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Case Bath of Bathsheba – Italy and Wadsworth Atheneum Museum of Art

Italy/Italie – Wadsworth Atheneum Museum of Art – Artwork/oeuvre d'art – Spoils of war/butins de guerre – Ownership/propriété – Due diligence – Statute of limitation/prescription – Negotiation/négociation – Settlement agreement/accord transactionnel – Conditional restitution/restitution sous condition – Loan/prêt

The painting “The Bath of Bathsheba”, by Jacopo Zucchi, was looted in 1945 from the Italian Embassy in Berlin, where it was on loan from the Galleria Nazionale d’Arte Antica of Rome. In 1965, it was acquired by the Wadsworth Atheneum Museum of Art. It was returned to Italy in 1998 following the conclusion of a restitution agreement. In exchange, the Wadsworth Museum obtained a short-term loan of 28 Italian Baroque master paintings.

I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted Solution; V. Comment; VI. Sources.

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I. Chronology

Spoils of war

- **1908:** The Galleria Nazionale d'Arte Antica in Rome **lent** to the Italian Embassy in Berlin the painting "**The Bath of Bathsheba**", by Jacopo Zucchi, a 16th-century Florentine Mannerist and a follower of Vasari.
- **1945:** **Soviet troops ransacked** the Italian Embassy in Berlin and **removed** many objects, including the Zucchi painting. Shortly afterwards, Soviet soldiers **sold** the painting to a wagon-lit employee.
- **1947:** The same wagon-lit employee **offered** the painting to the **Italian Embassy in Paris**. It is uncertain whether or not the Embassy personnel knew that the painting belonged to the Italian patrimony. Nevertheless, as the Italian Government did not raise the funds to buy the painting, it was subsequently **sold to François Heim**, a Parisian antique dealer.¹
- **1965:** François Heim **sold** "The Bath of Bathsheba" to the **Wadsworth Atheneum Museum of Art** (Hartford, Connecticut) for \$35,000.²
- **1970:** Federico Zeri, an Italian art expert, visited the Wadsworth Museum and identified "The Bath of Bathsheba" as the masterpiece removed from the Italian Embassy in Berlin. He thus **alerted** the Italian Government, which immediately **claimed the return** of the artwork. The Wadsworth Museum responded with an **offer to sell** the painting, which was refused by the Italian Government.³
- **1997:** The **Wadsworth Museum** accepted that the painting had been stolen from the Italian Embassy in Berlin and **decided to negotiate** its return to Italy.
- **1998:** The agreement between the Italian Government, the Galleria Nazionale and the Wadsworth Museum provided for the **return** of "The Bath of Bathsheba" to Italy in exchange for a **loan** of 28 Italian Baroque master works.⁴

II. Dispute Resolution Process

Negotiation – Settlement agreement

- The dispute resolution process concerning this thirty year-long dispute can be divided into two distinct phases.
- In the first phase, which goes from 1970 to 1996, both the Wadsworth Museum and the Italian Government proved to be intransigent and determined to prevail over the counterpart by relying on legal arguments. On the one hand, the Museum argued that it had obtained the ownership title to "The Bath of Bathsheba" because it was bought in good faith. In this

¹ Mario Bondioli-Osio, "Italy," *Spoils of War International Newsletter*, No. 4, 1997.

² Judith H. Dobrzynski, "Museum Exchanges Looted Art for a Show," *The New York Times*, April 23, 1998.

³ Mario Bondioli-Osio, "Italy," *Spoils of War International Newsletter*, No. 4, 1997.

⁴ Judith H. Dobrzynski, "Museum Exchanges Looted Art for a Show," *The New York Times*, April 23, 1998.

connection, it gathered evidence demonstrating that François Heim did not know that the work was stolen. On the other hand, the Italian Government maintained that it was the rightful owner because the theft did not extinguish its ownership title. For this reason, Italy refused to buy the painting in 1970, when the Wadsworth Museum offered it for sale.⁵

- In the second phase, which goes from 1996 to 1998, both parties decided to cooperate. The beginning of this phase coincided with Peter Sutton's arrival as director of the Wadsworth Museum. Sutton decided to negotiate the return of the painting in order to avoid a legal battle. At the same time, the Italian Government had modified its tactics on how to recover looted artworks. As a result, Peter Sutton and Mario Bandioli Osio (the head of the *Commissione interministeriale per il recupero delle opere d'arte*, the Italian office charged with retrieving looted works of art) agreed on a mutually satisfactory solution, including the return of "The Bath of Bathsheba" to Italy.⁶

III. Legal Issues

Ownership – Due diligence – Statute of limitation

- The restitution claim concerning "The *Bath of Bathsheba*" was one of the many disputes that resulted from the widespread ransacking of art that occurred during the Second World War. As such, it involved many intertwined legal questions, such as the issues of ownership and due diligence and the problem of the claim's timeliness. However, no court of law dealt with any of these issues as a result of the settlement reached by Italy and the Wadsworth Museum.
- The issue of ownership was central as both disputants claimed to be the rightful owner. The Italian Government contended that the theft of the painting had not extinguished its ownership title, whereas the Wadsworth Museum claimed that the title to "The Bath of Bathsheba" had passed to it because the painting was bought in good faith.
- The due diligence argument was also important in the present case, as it could be used to appraise the conduct of the parties (and in particular the good faith of the possessor) and to discuss whether the Museum had legitimately acquired title to the painting. On the one hand, it appears that the Italian Government was neither diligent nor determined to find "The Bath of Bathsheba". In effect, it traced the painting by chance and only in 1970, despite the fact that it was on public display since its acquisition, in 1965. On the other hand, it seems that both the French dealer and the Wadsworth Museum should have noticed that the provenance of the painting was illicit given the story told by François Heim. The Paris dealer said that he bought the Zucchi painting from an Italian businessman who in turn had bought it from Soviet officers in Berlin after the war.⁷ The conduct of these art professionals should not be surprising

⁵ Stevenson Swanson, "Amicable Resolutions in Disputes of Ownership Are Rare in Art World," *Chicago Tribune*, June 28, 1998.

⁶ Mario Bondioli-Osio, "Italy," *Spoils of War International Newsletter*, No. 4, 1997.

⁷ Stevenson Swanson, "Amicable Resolutions in Disputes of Ownership Are Rare in Art World," *Chicago Tribune*, June 28, 1998.

given that antiquities buyers operated on a “don’t ask, don’t tell” standard after 1945, even though the Second World War was a time of the most extensive looting of cultural objects since the time of Napoleon.

- Finally, had Italy decided to file a lawsuit against the Wadsworth Museum, a statute of limitations defence could have been raised. In effect, Connecticut’s statute of limitation was elapsed in 1970, when Italy first demanded the return of the artwork.

IV. Adopted Solution

Conditional restitution – Loan

- The agreement concluded in 1998 by the Italian Government, the Galleria Nazionale d’Arte Antica and the Wadsworth Museum provided for the return of “The Bath of Bathsheba” to Italy. In exchange, the Wadsworth Museum received a loan of 28 prized Italian Baroque master paintings, including five works by Caravaggio. These were displayed, along with “The Bath of Bathsheba”, in a three month-long exhibition titled “Caravaggio and His Italian Followers”. The Italian Government paid for the transport and insurance of the artworks, which Sutton estimated would otherwise have cost the museum approximately \$350,000 (the Zucchi painting was valued about \$500,000). After the exhibition, “The Bath of Bathsheba” was returned to Italy together with the other paintings.⁸

V. Comment

- The amicable settlement of the dispute concerning the “The Bath of Bathsheba” attracted widespread attention and praise in the art world.
- On the one hand, it demonstrated that disputes over ownership of looted artworks need not be adjudicated through expensive and lengthy judicial proceedings. Therefore, it stands in stark contrast to cases involving Holocaust-related art that have been litigated in the United States, including the dispute between Maria Altmann and the Republic of Austria over six Klimt paintings,⁹ and the dispute between the descendants of Lea Bondi Jaray and the Leopold Museum of Vienna over the painting “Portrait of Wally” by Schiele.¹⁰
- On the other hand, it should be noted that the deal concluded by Italy and the Wadsworth Museum generated important advantages for both parties: Italy obtained the restitution of the Zucchi painting and avoided litigation, which could have demonstrated its lack of effort to

⁸ Judith H. Dobrzynski, “Museum Exchanges Looted Art for a Show,” *The New York Times*, April 23, 1998.

⁹ Caroline Renold, Anne Laure Bandle, Raphael Contel, Marc-André Renold, “Case 6 Klimt Paintings – Maria Altmann and Republic of Austria”, Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva, October 2011.

¹⁰ Raphael Contel, Giulia Soldan, Alessandro Chechi, “Case Portrait of Wally – U.S. Government and Estate of Lea Bondi and Leopold Museum”, Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva, October 2011.

locate and retrieve the artwork; the Wadsworth Museum avoided a costly trial, reputational harm and had the chance to organize a major show. Indeed, the exhibition “Caravaggio and His Italian Followers” was a hit at the small museum, which recorded monthly attendance increases of up to 36 percent during the exhibition’s run. In general, small museums in the United States do not have the authority or budget to pull off major international art loans.¹¹

- In light of the above, it should not be surprising that Constance Lowenthal (director of the Commission for Art Recovery) said that the amicable settlement of the dispute concerning the “The Bath of Bathsheba” is “a model [...] [and a] wonderfully creative solution in which the Wadsworth Atheneum is rewarded for doing the right thing”.¹² Mario Bondioli Osio affirmed that the “whole operation is destined to become an enlightened example of how, over and above the legal niceties, the love for art must also involve a respect for the history of each work and the culture it comes from”.¹³

VI. Sources

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¹¹ Stevenson Swanson, “Amicable Resolutions in Disputes of Ownership Are Rare in Art World,” *Chicago Tribune*, June 28, 1998.

¹² Ibid.

¹³ Ibid.