

LITE DEPALMA GREENBERG, LLC

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THE HEART MOUNTAIN WYOMING	:	SUPERIOR COURT OF NEW JERSEY
FOUNDATION, A PUBLIC NONPROFIT	:	HUNTERDON COUNTY - CHANCERY
CORPORATION,	:	DIVISION
	:	
Plaintiff,	:	Docket No.: HUD-L-
	:	
v.	:	Civil Action
	:	
DAVID RAGO AUCTIONS, INC. d/b/a	:	VERIFIED COMPLAINT
RAGO ARTS AND AUCTIONS d/b/a	:	
RAGO ARTS AND AUCTIONS CENTER:	:	
d/b/a RAGOAUCTIONS d/b/a	:	
RAGOAUCTIONSCOM, INC., and JOHN	:	
DOE,	:	
	:	
Defendants.	:	
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Plaintiff, The Heart Mountain Wyoming Foundation (“Plaintiff”), a public nonprofit corporation doing business at 1539 Road 19, Powell, Wyoming, by way of Verified Complaint against defendants, David Rago Auctions, Inc. d/b/a Rago Arts and Auctions d/b/a Ragu Arts and Auctions Center d/b/a Ragoauctions d/b/a Ragoauctionscom, Inc., (“Rago”), and John Doe, hereby alleges as follows:

THE PARTIES AND THE COLLECTION

1. At all times herein mentioned, Plaintiff was and is a public nonprofit corporation authorized and existing under the laws of the state of Wyoming with a principal place of business located at 1539 Road 19, Powell, Wyoming.

2. Plaintiff is a public nonprofit corporation dedicated to (1) preserving Heart Mountain, now a National Historical Landmark, and the site of the Heart Mountain Relocation Center, one of the camps where Japanese Americans, including Arthur Ashigo, were illegally imprisoned during World War II, (2) educating the public about the history surrounding the tragic and illegal imprisonment of the Japanese Americans at Heart Mountain, (3) memorializing the place and events that occurred at Heart Mountain during their imprisonment, and (4) supporting research efforts relating to the Japanese American incarceration experience.

3. Heart Mountain existed as a War Relocation Authority Facility. By the time Heart Mountain closed in September 1945, a total of 14,997 Japanese Americans had been detained at the camp.

4. Plaintiff owns and runs the Heart Mountain Interpretive Center, a museum dedicated to memorializing the story of the events that occurred at Heart Mountain for future generations. Plaintiff collects, preserves and catalogues a collection of artifacts, which are available to the public at the Heart Mountain Interpretive Center.

5. At all times herein mentioned, Rago is a corporation authorized and existing under the laws of the state of New Jersey with a principal place of business located at 333 North Main Street, Lambertville, New Jersey.

6. At all times herein mentioned, John Doe, a resident of Connecticut, is the owner and consignor of a collection of approximately 450 artifacts and personal items created and/or owned by Japanese Americans who were incarcerated in camps during World War II (the "Collection"). John Doe consigned the Collection to Rago, which has agreed to auction the Collection on April 17, 2015 at 10:00 a.m. EST (the "Auction").

7. The Collection, which Rago has an estimated to have a maximum value of approximately \$26,900, comprises art made by the incarcerated Japanese Americans, including sculptures, cigarette boxes, carved wood name plates, and oil paintings by Estelle Peck Ishigo, the Caucasian wife of Arthur Ashigo, a Japanese American incarcerated at the Heart Mountain Relocation Center. The Collection also contains photos and personal items like furniture, pins, brooches, and jewelry. Attached as **Exhibit A** are true copies of the Collection items.

8. Rago recognizes that the items in the Collection are “an important part of our history, the remnants of a difficult and unjust part of our growth as a nation – something never to forget.”

9. The Collection belonged to the late Allen H. Eaton, a former Oregon state legislator, writer, anti-war activist, art curator and folk and immigration art expert. Eaton was a champion of the arts, a staunch advocate of American folk art, and a committed educator of the public about handicrafts. John Doe’s father was a friend of Eaton’s daughter, and inherited her entire estate upon her death. Upon information and belief, John Doe inherited the Collection from his father, who had inherited it from Eaton’s daughter.

10. As stated in a letter dated October 1, 1945, Eaton was focused “in the preserving of some of the best things for the exhibition.” As Rago has admitted, Eaton “intended to curate an exhibition that would carry their humanity throughout the country.” The “exhibition” was never realized, but Eaton used his research to write and publish a book in 1952 titled “Beauty Behind Barbed Wire: The Arts of the Japanese in our War Relocation Camps.” The book features 81 sets of photos of Japanese American artists (then incarcerated) and their works of art.

11. Eaton commissioned photographers to photograph the incarcerated experience, which he also intended to use in the exhibition. As Eaton noted in his book, he also “kept up contact with friends in several of the ten Relocation Centers,” periodically receiving packages with art created by the Japanese incarcerated, like “exquisite embroideries from Heart Mountain.”

12. Eaton was opposed to the wartime incarceration of Japanese Americans and “hoped that the book would right ‘a great wrong’ done to Japanese Americans.”¹ As stated in *Beauty Behind Barbed Wire*, he wanted to tell “the story of the arts of the Japanese in our War Relocation Camps, a story without parallel in our country and one of the most remarkable chapters in the long history of the human arts.” Eaton sought to answer the question of “[h]ow could this story be told to the world outside” by portraying in his book the beauty he saw at the incarceration camps. He wished to show the world the incarcerated’ resourcefulness, describing in his book how the Japanese American “artisans made tools and art supplies out of salvaged wallpaper, drainage pipes, lumber scraps, ‘discarded saw blades, worn-down files, automobile springs and other waste metal.’”²

13. At the end of World War II, Eaton visited five incarceration camps to study the handicrafts made by the Japanese incarcerated in anticipation of exhibiting these works of art. Eaton initially sought out to purchase the incarcerated’ art for an exhibition that he “hoped could be circulated throughout the country,” but found that the incarcerated were not willing to sell

¹ http://www.nytimes.com/2015/03/06/arts/design/art-of-internment-camps-will-head-to-auction.html?_r=0 (last visited April 14, 2015)

² http://www.nytimes.com/2015/03/06/arts/design/art-of-internment-camps-will-head-to-auction.html?_r=0 (last visited April 14, 2015).

these precious pieces. Many³ of the items in the Collection were given, not sold, to aid Eaton in his efforts to tell the story of the Japanese American experience in the incarceration camps.

14. However, these artifacts were not given to Eaton unconditionally. The intention of the incarcerated, as well as Eaton, was to have Eaton preserve and display the artifacts. To that end, Eaton wrote in his book that the Japanese Americans refused to take money from him for the items. The incarcerated were not interested in selling these personal items; items that, as Eaton believed, depicted the Japanese Americans' ability to create beauty and normalcy amidst a horrible and shameful experience. As Eaton stated:

It was my intention, at the time of going into the field, to purchase a number of objects for an exhibition **which I hoped could be circulated throughout the country**, but I found that few of the craftsmen had any thought of selling the things they had made; they were saving them as “going away gifts,” or to send to friends outside of camp, or just to keep in the family. They offered to give me things to the point of embarrassment, **but not to sell them**

15. Most of these items in the Collection came from the Heart Mountain Relocation Center. As stated in letters penned by Eaton, he commissioned photographs and accepted the artifacts in order “to preserve as much as possible of [Heart Mountain]” because it had made “an impression” upon him. He believed, as stated in a letter dated October 2, 1945, that “nothing which is beautiful, no matter how small, is insignificant,” and it was of utmost importance for him to tell “the story of the arts at Heart Mountain. The different people engaged in them, what the making and doing of beautiful things meant to [the incarcerated].”

16. On March 19, 2015, upon learning of the auction and desiring to preserve these artifacts as a collection and avoid their fragmented sale, Plaintiff asked John Doe, through Rago, to donate the Collection, or remove the it from the Auction so that Plaintiff, along with other

³ The photographs in the Collection were commissioned by Eaton.

Japanese-American cultural organizations, could be afforded an opportunity to buy the collection in a private sale through Rago.

17. Rago rejected Plaintiff's requests on March 26, 2015, stating, in part, :

We hope that the Heart Mountain Wyoming Foundation -- and any other institution that makes this property available for research, display and education -- will find the funds, either singly or together, to bring this property into the public domain as soon as possible.

18. On April 9, 2015, Plaintiff requested that Rago at least delay the Auction so that Plaintiff could have the opportunity to research the Collection, work with other Japanese American cultural institutions, and obtain funding to purchase them at the Auction. Plaintiff stated:

We believe that many of these pieces, with such strong Heart Mountain connections, belong in our care. Estelle Ishigo, beyond being an incarcerated, was a tireless Heart Mountain advocate. She had a very good relationship with Mr. Eaton, as evidenced by the pieces of hers that ended up in his collection. But he also worked through her to develop confinement camp contacts in order to record and preserve the art that was being created. There is a larger story here, with Eaton and his efforts to record and preserve these pieces. Estelle's ashes are scattered on Heart Mountain. We share part of her and her husband's story in our museum, but our collection contains none of her artworks.

19. Rago rejected Plaintiff's request for a delay and noted that it was "astonished that no one has stepped forward with an offer of any size for it. I am sure there was a price at which the consignor would have sold."

20. In response, Plaintiff offered \$50,000 to purchase the Collection for display at the Heart Mountain Interpretive Center. Plaintiff stated in its offer that it was funded through personal pledges as follows:

- Plaintiff's Board Chair Shirley Ann Higuchi, whose parents first met while incarcerated at Heart Mountain. Shirley serves in honor of them, promising her mother, who passed away in 2005, to create a museum and ensure it thrives.
- Plaintiff's Vice Chair Douglas W. Nelson, who wrote the first important history of Heart Mountain in 1976 (and earned a Pulitzer nomination for it). He has

served on the board for many years.

- Dana Ono, whose mother was incarcerated at Heart Mountain and whose father was incarcerated at Manzanar.
- Kris Horiuchi, whose mother was incarcerated at Heart Mountain.
- LaDonna Zall, a native Wyomingite, who has a profound memory of watching the last train of incarcerated leave camp in 1945. She served as volunteer curator and keeper of Plaintiff's precious artifacts for years before Heart Mountain Interpretive Center was built. She still volunteers on a weekly basis, despite the frailties of old age.
- Shig Yabu, who was also incarcerated and who writes children's books about his time at Heart Mountain and makes friends wherever he goes telling stories of "camp."
- Sam Mihara, who is spending his retirement time and funds traveling all over the country educating people through his family's story of incarceration at Heart Mountain.
- Takashi Hoshizaki, who was a resister while at Heart Mountain, and who served two years in a federal penitentiary for that resistance. He also went on to serve in the Korean War.
- Kathy Saito Yuille, who was born at Heart Mountain.

21. Despite Plaintiff's good faith efforts to resolve this matter and preserve the intentions of the incarcerated and Eaton by securing that the Collection for posterity and educational purposes, on April 13, 2015, Rago rejected all of Plaintiff's offers and requests, stating that John Doe feels that he is "not qualified to determine which organization is best suited for this collection."

STATEMENT OF FACTS COMMON TO ALL COUNTS

22. The growing movement in the early 1900s to restrict Japanese immigration culminated with the Immigration Act of 1924, which completely excluded immigrants from Asia. After Japan's attack on Pearl Harbor on December 7, 1941, President Franklin Delano Roosevelt responded by issuing Executive Order 9066, which authorized the military to create

military zones that ultimately led to the deportation of Japanese Americans (that is, American citizens) to incarceration camps.

23. On March 2, 1942, General John L. DeWitt officially issued “Instructions to All Persons of Japanese Ancestry,” that indicated where and when the Japanese Americans were to report with their belongings. The federal government initially sought sites for human, open-gated resettlement communities in the Mountain states, but the governor of Wyoming, Gov. Nels Smith, objected to this plan, stating there would be “Japs hanging from every pine tree.” As a result, the government agreed to Smith’s (and other Western governors’) plan of incarcerating the Japanese in camps with guard towers and barbed wire.

24. For those Japanese Americans incarcerated during World War II, the creation of arts and crafts was a way to pass the time and cope with their significant loss of livelihood and freedom. As Eaton noted, “[t]he Japanese, more than any people I knew had a genius for making something out of almost nothing, so scarcity of materials need not be considered a deterrent,” and “[i]n all the camps . . . they had begun to make their bleak surroundings more attractive by planting gardens, and trying to make their tar-paper barracks more beautiful and therefore livable – almost literally out of nothing, for store-bought supplies were not available. Barren camps were being transformed gradually into attractive homes and communities.” Today, these artifacts not only symbolize the means of the incarcerated’s survival but also tell the story of their confinement. With the closing of the camps, many Japanese Americans focused on rebuilding their lives. Confronted with the pressure and anxiety to find a place to live and start their lives from scratch, they were not in a position to preserve their artwork, especially given that they were allowed to take only one suitcase when they left the camps. As noted by Eaton in his book, the incarcerated were emotionally tied to their possessions. They were saving them to give as

“going away gifts” or to send to friends outside the camps, and were by no means interested in parting with these items by way of a business transaction with non-Japanese Americans.

25. Since the camps’ closing, the federal government has made a series of apologies, beginning with an apology from Congress after the camps were closed. In 1976, President Gerald Ford stated that the incarceration of Japanese Americans during World War II was wrong, a national mistake, and should never again be repeated. In 1988, President Ronald Reagan too apologized for the atrocities committed on the Japanese Americans and signed the Civil Liberties Act of 1988, which entitled living incarcerated to receive \$20,000 from the federal government. In 1992, President George H.W. Bush signed the Civil Rights Amendment of 1992, which added more funds to pay the promise of \$20,000 to living Japanese Americans, and again formally apologized.

26. Consistent with the government’s intent to provide remuneration for the wartime hysteria that caused one of the most shameful events of our nation’s history, Congress passed the Japanese American Confinement Sites Act (JACS), Public Law 109-441, 120 Stat. 3288, 16 U.S.C 461 and Public Law 111-88. The JACS establishes a grant program to provide for the preservation and interpretation of the incarceration camps. It was established to encourage projects that identify, research, evaluate, interpret, protect, restore, repair, and acquire the incarceration camps in order that present and future generations may learn and gain inspiration from these sites and that these sites will demonstrate the Nation’s commitment to equal justice under the law. Plaintiff has received three grants under the JACS.

27. Despite the public outcry regarding the Auction, and Plaintiff’s offer to purchase the Collection for \$50,000, as well as its promise that it will work with other Japanese American

institutions to preserve and exhibit the Collection, the Consignor refuses to sell the items to Plaintiff and/or to delay the Auction.

28. Many of the camps' survivor's heirs have come forward to express their anger and disapproval of the Auction. For example, [REDACTED] contacted Plaintiff upon recognizing his family's name on a carved wood nameplate, and is outraged that his family's property is being sold for profit. Others, like Yoshinori H.T. Himel, have recognized their family members in photos taken at the camps and have written to Rago. In response to seeing his mother's image being auctioned, Mr. Himel wrote in a letter dated April 2, 2015:

The government used this young woman's smiling likeness to mask the tragedy suffered by her and an entire racial group of innocent people. Each item donated to the collector and offered by the consignor was a product of that injustice. To profit from these items is a second injustice. I wonder how the consignor and you justify to yourselves this second exploitation of my family's, and our people's, suffering.

29. Likewise, Reverend Bob Oshita, minister of the Buddhist Church of Sacramento, in protest of the Auction stated:

The drawings, paintings, photographs & crafts created by those of Japanese Ancestry imprisoned during World War II are not pieces of art meant to decorate a private collection. They are deep and quiet expressions of the hope and despair felt by a people enduring the trauma of racism, hatred and fear. What you are planning to sell should be part of our shared social conscience...and not viewed as simply art for display.

30. Poet Janice Mirikitani issued a statement in protest of the Auction, stating:

I was shocked and appalled, to say the least, in seeing my cousin, Jimmy Tsutomu Mirikitani's photo up for sale in an auction. Jimmy has endured more adversity than most human beings could imagine, not only with the injustice of our incarceration in American concentration camps, but also his struggle for validation as an American citizen.

...

To 'pimp' the suffering of my family, my community, is not only insulting, it is inhumane. I was an infant incarcerated in a camp in Rohwer, Arkansas, so I have

my own personal journey witnessing the aftermath of the camps on my mother's life.

Do not commit this travesty of cheapening and 'selling' memories of cherished family members, and artwork which was created to survive the isolation and humiliation of the camp experience.

31. On both Rago's Facebook page, and a Facebook page created to protest the Auction, as well as a Change.org petition, thousands of Plaintiff's supporters have expressed outrage at Rago's and John Doe's profiting off of Eaton's collection, which was amassed only to educate others about the Japanese American incarceration camp experience.

32. Eaton's book identifies the owners of some of the artifacts in his collection. Plaintiff intends to locate the heirs to the artifacts to return the items to their rightful owners. Plaintiff also intends to preserve the remaining items for display at its museum, and to share them with other Japanese American institutions.

33. Plaintiff's intentions are in line with Eaton's desire not only to tell the Japanese American story, but to preserve it for future generations. As he stated in a letter to Estelle Ishigo, dated October 1, 1945, he felt "that the folks to whom we came in contact at Heart Mountain realize the desirability of making this record as good and complete as we can under the circumstances."

34. As admitted by Rago, "[t]here could be no better resolution here than for a member/members of the Japanese American community with the means to secure this property to come forward, purchase the collection at auction and find it a worthy home." Plaintiff is one of those members, has made a more than fair offer, and has assured Defendants that indeed it will find the Collection "a worthy home."

35. The artifacts in the Collection, as a group, tell the story Eaton set out to tell in his book. As Eaton stated, his book was "presented in the hope that it will help bring about better

understanding, appreciation and love for a minority group in our midst, our people of Japanese ancestry; and also in the hope that many and more of us will turn our minds to ways of righting, in such measure as we can, a great wrong which we, through our government and some of our fellow citizens, have done to these people.” To fragment the Collection through an auction would violate both Eaton’s intention to procure this art for posterity, as well as the intention of the incarcerated that gave Eaton their possessions for the sole purpose of exhibition. Dispersing the artifacts through an auction sale would also destroy the possibility that they could ever be exhibited as a group for educational, historical, and cultural purposes, as Eaton and the incarcerated contemplated.

36. Unless the Auction is enjoined and a constructive trust is imposed, Rago and John Doe will be unjustly enriched to Plaintiff’s detriment. As a protester has noted “[u]nless one buyer purchases the entire collection on auction day, everything will be cast to the wind, piecemeal, into private collections.”

COUNT ONE
(Replevin)

37. Plaintiff repeats and realleges each and every allegation set forth in the preceding paragraphs as if set forth at length herein.

38. N.J.S.A. 2B:50-1 provides that “[a] person seeking recovery of goods wrongly held by another may bring an action for replevin in the Superior Court. If the person establishes the cause of action, the court shall enter an order granting possession.”

39. The Collection is wrongly held by the consignor. The incarcerated donated their artifacts to Eaton in exchange for his promise to use the artifacts in his planned exhibition and for the purposes of educating the public about the Japanese American experience during World War II.

40. This consideration was destroyed when Eaton transferred the artifacts to the Consignor.

41. Plaintiff has superior title to the Collection and the wrongful transfer of the artifacts has frustrated the purpose of the incarcerated's exchange with Eaton, as evidenced by the Consignor's intent to profit from these wrongfully obtained items by way of the Auction.

COUNT TWO
(Unjust Enrichment)

42. Plaintiff repeats and realleges each and every allegation set forth in the preceding paragraphs as if set forth at length herein.

43. The incarcerateds expected to obtain the benefit of having their artifacts used solely for posterity and educational purposes.

44. If the Collection is sold at the Auction, the incarcerateds will not have obtained the agreed upon benefit, while John Doe and Rago will receive an undue benefit without giving proper consideration for this benefit.

45. John Doe and Rago would be unjustly enriched by selling the Collection, as it is property rightfully belonging to the incarcerateds.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants together with an Order:

- (a) Enjoining the auction of Lots 1232 to 1255, currently scheduled to take place on April 17, 2015 at 10:00 a.m. EST;
- (b) Imposing a constructive trust over the property in Lots 1232 to 1255 scheduled for auction on April 17, 2015 at 10:00 a.m. EST; and
- (c) Granting such other relief as the Court deems equitable and just.

Dated: April 16, 2015

LITE DEPALMA GREENBERG, LLC

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Susana Cruz Hodge
Jeffrey A. Shooman
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Newark, NJ 07102

Attorneys for Plaintiff

CERTIFICATION PURSUANT TO RULE 4:5-1

In accordance with R. 4:5-1, I hereby certify that the matter in controversy is not the subject of any other litigation. I further certify that to the best of my knowledge, information and belief, no other party should be joined in this action. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: April 16, 2015

LITE DEPALMA GREENBERG, LLC

Bruce D. Greenberg
Susana Cruz Hodge
Jeffrey A. Shooman
Two Gateway Center, Suite 1201
Newark, NJ 07102

Attorneys for Plaintiff

DESIGNATION OF TRIAL COUNSEL

It is hereby designated that Bruce D. Greenberg will be trial counsel in the above referenced matter pursuant to R. 4:25-4.

Dated: April 16, 2015

LITE DEPALMA GREENBERG, LLC

Bruce D. Greenberg
Susana Cruz Hodge
Jeffrey A. Shooman
Two Gateway Center, Suite 1201
Newark, NJ 07102

Attorneys for Plaintiff

VERIFICATION OF PLAINTIFF'S COMPLAINT

Shirley Ann Higuchi, of full age, upon her Certification, says:

1. I am Board Chair of the Plaintiff in this action.

2. I have read the foregoing Verified Complaint, and I hereby Certify that all allegations contained therein are true and correct, except those made upon information and belief and as to allegations based upon information and belief, I believe these to be true upon reasonable investigation and inquiry.

Shirley Ann Higuchi

Dated: April 15, 2015