Alessandro Chechi, Anne Laure Bandle, Marc-André Renold

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Case View of the Asylum and Chapel at St. Rémy – Mauthner Heirs v. Elizabeth Taylor

Margarethe Mauthner – Elizabeth Taylor – Artwork/œuvre d'art – Nazi looted art/spoliations nazies – Judicial claim/action en justice – Judicial decision/décision judiciaire – Due diligence – Ownership/propriété – Procedural issue/limites procédurales – Statute of limitation/prescription – Request denied/rejet de la demande

In 2007, the court battle over the van Gogh painting "View of the Asylum and Chapel at St. Rémy" came to an end when the United States Supreme Court denied a writ of certiorari, thereby finalising the decision of the Court of Appeals for the Ninth Circuit in Pasadina. The Ninth Circuit had dismissed the lawsuit filed by the heirs of Margarethe Mauthner, a Jewish art dealer who lost the painting before fleeing Nazi Germany in 1939, against the possessor of the painting, the famous American film star Elizabeth Taylor.

I. Chronology

Nazi looted art

- **1906-1907**: German art dealer **Paul Cassirer** bought the **Vincent van Gogh** painting ***View of the Asylum and Chapel at St. Rémy*** (1889) from Joanna van Gogh, Vincent van Gogh's sister in law.[1]
- **1914**: The painting was **acquired by Margarethe Mauthner**, a German art dealer of Jewish descent.
- **1933**: Mauthner's family fled to South Africa to escape Nazi persecution. Margarethe followed in **1939**. She died in South Africa in **1947**.[2]
- **1939**: The van Gogh painting became the property of Alfred Wolf.
- **1963**: After Alfred Wolf's death, the painting was sold at a Sotheby's auction. The buyer was the famous American film star **Elizabeth Taylor**.
- **2003**: Margarethe Mauthner's heirs contacted Elizabeth Taylor demanding that she **return** the painting or give them a portion of any future sale.[3] **Taylor refused and filed a declaratory judgment action** in the United States District Court for the Central District of California requesting a judgment that she was the rightful owner of the painting.
- **2004**: The descendants of Margarethe Mauthner **filed a motion to dismiss and counterclaimed**. They contended that they were the rightful owners of the painting that had been **seized by the Nazis** sometime before Mauthner fled from Germany, in 1939. Elizabeth Taylor filed a **motion to dismiss**.
- **2005**: The District Court: (i) denied the Mauthner heirs' motion to dismiss Taylor's action; (ii) granted Taylor's motion to dismiss; and (iii) **dismissed the heirs' claim** as time-barred by the applicable statute of limitations.[4] The heirs appealed this decision.
- **2007**: The Court of Appeals upheld the District Court's decision.[5] The plaintiffs filed a petition for writ of certiorari to the Supreme Court of the United States. The Supreme Court denied certiorari,[6] thereby finalising the decision of the Court of Appeals.

[1] Lauren Fielder Redman, "*Orkin v. Taylor*. A Satisfying Solution to a Dispute over a Van Gogh or a Blow for Holocaust Art Restitution Claims in United States Federal Court?" *Art Antiquity and Law* 4 (2007): 390-395.
[2] *Adler et al. v. Taylor,* 2005 U.S. Dist. LEXIS 5862 (c.d. Cal., 2 February 2005).
[3] Fielder Redman, "*Orkin v. Taylor*," 394. The heirs of Margarethe unsuccessfully claimed another van Gogh, see Alessandro Chechi, Anne Laure Bandle, Marc-André Renold, "Case View of Les Saintes-Maries-de-la-Mer – Mauthner Heir v. Switzerland," Platform ArThemis (http://unige.ch/art-adr), Art-Law Centre, University of Geneva.
[4] *Adler et al. v. Taylor*, 2005 U.S. Dist.
[5] *Orkin et al. v. Taylor*, 487 F3d 734, 2007 U.S. App. LEXIS 11623 (9th Cir. Cal., 18 May 2007).
[6] *Orkin v. Taylor et al.*, 2007 U.S. LEXIS 11852 (U.S., 29 October 2007).

II. Dispute Resolution Process

Judicial claim – Judicial decision

- From the beginning, the Mauthner heirs attempted to negotiate an amicable settlement and avoid litigating the Holocaust-related art dispute. However, the interests at stake were difficult to reconcile: as an alternative to the outright return of the painting, the Mauthner's heirs requested a portion of its sale. Instead, Taylor offered roughly $400,000 as a sort of compensation.[7] The heirs were unsatisfied with this offer, given that the painting *View of the Asylum and Chapel at St. Rémy* was worth at least ten to fifteen million US$![8] As the *positions remained too far apart* for a compromise to be struck, both parties resorted to litigation. However, their claim was dismissed by two subsequent court decisions.
- It is worth emphasising that negotiation also failed because both sides presented their own version of the facts regarding how and when Margarethe Mauthner ceased to own the painting. Taylor maintained that Mauthner freely disposed of the painting after 1907 and that it was subsequently legally acquired by Alfred Wolf. Therefore, Taylor denied that Margarethe Mauthner lost the painting as a result of Nazi coercion. The plaintiffs rejected this version and asserted that Margarethe Mauthner was forced to sell the painting sometime before 1939, under economic coercion engendered by the Nazi discriminatory regime. The heirs supported this argument with two *catalogues raisonnés* from 1928 and 1939. These catalogues showed that Mauthner was the owner of *View of the Asylum and Chapel at St. Rémy* until at least 1937. Mauthner's heirs also contended that Taylor purchased the painting ignoring that the gaps in the painting's provenance between 1907 and 1939 implicated warning signs that the painting could be Holocaust-era confiscated property.[9] This was all the more regrettable given that Elizabeth Taylor acquired the painting at the Sotheby's auction with the help of her father, Francis Taylor, who was an art dealer.[10]

III. Legal Issues

Due diligence – Ownership – Statute of limitation – Procedural issue

- Margarethe Mauthner's heirs based their legal action on four claims: replevin, constructive trust, restitution and conversion. In addition, they requested recovery of the painting under an action provided by federal law and an action provided by the findings and declarations of the California legislature. Essentially, the plaintiffs requested that the court find that: (i) they – through their relatives – were the rightful owner of the painting; (ii) their relatives lost the artwork as a result of Nazi persecution (the plaintiffs did not contend that the painting was

[7] Fielder Redman, "*Orkin v. Taylor*," 394.
[8] Ibid., 392.
[9] The Sotheby's auction incorrectly stated, *inter alia*, that the painting had passed to Paul Cassirer in 1928, but it was common knowledge that he had died in 1926. Ibid., 394.
[10] Ibid.

confiscated by the Nazis, but alleged that Mauthner had sold the painting "under duress"); and (iii) Taylor wrongfully took possession of the painting.[11]

- Elizabeth Taylor filed a motion to dismiss the suit on the grounds that the limitation period had expired. The plaintiffs argued that the "discovery rule" delayed the statute of limitations from running.
- California law originally established that actions for the recovery of personal property must be filed within three years from the time the subsequent purchaser of stolen property obtains the property ("from the 'taking, detaining, or injuring' of any 'goods or chattels'"; California Civil Procure Code § 338(c)). In 1983, the statute of limitations was amended to include a "discovery rule" for recovery of "any article of historical, interpretive, scientific, or artistic significance". This rule provides that a cause of action does not accrue until the injured party has discovered, or by exercise of reasonable diligence should have discovered, the whereabouts of the object or the identity of the possessor.
- The plaintiffs did not argue that the 1983 amendment applied retroactively to the events of 1939 or 1963; rather, they contended that the principle underlying the discovery rule had already applied before 1983, notwithstanding the lack of legislation, as held by a precedent decision.[12]
- The District Court for the Central District of California dismissed the plaintiffs' claim on the following grounds: (i) the plaintiffs' cause of action had expired in 1966, three years after Taylor purchased the painting in London, because California law did not include the "discovery rule" before 1983; (ii) even if the discovery rule applied to this case, the facts demonstrated that the plaintiffs did not exercise the requisite diligence because Mauthner's heirs should have discovered the whereabouts of *View of the Asylum and Chapel at St. Rémy* and brought action in 1963 (when it was acquired at a high publicized auction). In response to this issue, Mauthner's heirs claimed that, until their attorneys completed their investigation around 2000, they were unaware that Mauthner had owned the painting, that she had lost it as a result of Nazi persecution, that Taylor had bought the painting, or that there was a legal basis for recovering the painting.[13]
- The Court of Appeals upheld the District Court's decision. However, it came to a different conclusion with respect to the accrual of the cause of action. The Appeals Court held that the discovery rule applied to pre-1983 events and that the cause of action accrued when the plaintiffs knew or should have known the facts giving rise to the claim, i.e. in 1963 (when it was acquired at a high publicized auction), or in 1970 (when Taylor was listed as owner of the painting in a *catalogue raisonné*), or in 1986 (when it was exhibited publicly at the Metropolitan Museum of Art in New York, in an exhibition entitled "Van Gogh in Saint Rémy and Auvers"), or in 1990 (when Taylor publicly tried to sell the painting).[14]
- To avoid the statute of limitations issue, the plaintiffs asked the District Court to admit an action provided by the findings and declarations of the California legislature. A provision of the California Civil Procedure Code passed in 2002 (§354.3) entitled Nazi victims (or their

[11] *Adler et al. v. Taylor*, 2005 U.S. Dist. 2-3.
[12] *Naftzger v. American Numismatic Society*, 42 Cal. App. 4th 421, 49 Cal. Rptr. 2d 784 (1996).
[13] *Orkin et al. v. Taylor*, 487 F3d at 738.
[14] Ibid. at 741-742.

heirs) the right to sue galleries and museums for the return of stolen artworks until 2010, free from any statute of limitations. However, the District Court ruled that this exception did not apply to this case as it did not extend to suits against individuals.[15]

- As previously mentioned, the plaintiffs also requested the painting's recovery under an action implied by federal law, the Holocaust Victims Redress Act.[16] They contended that this federal law created a "non-traditional cause of action". The Supreme Court had established a four-factor test for discerning whether a specific statute creates a private right of action. Under this test, judges must ask: "(1) whether the plaintiff is a member of a class that the statute especially intended to benefit; (2) whether the legislature explicitly or implicitly intended to create a private cause of action; (3) whether the general purpose of the statutory scheme would be served by creation of a private right of action; and (4) whether the cause of action is traditionally relegated to state law such that implication of a federal remedy would be inappropriate".[17] As the Act did not satisfy any of these factors, the District Court and the Court of Appeals held that the Holocaust Victims Redress Act did not create a private right of action.

IV. Adopted Solution

Request denied

- In its 20 April 2005 decision, the United States District Court for the Central District of California dismissed the Mauthner heirs' claim as barred by the applicable statute of limitations. In addition, the Court held that the exception provided by the California Civil Procedure Code §354.3 did not apply to suits against individuals. Finally, the Court concluded that the federal Holocaust Victims Redress Act failed to create a private right of action.[18] The Court of Appeals upheld the District Court's decision on 18 May 2007.[19] The Supreme Court denied certiorari on 29 October 2007, finalising the decision of the Court of Appeals.[20]

V. Comment

- The legal battle over the Vincent van Gogh painting *View of the Asylum and Chapel at St. Rémy* is interesting for at least two reasons.
- First, it demonstrates the lack of an effective legal procedure in the United States for returning artworks lost during the Nazi era to their rightful owners. Congress enacted the

[15] *Adler et al. v. Taylor*, 2005 U.S. Dist. at 10-11.
[16] Pub. L. No. 105-158, 112 Stat. 15 (1998).
[17] *Orkin et al. v. Taylor*, 487 F3d at 738-740.
[18] *Adler et al. v. Taylor*, 2005 U.S. Dist.
[19] *Orkin et al. v. Taylor*, 487 F3d.
[20] *Orkin v. Taylor et al.*, 2007 U.S.

1998 Holocaust Victims Redress Act in an effort to provide "redress for inadequate restitution of assets seized by the United States Government during World War II which belonged to victims of the Holocaust" in the light of international law principles prohibiting the pillage and the seizure of works of art, enunciated in Articles 47 and 56 of the Regulations annexed to the 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land.[21] The Act acknowledged that "the Nazis extorted and looted art from individuals and institutions in countries it occupied during World War II and used such booty to help finance their war of aggression" and that the "Nazis' policy of looting art was a critical element and incentive in their campaign of genocide against individuals of Jewish and other religious and cultural heritage". It also stated that "all governments should undertake good faith efforts to facilitate the return of private and public property, such as works of art, to the rightful owners in cases where assets were confiscated from the claimant during the period of Nazi rule and there is reasonable proof that the claimant is the rightful owner". Despite this, courts have not interpreted the Act to provide a private right claim for redress. In the present case, the District Court affirmed that the Holocaust Victims Redress Act "does not explicitly confer a benefit on Holocaust victims" as its "focus is on 'governments' rather than individuals, urging those governments 'to facilitate' enforcement of pre-existing property rights". Yet it seems unfair that an Act would encourage individuals to come forward without prohibiting the application of statutes of limitations to those claims.[22]

- Admittedly, this disappointing situation could be improved by the creation of a commission on looted art, perhaps using models offered by the bodies established in some European countries. However, US Special Envoy for Holocaust Issues, Douglas Davidson, explained at the International Symposium "Fair and Just Solutions" that the creation of such a commission cannot be envisaged in the near future due to financial constraints.[23]
- The second aspect that is worth noting relates to the statutes of limitations. On the one hand, when the return of stolen artworks is sought, the obstacle of limitation periods frequently arises. This is particularly so where stolen art has been out of circulation for many years. On the other hand, as in the case under consideration, where the courts did not give Mauthner's heirs any relief from the statute of limitations under California law, an appraisal of the merits of the case was foreclosed by application of these statutes. The court did not investigate whether Taylor had acquired the work in good faith or whether Margarethe Mauthner actually sold the painting under duress. It is for these reasons that Robert Paterson advocated the non-application of the statutes of limitation defence to cases of misappropriation associated with crimes against humanity as a form of respect for the moral and ethical concerns implicated in such cases and a meaningful interpretation of national law in light of the current state of international law. The policy goals underlying limitation

[21] 18 October 1907, 1 Bevans 631.
[22] Fielder Redman, "*Orkin v. Taylor*," 404.
[23] Plundered art blog, "Funeral for the idea of a US Commission on Looted Art at the Peace Palace in The Hague, Netherlands, on November 27, 2012," accessed December 18, 2012, http://plundered-art.blogspot.nl/2012/12/funeral-for-idea-of-us-commission-on.html.

statutes (closure and stale evidence) are in conflict with the gravity of the criminal acts committed in connection with the property stolen.[24]

VI. Sources

a. Bibliography

- Fielder Redman, Lauren. "Orkin v. Taylor. A Satisfying Solution to a Dispute over a van Gogh or a Blow for Holocaust Art Restitution Claims in United States Federal Court?" *Art Antiquity and Law* 4 (2007): 389-405.
- Paterson, Robert K. "Resolving Material Culture Disputes: Human Rights, Property Rights, and Crimes against Humanity." In *Cultural Heritage Issues: The Legacy of Conquest, Colonization, and Commerce*, edited by James A.R. Nafziger and Ann M. Nicgorski, 371-387. Leiden: Martinus Nijhoff Publishers, 2009.

b. Court decisions

- *Adler et al. v. Taylor*, 2005 U.S. Dist. LEXIS 5862 (c.d. Cal., 2 February 2005).
- *Orkin et al. v. Taylor*, 487 F3d 734, 2007 U.S. App. LEXIS 11623 (9th Cir. Cal., 18 May 2007).
- *Orkin v. Taylor et al.*, 2007 U.S. LEXIS 11852 (U.S., 29 October 2007).

c. Legislation

- *Holocaust Victims Redress Act*, Pub. L. No. 105-158, 112 Stat. 15 (1998).

d. Documents

- Chechi, Alessandro, Anne Laure Bandle and Marc-André Renold. "Case View of Les Saintes-Maries-de-la-Mer – Mauthner Heir v. Switzerland." Platform ArThemis (http://unige.ch/art-adr), Art-Law Centre, University of Geneva.

e. Media

[24] Robert K. Paterson, "Resolving Material Culture Disputes: Human Rights, Property Rights, and Crimes against Humanity," in *Cultural Heritage Issues: The Legacy of Conquest, Colonization, and Commerce*, ed. James A.R. Nafziger and Ann M. Nicgorski (Leiden: Martinus Nijhoff Publishers, 2009): 374, 379.

- Plundered art blog. “Funeral for the Idea of a US Commission on Looted Art at the Peace Palace in The Hague, Netherlands, on November 27, 2012.” Accessed December 18, 2012. http://plundered-art.blogspot.nl/2012/12/funeral-for-idea-of-us-commission-on.html.