Poration, Urdang Capi-)	
tal Management, Inc.,	)	Department _____
The Bank of New York)	
U.S.-Tax "Consolidated	)	Amount Demanded
Group" of Corporations	)	Exceeds \$10,000

Plaintiff's Complaint for Conversion

The Plaintiff, John S. Karls, is a California resident, residing at 1534 Clay Street – Unit 1, San Francisco, CA 94109.

The Bank of New York U.S.-Tax "Consolidated Group" of Corporations is defined by 26 U.S.C. § 1504 and has been an unincorporated association acting as a common-law partnership.

The Bank of New York U.S.-Tax "Consolidated Group" of Corporations was formed by its members for the purpose of reducing their combined U.S. income tax liability.

The following Defendant corporations have been members of The Bank of New York U.S.-Tax "Consolidated Group" of Corporations –

The Bank of New York
BNY Mellon Performance & Risk Analytics, Inc.
Mellon Capital Management Corporation
Mellon Financial Services Corporation #1
Mellon Leasing Corporation
Mellon Ventures, Inc.
The Dreyfus Service Organization, Inc.
MBSC Securities Corporation
Urdang Capital Management, Inc.

The June 30, 2006 issue of the Wall Street Journal reported in the attached article on its front page, first column, that a number of companies have used intellectual property (hereinafter "The Property") which the Wall Street Journal reports was both confidential and proprietary.

The Property is indeed confidential and proprietary.

The Property belongs to the Plaintiff.

A detailed description of The Property comprises the last three pages of this Complaint.

The Bank of New York U.S.-Tax "Consolidated Group" of Corporations has converted The Property.

The Defendant corporations are liable for the acts of their unincorporated association, The Bank of New York U.S.-Tax "Consolidated Group" of Corporations.

Moreover, the parent company as agent for all of the members of The Bank of New York U.S.-Tax "Consolidated Group" of Corporations caused The Bank of New York U.S.-Tax "Consolidated Group" of Corporations to convert The Property and, accordingly, the Defendant corporations are liable for the acts of their agent.

The Plaintiff requests compensatory damages for the conversion of The Property by the agent of the Defendant Corporations and by their unincorporated association, The Bank of New York U.S.-Tax "Consolidated Group" of Corporations, equal to the value of the property to their unincorporated association.

The value of The Property to The Bank of New York U.S.-Tax "Consolidated Group" of Corporations is the amount of foreign tax credit that The Bank of New York U.S.-Tax "Consolidated Group" of Corporations has been and will be able to claim as a result of its use of The Property.

The Defendant corporations' agent, the parent company, was reckless in its failure to obtain the permission of the Plaintiff to use The Property.

Accordingly, the Plaintiff requests, in addition to the no-fault compensatory damages equal to the value of the converted Property, punitive damages

equal to three times the compensatory damages to be added to the amount of the compensatory damages.

The Plaintiff requests a Jury Trial of all factual issues.

[Editorial Note: The following ten italicized and underscored paragraphs were inserted at this point in the middle of the Complaint by an Amendment filed on September 24, 2009.]

“The Bank of New York as the parent corporation of the other defendants caused all of them as a group to convert The Property by obtaining it from, and pursuant to a contract with, Barclays Capital Ltd.

“Barclays Capital Ltd., under the doctrine of respondeat superior, had stolen The Property from the Plaintiff who had created it pursuant to a contract with Kleinwort Benson Ltd.

“Barclays Capital Ltd. is incorporated in England and has its headquarters in London, England.

“The Bank of New York is incorporated in the State of New York and has its headquarters in New York City.

“Kleinwort Benson Ltd. was incorporated in England, it had its headquarters in London, England, and the contract between Plaintiff and Kleinwort Benson Ltd. pursuant to which The Property was created provided that the contract would be governed by English law.

“The State of New York has not enacted the Uniform Trade Secrets Act.

“England has not enacted the Uniform Trade Secrets Act.”

“As alleged above, The Bank of New York as the parent corporation of the other defendants caused all of them to be in wrongful possession of The Property and, indeed, was even reckless in failing to obtain the permission of the Plaintiff to use The Property.”

“Plaintiff has never sought protection for The Property under Federal Patent Law and, accordingly, Federal Patent Law is inapplicable.”

“The Property” which, as described below as “an idea” that must be in the form of a “written presentation,” is so complicated that it cannot be understood without being embodied in a “written presentation.”

Detailed Description of The Property

In general, The Property was a “Product” defined as “an idea” the Plaintiff invented for which “with development and implementation” third parties would be willing to provide a financial reward, in addition to which “a Product shall include not only the initial idea but any improvements to that Product” that may be developed.

Also in general, the Product had to be “in the form of a written presentation, stating the accounting or tax benefit intended to be achieved, the transaction steps to be implemented, and the accounting or tax technical analysis” accompanied by diagrams.

In particular, The Property involved in this lawsuit was a typical Product which takes advantage of different views that the tax authorities of two different countries have regarding an entity (e.g., corporation or partnership), an instrument (e.g., debt

or equity), the nature of an investment (e.g., lease or ownership), etc., etc. – each country supremely confident that it has the “Holy Grail” and impervious to the views of any other country. (Typical international tax advisers merely look out for “rattlesnakes” – two different countries taxing the same thing, while good international tax advisers look out for opportunities in which no country taxes something because of their divergence in their respective “Holy Grails”).

Specifically, The Property was the idea that two different groups of companies could claim a tax advantage from combining the separate income taxes that each would otherwise pay on a portion of their income into a single tax for which both could claim benefit.

Each of the two different groups of companies would place their respective shares of income upon which they wanted to pay a single combined income tax, rather than two separate income taxes, into a joint structure.

The joint structure would be subject to income tax in two different jurisdictions, one of which would grant a credit (or tax reduction) for the tax paid to the other jurisdiction.

To accomplish this, the joint structure could be a dual-resident company (for example, a US-incorporated entity that was “minded and managed” in a British Commonwealth country as a result of which it would be treated the same as an entity incorporated in the British Commonwealth country), a dual-incorporated company (for example, a non-U.S. entity that is later incorporated in Delaware without surrendering its original non-U.S. incorporation status), a hybrid entity (for example,

an entity whose income is taxed in one country because that country treats it as a corporation, but whose income is taxed in another country because the second country views the entity as a pass-through partnership whose income is taxable to the partners), etc., etc.

The way that the two sets of income taxes are combined into a single tax (before credit) rather than merely adding to each other is with hybrid instruments.

The instrument representing the investment of one company is viewed as equity by that company's income tax jurisdiction and as debt by the taxing jurisdiction of the other company.

The instrument representing the investment of the second company is viewed as equity by that company's income tax jurisdiction and as debt by the taxing jurisdiction of the first company.

For example, a British-based bank and a US-based bank each put \$10 billion into a US-incorporated entity ("NewCo") which will last at least 5 years so that the US Internal Revenue Service will view (together with other features of the instrument) the US bank's investment in NewCo as equity while the UK Inland Revenue views that investment as debt. The investment of the British-based bank in NewCo is structured so that it will be viewed as equity by the UK Inland Revenue and as debt by the US Internal Revenue Service.

For ease of illustration, assume the interest rate upon inception in the early 2000's was 10% so each bank would have earned \$1 billion on its \$10 billion of cash in the absence of any action. Each has put their \$10 billion into Newco which now earns the combined \$2 billion of economic income. However,

UK Inland Revenue views NewCo as having earned \$2 billion less “interest” paid to the US-based bank. So it taxes what it perceives as NewCo’s net income (say \$1 billion) at its income tax rate (say \$300 million). And the UK-bank is free to pocket its share of income from NewCo (which the UK Inland Revenue views as a wholly-owned British-taxable subsidiary of the British-based bank) with no further income tax liability.

Meanwhile, the US Internal Revenue Service views NewCo as having earned \$2 billion less “interest” paid to the UK-based bank. So it taxes what it perceives as NewCo’s net income (the other \$1 billion of economic income in this example) at its income tax rate (say \$350 million) and grants a foreign tax credit for the UK income tax paid by NewCo (\$300 million) for a net US income tax of \$50 million.

The bottom line in this numerical example is that both the UK-based bank and the US-based bank have been able to reap the full economic advantage of the same \$300 million of UK income tax, an overall tax savings compared with the alternative of doing nothing.

DATED: June 15, 2009

Respectfully submitted,

/s/: John S. Karls

John S. Karls, Plaintiff, Pro Se

Editorial Note: There follows an article from the Wall Street Journal, a photocopy of

which was attached to, and made a part of, the complaint.

The Wall Street Journal
Friday, June 30, 2006 – Page 1

Border Crossing
How A U.K. Banker Helps
U.S. Clients Trim Their Taxes
Deals Devised by Roger
Jenkins Of Barclays Capital
Lift Own Firm's Fortunes, Too
Paid Once, Credited Twice
By Carrick Mollenkamp
And Glenn R. Simpson

London – At Barclays PLC, a British bank steeped in 300 years of tradition, the work of a team led by banker Roger Jenkins is far from traditional.

For instance, in 2003 his team set up a company with no employees, no products and no customers – just a mailing address in Delaware and a slate of British directors, mostly employees of his office. It was co-owned by Barclays and U.S. bank Wachovia Corp.

The following year, according to documents filed in the United Kingdom, the jointly owned company had \$317 million in profits. It paid U.K. taxes on them. Barclays and Wachovia were both able to claim credit for paying all of the tax.

This was one of at least nine such structures Mr. Jenkins and his team have set up involving U.S. banks, which also included Wells Fargo & Co. and Bank of America Corp. The complex transactions involve a strategy called tax arbitrage, which plays

off one nation's tax system against another to reduce the banks' tax bills.

Barclays is the leader in this esoteric field. It collects hundreds of millions of dollars in revenue generated by Mr. Jenkins's group. His team of lawyers and bankers has helped turn Barclays from a sleepy Main Street lender into an investment-banking power.

Critics of tax arbitrage are blunt about it. "This is just a complete and utter construct to get around the rules at both ends," says Richard Murphy, an accountant and professor who works with a London nonprofit called Tax Justice Network and has consulted for the U.K. government on financing.

The banks say the cross-border deals have been cleared by both U.S. and U.K. regulators and the regulatory review process is rigorous. Barclays says the transactions aren't designed mainly to reduce taxes. It says Mr. Jenkins's group generates a variety of strategies for corporate clients to lessen risk, maximize profits and fund balance sheets. Says Mr. Jenkins: "I run a structured capital-markets business which does a bunch of different things, and in there is tax efficiency, as you would expect."

But regulators and politicians in both countries are paying greater attention to tax arbitrage. The U.S. and U.K., along with Australia and Canada, have formed a body designed to combat cross-border tax abuses. The British government took a step against tax arbitrage last year by adopting a law that disallowed certain strategies in the U.K. and gave regulators more time to rule on deals when proposed. In the U.S., Internal Revenue

Service Commissioner Mark Everson told the Senate this month that his agency is focusing on ways that financial institutions are structuring deals abroad to avoid taxes.

Mr. Jenkins's success has made him one of the highest-paid executives at Barclays, which rewards him in unusual ways. Besides his salary and bonus, estimated to total in the millions of dollars annually, Barclays several years ago invested a total of about \$40 million in two Jenkins personal holding companies, according to U.K. documents. One of Mr. Jenkins's companies bought a state in a swimwear company his wife is involved in and also owns a warrant to invest in an energy-bar company run by his brother.

Mr. Jenkins, 50 years old, is known by people who work for him as relentless about the details of deals, with a competitive drive he showed early in life in Scotland. At Edinburgh Academy, he and his brother, David, put up school running records that still stand. "My brother and I are still, 40 years on, faster by about 10 yards than any other kid who has ever run there," Mr. Jenkins says. The school's alumni secretary confirms their track skills. David was the faster: He won a silver medal at the 1972 Olympics.

The son of an oil-refinery manager, Mr. Jenkins joined Barclays as a trainee in 1978, left for another bank, then returned in 1994 to set up a group to advise companies on tasks such as risk management and leasing.

It was a critical time at Barclays. Founded by Quakers in the 1600's, the bank had its headquarters on the same street in the City of London financial district for almost 300 years. But

by the mid-1990's, change was sweeping through banking, with some competitors branching out broadly into financial and investment services.

In 1966, Barclays's investment-banking unit hired an American executive of Credit Suisse, Robert Diamond Jr., who broadened the unit's horizons and has helped turn it into a major European investment bank. Meanwhile, Mr. Jenkins was assembling his group, known as Structured Capital Markets. Reaching beyond bankers, Mr. Jenkins also staffed this with people like Iain Abrahams, a London tax attorney who today is his chief lieutenant.

The investment-banking unit, Barclays Capital, soon faced a rough patch. It had an operating loss of \$440 million in 1998, the year Russia devalued its currency and defaulted on part of its debt. But growing profits from Mr. Jenkins's teamed softened the blow.

In 2000, Wells Fargo proposed a transaction to the U.S. Office of the Comptroller of the Currency that became the blueprint for the cross-border deals Barclays began to do. Wells Fargo, based in San Francisco, sought the bank regulator's clearance to set up a unit in the Cayman Islands "to achieve further efficiency in funding." The OCC approved it. A spokesman for the agency says it was aware the transaction had tax implications but had no reason to think it was improper.

To pass muster with the IRS, transactions must have a business purpose other than shaving taxes. At Wells Fargo, "all transactions serve a bona fide business purpose and benefit..." says the bank's controller, Richard Levy.

The financial filings of Wells Fargo, which has set up numerous cross-border structures including at

least one with Barclays, disclose little about them. Mr. Levy says they weren't big enough to be material. Other banks involved in these deals also make little mention of them in their filings. When the Wall Street Journal asked the OCC for documents on the transactions, several banks opposed their release, citing client confidentiality and trade secrets.

Barclays doesn't trumpet the Jenkins team's success, beyond occasional mention in its annual reports. Mr. Jenkins says talking about it could tip off competitors and jeopardize client confidentiality. Barclays declined to give details on how the cross-border structures work.

But some details of the 2003 Barclays-Wachovia transaction can be learned from U.S. and U.K. corporate and regulatory filings. These include OCC records, released in redacted form after an appeal by the Journal.

The structure at its heart was called August Funding LLC. British records show that in May 2003, members of Mr. Jenkins's group incorporated Augustus in Delaware. Its U.S. address: the office of a Wilmington clerical firm that lets thousands of shell companies use its address.

Directors of Augustus were eight executives in Britain, six of them members of Mr. Jenkins's group and two of them Wachovia employees. Board meetings take place at Barclays offices in Canary Wharf, U.K. records show. Duplicate books and records are kept there and in Charlotte, N.C., Wachovia's base.

Incorporation in Delaware established a U.S. residency for Augustus. Having a London address as well, plus British directors, made the business the

corporate equivalent of a dual passport holder: incorporated in the U.S., but a U.K. resident for tax purposes. Wachovia owns 49% of Augustus. Barclays owns 51%, via two intermediary companies that have no employees.

Wachovia's correspondence with the OCC to set up such an entity said the North Carolina bank could earn a higher return this way than through other investments with a similar level of risk. One document said the deal would provide its partner British bank "with certain tax benefits under United Kingdom law."

Augustus was funded with more than \$6 billion, the bulk of it contributed by Wachovia. In its first full year, 2004, Augustus reported \$317 million in pretax profits from assets such as Danish mortgage securities and U.S. Treasurys.

Augustus had to pay U.K. taxes on this income because of its British tax residency. The tax was \$94 million.

Augustus's owners, Barclays and Wachovia, both were able to claim credit at home for a tax payment. And thanks to the elaborate structure and cash flows involved in the deal, some of which remain undisclosed, each co-owner could take credit for a full \$94 million payment, say people familiar with how such transactions work. In effect, the \$94 million payment got claimed twice.

When it brought its share of the profits back to the U.S., Wachovia paid an additional amount of tax – about \$16 million – to the Internal Revenue Service to reflect the fact that U.S. corporate tax rates are slightly higher than U.K. tax rates. Wachovia noted that foreign-tax credits are common.

Barclays, asked about these accounts of the transaction, said they were “materially inaccurate,” but declined to be specific, citing client confidentiality. At Wachovia, a spokeswoman said the bank has “complied with all applicable laws and regulations,” including tax rules.

The outline for a similar, prospective Barclays deal with another U.S. bank estimated that it would produce savings of hundreds of millions of dollars over five years, after which it would end. In some deals, the Jenkins team has worked with a number of law and accounting firms, including KPMG LLP. The accounting firm says it submitted to the IRS all transactions involving U.S. banks and Barclays.

Barclays Capital, the investment-banking unit that includes Mr. Jenkins’s team, now contributes about a quarter of its parent bank’s pretax profit, up from 18% in 1999. In a move symbolic of the bank’s shift away from tradition, it has moved from its longtime home in the City of London to the modern Canary Wharf complex east of London. And as Mr. Jenkins’s team continued to do innovative deals, Barclays has augmented his compensation in a novel way.

A few years ago, the bank acquired about \$9 million of preferred shares in a personal holding company of his. In another instance, it invested about \$30 million in preferred shares in another Jenkins personal holding company. Barclays’s board approved the purchases under a plan designed to retain key executives, said a bank spokesman. The arrangement was that if Mr. Jenkins stayed three years, Barclays’s shares in the personal companies would become his.

One holding company, called D-Sol Systems Ltd., owns a warrant to buy shares in a California nutrition-bar maker owned by David Jenkins, the banker's Olympic-medalist brother. David Jenkins started the company, Next Proteins Inc., in 1989 after serving several months of a seven-year prison sentence for involvement in a steroid-smuggling ring. He didn't return calls seeking comment.

D-Sol also bought 49% of a company that makes the Melissa Odabash line of women's swimwear, where Roger Jenkins's wife, Diana, is a partner and helps on public-relations and design.

Mr. Jenkins declined to comment on D-Sol or Barclays's investment in it. Barclays said its investment in the Jenkins personal holding companies has ended, the bank's shares having been transferred to Mr. Jenkins in accordance with the three-year arrangement.

The Jenkinses have owned homes in Malibu, Calif., as well as London. The society magazine Tatler last year included them on a list of famous guests at an event. A New York Times Magazine feature last year about vacationing in Aspen, Colo., pictured Mrs. Jenkins, 35, adorned with what it said was a \$12,000 mink.

Mrs. Jenkins appears to share with her husband an appreciation of tax issues. While at London's City University in 1999, school records show, she wrote a paper called "Minimizing Withholding Taxes in a Multinational Corporate Structure."

**Court of Appeal
State of California
First Appellate District**

**CERTIFICATE OF INTERESTED ENTITIES OR
PERSONS [Prescribed Form]**

Court of Appeal Case Number: A127444
Division 3

Case Name: *Karls v. The Bank of New York, et al.*

Please check the applicable box:

() There are no interested entities or persons to
list in this Certificate per California Rules of
Court, rule § 8.208(d)(3).

(X) Interested entities or persons are listed below:

Name of Interested Entity or Person	Nature of Interest
1. The "I Have A Dream"® Foundation, etc.	Please see attached statement.
2. Barclays Capital Ltd. & Barclays Bank PLC	Please see attached statement.
3. 14 Other International Banking Groups	Please see attached statement.
4.	

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*Please attach additional sheets with Entity or
Person information if necessary*

/s/: John S. Karls

Signature of Attorney/Party Submitting Form

Printed Name: John S. Karls, Pro se

Address: 1534 Clay Street - Unit 1
San Francisco, CA 94109

State Bar No: N/A - Pro Se

Party Represented: Plaintiff - Appellant

Certificate of Interested Entities or Persons –
Additional Information

Karls v. The Bank of New York, et. al. – A127444

Interested Entity or Person No. 1 = The “I Have A Dream”® Foundation, etc.

During the 1990’s, I was the sponsor and chief benefactor of the “I Have A Dream”® Program of Stamford CT –

- IHAD-Stamford was patterned on self-made multi-billionaire Eugene Lang’s promise in 1981 to the graduating sixth graders of Harlem PS 121 that he would guarantee their college tuition if they stayed in school – he then provided tutoring and mentoring until they graduated from H.S.
- IHAD-Stamford was one of 178 such programs in 51 American cities in the 1980’s and 1990’s – providing tutoring and mentoring for inner-city children as they progressed from third-grade through HS graduation and guaranteeing their college tuition – typically transforming single-digit HS graduating rates to 65% - 70%.
- IHAD-Stamford served 200 inner-city children in three public-housing projects.

During the 1990’s, I also served as the Volunteer Treasurer of Eugene Lang’s National “I Have A Dream”® Foundation

As detailed on the attached resume and at the beginning of my Opposition Brief in the Superior Court in a section entitled “Future Party At Interest and Cal. Code Civ. Proc. § 367” and at the end of this attachment –

1. When I retired from Ernst & Young in 1997 at age 55 to become an investment banker, the reason communicated to my EY partners and to the sponsors of the other 177 “I Have A Dream”® Programs (most of whom were CEO’s of major U.S. corporations) was to earn substantial amounts of money that could be used to fund new “I Have A Dream”® Programs.
2. The record will show that after funding a modest life style and the education of my children, all of my remaining resources have been contributed to the causes of educating inner-city children and the environment.
3. In line with these two points, it continues to be my intention to contribute any proceeds from this law suit (and from the related law suits described below) to California-based “I Have A Dream”® or similar programs and that the only reasons this has not already been done are (1) that I am not admitted to practice law in California and a foundation, as a juridical entity, cannot proceed pro se, and (2) in line with having already given away all of my resources to the causes of educating inner-

city children and the environment, I cannot afford to hire counsel for a juridical entity.

Accordingly, California-based “I Have A Dream”® and similar programs are interested persons.

Interested Entities or Persons No. 2 = Barclays Capital Ltd. and Barclays Bank PLC

Barclays Capital Ltd., in unprivileged communications, have admitted that they stole The Property involved in this law suit and that they conveyed copies of The Property to the Defendants in this law suit and the 13 Other International Banking Groups listed in the next section below.

When property has been stolen, the common law of conversion provides that the original owner can proceed against either the original thief or a subsequent holder whose title derives from the thief, and can pray for either the return of the property or its value.

For example, the descendants of holocaust victims from whom the Nazis stole works of art can proceed against the museums that currently hold the art works.

Indeed, Judge Karnow has effectively asked this Court to re-affirm its decision in Gladstone v. Hillel, 203 Cal.App.3d 977 (1st Dist. 1988) before the Superior Court invests its time and resources in trying this and the related 14 law suits. In

Gladstone, the 1st District Court of Appeal enjoined explicitly under the common law of conversion the making of copies of jewelry from stolen molds even though jewelry design is normally protected by federal copyright law.

This would be the equivalent of the Nazis stealing Rembrandt etchings (Rembrandt was most famous for his etchings) and making prints that came into the possession of California museums.

And similar to Barclays Capital Ltd. making copies of The Property and transferring them to the Defendants in these lawsuits and the 13 Other International Banking Groups.

Obviously, if there are recoveries against the Defendants in this case and the 13 Other International Banking Groups, they will have a right of recovery against Barclays Capital Ltd. in British courts if they took proper precautions in their dealings with Barclays Capital Ltd.

Obviously, Barclays Bank PLC, a publicly-traded British corporation would suffer financially if there were recoveries by the Defendants in this law suit and by the 14 Other International Banking Groups against its U.K. subsidiary, Barclays Capital Ltd.

Interested Entities or Persons No. 3 = The 14 Other International Banking Groups

The 14 Other International Banking Groups whose title to The Property derives from Barclays Capital Ltd. and whose members are Defendants in related law suits:

ABN AMRO Inc.	HSBC Bank
AIG/AIU	ING Bank
Bank of America	JP Morgan Chase
Bear Stearns	Mellon Financial Corp.
BNP Paribas	Merrill Lynch
Citicorp	Wachovia Trust Company
Goldman Sachs	Wells Fargo & Company

NB: The lawsuit against BNP Paribas was settled, so it is no longer an Interested Entity.

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JOHN S. KARLS

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Mobile = 01-917-270-1280
E-mail = john@johnkarls.com

Dresdner Kleinwort Wasserstein Ltd./London (Sept. 1997 - present)

Designed and implemented international financial products for multinational corporations

Ernst & Young International – Chief International Tax Partner (Technical) (Jan. 1988 - Sept. 1997)

Designed financial products for two leading investment banks (Goldman Sachs & CS First Boston)

Structured international acquisitions/dispositions for three leading LBO funds (incl. Morgan Stanley)

Editor of Effective Tax Strategies for International Corporate Acquisitions covering 36 countries (Klewer (NL), 1992)

Associate Editor of Federal Income Taxation of Oil and Gas (CCH, monthly and annual)

**Texaco Inc. - Senior Tax Counsel and Director of
Worldwide Tax Planning (May 1974 - Dec. 1987)**
(when Texaco Inc. was still a Fortune-Ten Company)

Headed tax-attorney staff that structured all acquisitions, dispositions, special projects, etc.

Oversaw tax planning for Aramco (100% ownership of oil & gas in Saudi Arabia owned by Texaco Inc., Standard Oil Co. of California (aka, Chevron), Exxon Corp. and Mobil Corp.) during the 8-year takeover by the Saudi Government – continually winning kudos from the other three shareholders

Oversaw tax planning for Caltex Corp. (50-50 ownership of all of Texaco's and Chevron's operations East of Suez except Aramco) – continually winning kudos from Chevron

Professional Responsibilities

American Bar Association Tax Section

- Technical Reviewer for International Aspects of Submissions to the US Government by All Tax Section Committees – 1996-Present
- Chair, Foreign Activities of US Taxpayers Committee (the country's top 300 international tax attorneys with 22 working subcommittees) - 1994-1996

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- Chair of Various Subcommittees of the Foreign Activities of US Taxpayers Committee - 1987-1994

Member of the Editorial Board and Frequent Author, Journal of International Taxation (Warren Gorham & Lamont, monthly)

N.Y.U. Law School Tax Institute -- Lecturer on Cross-Border Mergers & Acquisitions

Fordham University Graduate School of Business -- Associate Professor

Professional Qualifications

Certified Public Accountant, New York

Elijah Watt Sells Silver Medal for ranking 2nd nationally among 28,788 candidates on the Fall, 1971 Uniform CPA Examination

Member of the Bar, New York and Connecticut

Education

BA in Economics, University of Michigan, 1964

JD, Harvard Law School, 1967

LLM in Taxation, New York University School of Law, 1973

MS in Accounting, Northwestern University Graduate School of Management, 1971

Biographical References

Who's Who in American Law

Who's Who in America

Who's Who in The World

Personal

Co-Founder of the first Homeless Shelter in
Fairfield County CT, 1976

Sponsor and chief benefactor of the "I Have A
Dream"® Program of Stamford CT

- Patterned on self-made multi-billionaire Eugene Lang's promise in 1981 to the graduating sixth graders of Harlem PS 121 that he would guarantee their college tuition if they stayed in school – he then provided tutoring and mentoring until they graduated from H.S.
- IHAD-Stamford was one of 178 such programs in 51 American cities in the 1980's and 1990's – providing tutoring and mentoring for inner-city children as they progressed from third-grade through HS graduation and guaranteeing their college tuition – typically transforming single-digit HS graduating rates to 65% - 70%

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- IHAD-Stamford served 200 inner-city children in three public-housing projects

Volunteer Treasurer of Gene Lang's National "I Have A Dream"[®] Foundation in the 1990's

At the request of the United Nations Under-Secretary General for the Environment because of my success in raising funds for IHAD-National and IHAD-Stamford, I raised funds for the United Nations Environment Programme (UNEP) – though the Under-Secretary General was based in Nairobi, my principal contact was with UNEP's Director for External Affairs at UNEP's Geneva Headquarters.

The record will show that after funding a modest life style and the education of my children, all of my resources have always been contributed to the causes of educating inner-city children and improving the environment.

When I retired from Ernst & Young in 1997 at age 55 to become an investment banker, the reason communicated to my EY partners and to the sponsors of the other 177 "I Have A Dream"[®] Programs (most of whom were CEO's of major U.S. corporations) was to earn substantial amounts of money that could be used to fund new "I Have A Dream"[®] Programs.

December 2002

The MacNeil-Lehrer Report
(aka The PBS News Hour With Jim Lehrer)

Official Transcript – November 16, 2009

Excerpt Regarding – 'Monuments Men' Explores
Hunt for Art Stolen by Nazis

Jeffrey Brown talks to author Robert M. Edsel about his new book "The Monuments Men: Allied Heroes, Nazi Thieves and the Greatest Treasure Hunt in History."

JIM LEHRER: And finally tonight: a tale of war, art, and an unusual group of soldiers. Jeffrey Brown has our conversation.

JEFFREY BROWN: It was a drama that largely took place behind the scenes of the great sweep of destruction, violence and final triumph of the Second World War: the systematic looting of art by Nazis and the response and rescue effort by the U.S. and its allies. Much of the work was undertaken by a small group that came to be known as the Monuments Men. And their story is told in a new book by that title. Its author, Robert Edsel, joins me now. Welcome to you.

ROBERT EDESEL, author, "The Monuments Men": Thank you.

JEFFREY BROWN: To help set up the story, describe the loot -- let's talk about the looting first. I said it was systemic. It was a vast scale. How did the Nazis go about it?

ROBERT EDSEL: Well, this is a scale we have never seen. Hitler was determined to build this museum in his hometown of Linz. It was going to be called the Fuhrer Museum, the greatest museum of the world's greatest works of art. And, of course, they had to have them. They are in these other countries. And they went about systematizing and changing the laws, going about confiscations, not just of Jews', but also other wealthy collectors. And it was systematized from the standpoint of developing lists. These different parts of the Nazi troops were in countries months before the invasion making lists of these works of art they intended to confiscate.

JEFFREY BROWN: So, in the midst of a war, you wouldn't think that rescuing art would be a high priority with so much going on. How did this effort get under way? How big did it become?

ROBERT EDSEL: Well, I think the great vision was on the part of a small handful of men and women in this country who, years before the bombing of Pearl Harbor, were in touch with museum colleagues in museums in Europe. And they understood from their colleagues about Hitler's rise to power, how art was being used as a weapon of propaganda. And I think they had the vision to see, at some point in time, the United States was going to become involved in this war. Within weeks after the bombings in Pearl Harbor, museum officials met at the Metropolitan Museum of Art in New York City. And they discussed the protection of works of art in this country. But I think, in the months that followed, they could see, the great risks were to the great

Western civilization cultural treasures that lay in the path of war.

JEFFREY BROWN: Now, I said this was a small group of people who became known as the Monuments Men. Some of them came from arts backgrounds, restoration, preservation, and all. There was systematic looting. Then they systematically went about, it sounds like from your book, to try to get it back.

ROBERT EDSEL: As much as they could do this. I mean, it really was an experiment, an untried experiment. The Monuments Men somewhat of a misnomer. They were museum directors, curators, artists themselves who volunteered for service, average age about 40 years old, most with accomplished careers, many with families. They had every reason to not volunteer and go do this. But they felt it was important to try and preserve the great cultural treasures of Western civilization, lest it become a stain, not just on the United States, but the Western allies, for all time, if the great treasures were destroyed. Their focus initially was on structures -- hence the name Monuments Men. But, as they got to Europe, the more and more, they began looking for the missing works of art that weren't in the museums.

Saving the Mona Lisa

JEFFREY BROWN: And we are talking literally about great treasures of Western civilization.

ROBERT EDSEL: Yes, these are not minor artists.

JEFFREY BROWN: This is the Mona Lisa. We have a photo here.

ROBERT EDSEL: The Mona Lisa was one of 400,000 works of art evacuated from the Louvre in a matter of a few weeks, trying to keep them out of war's path. Of course, initially, the concern was to try to get them out of way of damage from bombings and fires. But, in the course of time, it was to try and keep them away from the Nazis in the theft that went on. So, the Monuments Men arrived on the ground. There were no more than a dozen Monuments Men in all of Northern Europe responsible for covering a vast, vast area. There was a separate group of Monuments Men in Italy charged with this awesome responsibility, really no playbook, if you will. Many of them were hitchhiking their way across Europe. They were pathetically resourced, but they were empowered by this monumental order by General Eisenhower that said, we will protect cultural treasures, so much as war allows. And that really was a sea change in how this army went about fighting a war on the one hand and trying to mitigate damage to cultural treasures.

JEFFREY BROWN: There are so many amazing people and stories here. Is there one favorite character of yours in all of this that could help encapsulate...

ROBERT EDSEL: Well, I -- you are right. I mean, there are -- you have got the future director of the Metropolitan Museum of Art on the front cover of our book standing on the steps of the Castle of Neuschwanstein in southern Bavaria, where they

discovered many thousands of works of art stolen from collectors in France. George Stout, who really was the brainchild of this operation, who was a pioneer in the development of conservation, who had the vision to see this was going to be necessary. I think one of the fellows that we enjoy so much getting to know, a living Monuments Man, is a fellow named Harry Ettlinger, who, as a 13-year-old boy, was the last Jew Jewish boy to have a bar mitzvah in Karlsruhe, Germany. His family fled Germany and came to the United States. He went to school here, worked two jobs, and was drafted into the Army when he was 18, found himself on a truck headed off for the Battle of the Bulge, on his 19th birthday, was pulled off the truck. He didn't know why, and later found out they were pulling him into the Monuments Men section because he was a native German speaker. So, here is this 19-year-old returning to his country of origin, his old country, to fight a war on behalf of his new country.

Unrecovered art

JEFFREY BROWN: Now, you mentioned General Eisenhower. We have a photo of him looking at some of the works that were recovered. So much was recovered, but a lot was not, right?

ROBERT EDSEL: Well, that's right. So many of the things that were recovered -- the Monuments Men stayed in Europe for more than six years after the war, by 1951, had returned more than five million cultural objects, library books, stained glass, church bells, and hundreds of thousands of works of art, to the countries from which these things had been

stolen. This photo of General Eisenhower, General Patton, and General Bradley in a salt mine in Merkers, one of thousands of places these monuments officers found works of art hidden by the Nazis, including so many of the works from their own German museums. But, as you point out, there are still hundreds of works of art, over a million when we get into documents, musical manuscripts, that are missing today. They are with people that liberated some of these documents or treasures. They are with armies of all sides, displaced persons. And I believe, over the next five to 10 years, as we see the World War II generation pass, many of these things that are today in basements and attics hanging on walls are going to begin to surface. It is one of the things we hope at the Monuments Men Foundation we can play a role in helping illuminate the path home for them.

Protecting art from war

JEFFREY BROWN: You know, you mentioned one of them who went on to become the head of the Metropolitan Museum. Another was Lincoln Kirstein, who went on to co-found the New York City Ballet, one of the great art patrons in post-World War II. And, yet, I mean, a lot of -- so, some of these people went on to very famous careers, yet, their story is so little known. And that is what is kind of striking about what they did during the war. Why is that, do you think?

ROBERT EDSEL: Well, I think there are some people that wish this story would go away. I think there's different people that have agendas here.

There's a lot of works of art that are still missing. As I mentioned, some are in private collections. Some are in museums around the world. I think, when we get into the topic of Nazi looting, it is a very sensitive topic, even to this day. So, that is one of the things we try and break down with the Monuments Men Foundation is to discuss the story of these heroes and the role model that they can be, not just from World War II, but also how their work can serve to avoid some of the aftermath as we saw in the looting of the National Museum of Iraq in Baghdad. How is it that, in a world war with a dozen people empowered by General Eisenhower, we could do so well as a nation and as Western Allies, and we couldn't do better in a small -- complicated, but small regional conflict? I think it's important to understand I think it worked during World War II because the orders came from the top. They were empowered by President Roosevelt, orders issued by General Eisenhower. And I think that is an important model for us. We should never lower the bar on the protection of cultural treasures during war.

JEFFREY BROWN: All right. The book is "The Monuments Men," a remarkable story from World War II. Robert Edsel, thank you very much.

ROBERT EDSEL: Thank you.