UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	REPORT & RECOMMENDATION
-against-	:	19 Civ. 4355 (VM) (GWG)
COLLECTOR'S COFFEE, INC., et al.,	:	
Defendants.	:	

GABRIEL W. GORENSTEIN, UNITED STATES MAGISTRATE JUDGE

In 1945, the celebrated baseball player Jackie Robinson signed a contract to play for the Montreal Royals' 1946 baseball season. In 1947, Robinson signed a contract to play for the Brooklyn Dodgers' 1947 baseball season. Those contracts are now being held by the United States Marshals Service. Copies of the contracts are annexed hereto. The issue raised in the motions now before this Court is who is the rightful owner of these two contracts.

This suit was brought by the United States Securities and Exchange Commission against Collector's Coffee, Inc. ("CCI") and its principal, Mykalai Kontilai, alleging securities fraud. The sole asset of any value held by CCI are the two contracts signed by Jackie Robinson, which CCI bought in 2013 for $2 million. After this suit was filed, the contracts were placed in the custody of the United States Marshals Service and are being kept in storage pending the lawsuit's outcome. An investor group consisting of Adobe Investments, LLC; SDJ Investments, LLC; and Darren Sivertsen (collectively. "the Holders") has intervened in this action, claiming ownership of the contracts because the contracts were collateral for approximately $6 million in loans they made to CCI, which are now in default. The Jackie Robinson Foundation, Inc.

("JRF"), which was given the Dodgers' rights in the contracts as a gift, has also intervened seeking a declaration that it is the rightful owner.

The Holders have now filed a motion seeking summary judgment on their claim that CCI had title to the Contracts at the time the Holders made their loans to CCI and JRF has cross-moved for summary judgment against CCI seeking a declaratory judgment as to its own claim to title.[1] For the reasons stated below, neither side should be granted summary judgment because there are questions of fact as to who owns the contracts that must be resolved by a jury.[2]

I. BACKGROUND

The following facts are undisputed except as otherwise stated.

In October 1945, Jackie Robinson signed a contract with the minor league Montreal Royals baseball team to play for the 1946 season. See Holders' Response to JRF's Statement of

[1] See Intervenor-Plaintiffs' Memorandum of Law, filed Nov. 9, 2022 (Docket # 1118) ("Holders Mem."); Declaration of Robert DeMarco, filed Nov. 9, 2022 (Docket # 1120) ("First DeMarco Decl."); Memorandum of Law in Support of Intervenor-Defendant's Motion for Summary Judgment, filed Nov. 9, 2022 (Docket # 1122) ("JRF Mem."); Declaration of Seth Spitzer, filed Nov. 9, 2022 (Docket # 1124) ("First Spitzer Decl."); Declaration of Robert DeMarco, filed Nov. 9, 2022 (Docket # 1125) ("Second DeMarco Decl."); Intervenor-Plaintiffs' Memorandum of Law in Support of Opposition, filed Dec. 14, 2022 (Docket # 1139) ("Holders Opp."); Declaration of Robert DeMarco, filed Dec. 14, 2022 (Docket # 1140) ("Third DeMarco Decl."); Memorandum of Law of Intervenor-Defendant in Opposition to Intervenor-Plaintiffs' Motion, filed Dec. 14, 2022 (Docket # 1141) ("JRF Opp."); Declaration of Seth Spitzer, filed Dec. 14, 2022 (Docket # 1143) ("Second Spitzer Decl."); Defendant's Opposition to the Jackie Robinson Foundation's Motion for Summary Judgment, filed Dec. 14, 2022 (Docket # 1144) ("CCI Opp."); Declaration of James Ardoin, filed Dec. 14, 2022 (Docket # 1145) ("Ardoin Decl."); Intervenor-Plaintiffs' Memorandum of Law in Support of Reply, filed Jan. 6, 2023 (Docket # 1146) ("Holders Reply"); Reply of Intervenor-Defendant, filed Jan. 6, 2023 (Docket # 1148) ("JRF Reply"); Declaration of Seth Spitzer, filed Jan. 6, 2023 (Docket # 1149) ("Third Spitzer Decl.").

[2] For purposes of these motions, we assume that trial of any issues raised would be presented to a jury for decision. Our so stating should not be taken as to a ruling whether either side is in fact entitled to a jury trial as opposed to a bench trial. Neither side has addressed this question in their briefing and thus we do not address it either.

Material Facts, filed Dec. 14, 2022 (Docket # 1138) ("Holders 56.1 Response"), at ¶ 7. The contract also bore the signature of Royals President Hector Racine and a stamp on the final page above Robinson's signature stating that Robinson "acknowledge[d] receipt of duplicate of executed contract." See Contract, annexed as Exhibit C to First Spitzer Decl. (Docket # 1124-2). At the time, the Montreal Royals were a minor league affiliate of the Brooklyn Dodgers, which owned a "significant" or "controlling" interest in the team. Holders 56.1 Response ¶ 6. In April 1947, Robinson signed a major league contract with the Brooklyn Dodgers. Id. ¶ 9; see Contract, annexed as Exhibit D to First Spitzer Decl. (Docket # 1124-2). The contract was stamped "Approved" and signed by Dodgers President Branch Rickey and Ford Frick, the president of the National League of Professional Baseball Clubs. Holders 56.1 Response ¶ 9. Id. Both the Royals and Dodgers contracts (collectively, the "Contracts") followed the "Uniform Player Contract" ("UPC") format used by the baseball leagues at the time. Id. ¶ 12.

Temporally, the next piece of evidence referencing the existence of either of the contracts is an article published in the Brooklyn Daily Eagle on February 10, 1948. See Exhibit to Show Part Played by Negroes in Boro Since 1660, Brooklyn Daily Eagle (Feb. 10, 1948), annexed as Exhibit 22 to First DeMarco Decl. (Docket # 1120-22) ("1948 Article").[3] This article describes an exhibit "depicting the part played by Negro residents of Brooklyn from 1660 to the present time" in the Brooklyn Hall of Records "as part of the borough celebration of Negro History Week." Id. The 1948 Article states that the exhibit was arranged by "Borough Historian James A. Kelly" and that the documents on exhibit include "the contract signed by Jackie Robinson

[3] Under Fed. R. Evid. 803(16), a newspaper article published before 1998 is admissible as an exception to the rule against hearsay. See, e.g., In re Davis New York Venture Fund Fee Litig., 2019 WL 11272913, at *3 n.4 (S.D.N.Y. July 2, 2019) (accepting as evidence a 1993 Wall Street Journal article). Newspaper articles are self-authenticating under Fed. R. Evid. 902(6).

with the Montreal baseball team." Id.

An article published on February 12, 1952, in the Brooklyn Daily Eagle announced that another exhibit at the Brooklyn Hall of Records was "now in progress" and that it displayed a number of documents relating to "the history of the Negro in Brooklyn." See Hall of Records Exhibit, Brooklyn Daily Eagle (Feb. 12, 1952), annexed to Letter from Richard Schonfeld, filed May 15, 2023 (Docket # 1225) ("1952 Article"). The article describes a document from New York's early history written in Dutch and then states the following:

> In the same display case is a uniform player's contract made by the Dodgers with Jackie Robinson. It was Robinson's first pact with the Flock, dated 1947 and listing his salary as $5000.
>
> It was made available to the exhibition by Walter O'Malley, Dodger president. Branch Rickey contributed another Robinson contract, one made in 1946 with the Montreal Royals.

Id. The article states that Walter O'Malley was "president" of the Dodgers. The parties agree that at this point Rickey was no longer employed by the Dodgers. See Holders Reply at 2 n.2.

Importantly, the 1952 Article states that the exhibit was "prepared . . . by James A. Kelly, Deputy County Clerk and Borough Historian." Id. It states that Kelly prepared the exhibit "on behalf of County Clerk Francis J. Sinnott." Id. As noted, Kelly was also referenced in the 1948 Article as the person arranging the exhibit of the Royals contract.

An article published on February 18, 1974, in the New York Daily News describes the opening of the "James A. Kelly Institute for Local Historical Studies" (the "Institute"), housed at St. Francis College in Brooklyn, and also describes the records the Institute holds. See Keeping Up to Date on the Past, N.Y. Daily News (Feb. 18, 1974), annexed as Exhibit 1 to Letter from Richard Schonfeld, filed Apr. 28, 2023 (Docket # 1211-1) ("1974 Article"). The 1974 Article reads in relevant part:

> For the history buff, the James A. Kelly Institute for Local Historical Studies is a treasure trove of four million documents, records, charters, maps and memorabilia of Brooklyn's history.
>
> The institute opened its new home last Friday at St. Francis College, 180 Remsen St., Brooklyn Heights. Books, artifacts, pictures and posters are housed in five basement rooms.

Id. The article then describes a number of historical documents including the "bill of sale for Coney Island in 1654." Id. The following paragraph appears next:

> And then, there is Jackie Robinson's original contracts with the Brooklyn Dodgers and the then minor-league Montreal team he played with before coming to Brooklyn.

Id. The article recounts that "[a]t its opening, Arthur J. Konop, institute director, welcomed guests from across the city." Id. The article states:

> The institute is named for the first official borough historian, James A. Kelly, who died in 1971 at the age of 86. His wife came to applaud the work of Konop and his staff members, David Oats and Eric Ierardi.
>
> Konop, a former assistant county clerk, worked with Kelly and James F. Waters to assemble and catalogue the material collected over the years.

Id. The article contains a photograph of Konop at the "opening-day ceremonies." Id.

On July 11, 1979, another article appeared in the Daily News reporting on the Institute. It describes a "new brochure" that had been issued by the "James A. Kelly Institute" as a result of "increased funding and an enlarged staff." See Archives Store Treasure Trove of Brooklyn's Past, N.Y. Daily News, July 11, 1979, annexed as Exhibit 2 to Letter from Richard Schonfeld, filed Apr. 28, 2023 (Docket # 1211-2) ("1979 Article"). The article makes clear that its source is "institute Director Arthur Konop" and displays a picture of Konop holding a copy of the brochure. Id. The article quotes Konop as saying: "[w]e are in the midst of enlarging the institute and becoming more active in letting people know what we do." Id. Konop referred to the fact that the institute "received some money from various foundations and businesses" and

that he hoped that the brochure "will help attract additional money in the future." Id. The article continues:

> The institute, at 180 Remsen St., houses one of the largest collections of source documents, memorabilia and archives on New York's history and, more especially, on Brooklyn's history.
>
> Originally founded in 1956 as the Brooklyn Historical Studies Institute of St. Francis College, its first director was James A. Kelly, the official borough historian from 1944-1971. After Kelly's death the institute was renamed in his honor.
>
> Items in the crowded basement rooms range from the entire collection of Kings County town records dating back 300 years, to collections of personal papers from politicians such as John Rooney and Eugene Keogh, over 7,000 maps and charts of old Brooklyn and a library and files with information on almost every phase of life in Brooklyn.
>
> Konop even has Jackie Robinson's original contract with the Brooklyn Dodgers.
> . . .
>
> "Anything having to do with Brooklyn or with New York in any facet of interest, we probably have information on," said the director.

Id. (emphasis added). The article states that the institute "draws people from all over the world." Id. It states: "Despite the library's constant use, the institute charges no fees for its services and, until last year, was funded solely by St. Francis College." Id. It notes that "because of the age of many of the irreplaceable documents and records, the Kelly Institute has embarked on a major microfilming and restoration project and that, Konop said, costs money. Thus the director hopes that the new publicity campaign will attract not only additional users, but also some ongoing support to ensure the upkeep of the vast collection." Id.

Konop died in 2009. Holders 56.1 Response ¶ 36. Scott Konop testified that upon his father's death, his mother gave him an envelope containing a key to a safe deposit box that housed the Contracts, along with a message from his father: "my kids will know what to do with

this." Id.[4]

In 2012, Konop's estate sold the Contracts to a company called Gotta Have It Collectibles ("Gotta Have It") for $750,000. Id. ¶¶ 45-46; JRF Mem at 10. Gotta Have It sold the Contracts to CCI in July 2013 for $2 million. Holders 56.1 Response ¶ 57. CCI later obtained loans from the Holders for $6 million secured by the Contracts. Id. ¶¶ 75-77.

After CCI acquired the Contracts, CCI displayed them to promote a future sale through events at Philadelphia's Constitution Center and New York's Times Square, including displays in 2015. JRF 56.1 Response ¶ 47. In 2017, CCI retained the Goldin auction house to organize a sale of the Contracts. Holders 56.1 Response ¶ 107. As of September 2017, the owner of the auction house "was stating publicly that the Contracts were [Jackie] Robinson's personal copies," as opposed to the copies belonging to the Dodgers organization. Id. ¶ 108. In February 2018, the auction house put the Contracts up for auction but did not sell them. Id. ¶111.

In April 2018, the Dodgers requested from the auction house "all available information relating to the provenance of the contracts." Id. ¶ 121. On January 24, 2019, the Dodgers sent a letter to CCI demanding possession of the Contracts and stating that "[t]he property is owned by

[4] At the time she negotiated the sale of the contracts to Gotta Have It, Arthur Konop's wife, Odette Konop, signed a letter that warranted title and stated "My Husband possessed these contracts in a safe deposit box or our home for over forty-five years . . . . He has cared for them and protected them over half his life to the time of his passing." Letter from Odette Konop, dated Mar. 2, 2012, annexed as Exhibit 28 to First DeMarco Decl. (Docket # 1120-28). While the admissibility or not of this letter does not affect the outcome of the instant motions, we note that it is unsworn and thus not admissible under Fed. R. Civ. P. 56(c)(4). Also inadmissible hearsay (and also not affecting the outcome of the instant motions) is Scott Konop's testimony regarding what his father "[told him] about the contracts," which included a claim that the contracts belonged to his father and that he "loaned" them to "the college." Deposition of Scott Konop, annexed as Exhibit 29 to First DeMarco Decl. (Docket # 1120-29), at 37-38. Scott's mother's or father's statement to Scott that Arthur found the contracts "actually being disposed of" is similarly hearsay Id. at 38-39.

the Dodgers and is not the property of [CCI]." Id. ¶ 124. In November 2019, the Dodgers assigned to JRF whatever interest they had in the Contracts. See id. ¶ 126.

In September 2019, the Holders filed an intervenor complaint seeking declaratory relief regarding the ownership of the Contracts. See Intervenor Complaint, filed Sept. 10, 2019 (Docket # 92). On May 29, 2020, JRF filed an answer. Answer, filed May 29, 2020 (Docket # 353) ("Ans."). On April 4, 2022, JRF amended its answer to include a cross-claim against CCI for declaratory relief that it was the true owner of the Contracts. Amended Answer, filed Apr. 4, 2022 (Docket # 1002) ("Am. Ans."), at 14. On November 9, 2022, both JRF and Holders filed the instant motions for summary judgment as to their claims for declaratory relief.

II. LEGAL STANDARDS

A. Summary Judgment

Rule 56(a) of the Federal Rules of Civil Procedure states that summary judgment shall be granted when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see also Beard v. Banks, 548 U.S. 521, 529 (2006) (citing Celotex Corp. v. Catrett, 447 U.S. 317, 323 (1986)); Celotex, 477 U.S. at 322 (quoting Fed. R. Civ. P. 56(c)). A genuine issue of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). "[O]nly admissible evidence need be considered by the trial court in ruling on a motion for summary judgment." Raskin v. Wyatt Co., 125 F.3d 55, 66 (2d Cir. 1997) (citations omitted); see also Fed. R. Civ. P. 56(c)(4) (parties shall "set out facts that would be admissible in evidence").

In determining whether a genuine issue of material fact exists, "[t]he evidence of the non-movant is to be believed" and the court must draw "all justifiable inferences" in favor of the

nonmoving party. Anderson, 477 U.S. at 255 (citing Adickes v. S.H. Kress & Co., 398 U.S. 144, 158-59 (1970)). Once the moving party has shown that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law, "the nonmoving party must come forward with 'specific facts showing that there is a genuine issue for trial,'" Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (emphasis in original) (quoting Fed. R. Civ. P. 56(e)), and "may not rely on conclusory allegations or unsubstantiated speculation," Scotto v. Almenas, 143 F.3d 105, 114 (2d Cir. 1998). In other words, the nonmovant must offer "concrete evidence from which a reasonable juror could return a verdict in his favor." Anderson, 477 U.S. at 256. Thus, "[a] party opposing summary judgment does not show the existence of a genuine issue of fact to be tried merely by making assertions that are conclusory." Major League Baseball Props., Inc. v. Salvino, Inc., 542 F.3d 290, 310 (2d Cir. 2008). "Where it is clear that no rational finder of fact 'could find in favor of the nonmoving party because the evidence to support its case is so slight,' summary judgment should be granted." FDIC v. Great Am. Ins. Co., 607 F.3d 288, 292 (2d Cir. 2010) (quoting Gallo v. Prudential Residential Servs., Ltd. P'ship, 22 F.3d 1219, 1224 (2d Cir. 1994)).

"When each side has moved for summary judgment, . . . [courts] are required to assess each motion on its own merits and to view the evidence in the light most favorable to the party opposing the motion, drawing all reasonable inferences in favor of that party." Wachovia Bank, Nat'l Ass'n v. VCG Special Opportunities Master Fund, Ltd., 661 F.3d 164, 171 (2d Cir. 2011).

While testimony from experts may be admissible, a court will not accept unsupported testimony or conclusory allegations from such witnesses. See Sec. Exch. Comm'n v. Yorkville Advisors, LLC, 305 F. Supp. 3d 486, 504 (S.D.N.Y. 2018) ("expert testimony that rests on

merely subjective belief or unsupported speculation is inadmissible") (citing Atl. Specialty Ins. v. AE Outfitters Retail Co., 970 F. Supp. 2d 278, 291 (S.D.N.Y. 2013)).

B. Declaratory Judgment

The Declaratory Judgment Act provides that "[i]n a case of actual controversy within its jurisdiction, . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a). Because declaratory judgment claims must present an "actual controversy," id., "the facts alleged, under all the circumstances, [must] show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." In re Prudential Lines Inc., 158 F.3d 65, 70 (2d Cir. 1998).

The Declaratory Judgment Act is "procedural only," Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 671 (1950), and the party invoking it must still point to a separate legal right it is seeking to vindicate, see Chevron Corp. v. Naranjo, 667 F.3d 232, 244-45 (2d Cir. 2012) (the Declaratory Judgment Act "does not extend to the declaration of rights that do not exist under law"). Ultimately, the decision to grant declaratory relief turns on "(1) whether the judgment will serve a useful purpose in clarifying or settling the legal issues involved; and (2) whether a judgment would finalize the controversy and offer relief from uncertainty.'" Duane Reade, Inc. v. St. Paul Fire & Marine Ins. Co., 411 F.3d 384, 389 (2d Cir. 2005)) (citation omitted).

III. DISCUSSION

Both the Holders and JRF seek a declaratory judgment as to whether either of them holds any current "right, title, or interest" in the Contracts. The Holders argue that they are entitled to declaratory judgment because JRF has failed to establish ownership. Holders Mem. at 3. JRF seeks a declaratory judgment on the basis that it has a right to the Contracts under the law of replevin. JRF Mem. at 3. The Holders respond that any replevin claim is barred by the relevant statute of limitations and by the doctrine of laches. Holders Opp. at 2, 30, 39. CCI has opposed JRF's motion and adds an argument that JRF is judicially estopped from claiming ownership over the Contracts based on statements made in a bankruptcy proceeding. CCI Opp. at 1-5.

We next address the various issues that these motions raise.

A. Availability of Declaratory Judgment

As noted, the Declaratory Judgment Act states that, with exceptions not relevant here, "any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration." 28 U.S.C. § 2201(a). The availability of relief is contingent upon a showing "that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." In re Prudential Lines, 158 F.3d at 70. "The disagreement must not be nebulous or contingent but must have taken on fixed and final shape so that a court can see what legal issues it is deciding, what effect its decision will have on the adversaries, and some useful purpose to be achieved in deciding them." Public Serv. Comm'n of Utah v. Wycoff Co., 344 U.S. 237, 244 (1952). Here, it is evident that JRF, CCI and the Holders have adverse interests. Likewise, the dispute here is more than hypothetical. It is based on concrete

allegations of fact, not on mere hypotheticals or contingencies. As such, there is an "actual controversy" eligible for declaratory relief.

A decision to grant declaratory relief must consider "(1) whether the judgment will serve a useful purpose in clarifying or settling the legal issues involved; and (2) whether a judgment would finalize the controversy and offer relief from uncertainty.'" Duane Reade, 411 F.3d at 389. A declaratory judgment in this case would achieve both ends by establishing whether the parties involved have an ownership interest in the Contracts.

The Holders argue that JRF's request for declaratory judgment is infirm because any claim grounded in replevin and seeking a declaration of ownership should have been pleaded as a replevin claim in JRF's cross-claim. See Holders Opp. at 2. We reject this argument inasmuch as "[t]he existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate." Fed. R. Civ. P. 57. Here, replevin is merely the legal framework through which JRF attempts to establish its entitlement to a declaratory judgment. Courts routinely assess a claim for a declaratory judgment by reference to the substantive law that creates the entitlement to a declaratory judgment. See, e.g., In re Joint Eastern and Southern Dist. Asbestos Litig., 14 F.3d 726, 731 (2d Cir. 1993) ("a court may only enter a declaratory judgment in favor of a party who has a substantive claim of right to such relief"); Now-Casting Economics, Ltd. v. Economic Alchemy, LLC, 2022 WL 4280403, at *8 (S.D.N.Y. Sept. 15, 2022) (addressing declaratory judgment claim for ownership of trademark under the law of trademark); Gibbs-Squires v. Cosby, 2017 WL 5515916, at *3 (E.D. Pa. 2017) (applying the statute of limitations for replevin to declaratory judgment action seeking to resolve rights to property).

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B. Judicial Estoppel

CCI argues that JRF and the Dodgers should be judicially estopped from asserting an ownership interest in the Contracts due to statements made in a prior bankruptcy proceeding. CCI's argument centers on a June 27, 2011, bankruptcy petition filed by the Dodgers. CCI argues that "[t]he Dodgers had a statutory duty in the bankruptcy case to list the [] Contracts before the U.S. Trustee as either a Dodgers[] asset[] or . . . as missing assets that the Dodgers would have a claim for the Trustee to pursue." CCI Opp. at 2. Thus, CCI argues that because the Contracts were never listed in the bankruptcy proceeding, id. at 1, the Dodgers, and by extension JRF as the transferee of the Dodgers' alleged ownership rights, "are precluded or estopped from claiming an asset that the club did not list," id. at 3.

Under the doctrine of judicial estoppel, "[w]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." New Hampshire v. Maine, 532 U.S. 742, 749 (2001) (quoting Davis v. Wakelee, 156 U.S. 680, 689 (1895)). Judicial estoppel "'generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase.'" Id. (quoting Pegram v. Herdrich, 530 U.S. 211, 227 n.8 (2000)). With regard to bankruptcy, the doctrine means that "a creditor who fails to lay claim to an asset in the bankruptcy court only to do so in subsequent litigation must, to prevail, bear the heavy burden of showing a de minimis effect on the bankruptcy proceeding." Adelphia Recovery Tr. v. Goldman, Sachs & Co., 748 F.3d 110, 120 (2d Cir. 2014). However, "because [judicial estoppel] is primarily concerned with

protecting the judicial process, relief is granted only when the risk of inconsistent results with its impact on judicial integrity is certain." Id. at 116 (citation omitted).

In determining whether a party is judicially estopped from asserting a claim, courts consider the following:

> First, a party's later position must be clearly inconsistent with its earlier position. Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled . . . . A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. In enumerating these factors, we do not establish inflexible prerequisites or an exhaustive formula for determining the applicability of judicial estoppel.

Id. at 116 (quoting New Hampshire v. Maine, 532 U.S. at 750-51). "Courts decline to apply the doctrine of judicial estoppel . . . where a party's prior action resulted from 'a good faith mistake or an unintentional error.'" Foster v. City of New York, 2017 WL 11591568, at *41 (S.D.N.Y. Sept. 30, 2017) (quoting Mitchell v. Washingtonville Cent. Sch. Dist., 190 F.3d 1, 6 n.2 (2d Cir. 1999)). Likewise, "if the statements or positions in question can be reconciled in some way, estoppel does not apply." Negron v. Weiss, 2006 WL 2792769, at *4 (E.D.N.Y. Sept. 27, 2006) (citing Simon v. Safelite Glass Corp., 128 F.3d 68, 72-73 (2d Cir. 1997)); accord Whitehurst v. 230 Fifth, Inc., 998 F. Supp. 2d 233, 247 (S.D.N.Y. 2014).

CCI's argument founders for a number of reasons but most obviously on its inability to show that the Dodgers took a position in the Bankruptcy Court with regard to the Contracts that is "clearly inconsistent" with the position they take now. [5] In this court, the position taken by

[5] While JRF argues that there is a distinction between the "New Dodgers" organization that transferred its interest in the Contracts to JRF and the "Old Dodgers" organization, which was the subject of the bankruptcy proceeding, see JRF Reply at 21-22, we need not address this issue because we find that estoppel is not warranted regardless.

JRF is that the Dodgers were the rightful owners of the Contracts at the time of the bankruptcy. See JRF Reply at 21-25. CCI points to the schedule of assets and liabilities filed by Dodgers as part of its bankruptcy filing, see In re Los Angeles Dodgers, LLC, No. 11-cv-12010 (Del. Bankr.), asserting that "nothing about Jackie Robinson Contracts was ever mentioned." CCI Opp. at 1. But the schedule in fact lists "Player Contracts/Assignments," see Schedule of Assets and Liabilities, Exhibit B5, annexed at *17 to Exhibit 4 to Ardoin Decl. (Docket # 1145-4) ("Schedule B5"), at G31, and "Player Files," id. at G51.[6] Indeed, it does not appear that any historical player contracts were listed by name in the schedule of personal property, see id. at G1-G85, although the contracts for then-active players are listed by name in a separate section of the filing, see Schedule of Assets and Liabilities, Exhibit G, annexed at *238 to Exhibit 4 to Ardoin Decl. (Docket # 1145-4). Because the listing of "Player Contracts/Assignments" on its face arguably included the Contracts at issue here, the Dodgers' statement in the Bankruptcy Court can be "reconciled in some way" with its current position, see Whitehurst, 998 F. Supp. 2d at 247, and thus judicial estoppel is not warranted.

C. Ownership Interest in the Contracts

Under New York law,[7] "[t]o establish a claim for replevin, the plaintiff must prove two elements: (1) that plaintiff has a possessory right superior to that of the defendant; and (2) that

[6] Although other contracts in the Schedule are grouped by year, see Schedule B5 at G47, G55, G56, no range of time accompanies these entries, see id. at G31, G51.

[7] JRF's brief argues that New York law applies to this dispute. See JRF Mem. at 21-22. Neither CCI nor the Holders' opposition briefs address let alone oppose JRF's arguments as to choice of law regarding the elements of replevin. As a result, we deem any opposition to the application of New York law to be waived. See, e.g., Scott v. JPMorgan Chase & Co., 2014 WL 338753, at *2 (S.D.N.Y. Jan. 30, 2014) ("Plaintiff's opposing [m]emorandum of [l]aw does not respond to this argument, and effectively concedes these arguments by his failure to respond to them."); accord Barkai v. Mendez, 2022 WL 4357923, at *11 (S.D.N.Y. Sept. 20, 2022).

plaintiff is entitled to the immediate possession of that property." Int'l Bus. Machines Corp. v. BGC Partners, Inc., 2013 WL 1775367, at *9 (S.D.N.Y. Apr. 25, 2013) ("IBM") (citing Jamison Bus. Sys., Inc. v. Unique Software Support Corp., 2005 WL 1262095, at *14 (E.D.N.Y. May 26, 2005); accord Batsidis v. Batsidis, 9 A.D.3d 342, 343 (2d Dep't 2004); Pivar v. Graduate Sch. of Figurative Art of the N.Y. Acad. of Art, 290 A.D.2d 212, 213 (1st Dep't 2002).

With regard to the burden of proof, the Second Circuit has recently noted:

> New York law contains protections for the true owners of stolen property. Lubell, 77 N.Y.2d at 317-20. One such protection is with respect to the burden of proof, which is borne by the possessor of an allegedly stolen artwork. . . . [U]nder New York law, the ultimate burden of proof does not rest on the shoulders of the claimant. Lubell, 77 N.Y.2d at 321. Rather, the claimant must only make a "threshold showing" of an "arguable claim" to the [property at issue] before the possessor must carry the rest. Bakalar, 619 F.3d at 147; see also Lubell, 550 N.Y.S.2d at 624 ("We recognize this burden to be an onerous one, but it well serves to give effect to the principle that persons deal with the property in chattels or exercise acts of ownership over them at their peril." (internal quotation marks and alterations omitted)).

Republic of Turkey v. Christie's Inc., 62 F.4th 64, 70-71 (2d Cir. 2023) (emphasis added).

"[I]f the district judge determines that [claimants] have made a threshold showing that they have an arguable claim to the [item at issue], New York law places the burden on . . . the current possessor[] to prove that the [item] was not stolen." Bakalar v. Vavra, 619 F.3d 136, 147 (2d Cir. 2010); accord id. at 142 (New York law requires the possessor to prove "that the [item at issue] was not stolen.") (citing Solomon R. Guggenheim Found. v. Lubell, 77 N.Y.2d 311, 321 (Ct. App. 1991) ("Lubell II")).

1. Original Ownership of the Contracts

As to the first element of replevin, requiring that JRF make a "threshold showing" of an "arguable claim" to the Contracts, the Holders contend that material facts are in dispute regarding the question of "whether or not the Contracts . . . ever belonged to the Los Angeles

Dodgers." See Holders Mem. at 1. CCI similarly contends that JRF is not entitled to summary judgment on this issue. CCI Opp. at 10. JRF contends that it is entitled to summary judgment on this point. JRF Mem. at 24-27.[8]

Before addressing the evidence that JRF has marshaled in support of its claim that Dodgers were the original owners of the Contracts, we note that the parties agree that the Contracts at issue are UPCs, meaning that they followed a standard form for baseball contracts at the time. See Holders 56.1 Response ¶ 12. The parties similarly agree that the Dodgers contract was signed by Jackie Robinson, Branch Rickey, and League President Ford Frick, id. ¶ 9, while the Royals contract was signed by Jackie Robinson and Hector Racine, id. ¶ 7. The Royals contract has a stamp above Robinson's signature (on the final page) indicating that Robinson "acknowledge[s] receipt of duplicate of executed contract" and the contract lacks a signature from the League President. See Exhibit A.

A critical issue on the question of ownership relates to whether the Contracts purchased by CCI are the Dodgers' copy (that is, the "club copy") of the signed contracts or Jackie Robinson's personal copy. JRF's contention that these are the Dodgers organization's copy is supported by an expert report from G. Edward White, which details that UPCs ordinarily were issued in duplicate, with one copy for the player and one copy for the club. See Expert Report of G. Edward White, annexed as Exhibit 2 to First Spitzer Decl. (Docket # 1124-2) ("White Report"), at ¶ 40. White states that the major leagues had a "longstanding and ubiquitous"

[8] JRF argues that because CCI failed to file its own responsive statement under Local Rule 56.1 and instead "adopted" the Holders' response, CCI should be deemed to have admitted the facts proposed by JRF. JRF Reply at 6. In keeping with Fed. R. Civ. P. 1's admonition to secure the "just, speedy, and inexpensive determination of every action and proceeding," we see a great efficiency in permitting one party to adopt in writing another party's response to a Rule 56.1 statement rather than cluttering the record by having the party file a response identical to one already in the record.

practice of sending the club copy to the League President for approval, at which time the club copy would be stamped with the League President's signature. Id. ¶¶ 41-42. White states that "[p]layers did not receive original signed versions of contracts once they were approved by the League President." Id. ¶ 43. Thus, White concludes that "the contract signing process in the reserve clause era of Major League Baseball resulted in two copies of player contracts — one without the signature of a League President, which belonged to the player, and one with the League President signature, which belonged to the club." Id. ¶ 45. White provides examples of UPCs that follow this pattern, with personal copies signed only by the player and club, while club copies are signed by the League President as well. See id. ¶ 53 (listing contracts obtained from personal estates of eight players, none of which bore the President's signature); id. ¶¶ 55-57 (listing contracts obtained from teams or team officials for two players, which bear the President's signature). Because the Dodgers contract bears the league president's signature, it is the club copy according to White. Id. ¶ 63.

As to the Royals contract, JRF presents White's opinion that "the practice of having minor League Presidents 'approve' contracts between players and clubs in their leagues was not assiduously followed." White Report ¶ 67. White avers that "none of the Montreal Royals contracts from that time period, which are currently in the Dodgers' archives, bear the signatures of the president of the International League or of the National Association of Professional Baseball Leagues." Id. White concludes that "the absence of [the League President's] signature[] does not mean that the contract was Robinson's personal copy." Id. ¶ 64. Additionally, the Royals contract contains a stamp above Robinson's signature acknowledging on the final page that he had received a "duplicate" of the contract. White cites this inscription as "another basis for the conclusion that the [Royals Contract] . . . was not Robinson's personal

copy," noting that examples of other team copies of minor league contracts bear this language. White Report ¶ 70. The Holders present literally no evidence that suggests a player copy of the minor league UPC would have borne this notation. In the end, the Holders do not present evidence that contradicts JRF's expert testimony that there were two copies of minor league contracts, and that the absence of the League President's signature was not dispositive as to the provenance of a minor league contract.

That the contracts at issue in this case are the club copies is supported by the 1952 Article, which describes a "uniform player's contract made by the Dodgers with Jackie Robinson . . . dated 1947" that was "made available to the exhibition by Walter O'Malley, Dodger president." It also says that the Royals contract was contributed by Rickey, the Dodgers' former president. Given the connection between Kelly, who received and had possession of these contracts, and Konop, whose estate ultimately sold them to the entity that sold them to CCI, the only reasonable inference from the evidence is that the Contracts purchased by CCI and now before the Court are the same contracts that were made available at the 1952 exhibition.

The Holders have offered essentially no evidence that would allow a jury to find the two contracts were not originally owned by the Dodgers.[9] Indeed, the Holders own expert, Troy Kinunen, backs up White on the significance of the presence of League President Ford Frick's signature. Kinunen stated that he had reviewed "a complete collection of Braves contracts and a partial collection of Brewers contracts" available on the collectors market, and noted that every example identified as a club copy of a UPC bore the signature of the then-League President. See Deposition of Troy Kinunen, annexed as Exhibit 31 to Third DeMarco Decl. (Docket # 1140-31)

[9] CCI presents no evidence on this issue and in fact makes no argument as to whether the Dodgers originally owned the Contracts beyond the passing assertion that the Dodgers lack a record of original ownership. See CCI Opp. at 8-9.

("Kinunen Dep."), at 112:13-20, 114:20-115:2, 115:8-19. Kinunen agreed that these contracts were "similar to what is found on Jackie Robinson's 1947 contract . . . [w]ith respect to the signing of the league president." Id. at 115:20-116:3.

The Holders provide testimony from their expert Gary Gillette, who stated that although the odds were "vanishingly small" that the Dodgers' copy of the 1947 Contract lacked Ford Frick's signature, "[t]he chances that the Robinson original had Frick's signature are significant" because the Robinson signing "was an exceptional historical event." Deposition of Gary Gillette, annexed as Exhibit 32 to Third DeMarco Decl. (Docket # 1140-32) ("Gillette Dep."), at 98:21-99:3. The problem with this testimony is that Gillette cited no basis for his opinion that there was a "significant" chance that Robinson's own copy of the Dodgers contract contained Frick's signature. See id. John Reznikoff, an expert also retained by the Holders, see Holders Mem. at 12, testified that he had found "no indication" that the historical significance of the signing "might have changed the way things [were] done" in relation to the Dodgers contract. See Deposition of John Reznikoff, annexed as Exhibit 77 to First Spitzer Decl. (Docket # 1124-77) ("Second Reznikoff Dep. Excerpt"), at 148:12-17. The Holders do not provide a single example of a player copy of a UPC featuring the League President's signature. In light of this evidence, no reasonable jury could accept Gillette's speculation that Robinson's own copy might have contained Frick's signature.

Positing that there may be a third copy of the Dodgers contract, the Holders cite a 2019 email exchange between Dodgers personnel and Paul Misfud, a representative of Major League Baseball ("MLB"). See Email from Paul Misfud to Sam Fernandez, dated Jan. 26, 2019, annexed as Exhibit 44 to Third DeMarco Decl. (Docket # 1140-44) ("Misfud Email"). In this exchange, the Dodgers asked whether "MLB would still have its copy of Jackie Robinson's 1947

UPC" and whether it would be correct to say "that in the 40s, three original UPCs were signed: one that was given to the player, one that was kept by the club, and one that was filed with the Commissioner's Office." Id. Misfud responded by stating that MLB "[does]n't have original old UPCs of anyone pre-1980" due to a storage mishap. See id. Again, this provides no evidence contradicting the evidence of ownership as it simply does not address whether there was any real possibility that there was a third contract that was retained by MLB. Mifsud's response provides no competent evidence on this issue. The same is true for the testimony of the Dodgers' 30(b)(6) representative, Mark Langill, who merely testified that to his knowledge, contemporaneous articles and photographs did not identify how many copies of the 1947 contract Robinson signed. Deposition of Mark Langill, annexed as Exhibit 21 to Third DeMarco Decl. (Docket # 1140-21) ("Langill Dep."), at 51:2-8.

Of course, here we are not presented with Contracts completely devoid of evidence as to their provenance. The series of articles beginning in 1948 reflect that the Contracts acquired by CCI were originally in the possession of Kelly, who obtained possession of them from a Dodgers president and a former Dodgers president, that Kelly's Institute had possession of the Contracts in the 1970's, that Konop succeeded Kelly in his role as head of Kelly's Institute, and that Konop had possession of the Contracts at the time of this death. These undisputed facts provide further support that the Contracts at issue in this case originally emanated from the Dodgers' organization and thus were in fact owned by the Dodgers. No reasonable jury could find otherwise.

In sum, we find that there is no genuine dispute of material fact as to the question of whether the Contracts were originally owned by the Dodgers. Thus, the Dodgers have more than

satisfied their burden of making a "threshold showing" of an "arguable claim" to the Contracts. Republic of Turkey, 62 F.4th at 70.

2. Proof that the Contracts Were Not Stolen

On the question of whether a jury could find that the Holders have met their burden of showing that the Contracts were "not stolen," neither party is entitled to summary judgment.

We begin by addressing the evidence regarding the whereabouts of the Contracts beginning in 1948. As noted, the 1948 Article shows that the Royals Contract was in the possession of Kelly for purposes of exhibiting the contract at the Brooklyn Hall of Records. The 1952 Article shows that O'Malley, who was president of the Dodgers, provided the Dodgers contract to the 1952 exhibition organized by Kelly. The 1952 Article reflects that, at the same time, Rickey, the former president of the Dodgers, loaned the Royals contract to the same exhibition run by Kelly. A jury could reasonably infer that in light of the circumstances of the event and the publicity as manifested in the 1952 Article, O'Malley was aware of Rickey's action in 1952 given that both contracts were loaned to the same exhibition. Furthermore, in in light of the 1974 Article describing the James A. Kelly Institute and its possession of both contracts, and in light of the fact that the Dodgers organization never filed any action seeking return of the Contracts (even though O'Malley obviously knew who they had been loaned to), a jury could also find that the Contracts were in lawful possession of the James A. Kelly Institute as of 1974.[10] This finding is further supported by the fact that the Institute plainly was seeking

[10] While it is not in the record, O'Malley's obituary indicates that he was chairman of the Los Angeles Dodgers until his death in 1979. See Walter F. O'Malley, Leader of Dodgers' Move to Los Angeles, Dies at 75, N.Y. Times (Aug. 10, 1979) (available at: https://www.nytimes.com/1979/08/10/archives/walter-f-omalley-leader-of-dodgers-move-to-los-angeles-dies-at-75.html) ("O'Malley Obituary").

publicity for the purposes of educating the public and fundraising as reflected in the 1974 and 1979 articles, and as part of that effort displayed the Contracts. These actions are completely contrary to the expected actions of a party who had stolen the Contracts.

Putting these facts together, a jury might reasonably infer that the Dodgers organization, through its president, O'Malley, either decided to transfer ownership of the Contracts to Kelly or the James A. Kelly Institute or simply abandoned them.[11] A donation might be expected given that Kelly was Brooklyn "Borough Historian" beginning from 1944 through 1971, see 1979 Article, and the Dodgers might have seen value in having the documents rest in what appeared to be a public archive. Given that these same contracts were in the James A. Kelly Institute's possession in 1974, and that there is no indication from the 1974 Article that they were merely on loan at that time, a jury also might reasonably conclude that O'Malley and Rickey had abandoned the Contracts, and thus that they were not stolen.[12]

Such an inference is supported to some degree by evidence that teams did not treat Major League player contracts as items of value that needed to be safeguarded, though it is certainly arguable that the team might have treated the Jackie Robinson contracts differently from any other player contracts. Thus, the Holders expert, Kinunen, testified that the Milwaukee teams discarded player contracts for the period 1953-1965 and 1970-1980, Kinunen Dep. at 112:7-114:5, and Gillette testified that Pittsburgh Pirates contracts were sold to collectors by then-

[11] We address New York law on abandonment in section III.F. below

[12] Because we are called upon in this motion to determine only whether JRF has a claim to the Contracts superior to that of CCI or the Holders, we address whether CCI and the Holders have marshaled evidence showing that the contracts were not stolen from the Dodgers — not whether the Contracts were stolen from any other party. See IBM, 2013 WL 1775367, at *9 (law of replevin seeks to determine whether the "plaintiff has a possessory right superior to that of the defendant"). As a result, we do not consider whether the Contracts were stolen by Konop from the James A. Kelly Institute. See also fn. 14 below.

General Manager Joe Brown, Gillette Dep. at 158:17-159:7, 160:4-161:11. The Holders also point to the testimony of JRF expert, White, who noted that a 1946 St. Louis Cardinals UPC signed by Ford Frick and sold at auction had been "rescued" from the club offices by an employee. White Report ¶ 56; Deposition of G. Edward White, annexed as Exhibit 33 to Third DeMarco Decl. (Docket # 1140-33), at 52:13-54:7.

The Holders' position is also supported by the fact that Dodgers representative Mark Langill testified that the Dodgers had not identified any 1947 Dodgers contracts in their archives. See Langill Dep. at 66:4-67:15. In a similar vein, the Holders' expert, Reznikoff, reviewed the Dodgers' archive index and found that it contained no contracts for players on the roster between 1945 and 1947. See Deposition of John Reznikoff, annexed as Exhibit 1 to First DeMarco Decl. (Docket # 1120-1) ("First Reznikoff Dep. Excerpt"), at 113:7-114:6. While there is evidence that the Dodgers have contracts signed by players with minor league clubs from the 1940s, including some Royals contracts, White Report ¶¶ 35, 48, 66-69, there is no evidence of any systematic policy on the part of the Dodgers of maintaining player contracts, and thus the Holders' evidence supports an inference that the Dodgers might have abandoned or donated the Robinson contracts.

In sum, the Holders have offered evidence that would allow a reasonable jury to find that the Contracts were not stolen from the Dodgers. On the other hand, a jury would not be required to so find. It could instead draw other inferences — for example, that the James A. Kelly Institute was merely loaned the Contracts and improperly failed to return them to the Dodgers — and thus conclude that that the Holders had not met their burden of showing by a preponderance of the evidence that the Contracts were not stolen. Accordingly, the "weighing of the evidence

(including the competing reasonable inferences that could be drawn from such evidence) must be resolved by a jury in this case." Radwan v. Manuel, 55 F.4th 101, 133 (2d Cir. 2022).

D. Statute of Limitations

The Holders argue that JRF's claim is barred by the applicable statute of limitations. Holders Opp. at 2. This argument relies on the assertion that "there were numerous instances of the Contracts being publicly displayed and highlighted in the media for years without claim from the Dodgers," and "the Dodgers were shown and offered the Contracts in 2012 and thereafter, and yet did nothing until January 2019 to assert alleged ownership over those Contracts." Id. at 39.

New York law applies a three-year statute of limitations for actions to recover stolen chattel. See N.Y.C.P.L.R. 214(3). [13] The cause of action for replevin accrues at two different times depending on whether the claim is against a thief or against a good-faith purchaser. See Lubell II, 77 N.Y.2d at 318 ("New York case law treats thieves and good-faith purchasers differently"); accord Republic of Turkey v. Christie's Inc., 425 F. Supp. 3d 204, 211 (S.D.N.Y. 2019). Because there is no evidence that CCI was anything other than a good faith purchaser of the Contracts, see Holders 56.1 Response ¶¶ 45, 57, we look only to the standard for such purchasers. "[A] cause of action for replevin against the good-faith purchaser of a stolen chattel accrues when the true owner makes demand for return of the chattel and the person in possession of the chattel refuses to return it." Lubell II, 77 N.Y.2d at 317-18 (citing Goodwin v. Wertheimer, 99 N.Y. 149, 153 (Ct. App. 1885)); Cohen v. Keizer, Inc., 246 A.D. 277, 278 (1st

[13] The Holders suggest that the California statute of limitations may apply to the replevin claim if JRF contends the Contracts were stolen after 1958, when the Dodgers moved to Los Angeles. See Holders Opp. at 39. Inasmuch as we do not view JRF as making such a contention, we apply the law of New York to this issue as well as all others. See footnote 7 above.

Dep't 1936)); accord Abbott Lab'ys v. Feinberg, 2023 WL 19076, at *3 (2d Cir. Jan. 3, 2023) ("Abbott II"). "Until demand is made and refused, possession of the stolen property by the good-faith purchaser for value is not considered wrongful." Id. Thus, the three-year statute of limitations applicable to JRF's replevin claim ran from any demand and refusal — not from the time at which the Contracts left the Dodgers' possession.

Here, the Dodgers first made a demand on CCI on January 24, 2019, when they sent a letter to CCI's counsel asserting that the Contracts "[are] owned by the Dodgers and [are] not the property of [CCI]." See Holders 56.1 Response ¶ 124. We will assume, inasmuch as it benefits the Holders, that a demand on CCI satisfied the "demand" portion of the "demand-and-refusal" rule. But in the portion of the Holders' opposition memorandum addressing the statute of limitations, the Holders do not even assert on what date the refusal occurred, see Holders Opp. at 39-40, making it impossible for the Court to understand the Holders' statute of limitations argument. In the absence of any argument or evidence of when the refusal occurred, we cannot say when the limitations period began to run. Thus, we reject the argument that JRF's filing of its cross-claim for a declaratory judgment on April 4, 2022 was untimely. See Am. Ans.

E. Laches

The Holders also argue that JRF's replevin claim is barred by the equitable doctrine of laches. Holders Opp. at 30. In seeking summary judgment in its favor, JRF argues that the evidence would not support the application of a laches defense. JRF Reply at 14-19.

"Laches is an equitable defense available to a defendant who can show that the plaintiff has inexcusably slept on its rights so as to make a decree against the defendant unfair, and that the defendant has been prejudiced by the plaintiff's unreasonable delay in bringing the action."

Zuckerman v. Metro. Museum of Art, 928 F.3d 186, 190 (2d Cir. 2019) (citation omitted). "The doctrine of laches 'protects defendants against unreasonable, prejudicial delay in commencing suit.'" Id. at 193 (quoting SCA Hygiene Prods. Aktiebolag v. First Quality Baby Prods., LLC, 580 U.S. 328, 333 (2017)). "The party asserting the defense of laches has the burden" of showing that the "delay was unreasonable and that it was prejudicial." Howard Univ. v. Borders, 2022 WL 11817721, at *9 (S.D.N.Y. Oct. 20, 2022) (citing Abbott Lab'ys. v. Feinberg, 506 F. Supp. 3d 185, 198 (S.D.N.Y. 2020) ("Abbott I")). "To establish the first element, the party asserting laches . . . must prove that [plaintiff] was 'aware of [its] claim' and 'inexcusably delayed in taking action.'" Id. (quoting Bakalar v. Vavra, 819 F. Supp. 2d 293, 303 (S.D.N.Y. 2011)). "The knowledge prong of the laches analysis is intertwined with the scope of required diligence, as any potential claimant must act reasonably on the basis of any information it possesses or should possess." Id. (citation omitted). Thus, the plaintiff's delay is measured from when it either knew or "should have known" of the injury. Republic of Turkey, 62 F.4th at 71. "Where the evidence does not support that the true owner knew or should have known of the information necessary to bring its claim at that earlier point in time, it cannot be said that the true owner unreasonably delayed [its] lawsuit." Howard Univ., 2022 WL 11817721, at *9 (collecting cases).

As to the prejudice element, "prejudice . . . 'may be demonstrated by a showing of injury, change of position, loss of evidence, or some other disadvantage resulting from the delay[.]'" Abbott I, 506 F. Supp. 3d at 197 (quoting Reif v. Nagy, 175 A.D.3d 107, 130 (1st Dep't 2019)). "The mere lapse of time, without a showing of prejudice, is insufficient to sustain a claim of laches.'" Reif, 175 A.D.3d at 130. "Where the due diligence of the original owner of [an item] raises questions of fact, the issue of whether its lack of diligence operated to the prejudice of the

party currently in possession of the [item] is appropriately resolved at trial." In re Peters, 34 A.D.3d 29, 38 (1st Dep't 2006) (citing Lubell II, 77 N.Y.2d at 321); accord Malanga v. Chamberlain, 71 A.D.3d 644, 646 (2d Dep't 2010).

The party asserting the defense of laches has the burden on both elements — that delay was unreasonable and that it was prejudicial. See Abbott I, 506 F. Supp. 3d at, 198.

1. Delay

We first consider whether the Dodgers and JRF unreasonably delayed bringing their claim. The issue before us is whether the undisputed evidence would require a jury to find one way or the other on the issue of whether the Dodgers knew or should have known that they had a claim to the Contracts and whether they acted reasonably in light of that knowledge.

As already described above, the 1948, 1952 and 1974 Articles would allow a jury to find that that O'Malley, who was president of the Dodgers, loaned the Contracts to Kelly in 1948 and 1952; that he was aware that Branch Rickey had the Royals Contract and had similarly loaned it; and that by 1974 at the latest, the Institute founded by Kelly possessed both the Contracts and did not view them as being on loan but rather as belonging to the Institute.

From this evidence, a jury might reasonably infer that O'Malley was aware in 1952 that the Contracts were in possession of Kelly, identified in the article as the Brooklyn "Borough Historian," for at least some period time beginning in 1952. Given O'Malley's position as president of the Dodgers, a jury could conclude that the Dodgers had actual knowledge of the location of the Contracts starting in 1952 and continuing for an indefinite period — for at least as long as O'Malley held a high position with the Dodgers.

If O'Malley viewed the Contracts as being merely on a temporary loan to the Borough Historian, he (and thus the Dodgers) was certainly on notice that the Contracts should be

returned to the Dodgers' possession. If by contrast the Contracts were donated to the Borough of Brooklyn or the Brooklyn Historian on a permanent basis, O'Malley (and thus the Dodgers) would certainly have been aware of that as well. Given that these same contracts were in the James A. Kelly Institute's possession in 1974, and that there is no indication from the 1974 article that they were merely on loan at that time, a jury might reasonably conclude that O'Malley and thus the Dodgers "should have been aware" that Kelly or his Institute had possession of the Contracts beginning in 1952 and for some indefinite period afterwards.

Even if a jury inferred that O'Malley simply failed to do anything to get the Contracts back from Kelly in the years following 1952, and even if the Dodgers retained title to the Contracts, a jury could still find the Dodgers "should have known" during the period following the 1952 exhibition that another party was improperly retaining possession over the Contracts, and thus that the Dodgers should have acted to regain possession through a replevin action. In other words, the jury might find that the Dodgers did not "act reasonably on the basis," Howard Univ., 2022 WL 11817721, at *9, of the information that the Dodgers either did possess or should have possessed as a result of O'Malley's knowledge of the whereabouts of the Contracts in that period. While a jury would not be required to draw these inferences, they are reasonable inferences nonetheless and thus preclude summary judgment in favor of the Dodgers on this issue.

The Holders are not entitled to summary judgment on the laches defense either, however, because a reasonable jury could choose to find against the Holders on this issue. First, a jury could draw different inferences from the various news articles and conclude that the Holders had not met their burden of showing that O'Malley should have known that the Contracts were being improperly held by Kelly. Second, case law makes clear that when laches is invoked,

"defendant's vigilance is as much in issue as plaintiff's diligence. . . . The reasonableness of both parties must be considered and weighed." Solomon Guggenheim Found. v. Lubell, 153 A.D.2d 143, 152 (1st Dep't 1990) ("Lubell I"). Here, there is no evidence that the CCI and the Holders made a reasonable effort to determine the provenance (as opposed to the authenticity) of the Contracts. See, e.g., Deposition of Peter Siegel, annexed as Exhibit 27 to First Spitzer Decl. (Docket # 1124-27), at 101:24-102:24 (owner of Gotta Have It testifies that he did "no independent investigation" but merely "asked around" and determined that "nobody knew about Konop"); Deposition of Collector's Coffee, Inc. Representative Joseph Michael Maliak, annexed as Exhibit 41 to First Spitzer Decl. (Docket # 1124-41), at 393:11-14; 394:9-25; 399:6-401:22 ("Q: And to your knowledge, there was no further investigation into whether or not [Odette Konop's warranty of title] is a true statement, correct? A: Not to my knowledge."); Deposition of Darren Sivertsen, annexed as Exhibit 51 to First Spitzer Decl. (Docket # 1124-51), at 59:2-15; 63:4-18; 70:4-73:5 ("Q: Did Mr. Kontilai provide you with any proof as to how this family in Brooklyn obtained the [C]ontracts? A: No."). Putting aside the equivocal evidence available as to how and why the Contracts came to be in the collection of the Institute, the Holders and CCI were certainly on notice that there were serious questions as to how title could have lawfully passed from the James A. Kelly Institute for Local Historical Studies (where the Contracts were maintained based on the descriptions provided in the 1974 article) to Arthur Konop personally. These questions as to ownership were easily discoverable through the most basic efforts. Even a Google search of "Arthur Konop Jackie Robinson" turns up the 1979 Daily News article showing that the Contracts were in the collection of the "James A. Kelly Institute" at St. Francis College, and thus likely not Arthur Konop's personal property. See Search for "Arthur Konop Jackie Robinson," http://www.google.com (last accessed May 11, 2023). Any reasonable

purchaser of the Contracts from Konop (or from someone who had purchased the Contracts from Konop) would investigate why Konop was vested with title to the Contracts and not the James A. Kelly Institute or St. Francis College.[14]

In light of the above, it is not necessary to address in any detail the question of whether the Dodgers knew or should have known of the Contracts' possession by Konop's estate, Gotta Have It, or CCI beginning in 2012 when Scott Konop first sought to sell the Contracts and they were purportedly shown by Gotta Have It to a Dodgers representative, or in the period 2015-2019, when Gotta Have It and CCI organized public events around the sale of the Contracts. See Holders Opp. at 15-23. Nonetheless, we note that while the Holders marshal evidence to support their conclusion that Dodgers knew of the Contracts existence as a result of this publicity, see id., in fact the Holders' evidence shows at best only that the Dodgers should have known that some version of the Contracts were being offered for sale. The Holders have provided no evidence that the Dodgers' should have known it was the club copies being marketed. Indeed, in 2017, prior to the first auction attempt, Ken Goldin of the auction house represented the Contracts as Robinson's personal copies. Holders 56.1 Response ¶ 108. None of Goldin's communications with the Dodgers suggest that the Dodgers believed otherwise. See Email from Pierce

[14] The record is not at all developed on the interest of the James A. Kelly Institute in the Contracts even though the 1975 Article identifies individuals who worked with Konop at the Institute and there may well be individuals at St. Francis College who have knowledge about the Institute's collection and any documents governing ownership or disposition of items in the Institute's collection. The absence of such evidence is not surprising given that no party before the Court has any incentive to investigate the possibility that the Contracts are in fact the property of the James A. Kelly Institute or its successor.

For what it is worth, it appears that in 1988, St. Francis College closed the Institute and donated the Institute's collection to various New York City governmental entities, including Brooklyn College, which is part of the City University of New York. See Brooklyn College Local History Collection, Brooklyn College (last accessed May 11, 2023), https://archives.brooklyn.cuny.edu/repositories/2/resources/39.

Rothschild to Ken Goldin, dated Feb. 26, 2018, annexed as Exhibit 53 to Third DeMarco Decl. (Docket # 1140-53).

Neither the Holders nor CCI meaningfully engage with the contention that, although the Dodgers were aware that CCI owned Jackie Robinson contracts, they were not aware until much later that the Contracts bore Ford Frick's signature, which distinguished the Contracts as being the Dodgers' copies rather than Jackie Robinson's and thus that the Dodgers were unaware that the Contracts might be club copies to which they could lay claim. See JRF Reply at 17-18. None of the evidence provided by the Holders and CCI indicates whether this signature was visible or described at any time between the 2012 sale and the time at which Dodgers claim they became aware of its existence. The evidence indicates only that at some time afterward, the Dodgers began questioning the Contracts' provenance, resulting in the eventual demand for the return of the Contracts. See Holders 56.1 Response ¶ 124.

We conclude by noting that JRF's dismissal of the import of the 1948, 1952, 1974 and 1979 articles is premised on the notion that the Dodgers organization should not be expected to have knowledge of articles in "local" newspapers. JRF Mem. at 33. First, the 1952 Article was not in a "local" paper given that it appeared in a popular Brooklyn daily and the Dodgers were located in Brooklyn at the time. This is beside the point, however. The import of the 1952 Article is that it makes clear that the Dodgers' president (O'Malley) put the Dodgers contract in the hands of the Institute.[15] And the importance of the 1974 and 1979 articles is not that the Dodgers should have been expected to have read them, but that they provide a link between the

[15] Additionally, given that the Dodgers were still in Brooklyn and the article chronicled an act of generosity of their president, it is certainly a reasonable inference that it was read by officials of the Dodgers and thus that they knew about Rickey's donation of the Royals' contract.

1948 and 1952 possession of the Contracts by Kelly and the continued possession of the Contracts by Kelly's organization, the Institute, and ultimately Konop.

2. Prejudice

JRF does not address the issue of whether there was prejudice if a jury were to find that that the Dodgers unreasonably delayed taking action having known of their entitlement to the Contracts from 1952 onwards. And the prejudice to CCI and the Holders is obvious given that the critical witnesses to the purported transfer of title of the Contracts from the Dodgers to the Institute (at the latest, as of 1974) all have died in the decades since, including Arthur Konop, who died in 2009, see JRF 56.1 Response ¶ 44; Kelly, who died in 1971, see 1974 Article; Rickey, who died in 1965, see Branch Rickey, 83, Dies in Missouri, United Press Int'l (Dec. 10, 1965), https://archive.nytimes.com/www.nytimes.com/learning/general/onthisday/bday/1220.html; and O'Malley, who died in 1979, see O'Malley Obituary.[16] The death of significant witnesses is sufficient to show prejudice for the purpose of applying laches. See Republic of Turkey, 62 F.4th at 73 ("A defendant has been prejudiced by a delay when the assertion of a claim available some time ago would be inequitable in light of the delay in bringing that claim. The deaths of . . . key witnesses . . . form[] just such an inequity.") (citation omitted); see also Zuckerman, 928 F.3d at 194-95 (finding prejudice where the "time interval . . .

[16] Although the parties provide no evidence regarding the years of death of O'Malley and Rickey, we take judicial notice of the years of death for both men based on published obituaries, as is permitted by case law. See Shaut v. Sec'y of Dep't of Health & Hum. Servs., 2014 WL 7358648, at *1 n.2 (N.D.N.Y. Dec. 22, 2014) (citing Magnoni v. Smith & Laquericia, LLP, 701 F. Supp. 2d 497, 501 (S.D.N.Y. 2010), aff'd 483 F. App'x 613 (2d Cir. 2012)); accord United States v. Thomas, 2022 WL 538540, at *3 (D.N.J. Feb. 23, 2022); Beeman v. TDI Managed Care Servs., Inc., 2016 WL 11637594, at *12 n.6 (C.D. Cal. Nov. 10, 2016).

resulted in deceased witnesses, faded memories, . . . and hearsay testimony of questionable value, as well as the likely disappearance of documentary evidence") (citation omitted).

Because there are disputed issues of fact on the issue of unreasonable delay, neither side is entitled to summary judgment on the laches defense.

F. Abandonment

JRF argues that it is entitled to summary judgment that the Dodgers did not "abandon" the Contracts. See JRF Mem. at 30-34.

Under New York law, "[a]bandonment of property requires a confluence of intention and action by the owner." Johnson v. Smithsonian, 189 F.3d 180, 187 (2d Cir. 1999); accord Kamat v. Kurtha, 2008 WL 5505880, at *8 (S.D.N.Y. Apr. 14, 2008). Thus, "before possessory rights will be relinquished, the law demands proof both of an owner's intent to abandon the property and of some affirmative act or omission demonstrating that intention." Hoelzer v. City of Stamford, Conn., 933 F.3d 1131, 1138 (2d Cir. 1991); accord Kamat, 2008 WL 5505880, at *8. "Proof supporting [abandonment] must be direct or affirmative or reasonably beget the exclusive inference of the throwing away." United States v. Cowan, 396 F.2d 83, 87 (2d Cir. 1968); accord Hoelzer, 933 F.3d at 1138. "The burden of proof rests with the party claiming ownership by default." Hoelzer, 933 F.3d at 1138.

Summary judgment on this issue should be denied. For the same reasons already discussed at length, a reasonable jury could infer from the evidence in the record that the Dodgers (through their president, O'Malley) knew that Kelly as Borough Historian had possession of the Contracts and consciously allowed the Contracts to remain in Kelly's possession. The "omission" required by case law is reflected in the fact that the Dodgers did not take any action to reclaim possession of the Contracts from Kelly or his Institute. Additionally,

the Dodgers have apparently been making efforts recently to see if they have any contracts in their possession from 1947 and have found no such contracts, see Langill Dep. at 66:4-67:21, which suggests that player contracts are just the sort of property that the Dodgers normally do not maintain. Since it cannot be disputed by JRF that the Dodgers at one time had possession of the Contracts (at signing and as reflected in the donations for the exhibition in 1948 and 1952), the absence of any contracts would allow an inference that the Dodgers intentionally abandoned the Contracts in favor of their possession by Kelly and his Institute.

IV. CONCLUSION

For the foregoing reasons, JRF's motion for summary judgment (Docket # 1121) and the Holders motion for summary judgment (Docket # 1117) should be denied. The claims for declaratory judgment should instead proceed to trial.

PROCEDURE FOR FILING OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties have fourteen (14) days (including weekends and holidays) from service of this Report and Recommendation to file any objections. See also Fed. R. Civ. P. 6(a), 6(b), 6(d). A party may respond to any objections within 14 days after being served. Any objections and responses shall be filed with the Clerk of the Court. Any request for an extension of time to file objections or responses must be directed to Judge Marrero. If a party fails to file timely objections, that party will not be permitted to raise any objections to this Report and Recommendation on appeal. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72; Fed. R. Civ. P. 6(a), 6(b), 6(d); Thomas v. Arn, 474 U.S. 140 (1985); Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C., 596 F.3d 84, 92 (2d Cir. 2010).

SO ORDERED.

Dated: May 22, 2023
New York, New York

GABRIEL W. GORENSTEIN
United States Magistrate Judge

EXHIBIT A

Jackie Robinson 1947 Contract with the Brooklyn Dodgers

Jackie Robinson 1945 Contract with the Montreal Royals

UNIFORM PLAYER'S CONTRACT

National League of Professional Baseball Clubs

Parties Between BROOKLYN NATIONAL LEAGUE BASEBALL CLUB, INC.

herein called the Club, and JACK ROOSEVELT ROBINSON

of 1588 W. 36th Pl. Los Angeles, Calif., herein called the Player.

Recital The Club is a member of the National League of Professional Baseball Clubs, a voluntary association of eight member clubs which has subscribed to the Major League Rules with the American League of Professional Baseball Clubs and its constituent clubs and to the Major-Minor League Rules with that League and the National Association of Baseball Leagues. The purpose of those rules is to insure the public wholesome and high-class professional baseball by defining the relations between Club and Player, between club and club, between league and league, and by vesting in a designated Commissioner broad powers of control and discipline, and of decision in case of disputes.

Agreement In consideration of the facts above recited and of the promises of each to the other, the parties agree as follows:

Employment 1. The Club hereby employs the Player to render, and the Player agrees to render, skilled services as a baseball player during the year 1947 including the Club's training season, the Club's exhibition games, the Club's playing season, and the World Series (or any other official series in which the Club may participate and in any receipts of which the player may be entitled to share).

Payment 2. For performance of the Player's services and promises hereunder the Club will pay the Player the sum of $ FIVE THOUSAND DOLLARS ($5,000.00) for the season, as follows:

In semi-monthly installments after the commencement of the playing season covered by this contract, unless the Player is "abroad" with the Club for the purpose of playing games, in which event the amount then due shall be paid on the first week-day after the return "home" of the Club, the terms "home" and "abroad" meaning respectively at and away from the city in which the Club has its baseball field.

If a monthly rate of payment is stipulated above, it shall begin with the commencement of the Club's playing season (or such subsequent date as the Player's services may commence) and end with the termination of the Club's scheduled playing season, and shall be payable in semi-monthly installments as above provided.

If the player is in the service of the Club for part of the playing season only, he shall receive such proportion of the sum above mentioned, as the number of days of his actual employment in the Club's playing season bears to the number of days in said season.

If the rate of payment stipulated above is less than $5,000 per year, the player, nevertheless, shall be paid at the rate of $5,000 per year for each day of his service as a player on a Major League team.

Loyalty 3. (a) The Player agrees to perform his services hereunder diligently and faithfully, to keep himself in first class physical condition and to obey the Club's training rules, and pledges himself to the American public and to the Club to conform to high standards of personal conduct, fair play and good sportsmanship.

Baseball Promotion (b) In addition to his services in connection with the actual playing of baseball, the Player agrees to cooperate with the Club and participate in any and all promotional activities of the Club and its League, which, in the opinion of the Club, will promote the welfare of the Club or professional baseball, and to observe and comply with all requirements of the Club respecting conduct and service of its teams and its players, at all times whether on or off the field.

Pictures and Public Appearances (c) The Player agrees that his picture may be taken for still photographs, motion pictures or television at such times as the Club may designate and agrees that all rights in such pictures shall belong to the Club and may be used by the Club for publicity purposes in any manner it desires. The Player further agrees that during the playing season he will not make public appearances, participate in radio or television programs or permit his picture to be taken or write or sponsor newspaper or magazine articles or sponsor commercial products without the written consent of the Club, which shall not be withheld except in the reasonable interests of the Club or professional baseball.

Player Representations

Ability 4. (a) The Player represents and agrees that he has exceptional and unique skill and ability as a baseball player; that his services to be rendered hereunder are of a special, unusual and extraordinary character which gives them peculiar value which cannot be reasonably or adequately compensated for in damages at law, and that the Player's breach of this contract will cause the Club great and irreparable injury and damage. The Player agrees that, in addition to other remedies, the Club shall be entitled to injunctive and other equitable relief to prevent a breach of this contract by the Player, including, among others, the right to enjoin the Player from playing baseball for any other person or organization during the term of this contract.

Condition (b) The Player represents that he has no physical or mental defects, known to him, which would prevent or impair performance of his services.

Interest in Club (c) The Player represents that he does not, directly or indirectly, own stock or have any financial interest in the ownership or earnings of any Major League club, except as hereinafter expressly set forth, and covenants that he will not hereafter, while connected with any Major League club, acquire or hold any such stock or interest except in accordance with Major League Rule 20 (e).

Service 5. (a) The Player agrees that, while under contract, and prior to expiration of the Club's right to renew this contract, he will not play baseball otherwise than for the Club, except that the Player may participate in post-season games under the conditions prescribed in the Major League Rules. Major League Rule 18 (b) is set forth on page 4 hereof.

Other Sports

(b) The Player and the Club recognize and agree that the Player's participation in other sports may impair or destroy his ability and skill as a baseball player. Accordingly the Player agrees that he will not engage in professional boxing or wrestling; and that, except with the written consent of the Club, he will not engage in any game or exhibition of football, basketball, hockey or other athletic sport.

Assignment

6. (a) The Player agrees that this contract may be assigned by the Club (and reassigned by any assignee Club) to any other club in accordance with the Major and Major-Minor League Rules.

No Salary Reduction

(b) The amount stated in paragraph 2 hereof which is payable to the Player for the period stated in paragraph 1 hereof shall not be diminished by any such assignment, except for failure to report as provided in the next sub-paragraph (c).

Reporting

(c) The Player shall report to the assignee Club promptly (as provided in the Regulations) upon receipt of written notice from the Club of the assignment of this contract. If the Player fails so to report, he shall not be entitled to any payment for the period from the date he receives written notice of assignment until he reports to the assignee Club.

Obligations of Assignor and Assignee Clubs

(d) Upon and after such assignment, all rights and obligations of the assignor Club hereunder shall become the rights and obligations of the assignee Club; provided, however, that

(1) The assignee Club shall be liable to the Player for payments accruing only from the date of assignment and shall not be liable (but the assignor Club shall remain liable) for payments accrued prior to that date.

(2) If at any time the assignee is a Major League Club, it shall be liable to pay the Player at the full rate stipulated in paragraph 2 hereof for the remainder of the period stated in paragraph 1 hereof and all prior assignors and assignees shall be relieved of liability for any payment for such period.

(3) Unless the assignor and assignee clubs agree otherwise, if the assignee Club is a Minor League Club, the assignee Club shall be liable only to pay the Player at the rate usually paid by said assignee Club to other players of similar skill and ability in its classification and the assignor Club shall be liable to pay the difference for the remainder of the period stated in paragraph 1 hereof between an amount computed at the rate stipulated in paragraph 2 hereof and the amount so payable by the assignee Club.

Moving Expenses

(e) In the event this contract is assigned by a Major League Club during the playing season, the assignor Club shall pay the Player his reasonable and actual moving expenses resulting from such assignment up to the sum of $500.

"Club"

(f) All references in other paragraphs of this contract to "the Club" shall be deemed to mean and include any assignee of this contract.

Termination

By Player

7. (a) The Player may terminate this contract, upon written notice to the Club, if the Club shall default in the payments to the Player provided for in paragraph 2 hereof or shall fail to perform any other obligation agreed to be performed by the Club hereunder and if the Club shall fail to remedy such default within ten (10) days after the receipt by the Club of written notice of such default. The Player may also terminate this contract as provided in sub-paragraph (f)(4) of this paragraph 7.

By Club

(b) The Club may terminate this contract upon written notice to the Player (but only after requesting and obtaining waivers of this contract from all other Major League Clubs) if the Player shall at any time:

(1) fail, refuse or neglect to conform his personal conduct to the standards of good citizenship and good sportsmanship or to keep himself in first class physical condition or to obey the Club's training rules; or

(2) fail, in the opinion of the Club's management, to exhibit sufficient skill or competitive ability to qualify or continue as a member of the Club's team; or

(3) fail, refuse or neglect to render his services hereunder or in any other manner materially breach this contract.

(c) If this contract is terminated by the Club by reason of the Player's failure to render his services hereunder due to disability resulting directly from injury sustained in the course and within the scope of his employment hereunder and written notice of such injury is given by the Player as provided in the Regulations on page 4 hereof, the Player shall be entitled to receive his full salary for the season in which the injury was sustained, less all workmen's compensation payments paid or payable by reason of said injury.

(d) If this contract is terminated by the Club during the training season, payment by the Club of the Player's board, lodging and expense allowance during the training season to the date of termination and of the reasonable traveling expenses of the Player to his home city and the expert training and coaching provided by the Club to the Player during the training season shall be full payment to the Player.

(e) If this contract is terminated by the Club during the playing season, then, except in the case provided for in sub-paragraph (c) of this paragraph 7, the Player shall be entitled to receive as full payment hereunder such portion of the amount stipulated in paragraph 2 hereof as the number of days of his actual employment in the Club's playing season bears to the total number of days in said season, provided, however, that if this contract is terminated under sub-paragraph (b) (2) of this paragraph 7 for failure to exhibit sufficient skill or competitive ability, the Player shall be entitled to an additional amount equal to thirty (30) days payment at the rate stipulated in paragraph 2 hereof and the reasonable traveling expenses of the Player to his home.

(f) If the Club proposes to terminate this contract in accordance with sub-paragraph (b) of this paragraph 7, the procedure shall be as follows:

Procedure

(1) The Club shall request waivers from all other Major League clubs. Such waiver request must state that it is for the purpose of terminating this contract and it may not be withdrawn.

(2) Upon receipt of the waiver request, any other Major League club may claim assignment of this contract at a waiver price of $1.00, the priority of claims to be determined in accordance with the Major League Rules.

(3) If this contract is so claimed, the Club shall, promptly and before any assignment, notify the Player that it had requested waivers for the purpose of terminating this contract and that the contract had been claimed.

(4) Within 5 days after receipt of notice of such claim, the Player shall be entitled, by written notice to the Club, to terminate this contract on the date of his notice of termination. If the Player fails so to notify the Club, this contract shall be assigned to the claiming club.

(5) If the contract is not claimed, the Club shall promptly deliver written notice of termination to the Player at the expiration of the waiver period.

(g) Upon any termination of this contract by the Player, all obligations of both parties hereunder shall cease on the date of termination, except the obligation of the Club to pay the Player's compensation to said date.

Regulations 8. The Player accepts as part of this contract the Regulations printed on the fourth page hereof.

Rules 9. (a) The Club and the Player agree to accept, abide by and comply with all provisions of the Major and Major-Minor League Rules which concern player conduct and player-club relationships and with all decisions of the Commissioner and the President of the Club's League, pursuant thereto.

Disputes (b) In case of dispute between the Player and the Club, the same shall be referred to the Commissioner as an arbitrator, and his decision shall be accepted by all parties as final; and the Club and the Player agree that any such dispute, or any claim or complaint by either party against the other, shall be presented to the Commissioner within one year from the date it arose.

Publication (c) The Club, the League President and the Commissioner, or any of them, may make public the findings, decision and record of any inquiry, investigation or hearing held or conducted, including in such record all evidence or information, given, received or obtained in connection therewith.

Renewal 10. (a) On or before February 1st (or if a Sunday, then the next preceding business day) of the year next following the last playing season covered by this contract, the Club may tender to the Player a contract for the term of that year by mailing the same to the Player at his address following his signature hereto, or if none be given, then at his last address of record with the Club. If prior to the March 1 next succeeding said February 1, the Player and the Club have not agreed upon the terms of such contract, then on or before 10 days after said March 1, the Club shall have the right by written notice to the Player at said address to renew this contract for the period of one year on the same terms, except that the amount payable to the Player shall be such as the Club shall fix in said notice; provided, however, that said amount, if fixed by a Major League Club, shall be an amount payable at a rate not less than 75% of the rate stipulated for the preceding year.

(b) The Club's right to renew this contract, as provided in subparagraph (a) of this paragraph 10, and the promise of the Player not to play otherwise than with the Club have been taken into consideration in determining the amount payable under paragraph 2 hereof.

Commissioner 11. The term "Commissioner" wherever used in this contract shall be deemed to mean the Commissioner designated under the Major League Agreement, or in the case of a vacancy in the office of Commissioner, the Executive Council or such other body or person or persons as shall be designated in the Major League Agreement to exercise the powers and duties of the Commissioner during such vacancy.

Supplemental Agreements 12. The Club and the Player covenant that this contract fully sets forth all understandings and agreements between them, and agree that no other understandings or agreements, whether heretofore or hereafter made, shall be valid, recognizable, or of any effect whatsoever, unless expressly set forth in a new or supplemental contract executed by the Player and the Club (acting by its president, or such other officer as shall have been thereunto duly authorized by the president or Board of Directors, as evidenced by a certificate filed of record with the League President and Commissioner) and complying with the Major and Major-Minor League Rules.

Special Covenants

Approval This contract or any supplement hereto shall not be valid or effective unless and until approved by the League President.

Signed in duplicate this 11th day of April, A. D. 1947

Jack Roosevelt Robinson
(Player)

1588 W. 36th St. L.A. Calif.
(Home address of Player)

Social Security No. 551-14-1990

BROOKLYN NATIONAL LEAGUE BASEBALL CLUB, INC.
(Club)

By [signature]
(President)

Approved APR 15 1947, 194...

Ford Frick
President, National League of Professional Baseball Clubs

REGULATIONS

1. The Club's playing season for each year covered by this contract and all renewals hereof shall be as fixed by the National League of Professional Baseball Clubs, or if this contract shall be assigned to a Club in another league, then by the league of which such assignee is a member.

2. The Player, when requested by the Club, must submit to a complete physical examination at the expense of the Club, and if necessary to treatment by a regular physician or dentist in good standing at the Player's expense. Upon refusal of the Player to submit to a complete medical or dental examination the Club may consider such refusal a violation of this regulation and may take such action as it deems advisable under Regulation 5 of this contract. Disability directly resulting from injury sustained in the course and within the scope of his employment under this contract shall not impair the right of the Player to receive his full salary for the period of such disability or for the season in which the injury was sustained (whichever period is shorter), together with the reasonable medical and hospital expenses incurred by reason of the injury and during the term of this contract, less all workmen's compensation payments paid or payable by reason of said injury; but only upon the express prerequisite conditions that (a) written notice of such injury, including the time, place, cause and nature of the injury, is served upon and received by the Club within twenty days of the sustaining of said injury and (b) the Club shall have the right to designate the doctors and hospitals furnishing such medical and hospital services. Any other disability may be ground for suspending or terminating this contract at the discretion of the Club.

3. The Club will furnish the Player with two complete uniforms, exclusive of shoes, the Player making a deposit of $30 therefor, which deposit will be returned to him at the end of the season or upon the termination of this contract, upon the surrender of the uniforms by him to the Club.

4. The Club will pay all proper and necessary traveling expenses of the Player while "abroad," or traveling with the Club in other cities, including board, lodging, Pullman accommodations, if available, and during the training season, an allowance of $25 per week, payable in advance, to cover other training trip expenses. The Club will also pay the reasonable traveling expenses of the Player to his home at the end of the season.

5. For violation by the Player of any regulation or other provision of this contract, the Club may impose a reasonable fine and deduct the amount thereof from the Player's salary or may suspend the Player without salary for a period not exceeding thirty days, or both, at the discretion of the Club. Written notice of the fine or suspension or both and of the reasons therefor shall in every case be given to the Player.

6. In order to enable the Player to fit himself for his duties under this contract, the Club may require the Player to report for practice at such places as the Club may designate and to participate in such exhibition contests as may be arranged by the Club for a period beginning not earlier than February 15 in 1947 and not earlier than March 1 in 1948 and subsequent years without any other compensation than that herein elsewhere provided, the Club, however, to pay the necessary traveling expenses, including Pullman accommodations, if available, and meals en route, of the Player from his home city to the training place of the Club, whether he be ordered to go there direct or by way of the home city of the Club. In the event of the failure of the Player to report for practice or to participate in the exhibition games, as provided for, he shall be required to get in playing condition to the satisfaction of the Club's team manager, and at the Player's own expense, before his salary shall commence.

7. In case of assignment of this contract the Player shall report promptly to the assignee club within 72 hours from the date he receives written notice from the Club of such assignment, if the Player is then not more than 1600 miles by most direct available railroad route from the assignee Club, plus an additional 24 hours for each additional 800 miles.

Post-Season Exhibition Games. Major League Rule 18 (b) provides:

Exhibition Games. (b) No Player shall participate in any exhibition game played during the period between the close of the Major League championship season and the following training season; except that a Player, with the written consent of the Commissioner, may participate in exhibition games which are played within thirty days after the close of the Major League championship season and which are approved by the Commissioner. Player conduct, on and off the field, in connection with such post-season exhibition games shall be subject to the discipline of the Commissioner. The Commissioner shall not approve more than three Players of any one Club on the same team. No Player shall participate in any exhibition game with or against any team which, during the current season or within one year, has had any ineligible player or which is or has been during the current season or within one year, managed and controlled by an ineligible player or by any person who has listed an ineligible player under an assumed name or who otherwise has violated, or attempted to violate, any exhibition game contract; or with or against any team which, during said season or within one year, has played against teams containing such ineligible players, or so managed or controlled. Any player violating this rule shall be fined not less than fifty dollars ($50) nor more than five hundred dollars ($500), except that in no event shall such fine be less than the consideration received by such player for participating in such game.

CONTRACT

CLASS AA

APPROVED BY THE

NATIONAL ASSOCIATION OF PROFESSIONAL BASEBALL LEAGUES

UNIFORM PLAYER'S CONTRACT

IMPORTANT NOTICES

The attention of both Club and Player is specifically directed to the following excerpt from Rule 3(a), of the Major-Minor League Rules:

"No Club shall make a contract different from the uniform contract and no club shall make a contract containing a non-reserve clause, except permission first be secured from the Executive Committee or the Advisory Council. The making of any agreement between a Club and Player not embodied in the contract shall subject both parties to discipline by the Commissioner or the Executive Committee."

A copy of this contract when executed must be delivered to player either in person or by registered mail, return receipt requested.

Parties The THE MONTREAL BASEBALL CLUB INC.

herein called the Club and JACK ROOSEVELT ROBINSON

of 121 PEPPER ST. PASADENA, CALIF. herein called the Player.

Recital The Club is a member of the National Association of Professional Baseball Leagues. As such, and jointly with the other members of the National Association of Professional Baseball Leagues, it is a party to the National Association Agreement, and to the Major-Minor League Agreement and Rules with the American League of Professional Base-ball Clubs and its constituent clubs and with the National League of Professional Baseball Clubs and its constituent clubs, and is a party to the Constitution and By-Laws of the league of which the club is a member. The purpose of these agreements, rules, Constitutions and By-Laws is to insure to the public wholesome and high-class professional base-ball by defining the relations between club and player, between club and club, between league and league and by vesting in a designated Commissioner, Executive Committee and President of the National Association, broad powers of control and discipline and decision in cases of disputes.

Agreement In view of the facts above recited the parties agree as follows:

Employment 1. The Club hereby employs the Player to render skilled service as a baseball player in connection with all games of the Club during the year 46 including the Club's training season, the Club's exhibition games, the Club's playing season, and any official series in which the Club may participate and in any games or series of games in the receipts of which the Player may be entitled to share; and the Player covenants that he is capable of and will perform with expertness, diligence and fidelity the service stated and such duties as may be required of him in such employment.

Salary 2. For the service aforesaid the Club will pay the Player an aggregate salary of 600.00 monthly

SIX HUNDRED DOLLARS per month - - - - - - - - - - - - , as follows:

In semi-monthly installments after the commencement of the playing season coverёd by this contract, unless the Player is "abroad" with the Club for the purpose of playing games, in which event the amount then due shall be paid on the first week day after the return "home" of the Club, the terms "home" and "abroad" meaning, respectively, at and away from the city in which the Club has its baseball field.

If a monthly salary is stipulated above, it shall begin with the commencement of the Club's playing season (or such subsequent date as the player's service may commence) and end with the termination of the Club's scheduled playing season, including split-season play-off series, and shall be payable in semi-monthly installments as above provided.

If the player is in the service of the Club for part of the playing season only he shall receive such proportion of the salary above mentioned, as the number of days of his actual employment in the Club's playing season bears to the number of days in said season.

Loyalty 3. (a) The Player during said season will faithfully serve the Club or any other Club to which, in conformity with the agreements above, or hereinafter recited, this contract may be assigned, and pledges himself to the American public to conform to high standards of personal conduct, fair play and good sportsmanship.

(b) The Player represents that he does not, directly or indirectly, own stock or have any financial interest in the ownership or earnings of any club, except as herein expressly set forth, and covenants that he will not hereafter, while connected with any club, acquire or hold any such stock or interest except in accordance with the Major-Minor League Rules.

Service 4. (a) The Player agrees that, for the purpose of avoiding injuries and to remain in physical condition to perform the services he has contracted with the club to perform, while under contract or reservation he will not play baseball otherwise than for the Club or for such other Clubs, as may become assignees of this contract in conformity with said agreements; that he will not engage in professional boxing or wrestling; and that, except with the written consent of the Club or its assignee he will not engage in any game or exhibition of football, basketball, hockey, or other athletic sport.

(b) The Player agrees that while under contract or reservation he will not play in any post-season baseball game except in conformity with the National Association Agreement and Major-Minor League Rules and that he will not play in any such baseball game after October 31st of any year until the following spring training season, or with or against any ineligible player, or team.

Assignment

5. (a) In case of assignment of this contract to another Club the Player shall promptly report to the assignee club; accrued salary shall be payable when he so reports; and each successive assignee shall become liable to the Player for his salary during his term of service with such assignee, and the Club shall not be liable therefor. If the transaction of transfer of services is between two clubs of the same classification in the National Association of Professional Baseball Leagues, the salary rate shall be as first specified in contract. If the assignee is any other club, the salary rate shall be the same as that usually paid by said club to other players of like ability. The foregoing shall apply not only in case of assignment of this contract to another club, but also when the transfer is to a club which the club (party hereto) owns or controls. A subsequent retransfer by such subsidiary to the club (party hereto), either the same season or thereafter, shall not entitle the Player to be paid any salary lost by the Player as a result of such transfer or transfers.

Termination

(b) This contract may be terminated at any time by the Club or by any assignee by giving official release notice to the player.

Regulations

6. The Player and the Club accept as part of this contract the regulations printed on the third page hereof and also such reasonable modifications of them and such other regulations as the National Association or Club may announce from time to time.

Agreements and Rules

7. (a) The National Association Agreement and the Major-Minor League Agreement and Rules, and the Constitution and By-Laws of the League of which the Club is a member, and all amendments thereto hereafter adopted, are hereby made a part of this contract, and the Club and Player agree to accept, abide by and comply with the same and all decisions of the President of the National Association, the Executive Committee and Commissioner pursuant thereto.

(b) It is further expressly agreed that, in consideration of the rights and interest of the public, the Club, the League President, the President of the National Association, the Executive Committee or the Commissioner may make public the record of any inquiry, investigation or hearing held or conducted, including in such record all evidence or information given, received or obtained in connection therewith, and including further the findings and decisions therein and the reasons therefor.

Renewal

8. (a) Each year, on or before March 1st (or if Sunday, then the succeeding business day) next following the playing season covered by this contract, by written notice to the Player, the Club or any assignee thereof, may renew this contract for the term of that year except that the salary rate shall be such as the parties may then agree upon.

(b) In default of agreement by the parties, the salary rate shall be determined as provided in paragraph 9, but pending such determination and final decision rendered, the Player will accept the salary rate fixed by the Club or else will not play otherwise than for the Club or for an assignee hereof.

(c) The reservation to the Club, expressly granted and agreed to by the Player, of the valuable and necessary right to renew this contract and to fix the salary rate for the succeeding year, and the promise of the Player not to play during said year otherwise than with the Club or an assignee hereof, have been taken into consideration in determining the aggregate or monthly salary specified herein and the undertaking by the Club to pay said salary is the consideration for the Player's services, the reservation, and renewal option granted and promise made.

Disputes

9. In case of dispute between the Player and the Club or any assignee hereof arising under the provisions of this contract the same shall be referred to the Executive Committee or the Commissioner as the case may be, as an umpire, and the Committee's decision shall be accepted by all parties as final, subject only to such right of appeal as is given to the Player only, under the terms of the National Association Agreement and Major-Minor League Agreement and Rules.

10. The Club and Player covenant that this contract fully sets forth all understandings and agreements between them, and agree that no other alleged understandings or agreements, whether heretofore or hereafter made, shall be valid, recognizable, or of any effect whatsoever, unless expressly set forth in a new or supplemental contract executed by the Player and the Club (acting by its president—and that no other Club officer or employee shall have any authority to represent or act for the Club in that respect), complying with all agreements and rules to which this contract is subject.

Special Covenants See "Important Notice" above

11. This contract is subject to Federal or State legislation, regulations, executive or other official orders, or other governmental action, now or hereafter in effect, repecting military, naval, air or other governmental service, which may, directly or indirectly, affect the Player, the Club or the League; and subject also to all rules, regulations, decisions or other action by the National Association, the League, the Commissioner, the President of the National Association, the Major-Minor League Advisory Council, or the League President, including the right of the Commissioner or the President of the National Association to suspend the operation of this contract during any national emergency.

12. A copy of this contract and any constituent part thereof referred to in Section 7(a) hereof, will be furnished the player upon his request made to either the Club or the President of the National Association at the time of executing same or any time during the life of the contract.

13. This contract shall not be valid or effective unless and until approved by the President of the National Association.

Signed this 23rd day of OCTOBER, A. D., 19 45

MONTREAL BASEBALL CLUB INC.

By Hector B Moore

President

Jack R. Robinson

Player Sign Here

121 PEPPER ST. PASADENA. CALIF.

Player's Home Address—Street and City

SEAL

Consent of Parent or Guardian

Consent is given to the minor player executing this contract and any renewals thereof as may be necessary under Sections 5 and 8 of the above contract, without any further renewals of this consent.

.....

Parent-Guardian

DRAFT STATUS; INACTIVE RESERVE.

Social Security No. 551-14-1990

Players must sign CORRECT NAME, giving their INITIALS and STREET and HOME CITY ADDRESS

Notice: If player is to receive any extra compensation as bonus, salary, or otherwise from the signing Club or from any other source whatsoever, which is not set forth on page one of this contract, it must be inserted below, giving name of payor, amount of payment, when to be paid, etc.

Salary payable half Canadian funds and half U.S. Funds, on the fifteenth and last day day of each month. Player Robinson to receive a bonus of $3500.00 American funds, on signing of this contract.

CLUB PRESIDENT'S AFFIDAVIT

PROVINCE OF QUEBEC,

County of HOCHELAGA.

I, the undersigned Club President, hereby certifies that all of the compensation player JACK R. ROBINSON is receiving, or has been promised in the form of salary, transportation (except transportation expenses for one person from the player's home or point of departure to the city to which he is directed to report), allowance, bonus of whatsoever nature, or otherwise from the MONTREAL club, or through or from any other club, person, agent, or corporation or to be paid prior to the execution of said contract, during the life thereof or thereafter for services rendered to said club, or incident to such service, is set forth fully in the contract to which this affidavit is attached.

Affiant makes this affidavit with full knowledge that if its contents be found false the club which affiant represented may be fined not to exceed Five Hundred ($500) Dollars and its Club President and/or any person whom he permits to sign this affidavit in the club's behalf suspended from further participation in National Association affairs for a period of two years from the date final decision was rendered finding said affidavit to have been false.

Peter J. Mace

President

REGULATIONS

1. The Club's playing season for each year covered by this contract and all renewals hereof shall be as fixed by the League of Professional Baseball Clubs of which the contracting Club is a member.
2. The Player must keep himself in first class physical condition and must at all times conform his personal conduct to standards of good citizenship and good sportsmanship.
3. The Player, when requested by the Club, must submit to a complete physical examination at the expense of the Club and, if necessary, to treatment by a regular physician or dentist in good standing at the Player's expense. For refusal of the player to submit to a complete medical or dental examination the club may consider such refusal as a violation of this regulation and may take such action as it deems advisable under regulation 7 of this contract. Disability directly resulting from injuries sustained while rendering service under this contract shall not impair the right of the Player to receive his full salary for a period not exceeding two weeks from the date of his injury, at the termination of which he may be released or continued on the salary roll. Any other disability or misconduct may be ground for suspending or terminating this contract at the discretion of the Club.
4. A Player who sustains an injury while playing baseball for his club must serve written notice upon his club of such injury, giving time, place, cause and nature of the injury within ten days of the sustaining of such injury.
5. The Club will furnish the Player with uniform, exclusive of shoes. Upon the termination of the championship playing season or release of the Player the Player agrees to surrender the uniform or uniforms to the Club.
6. The Club will provide and furnish the Player during spring training with proper board and lodging, and while "abroad" or traveling with the Club in other cities during spring training or the playing season, with proper board, lodging, and pay all proper and necessary traveling expenses, including Pullman accommodations when necessary and meals en route.
7. For violation by the Player of any rule or regulation, the Club may impose a reasonable fine and deduct the amount thereof from the Player's salary, or may suspend the Player without salary or both, at the discretion of the Club, but if suspension exceeds ten days the Player may appeal to the President of the National Association.
8. In order to enable the Player to fit himself for his duties under this contract, the Club may require the Player to report for practice at such places as the Club may designate, and to participate in such exhibition contests as may be arranged by the Club for a period of.....days prior to the playing season without any other compensation than that herein elsewhere provided, **the Club, however, to pay the rail traveling expenses, including Pullman accommodations, if available, otherwise only such transportation as may be available will be required, and meals en route of the Player from his home city to the training place of the Club (but not in cases where Club trains at home)** whether he be ordered to go to the training camp direct or by way of the home city of the Club. In the event of the failure of the Player to report for practice or to participate in the exhibition games, as provided for, a penalty by way of fine may be imposed by the Club, the same to be deducted from the compensation stipulated herein.
9. Any Club, member of this Association, assigning a Player's contract to another Club in the National Association during the playing season shall be responsible for the Player's salary, under his contract, up to and including the day notice of such assignment is served upon him, and in addition for the number of days' travel required by the Player, if he promptly reports to the club to which his contract is assigned. The number of days' travel allowed shall be determined by the number of days which would be required by the use of the transportation furnished by the Club, and the Player's salary with the assignee Clubs shall begin the day the Player reports to the assignee Club.
10. Any Manager, Player or Umpire, asserting any claim against any person or organization in professional baseball must file an itemized statement of same with the league president of the league of which the creditor is a member within 120 days of the maturity of the claim. If league president fails to render decision, or if adverse to either party, the party against whom decision is rendered may appeal to the President of the National Association within 30 days. If assertion of claims be by any league or club against any league or club claims must be filed within 120 days with the President of the National Association. (See Sec. 10-11-12, Article 6, National Association Agreement, for further information).

When I signed this contract, the name of the club, the year for which I am contracting, the salary I am to receive and the date of the contract were entered on the contract form. The terms of the contract are those that prevailed for in the contract has been explained me. I hereby acknowledge receipt of duplicate of executed contract.

Jack R. Robinson

(Player) (Parent - Guardian)

CLASS AA

National Association

PLAYER'S CONTRACT

League

OF

The National Association of Professional Baseball Leagues

Base Ball Club

WITH

Player

Approved and Recorded

19

President of the National Association

19

League President

PRINTED IN THE U. S. A.