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March 2014

## **Case Bust of a Young Boy - Heirs of Gentili di Giuseppe and Art Institute of Chicago**

*Federico Gentili di Giuseppe - Art Institute of Chicago - Artwork/œuvre d'art - Nazi-looted art/spoliations nazies - Judicial claim/action en justice - Judicial decision/décision judiciaire - Negotiation/négociation - Due diligence - Ownership/propriété - Statute of limitation/prescription - Settlement agreement/accord transactionnel - Donation - Repurchase/rachat - Symbolic gesture/geste symbolique*

*In 1999, the heirs of the important Jewish art collector Federico Gentili di Giuseppe contacted the Art Institute of Chicago to obtain the restitution of a bust by Francesco Mochi ("Bust of a Young Boy"). This bust had been sold in France at a sale that was subsequently annulled by French judges as constitutive of spoliation. The parties reached an agreement in 2000 under which the museum retains the sculpture.*

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

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## I. Chronology

### Nazi-looted art

- On **21 April 1940**, **Federico Gentili di Giuseppe**, an important art collector of Jewish faith, died leaving two children, Marcello and Adriana.<sup>1</sup>
- In **June 1940**, Marcello and Adriana left Paris to escape the Nazis.
- On **24 October 1940**, Julien Giraud, claiming to be a creditor of Federico Gentili di Giuseppe, filed a summary proceedings suit against the latter's children before the Seine First Instance Court (*Tribunal civil de première instance de la Seine*). He accused them of being completely uninterested in their estate and therefore requested the appointment of an administrator for the estate. As the summons was delivered to the Parisian homes of Marcello and Adriana - one of which was already occupied by the Gestapo - the heirs were not informed of such request.<sup>2</sup>
- On **29 October 1940**, an **order** from the President of the Court entrusted Mr. Moulin with the mission of **managing the estate** and carrying out all acts relating thereto. The administrator then drew up an inventory of the estate's assets.
- On **17 March 1941**, the President of the Court, at the request of the administrator, authorized the latter to proceed with the **public sale** of all or part of the household effects included in the inventory.
- On **23 and 24 April 1941**, the **sale** of Federico Gentili di Giuseppe's collection took place at the Hôtel Drouot in Paris. The 155 lots sold<sup>3</sup> comprised the “**Bust of a Young Boy**” by Francesco Mochi and several paintings.<sup>4</sup> The sale brought in 4.7 million francs.<sup>5</sup>
- In **1988**, **Anthony Roth**, a renowned London art dealer, acquired the “Bust of a Young Boy” at an auction.
- In **February 1989**, the **Art Institute of Chicago** acquired the sculpture from Anthony Roth Fine Arts Ltd. through a donation.<sup>6</sup>
- On **19 March 1998**, the Gentili di Giuseppe's heirs **brought an action against the**

<sup>1</sup> Most of the information in this section comes from the decision of the Paris Court of Appeal, 2 June 1999, No. 1998/19209. Information from other sources is provided in specific footnotes.

<sup>2</sup> PASSA, n. 43-44.

<sup>3</sup> MARCUS, p. 45.

<sup>4</sup> These paintings encompassed Corrado Giaquinto's “Adoration of the Magi”, which was later purchased by the Museum of Fine Arts, Boston (cf. Anne Laure Bandle, Alessandro Chechi, Marc-André Renold, “Case Adoration of the Magi - Gentili di Giuseppe Heirs and Museum of Fine Arts Boston,” Platform ArThemis (<https://unige.ch/art-adr>), Art-Law Centre, University of Geneva), as well as five paintings that will be acquired by the Louvre (cf. Anne Laure Bandle, Alessandro Chechi, Marc-André Renold, “Case Five Italian Paintings - Gentili di Giuseppe Heirs v. Musée du Louvre and France”, Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva)

<sup>5</sup> NOCE, n. 33.

<sup>6</sup> Website of the Art Institute of Chicago, [http://www.artic.edu/aic/collections/artwork/73413?search\\_no=9&index=52](http://www.artic.edu/aic/collections/artwork/73413?search_no=9&index=52) (04.01.2014).

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**French State** before the President of the Paris First Instance Court (*Tribunal de Grande Instance de Paris*) seeking, among other things, a declaration that the sale of 23 and 24 April 1941 was void.

- On **10 July 1998**, the President of the First Instance Court **rejected** their request.
- On **2 April 1999**, the heirs **filed an** appeal.
- On **2 June 1999**, the Paris Court of Appeal **annulled the sale** of 23 and 24 April 1941.
- In **November 1999**, the **Gentili di Giuseppe heirs contacted the Art Institute of Chicago**<sup>7</sup> about the Bust, which they had retained ownership of since the original sale had been annulled by the Paris Court of Appeal.
- In **2000**, the parties reached **an agreement** on the ownership of the sculpture whereby the museum retains the Bust.<sup>8</sup>

## II. Dispute Resolution Process

### Judicial claim - Judicial decision - Negotiation - Settlement agreement

- In 1999, the heirs of Gentili di Giuseppe obtained from the **Paris Court of Appeal** the **annulment of** the sale that took place on 23 and 24 April 1941.<sup>9</sup> On this basis, they entered into **negotiations** with the Art Institute of Chicago in order to obtain the restitution of the “Bust of a Young Boy” belonging to Federico Gentili di Giuseppe.

## III. Legal Issues

### Ownership - Due diligence - Statute of limitation

- The heirs of Gentili di Giuseppe had no difficulty in proving their title to the “Bust of a Young Boy”: the inventory carried out in 1940 by the court-appointed administrator of Federico Gentili di Giuseppe's estate, as well as the 1999 decision of the Paris Court of Appeal, constitute irrefutable evidence in this regard.
- The good faith of the museum - and the fact that it carried out the necessary *due diligence* prior to the purchase of a work of art - does not seem to have been called into question in this case. Indeed, there are several indications that the museum acted in good faith in acquiring the sculpture: (i) the museum acquired the work from Anthony Roth, a reputable art dealer who had himself acquired the work at a public auction, and none of

<sup>7</sup> PR NEWSWIRE ASSOCIATION LLC, n. 11.

<sup>8</sup> ARTNER, GROSSMAN, N. 10 ff; PR NEWSWIRE ASSOCIATION LLC, N. 1-5; MARCUS, p. 45.

<sup>9</sup> For more information on the cancellation of the sale, see Anne Laure Bandle, Alessandro Chechi, Marc-André Renold, “Case Five Italian Paintings - Gentili di Giuseppe Heirs v. Musée du Louvre and France”, Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

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these transactions were conducted in secrecy or under circumstances that might have raised doubts about the Bust's illicit provenance; (ii) the sculpture was exhibited at the Art Institute from the time of its acquisition and was featured in numerous publications,<sup>10</sup> an attitude which demonstrates that the museum had no intention of keeping the acquisition of the Bust under wraps, thus showing that it had no doubts about the legality of its provenance; (iii) the Art Institute acquired the Bust in 1989, i.e. nine years before the heirs of Gentili di Giuseppe brought an action for restitution before the French courts; if the museum had acquired the work after the heirs had taken legal action, its good faith might have been called into question, since such an action casts doubt on the lawful origin of the work.

- Proof of the museum's good faith is important under both French and American law. Indeed, this element is a prerequisite for the validity of the museum's title to the Bust. Under U.S. law, under the adage *nemo dat quod non habet*,<sup>11</sup> once a piece of personal property has been stolen from its original owner, it can never be retitled in a valid manner. However, since the original owner's action for restitution (*replevin*) is limited in time, a *bona fide* purchaser of stolen property may oppose this action by invoking that it is time-barred.<sup>12</sup> On the other hand, such limitation period does not apply to purchasers of bad faith. French law considers that a good faith purchaser of movable property becomes its owner immediately, even if it is stolen, pursuant to the rule that in the case of movable property, possession is worth title (Article 2276 of the Civil Code). The original owner may, however, claim his property for three years (Article 2276, paragraph 2 of the French Civil Code) and the new purchaser will be obliged to return the property to the previous owner.<sup>13</sup> However, if the acquirer is of bad faith, the rule according to which possession is worth title for movable property does not apply; ownership is not acquired through mere possession and the owner may always ask for the return of his property.<sup>14</sup>

#### IV. Adopted Solution

##### Donation - Repurchase - Symbolic gesture

- In 2000, the heirs of Gentili di Giuseppe and the Art Institute of Chicago reached an agreement. The financial details are being kept secret, but the parties have revealed that it

<sup>10</sup> PR NEWSWIRE ASSOCIATION LLC, N. 9-10.

<sup>11</sup> This rule is codified in the U.S. *Uniform Commercial Code* (U.C.C. 2-403 (1), 1998).

<sup>12</sup> In most States, the original owner may act within a maximum of six years. However, the starting point of this limitation period is controversial (cf. GERSTENBLITH, pp. 441, 442).

<sup>13</sup> However, he may obtain a financial consideration for this return.

<sup>14</sup> The claim for recovery is not subject to extinctive prescription, this rule finds its basis in Article 2227 of the French Civil code which enshrines the imprescriptibility of the right of ownership.

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is a donation and repurchase agreement: the Art Institute has partially repurchased the sculpture from the heirs, who have donated the remaining part to the museum. The museum also agreed to mention that the work had previously belonged to Federico Gentili di Giuseppe.

## V. Comment

- Since the 1950s, the heirs of Gentili di Giuseppe have been seeking the return of the works of art belonging to the collection of Federico Gentili di Giuseppe that were dispersed at the 1941 sale. However, it is only since the end of the 1990s that their claims have been successful, thanks in particular to the decision of the Paris Court of Appeal which serves as a basis for negotiations and to an emerging international willingness to offer reparation to Jewish families whose property was looted by the Nazis.<sup>15</sup> The spokesman for the Gentili di Giuseppe heirs emphasized the exemplary attitude adopted by the Art Institute of Chicago in its negotiations with the Gentili di Giuseppe heirs, an attitude that should be followed by other museums in a similar situation.
- It is interesting to note that the negotiations between the heirs and the Art Institute, as well as with the Museum of Fine Arts, Boston for the *Adoration of the Magi*,<sup>16</sup> resulted in the museums retaining ownership of the work.<sup>17</sup> This may be explained by the heavy fiduciary obligations on American museums, which make it very difficult to remove an object from their collections.<sup>18</sup> It is also possible that this result is due to the objective pursued by the families looted by the Nazis. Indeed, they seem to be asserting a “moral claim”<sup>19</sup> rather than looking for material restitution, *i.e.*, recognition of their family's prior ownership and the act of spoliation, while leaving the work available to the public.

## VI. Sources

- a. Bibliography
  - Gerstenblith, Patty. Acquisition and Deacquisition of Museum Collections and the Fiduciary Obligations of Museums to the Public, *in* Cardozo Journal of International and Comparative Law, 2003, 409-441.

<sup>15</sup> ARTNER, GROSSMAN, N. 50-54.

<sup>16</sup> See Anne Laure Bandle, Alessandro Chechi, Marc-André Renold, “Case Five Italian Paintings - Gentili di Giuseppe Heirs v. Musée du Louvre and France”, Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

<sup>17</sup> GERSTENBLITH, p. 439.

<sup>18</sup> GRAEFE, pp. 493-500.

<sup>19</sup> DOVKANTS, N.5.

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- Graefe A, Emily. The Conflicting Obligations of Museums Possessing Nazi-Looted Art, *in* Boston College Law review, vol. 51, issue 2, 473-515.
  - Marcus B, Erica. Nazi Looted Art: Setting Precedence for Museum Decisions. 2010 (<http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1251&context=theses>) (04.01.2014).
  - Passa, Jérôme. Condamnation du musée du Louvre à restituer des tableaux aux héritiers des propriétaires spoliés durant l'Occupation, *in* Dalloz, 1999, 535.
- b. Judicial decisions
- Paris Court of Appeal, Chamber 1, Section A, 2 June 1999, No. 1998/19209, jurisdata No. 1999-100039.
- c. Documents
- Anne Laure, Bandle, Alessandro, Chechi, Marc-André, Renold. "Case Adoration of the Magi - Gentili di Giuseppe Heirs and Museum of Fine Arts Boston." ArThemis Platform (<http://unige.ch/art-adrhttps://plone.unige.ch/art-adr/cases-affaires/adoration-of-the-magi-2013-gentili-di-giuseppe-heirs-and-museum-of-fine-arts-boston>), Art Law Center, University of Geneva.
  - Bandle, Anne Laure, Alessandro, Chechi, Marc-André, Renold. "Case Five Italian Paintings - Gentili di Giuseppe Heirs v. Musée du Louvre." ArThemis Platform (<http://unige.ch/art-adrhttps://plone.unige.ch/art-adr/cases-affaires/five-italian-paintings-2013-gentili-di-giuseppe-heirs-v-musee-du-louvre-and-france>), Art Law Centre, University of Geneva.
- d. Media
- Dovkants, Keith. Nazi Claim Halts Sale of Lloyd Webber's Picasso, *in* Evening Standard, 9 November 2006. (<http://www.standard.co.uk/arts/nazi-claim-halts-sale-of-lloyd-webbers-picasso-7177678.html>) (04.01.2014).
  - PR Newswire Association LLC, Art Institute Reaches Agreement Concerning Holocaust-Era Claim. June 13, 2000 (<http://www.thefreelibrary.com/Art+Institute+Reaches+Agreement+Concerning+Holocaust-Era+Claim.-a062699574>) (26.01.2014).
  - Artner, Alan, Grossman, Ron. Museum, Heirs Settle WW II-era Art Dispute, *in* Chicago Tribune, 13 June 2000 ([http://articles.chicagotribune.com/2000-06-13/news/0006130237\\_1\\_heirs-art-institute-auctioned](http://articles.chicagotribune.com/2000-06-13/news/0006130237_1_heirs-art-institute-auctioned)) (23.01.2014).
  - Noce, Vincent. Biens juifs: procès pour cinq tableaux. Les héritiers d'un collectionneur assignent l'Etat français en restitution, *in* Libération, 20 March 1998 (<http://www.liberation.fr/culture/1998/03/20/biens-juifs-proces-pour-cinq-tableaux-les-heritiers-d-un-collectionneur-assignent-l-etat-francais-en-230730>) (26.01.2014).

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