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## Case Christ and the Samaritan Woman at the Well – Gross-Eisenstädt Heirs and Museum de Fundatie

*Gross-Eisenstädt Heirs – Museum de Fundatie – Richard Semmel – Artwork/oeuvre d'art – Nazi-looted art/spoliations nazies – Negotiation/négociation – Institutional facilitator/facilitateur institutionnel – Ownership/propriété – Legacy/legs – Request denied/rejet de la demande – Symbolic gesture/geste symbolique*

*In 1933, Jewish businessman and art collector Richard Semmel was forced to leave Berlin and sell parts of his art collection for economic survival. Among the works was the Italian painting “Christ and the Samaritan Woman at the Well”, which was bought by Dirk Hannema, a Dutch museums director. Since 1964, the painting has been in the Museum de Fundatie, which Hannema founded and to which he donated the painting. In 2011, the non-familial heirs of Richard Semmel, the Gross-Eisenstädt Heirs, requested the painting be returned to them. The parties decided to bring the dispute to the Dutch Restitutions Committee for binding opinion on the claim. The Gross-Eisenstädt Heirs’ claim was rejected, and the Museum was allowed to keep the painting.*

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

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## I. Chronology

### Nazi-looted art

- **November/December 1925:** The painting “Christ and the Samaritan Woman at the Well” by Italian artist Bernado Strozzi, was put up for auction at the firm Frederik & Muller & Cie, in Amsterdam<sup>1</sup>. Jewish businessman and art collector **Richard Semmel** (1875-1950) purchased the painting for his sizeable private collection.
- **Early 1933:** The Nazis assumed power in Germany. Semmel experienced severe economic pressure due to the anti-Jewish climate. As a result of losing his company and capital, Semmel fled to the Netherlands<sup>2</sup>.
- **21 November 1933:** Semmel submitted part of his art collection for auction in Amsterdam. One of the works was “Christ and the Samaritan Woman at the Well”<sup>3</sup>.
- **January 1934:** The painting was acquired by **Dirk Hannema**, on behalf of his mother Lady Hermine Elise de Stuers. Hannema inherited the painting in **1940**<sup>4</sup>.
- **2 December 1950:** Richard Semmel died in New York, after settling there in **1941**. **Grete Gross-Eisenstädt** was named as sole heir to Semmel’s estate in his will, as thanks for looking after him on a daily basis, after his wife’s death in 1945<sup>5</sup>.
- **12 November 1957:** Hannema set up the **Stichting Hannema - de Stuers Fundatie (Museum de Fundatie)**, in the Netherlands<sup>6</sup>.
- **21 January 1964:** Hannema donated his entire art collection to the Museum de Fundatie, including “Christ and the Samaritan Woman at the Well”, where it remained<sup>7</sup>.
- **2011:** The Gross-Eisenstädt Heirs, the grown grandchildren of Grete, claimed ownership over the painting, requesting its return, due to Semmel’s involuntary loss of possession during the Nazi regime. After the negotiations between the parties failed, they submitted a joint request to the **Dutch Restitutions Committee** for advice, which they consented to be bound by<sup>8</sup>.
- **25 April 2013:** The Committee issued a binding advice in favour of the Museum de Fundatie<sup>9</sup>, who would retain ownership rights and the painting.

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<sup>1</sup> Restitutions Committee, Binding advice concerning the dispute over the painting “Christ and the Samaritan Woman at the Well”, RC 3.128, April 25, 2013 (para. 3.2.), accessed January 14, 2015, [http://www.restitutiecommissie.nl/en/recommendations/recommendation\\_rc\\_3128.html](http://www.restitutiecommissie.nl/en/recommendations/recommendation_rc_3128.html).

<sup>2</sup> Ibid.

<sup>3</sup> Ibid, para. 3.4.

<sup>4</sup> Ibid, para. 3.5.

<sup>5</sup> Ibid, para. 3.3.

<sup>6</sup> Ibid, para. 3.5.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid, para. 2.

<sup>9</sup> Ibid, para. 7.8.

## II. Dispute Resolution Process

### Negotiation – Institutional facilitator (Dutch Restitutions Committee, binding opinion)

- The Gross-Eisenstädt Heirs asked the Museum de Fundatie to return “Christ and the Samaritan Woman at the Well”. They claimed restitution of the artwork, on account of what they adduce was involuntarily lost possession due to circumstances directly related to the Nazi regime<sup>10</sup>. As per their research conducted in the 1990s, they maintained that the painting belonged to them by right of succession<sup>11</sup>. The Museum de Fundatie refused, based on ownership and acquisition grounds.
- The Museum de Fundatie and the Gross-Eisenstädt Heirs submitted a joint request to the Dutch Restitutions Committee for a binding opinion on the Gross-Eisenstädt Heirs’ claim. The Committee is tasked with advising the government on claims for restitution and disputes about art, in public and private collections. They are particularly concerned with art lost in the Second World War<sup>12</sup>.

## III. Legal Issues

### Ownership – Legacy

- The central legal issue of this case resided in the question of ownership of the painting.
- In regards to the Gross-Eisenstädt Heirs, the Committee found it was sufficiently shown that Semmel acquired the work, shedding positive support for the degree of probability of ownership. Semmel’s loss of possession, from selling the painting, was deemed involuntary. This was considered as a direct result of persecution by the Nazi regime in Germany<sup>13</sup>.
- In regards to the Museum, the Committee acknowledged that the painting has been owned by the Museum since 1964, when Hannema the founder donated the work. The Committee alluded to Hannema’s good faith purchase, and found no indication whatsoever that the Museum acted without due care upon acquiring the painting, even though they were unaware of the Semmel provenance of the painting<sup>14</sup>.
- Once the Committee outlined that both parties had reasonable and fair claims to the painting, the next step was to take an interest-based approach, considering the moral merits of the parties, to settle who should retain ownership. The Committee noted that the Gross-Eisenstädt Heirs “deem it only just that they want to get back what belongs to them”<sup>15</sup>. However, the

<sup>10</sup> Ibid, para. 1.

<sup>11</sup> LootedArt.com, *Netherlands- Government Bodies: The Restitutions Committee*, accessed, January 14, 2015, <http://www.lootedart.com/MFEU4J93254>.

<sup>12</sup> Ibid.

<sup>13</sup> Restitutions Committee, Binding advice concerning the dispute over the painting “Christ and the Samaritan Woman at the Well”, RC 3.128, April 25, 2013 (para. 6.1.), accessed January 14, 2015, [http://www.restitutiecommissie.nl/en/recommendations/recommendation\\_rc\\_3128.html](http://www.restitutiecommissie.nl/en/recommendations/recommendation_rc_3128.html).

<sup>14</sup> Ibid, para. 7.5.

<sup>15</sup> Ibid, para. 7.6.

Committee ultimately viewed the Museum's interest as more plausible, pursuant to the standards of reasonableness and fairness. This they outlined was because the painting had a popular and prominent place in the collection and history of the Museum, and thus distinguished the Museum from other major Dutch 17th-century art collections<sup>16</sup>.

- An issue for the claimants was that they had no family ties with Semmel, the original owner, and no personal connection with or memory of the painting or Richard Semmel. The Committee also concluded that neither Semmel's art collection nor this artwork embodied the special relationship between Semmel and the claimants' grandmother, Grete Gross-Eisenstädt<sup>17</sup>. This affected the Committee's determination of the Gross-Eisenstädt Heirs' interest in obtaining the painting back.

#### IV. Adopted Solution

##### Request denied – Symbolic gesture (optional)

- The dispute was resolved by the Dutch Restitutions Committee's binding opinion on April 25, 2013, that Gross-Eisenstädt Heirs' claim was unsuccessful. The Museum de Fundatie was not obliged to return the painting "Christ and the Samaritan Woman at the Well", or to pay the Gross-Eisenstädt Heirs any compensation<sup>18</sup>.
- The Committee concluded in their report that, despite the involuntary nature of the loss of possession by Semmel in 1933, the interest the claimants expressed in having the claimed painting returned did not outweigh the Museum's ownership rights to this artwork.
- The Committee did *recommend* that Museum de Fundatie highlight the history of the former owner Richard Semmel by some means, such as in a caption alongside the painting, in a publication or in an exhibition. The Committee left it up to Museum de Fundatie to decide how it wanted to do this. This is a non-enforceable recommendation to provide a symbolic gesture.

#### V. Comment

- The Committee's finding in favour of the Museum de Fundatie, due to an interest-based approach, drew criticism from the heirs of Richard Semmel. They stated they were "outraged" by the Committee's decision to reject their claim for "Christ and the Samaritan Woman at the Well", because the Committee deemed their interest "carries less weight" than the Museums'. The Gross-Eisenstädt Heirs' lawyer, Olaf Ossmann, stated "the decision runs counter to existing inheritance law... These decisions give museums support for rejecting restitution claims. This cannot be summarized as 'fair and just'". Whilst recognizing Semmel's losses as a result of Nazi persecution, the Committee regarded the emotional and moral importance of

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<sup>16</sup> Ibid, para. 5.2.

<sup>17</sup> Ibid, para. 7.7.

<sup>18</sup> Ibid, para "Binding Opinion".

the return to the Gross-Eisenstädt Heirs as inferior. Ossmann argued that the “Committee’s observation that the claimants are not biologically related and didn’t know Semmel ‘carries cynical traits’ given that the heirs could only recently obtain access to archives proving Semmel’s ownership of the paintings”. These concerns demonstrate the evidential difficulties in restitution claims when proving provenance and interest, faced by the heirs of art owners that were affected by the Nazi regime<sup>19</sup>.

- The issue of making a reasonable, good faith purchase was barely considered. The Committee stated it found no indication that the Museum acted without due care upon acquiring the painting. The Committee applied the same reasoning to Hannema’s purchase in 1933, as neither appears to have been aware of the Semmel provenance of the painting. At para. 7.5, the Committee stated “An acquisition at an auction in Amsterdam in November 1933, seven years before the Germans invaded the Netherlands, would not have raised any questions”<sup>20</sup>. The Committee did not justify this conclusion based on any past or present provenance checking standards. This may be partly due to the difficulties in proving a buyer was aware or ought reasonably to have known, that an artwork had a complex provenance history. As Richard Semmel placed “Christ and the Samaritan Woman at the Well” up for auction, it would have been impossible for Dirk Hannema to have been aware of Semmel’s circumstances from the Nazi regime, due to client confidentiality.
- The Museum de Fundatie included in their position the fact that, ever since the painting has been owned by the Hannema family, the painting has been restored a number of times<sup>21</sup>. By investing in the continued quality of the painting, the Museum contended that priority over its provenance should be afforded to them. As the Committee found in the Museum’s favour, this suggests that signs of care and attention to an artwork increases a party’s interest over its value and ownership.

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<sup>19</sup> Catherine Hickley, “Heirs Outraged as Dutch Panel Rejects Nazi-Era Art Claim”, Bloomberg, May 8, 2013, accessed January 14, 2015, <http://www.bloomberg.com/news/2013-05-08/heirs-outraged-as-dutch-panel-rejects-nazi-era-art-claim.html>.

<sup>20</sup> Decree issued by the State Secretary for Education, Culture and Science, F. van der Ploeg, establishing a committee to advise the government on the restitution of items of cultural value of which the original owners involuntarily lost possession due to circumstances directly related to the Nazi regime and which are currently in the possession of the State of the Netherlands (Decree establishing the Advisory Committee on the Assessment of Restitution Applications), WJZ/2001/45374(8123), 16 November 2001.

<sup>21</sup> Restitutions Committee, Binding advice concerning the dispute over the painting “Christ and the Samaritan Woman at the Well”, RC 3.128, April 25, 2013, (para. 5.4.), accessed January 14, 2015, [http://www.restitutiecommissie.nl/en/recommendations/recommendation\\_rc\\_3128.html](http://www.restitutiecommissie.nl/en/recommendations/recommendation_rc_3128.html).

## VI. Sources

### a. Legislation

- Decree issued by the State Secretary for Education, Culture and Science, F. van der Ploeg, establishing a committee to advise the government on the restitution of items of cultural value of which the original owners involuntarily lost possession due to circumstances directly related to the Nazi regime and which are currently in the possession of the State of the Netherlands (Decree establishing the Advisory Committee on the Assessment of Restitution Applications), WJZ/2001/45374(8123), 16 November 2001.

### b. Documents

- Restitutions Committee, Binding advice concerning the dispute over the painting Christ and the Samaritan Woman, RC 3.128, April 25, 2013. Accessed January 14, 2015, [http://www.restitutiecommissie.nl/en/recommendations/recommendation\\_rc\\_3128.html](http://www.restitutiecommissie.nl/en/recommendations/recommendation_rc_3128.html).
- Anne Laure Bandle, Alessandro Chechi, Marc-André Renold, “Case Road to Calvary – Oppenheimer Heirs and Private Person,” Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

### c. Media

- Press Release, Restitutie commissie, Opinions regarding claims to paintings in four Dutch museums, The Hague, May 8, 2013. Accessed January 14, 2015, [http://www.restitutiecommissie.nl/en/pressreleases/opinions\\_regarding\\_claims\\_to\\_paintings\\_in\\_four\\_dutch\\_museums.html](http://www.restitutiecommissie.nl/en/pressreleases/opinions_regarding_claims_to_paintings_in_four_dutch_museums.html).
- Hickley, Catherine, “Heirs Outraged as Dutch Panel Rejects Nazi-Era Art Claim”, *Bloomberg*, May 8, 2013. Accessed January 14, 2015, <http://www.bloomberg.com/news/2013-05-08/heirs-outraged-as-dutch-panel-rejects-nazi-era-art-claim.html>.
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