

Chicago Daily Law Bulletin®

Volume 165, No. 51

Serving Chicago's legal community for 164 years

WWII plane-theft suit filed 'too late'

7th Circuit affirms dismissal of suit over aircraft allegedly taken from its hangar decades earlier

BY SARAH MANSUR
Law Bulletin staff writer

A man's legal quest to reclaim his vintage fighter plane may have run its course.

Richard Vartanian cannot sue the current owners of a World War II-era P-51D Mustang he alleges was stolen from him sometime between 1974 and 1985, a federal appeals panel found, because too much time has passed since he discovered the plane was missing.

The 7th U.S. Circuit Court of Appeals panel last week affirmed the district court's ruling that Vartanian's claims against Amphib Inc. and Charles Greenhill are time-barred.

"It is too late for the judicial system to make a reliable decision about what happened to Vartanian's plane (or parts of it) and which components of Greenhill's plane might be traced to the Mustang that the Royal Canadian Air Force sold as surplus in 1960," Judge Frank H. Easterbrook wrote in the nine-page opinion, which included a rendering of the plane model and a brief history of it.

In 1965, Vartanian purchased the plane, which had flown in the Canadian air force, and stored it at a car dealership until 1973 or 1974, when he moved it to a hangar in New York.

Vartanian realized the plane was missing in 1985 when he decided to move it to California, but the plane was no longer in the New York hangar.

Vartanian aimed his suspicions at Wilbur Martin, who had promised to restore the plane. Vartanian's lawyer sent Martin a letter demanding he return the plane, but Martin denied he stole it.

In April 1985, Vartanian con-



A federal appeals panel has affirmed the dismissal of claims brought by Richard Vartanian to reclaim this P-51D Mustang WWII-era fighter plane, "Geraldine," pictured at the 2008 EAA AirVenture in Oshkosh, Wis. Vartanian bought a Mustang from the Canadian military in the 1960s, and his plane went missing from a New York hanger in the 1970s or 1980s. He alleged this plane is the one that was stolen and later sold to its current owners. In November 2017, a trial judge ruled the statute of limitations ran out on the claims. Flickr/D. Miller, "NAA P-51D Mustang 'Geraldine,'" CC-BY-2.0

tacted the Federal Aviation Administration, the FBI and law enforcement agencies in Los Angeles, New York and Chicago about the theft of his plane.

At the time, Martin claimed his Mustang was assembled with parts he purchased from an associate of Vartanian as well as parts of his own plane that crashed in Nicaragua.

Vartanian's inquiry into his missing plane fell dormant until either 2002 or 2003 when he read a magazine article that mentioned Martin sold a P-51D Mustang to Amphib and Greenhill in 1998.

That article identified the serial number of the plane purchased by Greenhill as 44-74543 — the same one as Vartanian's missing Mustang.

In 2004, Vartanian hired a new lawyer to represent him in a suit over the allegedly stolen plane, now named "Geraldine," but that

lawyer died before filing any lawsuit.

In 2009, Vartanian sent a letter to then-U.S. Attorney Patrick J. Fitzgerald about the alleged theft.

Fitzgerald replied, writing that the letter "does not form the basis for any action by the United States Attorney's Office at this time," but encouraged him to contact the FAA, a private attorney or a private investigator.

In February 2014, Vartanian demanded Greenhill turn over the plane he purchased from Martin.

Vartanian also sent letters with allegations against Greenhill to FAA administrators, California lawmakers and law enforcement officials, among others. He also contacted an employee of Amphib about these claims and posted the allegations on a public website.

Greenhill filed a defamation suit against Vartanian in October 2015. Vartanian filed counterclaims for

conversion and declaratory judgment in favor of his title to the plane.

His conversion counterclaim alleges Martin stole his plane and that Greenhill was complicit in Martin's efforts to launder the plane's title through the 1998 sale.

In November 2017, U.S. District Judge John Robert Blakey granted Greenhill's motion for summary judgment, ruling that the statute of limitations barred Vartanian's claims.

On appeal, the 7th Circuit initially found the document that contained Blakey's judgment did not satisfy the Federal Rules of Civil Procedure 58 because it didn't specify which of the two plaintiffs would receive relief, Amphib or Greenhill. It also did not provide the relief being awarded. The appeals panel remanded the document to Blakey, who revised the judgment.

Blakey's revised judgment states Amphib owns the plane free of any claim by Vartanian.

This second appeal to the 7th Circuit followed. A panel — which consisted of Easterbrook, Chief Judge Diane P. Wood and Judge Amy J. St. Eve — affirmed Blakey's ruling.

"The statute of limitations expired long ago, just as the district

court concluded," Easterbrook wrote in the March 8 ruling.

Even if the statute of limitations in Illinois did not apply in this case, Easterbrook wrote, "the doctrine of laches would remain," citing at least five potential witnesses who died since 1985.

Karnig S. Kerkonian, a partner with Kerkonian Dajani LLC in Evanston, is one of the attorneys

representing Vartanian. He could not be reached for comment.

John J. Scharkey III, a partner with Sweeney & Scharkey LLC, and Andrew G. May, a partner at Neal Gerber & Eisenberg LLP, represent Greenhill and Amphib.

"This case was unique in as much as we were able to formulate a way to use a statute of limitations argument and a laches argu-

ment on behalf of a plaintiff," Scharkey said in an interview. "We are pleased to have achieved the finality and closure that our client needs to move on, free and clear of any claim, lien or encumbrance asserted by Mr. Vartanian."

The case is Charles Greenhill, et al., v. Richard Vartanian, et al., 17-3526.

smansur@lawbulletinmedia.com