

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

13 CIV 7241

HARRY BELAFONTE,

Plaintiff,

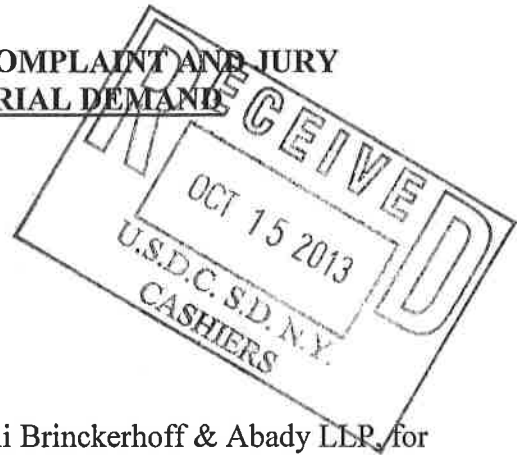
-against-

THE ESTATE OF MARTIN LUTHER KING,
JR., INC.; and BERNICE A. KING, as
administrator C.T.A. of the Estate of Coretta
Scott King,

Defendants.

Case No.: 13 Civ. _____

COMPLAINT AND JURY
TRIAL DEMAND



Plaintiff Harry Belafonte, by his attorneys Emery Celli Brinckerhoff & Abady LLP, for his Complaint against defendants The Estate of Martin Luther King, Jr., Inc. (the "Estate"), and Bernice A. King, as administrator C.T.A. of the Estate of Coretta Scott King, alleges as follows:

PRELIMINARY STATEMENT

1. This is an action to resolve once and for all the ownership interest that human rights activist and music legend Harry Belafonte has in a number of items given to him by the late Reverend Dr. Martin Luther King, Jr. and his widow, Coretta Scott King. For more than a decade, Dr. King and Mr. Belafonte worked at the epicenter of this nation's historic Civil Rights movement, a history that is well documented.¹ From Memphis to Birmingham, to Washington, D.C., and beyond, Dr. King and Mr. Belafonte worked on strategies and collaborated on issues that would transform American society. During that time, Dr. King and Mr. Belafonte also

¹ See generally Taylor Branch, Parting the Waters: America in the King Years 1954-63 (1989); Taylor Branch, Pillar of Fire: America in the King Years 1963-65 (1999); Taylor Branch, At Canaan's Edge: America in the King Years 1965-68 (2007); Harry Belafonte, My Song: A Memoir (2011); Sing Your Song: Harry Belafonte (Belafonte Enterprises and S2BN Entertainment Production 2011).

forged a deep and enduring personal friendship. Dr. King was a regular guest at Mr. Belafonte's Manhattan apartment: he worked, socialized, and rested there. In addition, over the years Mr. Belafonte provided much needed financial support to the Reverend and his family. So close and special was their relationship that Coretta Scott King emphasized it in her autobiography, stating, among other things, that "whenever we got into trouble or when tragedy struck, Harry has always come to our aid, his generous heart wide open."²

2. Not surprisingly, during their long time together, Mr. Belafonte came to own documents associated with Dr. King and his widow, three of which (defined below as the "Documents") are the subject of this action. Mr. Belafonte has owned these Documents for many years and possessed them until early 2008, when he delivered them to Sotheby's, Inc. ("Sotheby's") auction house to assess their value and for a possible sale.

3. These Documents belong to Harry Belafonte.

4. Notwithstanding these facts, astonishingly, in December 2008, the Estate of Martin Luther King, Jr., Inc. (the "Estate") and Bernice King objected to a public auction of the Documents, accusing Mr. Belafonte of having obtained them from a "wrongfully acquired" collection. Not a scintilla of evidence was ever offered to support this claim, yet the Estate demanded the Documents be turned over to *them*. In response to the objections, Mr. Belafonte withdrew the Documents from auction, but continued to maintain his ownership in them. Sotheby's refused to return the Documents to Mr. Belafonte until the Estate's and Bernice King's claim was resolved, formally or informally. The Documents, which Mr. Belafonte wishes to be returned to his possession, have remained with Sotheby's ever since.

² Coretta Scott King, My Life with Martin Luther King, Jr. 144-45 (1994).

5. Critically, in addition to the Estate's illegitimate challenge to Mr. Belafonte's clear title, any applicable statute of limitations period for a claim to the Documents has long expired. Any possible claim by the Estate or Bernice King is governed by the three-year statute of limitations for conversion and replevin. But neither the Estate nor Bernice King has *ever* commenced an action to enforce its assertion of purported rights. Any claim by the Estate or Bernice King to divest Mr. Belafonte of his property no longer exists.

6. Nonetheless, despite all this and without ever having provided a cognizable basis for doing so, the Estate and Bernice King continue to interfere with Mr. Belafonte's clear title.

7. Unfortunately, this is not the first or only time the Estate has overreached in this meritless way. Indeed, it is part of a pattern. Most recently, in March 2013, the Fifth Circuit Court of Appeals resoundingly rebuked the Estate for an almost-identical effort. There, the Estate sought to take possession of property owned for many years by the now 87-year-old former secretary of Dr. King, Maude Ballou. There, as here, Ms. Ballou had come into legitimate possession of the materials in question, notwithstanding the Estate's specious claims to the contrary. And there, as here, the Estate had waived any conceivable rights by allowing the applicable statute of limitations period to expire. In affirming a District Court ruling that addressed both the challenge to title and the statute of limitations, the Fifth Circuit issued a curt, stern ruling rejecting the Estate's overreach. *See Estate of Martin Luther King, Jr., Inc. v. Ballou*, No. 12-60306 (5th Cir. Mar. 8, 2013) (per curiam).

8. The *Ballou* decision followed an earlier and equally unsuccessful effort by the Estate to wrestle possession of papers that had been pledged by Dr. King, in that case, to Boston University. After hearing the evidence there, a jury ruled in the University's favor and rejected the Estate's claims. *See King v. Trustees of Boston Univ.*, 420 Mass. 52 (1995).

9. Undeterred by these rulings and the facts here, the Estate continues with its baseless and hyper-aggressive efforts to claim ownership over the property of others. Mr. Belafonte seeks to put an end to the Estate's and Bernice King's unjustified interference with his ownership of the Documents, by requesting that this Court declare the invalidity of the Estate's and Bernice King's claims and issue an order that will permit the Documents to be released into the possession of their rightful owner, Harry Belafonte.

JURISDICTION AND VENUE

10. This action asserts claims arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202, and New York state law. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the parties are citizens of different States and the matter in controversy exceeds the sum of \$75,000.

11. Personal jurisdiction is proper over the Estate and Bernice King because they have interfered with a business transaction in this State giving rise to this action, repeatedly asserted claims against a person and property located in this State, and continue to interfere with Mr. Belafonte's possession of such property located in this State as a result of claims made to an auction house located in this State, which has caused injury to Mr. Belafonte within this State. Moreover, upon information and belief, the Estate derives substantial revenue from interstate commerce (including through the King Center and intellectual property licensing) and should have reasonably expected that its actions had consequences in this State.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred within this District, and because the property that is the subject of the action is situated in this District.

THE PARTIES

13. Plaintiff Harry Belafonte is an individual residing in New York, New York.

14. Upon information and belief, Defendant Estate of Martin Luther King, Jr., Inc. is a Georgia for-profit corporation, with a principal place of business in Georgia. The Estate maintains a registered agent at 1100 Peachtree Street, Suite 2800, Atlanta, Georgia 30309, Attention: Miles J. Alexander.

15. Upon information and belief, Defendant Bernice A. King, as Administrator C.T.A. of the Estate of Coretta Scott King, is a resident and citizen of the State of Georgia and may be served with process at 1638 Laurens Way, Atlanta, Georgia 30309.

FACTS

Background

16. Born in Harlem and raised in modest circumstances in Jamaica, Harry Belafonte's commitment to human rights springs from his own experience, and from his abiding desire to "give back." Although now recognized as one of the world's great entertainers and legendary human rights activists, the early decades of Mr. Belafonte's life were marked by struggle, as he fought to overcome prejudice and discrimination while building a career for himself in the arts. These experiences shaped Mr. Belafonte's outlook and drove his actions. Working with major figures like Eleanor Roosevelt, Paul Robeson, Nelson Mandela, and more, Mr. Belafonte has consistently contributed political, emotional and financial support to humanitarian causes worldwide. Indeed, for more than six decades, whenever "the cause" was in need of a commanding performer, an articulate speaker, or a financial backer, Harry Belafonte was there.

17. Mr. Belafonte's strong and special connection to the late Dr. Martin Luther King, Jr. is widely known and chronicled. Dedicated to Dr. King and the Civil Rights movement, Mr.

Belafonte provided significant support for the Freedom Rides, voter registration drives, the March on Washington in 1963 and countless other activities important to the struggle. Mr. Belafonte also helped Dr. King and his family personally: he offered bail money to gain Dr. King's release from several arrests, including release from the Birmingham City Jail in 1963, opened his Manhattan apartment to Dr. King as a "retreat," and provided much-needed financial support for the Reverend's family.

18. Over time, through his relationship with Dr. King and Coretta Scott King, Mr. Belafonte came into possession of the three Documents at issue in this action, described below.

The "Casualties of The War in Vietnam" Speech Document

19. The first Document is an outline for Dr. King's now famous "The Casualties of the War in Vietnam" speech (the "Vietnam War Speech Outline"), which Dr. King delivered in February 1967. Dr. King worked on the speech in Mr. Belafonte's apartment during one of Dr. King's visits to New York. Before his departure, he left the Vietnam War Speech Outline behind – as he had with several other drafts of speeches over the years – for Mr. Belafonte to preserve for posterity or any other disposition, if he so wished.

20. Mr. Belafonte has possessed that Vietnam War Speech Outline since 1967.

The Memphis Speech Document

21. The second of the Documents contains notes from another, undelivered speech to be given in Memphis, Tennessee (the "Memphis Notes"). Those notes were found in Dr. King's suit pocket after he was assassinated in 1968. At the time of Dr. King's death, as she and Mr. Belafonte were preparing the clothes for her slain husband's body to lay in state, Mrs. King attempted to give the Memphis Notes, which were contained in a small pamphlet, to Mr. Belafonte. Although he was deeply touched by the gesture, Mr. Belafonte felt that Stanley

Levison, one of Dr. King's longest-serving confidants, was more deserving, and suggested to Mrs. King that she give them to Mr. Levison. At Mr. Belafonte's urging, Mrs. King gave the Memphis Notes to Mr. Levison. Just before he died in 1979, Mr. Levison instructed his wife to deliver the Memphis Notes to Mr. Belafonte, which she did.

22. Mr. Belafonte has possessed the Memphis Notes since Mr. Levison's death in 1979.

The Condolence Letter from President Lyndon Johnson

23. The third Document is a typewritten condolence letter from President Lyndon Johnson to Mrs. King (the "Condolence Letter"). Mrs. King, who was also a frequent visitor to Mr. Belafonte's home in the years before her death in 2006, noticed that Mr. Belafonte kept a framed collection of historic documents on his wall, which included letters from presidents and heads of state. Mrs. King admired Mr. Belafonte's collection and, in or around 2003, directed her secretary to send President Johnson's condolence letter to Mr. Belafonte for his collection.

24. Mr. Belafonte has possessed the Condolence Letter since at least 2003.

25. Mr. Belafonte prominently displayed the Condolence Letter in his home where visitors could and did see the letter.

Other Gifts by Dr. King and Other Examples of the Estate's Overreach

26. Dr. King and Mrs. King were well-known for gifting papers and artifacts to their close friends, colleagues, and institutions, as a token of their appreciation and an acknowledgment of the historic significance of these items.

27. For example, Dr. King frequently gave away drafts and copies of his speeches, correspondence, and working papers to figures such as Andrew Young, a close friend of Dr.

King and fellow civil rights activist, while Mrs. King gave historic items to Taylor Branch, Dr. King's biographer.

28. In the 1950s, while he worked as the President of the Montgomery Improvement Association in Montgomery, Alabama, Dr. King also gave numerous documents and photographs to Maude Ballou, his close friend and personal secretary. As is the case with the Documents owned by Mr. Belafonte, there was no credible or reasonable basis to challenge Mrs. Ballou's ownership of the materials in her possession. Nevertheless, the Estate initiated legal proceedings to divest her of possession of these items.

29. The Estate's conduct in the Ballou case caused an uproar in the civil rights community. David J. Garrow, a Pulitzer Prize-winning biographer of Dr. King, characterized the Estate's failed effort against Mrs. Ballou as "heartless." "To sue somebody like Ms. Ballou, who worked for Dr. King and was totally loyal to Dr. King, betrays a sort of scorched-earth attitude," he said.³

30. Upon review, the federal district court presiding over the Ballou dispute rejected the Estate's claims in their entirety, finding ample evidence that Dr. King had personally given the property to Ballou, and that he did not intend that she return it to him. *See Estate of Martin Luther King, Jr., Inc. v. Ballou*, 856 F. Supp. 2d 860 (S.D. Miss. 2012), *aff'd*, No. 12-60306 (5th Cir. Mar. 8, 2013) (per curiam).

31. Mrs. Ballou testified that, over the years, she and her husband were very close with Dr. and Mrs. King. Dr. King knew that Mrs. Ballou understood the importance of his work, labored long and hard in the civil rights movement, and wanted to keep a personal record of the

³ See Jim Morrill, Court Rules for Ex-Charlottean in MLK Papers Suit, The Charlotte Observer, Mar. 8, 2013.

events. Dr. King ensured that Mrs. Ballou kept copies of his work for herself as pieces of the historical record and tokens of appreciation for her efforts.

32. As here, the Estate could offer no proof to contradict or undermine Mrs. Ballou's legitimate ownership interest in these materials. In addition, as here, the Court found that the Estate had long since waived any rights to the property because it allowed the applicable statute of limitations to expire.

33. Yet another example of the Estate's disturbing and illegitimate challenges to Dr. King's gift-giving occurred years ago in connection with a pledge the Reverend made to have a portion of his papers placed with Boston University, the institution from which he received his graduate degree in 1964. Although the Estate also challenged this pledge, *see King v. Trustees of Boston Univ.*, 420 Mass. 52 (1995), a jury rejected the Estate's claims, found in the University's favor, and required the materials remain as a charitable gift to Dr. King's *alma mater*, just as he intended.

34. As this record makes plain, Dr. King's and Mrs. King's decisions to give historically significant documents to Mr. Belafonte is in line with their documented practice of gifting such artifacts to their close friends and supporters.

Placement of the Belafonte Property with Sotheby's in 2008

35. On or about January 9, 2008, Mr. Belafonte executed a Consignment Agreement with Sotheby's, under which his Documents were valued and could potentially be sold at auction.

36. At the time, Mr. Belafonte's intention in the event of a sale was to use proceeds to support the non-profit work of organizations whose mission and work was consistent with that of Dr. King's.

The Estate's Interference and Unfounded Accusations of Unlawful Ownership

37. Notwithstanding Mr. Belafonte's indisputable title to his Documents; the clear expiration of the statute of limitations on any conceivable claim; and despite the Estate's failed and ignominious efforts to wrongfully extract materials from others under virtually identical circumstances, the Estate and Bernice King moved to block the return of the documents to Mr. Belafonte.

38. A public auction of the Documents by Sotheby's was scheduled for December 11, 2008.

39. Upon information and belief, on the afternoon of October 9, 2008, counsel for the Estate spoke with Sotheby's regarding the Documents. Upon information and belief, the Estate's legal representative objected to the sale of the Documents, and Sotheby's requested that the Estate provide Sotheby's with information to support the Estate's stated reasons for its objection.

40. On or around December 10, 2008, Isaac Farris, the then-chief executive officer of the King Center in Atlanta, issued a public statement regarding the auction of the Documents. That statement was made on behalf of the Estate.

41. The December 10, 2008 statement declared in part, "The King Estate contends that these documents are the property of the Estate of Martin Luther King, Jr." The statement went on to say that, "The King Estate believes the documents being offered in Thursday's auction are a part of a wrongfully acquired collection."

42. Therefore, on December 10, 2008, the Estate asserted its claim to title in the Documents.

43. On or around December 10, 2008, Bernice King, as Administrator of the Estate of Coretta Scott King, wrote through her attorneys to Mr. Belafonte and Sotheby's regarding the

Condolence Letter written by President Johnson to Mrs. King. In this letter to Mr. Belafonte, Bernice King asserted her claim to title in the Condolence Letter.

44. The Documents were withdrawn from the Sotheby's auction.

45. On December 12, 2008, counsel for the Estate sent an e-mail to Sotheby's to challenge Mr. Belafonte's title to the Documents. In the email, counsel for the Estate, *inter alia*, again suggested that the Documents were wrongfully acquired, calling the assertion that Mrs. King gave away historically significant documents "implausible."

46. Since then, neither the Estate nor Bernice King has ever provided Mr. Belafonte with further information or any facts to substantiate the positions taken in the October 9, 2008 telephone call, the December 10, 2008 press statement, the December 10, 2008 letter, or the December 12, 2008 e-mail. Upon information and belief, neither the Estate nor Bernice King has provided such information or facts to Sotheby's.

47. On January 14, 2009, Sotheby's sent a letter regarding the Documents to counsel for Mr. Belafonte and the Estate (the "Sotheby's Letter").

48. In the Sotheby's Letter, Sotheby's states that the Documents – listed as Lots 120-122 of Sale No. 8501 and referenced in such Letter as the "Property" – were "withdrawn from sale in light of an ownership claim made by the Estate of Dr. Martin Luther King, Jr. . . ." The Sotheby's Letter further notes that, "The Property remains in Sotheby's possession."

49. The Sotheby's Letter also states: "At this time, Sotheby's is in a difficult position as we have received conflicting demands from both parties. Specifically, Mr. Belafonte has demanded the Property be released to him but the Estate has requested that the Property remain in the custody of Sotheby's. As Sotheby's is not in a position to evaluate the merits of any

potential ownership claims raised, we are unable to release the Property until all issues regarding the title claim have been resolved.”

50. Therefore, as of January 14, 2009, the Estate and Bernice King were notified and on notice that Mr. Belafonte refused to return the Documents and continued to claim title in the Documents.

51. At points during the intervening period, the parties engaged in some discussions in an effort to resolve the dispute without having to commence formal litigation. However, no resolution was reached.

52. At no time since they first contacted Sotheby’s did the Estate or Bernice King seek to enter into a tolling agreement with Mr. Belafonte, or has the statute of limitations otherwise tolled.

53. At no time have the parties entered into any tolling agreement regarding any asserted claim of title in or to the Documents, or has the statute of limitations otherwise tolled.

54. On January 14, 2013, after counsel for Mr. Belafonte informed Sotheby’s that the parties had not reached a resolution of the Estate’s claims, counsel for Sotheby’s confirmed to counsel for Mr. Belafonte that Sotheby’s would not return the Documents to Mr. Belafonte without either consent from the King Estate or a court order.

55. As of the date of the filing of this Complaint, the Documents remain in Sotheby’s possession in New York, New York.

COUNT I – DECLARATORY JUDGMENT
(The Estate’s and Bernice King’s Claims of Title Are Time-Barred)

56. Mr. Belafonte incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

57. The Estate and Bernice King have been aware of Mr. Belafonte's possession of the Documents since December 2008, at the latest, when they objected to the Sotheby's sale.

58. The Estate's and Bernice King's communications with Sotheby's constitute a demand for the Documents, which Mr. Belafonte refused.

59. Since January 14, 2009, when the Sotheby's Letter was sent, the Estate and Bernice King have been aware of both: (a) Mr. Belafonte's assertion of ownership of the Documents; and (b) his refusal to provide the Documents to the Estate or to Bernice King.

60. The Estate's and Bernice King's continued objections have prevented Mr. Belafonte from possessing, selling or engaging in other acts consistent with clear ownership of the Documents.

61. Moreover, upon information and belief, as a result of the Estate's and Bernice King's objections that have prevented the Documents from being sold in 2008, the present fair market value may be lower than what would have been realized had the Documents been sold at auction as scheduled.

62. Under New York law, claims relating to the possession of personal property must be brought within three years.

63. The Estate and Bernice King have asserted that Mr. Belafonte wrongfully acquired the Documents.

64. More than three years has passed since Mr. Belafonte acquired each one of the Documents.

65. In addition, at least three years have passed between January 14, 2009 and the date of this Complaint.

66. Neither the Estate nor Bernice King has brought any action against Mr. Belafonte with respect to the Documents.

67. Accordingly, Mr. Belafonte is entitled to a ruling declaring that the Estate and Mrs. King are permanently barred from asserting claim of title in or to the Documents.

COUNT II – DECLARATORY JUDGMENT
(Mr. Belafonte Owns the Documents)

68. Mr. Belafonte incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth herein.

69. Mr. Belafonte has been in possession of the Vietnam War Speech, which Mr. Belafonte worked on with Dr. King, since 1967.

70. Mr. Belafonte was given the Memphis Notes by Stanley Levison in or around 1979. Mr. Levison was given the Memphis Notes by Mrs. King.

71. Mr. Belafonte was given the Condolence Letter by Mrs. King in or around 2003.

72. Mr. Belafonte did not wrongfully acquire title to the Documents from Dr. or Mrs. King, or otherwise engage in conversion of the Documents.

73. Mr. Belafonte possesses good title in all of the Documents.

74. Accordingly, Mr. Belafonte is entitled to a ruling declaring that he is the rightful owner of the Documents and possesses good title in the Documents.

75. Mr. Belafonte is further entitled to a ruling declaring that he did not engage in conversion of the Documents from either Dr. King or Mrs. King.

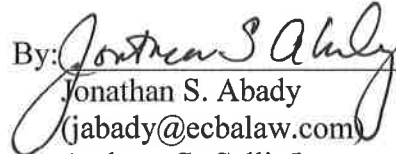
PRAYER FOR RELIEF

WHEREFORE, Mr. Belafonte respectfully requests that this Court enter judgment in his favor and against Defendants as follows:

1. Finding that the Estate's and Bernice King's claims against Mr. Belafonte are without merit;
2. Issuing a declaration and order that the Estate and Bernice King are permanently barred from asserting title in or to the Documents at any time now and into the future;
3. Issuing a declaration and order that Mr. Belafonte is the owner of the Documents and possesses good title in the Documents;
4. Issuing a declaration and order that Mr. Belafonte did not engage in conversion of the Documents from Dr. King or Mrs. King;
5. Issuing an order sufficient to permit Sotheby's to deliver the Documents back to Mr. Belafonte without risk of claim by the Estate or by Bernice King against Sotheby's;
6. Ordering an appraisal to determine the effect, if any, on the present valuation of the Documents and awarding Mr. Belafonte damages to compensate for any devaluation resulting from the Estate's and Bernice King's meritless claims;
7. Awarding Mr. Belafonte all costs and expenses of this litigation; and
8. Granting all such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 15, 2013

EMERY CELLI BRINCKERHOFF &
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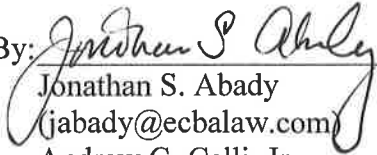
Counsel for Plaintiff Harry Belafonte

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiff Harry Belafonte demands a trial by jury on all issues so triable in this action.

Dated: New York, New York
October 15, 2013

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