

**Court of Appeal of Paris**  
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**Court of Appeal of Paris**  
**1<sup>st</sup> Division, Section A**  
**Judgement delivered on 2<sup>nd</sup> June 1999**  
**(11 pages in French)**

**General Roll N° : 1998/19209**  
**No joinder**

**Judgement appealed against:**  
**Judgement delivered on 10<sup>th</sup> July 1998 by Mr. Marcus, Vice-Presiding Judge of**  
**the County Court of Paris – General Roll N°1998/54616**

**Date of closing order: 13<sup>th</sup> April 1999**  
**Nature of judgement: After trial**

**Judgement on the merits of the case – confirmation of the judgement on lifting the**  
**barring – Setting aside of all the other provisions – Nullity of the sale by public auction.**

**Plaintiffs in appeal:**

**Mrs. GENTILI DI GUISEPPE Christiane spouse CASTEL**  
**Residing at Château de Biaudos**  
**40390 BIAUDOS**

**Mrs. MAUPAS Emmanuele spouse SALEM**  
**Residing at 88, Rue J.F. Millet**  
**76230 – BOISGUILLAUME**

**Mr. SALEM Daniel**  
**Residing at 3, Rue Ennismore Gardens**  
**LONDON SW7 – ENGLAND**

**Mr. SALEM Lionel**  
**Residing at 10, Rue Oswaldo Cruz**  
**75016 PARIS**

**Represented by Solicitor BODIN CASALIS, assisted by Corine HERSHKOVITCH (C**  
**785) registered with the Bar of Paris and Jean-Pierre SULZER, (M 851) registered with**  
**the Bar of Paris, barristers appearing in court.**

**Defendants in appeal:**

**The public body MUSEE DU LOUVRE**  
**Registered office: 1, Place du Carrousel**  
**75001 PARIS**



Actions and proceedings through its legal representatives domiciled ex officio at the said registered office address.

**THE FRENCH STATE**  
**- MINISTRY OF FOREIGN AFFAIRS**  
Head offices at: 37, Quai d'Orsay  
75007 PARIS

**- MINISTRY OF CULTURE**  
Offices at 3, Rue de Valois  
75001 PARIS

Represented by the Judicial Official of the Treasury

Represented by SCP JOBIN, solicitors

Assisted by the Bar President Bernard du GRANRUT and Christophe BOURDEL, barristers registered with the Bar of Paris and appearing in Court on behalf of SCP GRANRUT.

In the presence of:

The Public Prosecutor of the County Court of Paris, acting on behalf of the Director of Public Prosecution, himself represented at the hearings by Mrs. Brigitte GIZARDIN, Deputy Director of Public Prosecution, who developed her comments verbally.

Composition of Court:

During hearing and judges' consultation:

Presiding Judge: Mr. Guy CANIVET, First Presiding Judge  
Associate Judge: Mrs. Claire FAVRE, Presiding Judge  
Associate Judge: Mr. Christian CHARRUAULT, Presiding Judge

Hearings:

Held in open court on 14<sup>th</sup> April 1999

Court Clerk:

(During hearings and delivery of judgement)

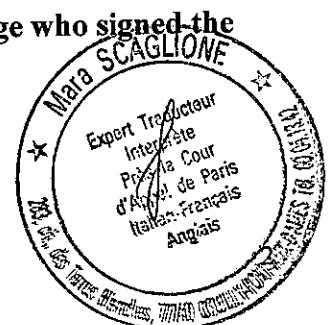
Mrs. Denise BRUNET

**JUDGEMENT:**

After trial

Delivered in open court by Mr. Guy CANIVET, First Presiding Judge who signed the records with Denise BRUNET, court clerk.

...



Frédéric GENTILI di GIUSEPPE died on 20<sup>th</sup> April 1940 in Paris leaving as heirs his two children born from his marriage to the late Emma de CASTRO who died on 23<sup>rd</sup> August 1927, i.e. Marcello GENTILI di GIUSEPPE and Adriana GENTILI di GIUSEPPE, wife of Raphaël SALEM.

Alleging that the sum of 90 000 francs was due to him by Frédéric GENTILI di GIUSEPPE and blaming the latter's heirs "for showing absolutely no interest" in the latter's estate, Julien GIRAUD had a summons to summary proceedings served on 24<sup>th</sup> October 1940 on Marcello GENTILI di GIUSEPPE, Adriana GENTILI di GIUSEPPE and Raphaël SALEM, the foregoing before the Presiding Judge of the Civil Court of First Instance with a view to the appointment of an estate manager.

By order issued on 29<sup>th</sup> October 1940, the Presiding Judge of the Court gave Mr. MOULIN the assignment of "managing the said estate, both actively and "taking all the related measures".

- Mr. MOULIN had an inventory carried out of the personal property comprised in Frédéric GENTILI di GIUSEPPE'S estate by Solicitor REVEL who drew up his report on 14<sup>th</sup> March 1941.

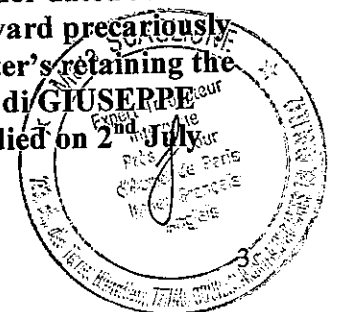
This report, in particular, comprised the following indications:

"Mr. MOULIN, plaintiff, points out that it would be in the interest of the heirs and representatives of Mr. GENTILI di GIUSEPPE, as also in that of the creditors, to have all or part of the above inventoried personal property sold as soon as possible by public auction, the proceeds to be used up to the required extent to settle the liabilities encumbering the estate.

Consequently, the plaintiff requests Solicitor REVEL, the undersigned, to see the Presiding Judge of the Seine Civil Court as soon as possible, with a view to obtaining the permission needed to carry out the sale in question through Solicitor RHEIMS, official auctioneer of the Seine Department".

Subsequent to Solicitor's REVEL'S referral, the Presiding Judge of the Court, in his order issued on 17<sup>th</sup> March 1941, authorised Mr. MOULIN "to proceed with the sale of all or part of the above inventoried personal property through Solicitor RHEIMS ... and to receive and collect the price of such sale, to use the sums thus collected for the payment of the debts due".

Putting forward, on the one hand, that during the enforcement of this order, Solicitor RHEIMS had, in April 1941, proceeded, in particular, with the sale by auction of five paintings comprised in the said inventory and that this sale was in the nature of despoilment within the meaning of the provisions of article 1 of the order dated 21<sup>st</sup> April 1945 and, on the other hand, that these paintings were henceforward precariously held by the public corporation MUSEE DU LOUVRE and that the latter's retaining the same was outrageous. On 19<sup>th</sup> March 1998, Mrs. Christiane GENTILI di GIUSEPPE née CASTEL, sole heir of the Marcello GENTILI di GIUSEPPE who died on 2<sup>nd</sup> July



1977, Mrs. Emmanuele MAUPAS née SALEM, Mr. Daniel SALEM and Mr. Lionel SALEM, heirs of Adriana GENTILI di GIUSEPPE who died on 6<sup>th</sup> August 1976 had the public corporation MUSEE DU LOUVRE and the State of France summoned before the Presiding Judge of the County Court of Paris ordaining in summary proceedings, petitioning him to rule as under:

- . To release them from the barring laid down by article 21 of the aforementioned order
- . To declare the nullity of the sale of the litigious paintings
- . To sentence this public corporation to return them the paintings designated below:
  - . "La Visitation" – Moretto Da BRESCIA (MNR 277)
  - . "La Sainte Famille" – Bernardo STROZZI (MNR 290)
  - . "Alexandre et Campaspe chez Apelle" – Giambattista TIEPOLO (MNR 305)
  - . "Joueurs de cartes devant une cheminée" – Alessandre MAGNASCO (MNR 790)
  - . "Portrait de femme" – pastel – Rosalba CARRIERA (REC 73)
- . To sentence the said public corporation and the French State to paying them 500 000 francs as damages in compensation for the prejudice arising from the outrageous holding of these paintings as also to the payment of 100 000 francs pursuant to article 700 of the New Code of Civil Procedure.

In his order issued on 10<sup>th</sup> July 1998, the Presiding Judge of the court released the plaintiffs of the barring to which they were subject and dismissed their other claims.

#### COURT,

After examination of the appeal filed on 30<sup>th</sup> July 1998 against this order by Mrs. Christiane GENTILI di GIUSEPPE née CASTEL, Mrs. Emmanuele MAUPAS née SALEM, Mr. Daniel SALEM and Mr. Lionel SALEM,

After examination of the claims dated 2<sup>nd</sup> April 1999 whereby the plaintiffs petitioned court to set aside the provision of the said order which dismissed their claims, to declare the nullity of the sale of the litigious paintings, to sentence the public corporation MUSEE DU LOUVRE to returning the latter to them as also any other work of art that might be in its possession and to sentence the said public corporation and the French State to paying them 100 000 francs pursuant to article 700 of the New Code of Civil Procedure,

Stated as follows:

- In the first place the State does not provide proof of holding any legitimate interest entitling it to contest their right of ownership to the litigious paintings neither in so far as it is concerned as in its capacity of precarious depository of the same nor on behalf of hypothetical third parties in so far as no person may call on an authorised agent to speak in his defence.
- In the second place, they are the sole parties able to claim the ownership of these paintings considering that the said paintings which formed part of Mr. Frédéric GENTILI di GIUSEPPE'S estate which reverted to his two children were sold by public auction in April 1941 to intermediaries who purchased them, not on their own



account, but on that of Hermann GOERING in whose collection they were found at the end of World War II.

- Thirdly, they are well-founded in availing themselves of the provisions of article 1 of the order dated 21<sup>st</sup> April 1945.
- Indeed, subsequent to the coercive measures adopted as from the month of June 1940 concerning French and foreign Jews, Frédéric GENTILI di GIUSEPPE'S heirs, who were Jewish, had been exiled against their will, the result being that they had been forced to bear with a situation imposed on them.
- Hence, if no estate manager had been appointed pursuant to Anti-Jew laws, the foregoing was the direct consequence of the laws and decrees promulgated by the authorities during the Occupation and by the Government at the time, all the more so that the presence in Paris – from June 1940 to April 1941 – of Frédéric GENTILI di GIUSEPPE'S heirs would have allowed for the inheritance operations to reach quite a different conclusion.
- The sale of the litigious paintings is therefore an act of disposal carried out as a consequence of the exorbitant common law measures laid down against the Jews after 16<sup>th</sup> June 1940.
- In addition, this sale is void due to the absence of two essential conditions needed to make it valid, i.e. on the one hand, the capacity to enter into a contract (bearing in mind that pursuant to the then prevailing regulations, Jews were incompetent) and, on the other hand, the absence consent of the concerned party.
- Fourthly, presuming that Frédéric GENTILI di GIUSEPPE'S heirs had agreed to the said sale, they would be well-founded in availing themselves of the presumption of violence laid down by article 11, paragraph 1, of the order dated 21<sup>st</sup> April 1945.
- That the fair price exception fair price provided for by paragraph 2 of the same text cannot be opposed to them by their adversaries considering that, on the one hand, they had been subject to the barring provided for by it, and, on the other hand, they were not empowered to raise the said exception.
- Fifthly, they are also well-founded in filing a claim for the cancellation of the sale of the litigious paintings pursuant to the provisions of article 1 of the order dated 9<sup>th</sup> June 1945.

After scrutiny of the claims filed on 23<sup>rd</sup> March 1999 whereby the public corporation MUSEE DU LOUVRE and the French State petition court to confirm the disputed order and to dismiss the plaintiffs' claims,

Court held as follows:

- The French State is well-founded in defending itself in the action brought by the plaintiffs, considering, on the one hand, that the Ministry of Foreign Affairs has



received the power to reach the decision to return works of art found after the war to despoiled owners and, on the other hand, the Ministry of Culture is in a position to look for and make known the condition of restitution of the works of art held by it.

- A whole range of concordant indications proves that the sale of the litigious paintings cannot be considered as being of a despoiling nature.
- It must, first of all, be stated that the proceeds of these sales were allocated to settle high estate liabilities, the balance being paid to Frédéric GENTILI di GIUSEPPE'S heirs.
- Subsequently, the latter chose three main representatives to handle the operations connected with the said sales, i.e.:

. Solicitor REVEL, family lawyer, who instigated the suit calling for the designation of Mr. MOULIN as Frédéric GENTILI di GIUSEPPE'S estate manager.

. Mr. MOULIN, who kept Marcel GENTILI di GIUSEPPE informed of the carrying out of his assignment, the latter having terminated the same after having expressed his thanks for its accomplishment.

. Mrs. ALLAIS, who, having received powers of attorney from Frédéric GENTILI di GIUSEPPE'S two heirs to manage the latter's estate, took part in all the operations which are today criticised.

- Going still further, it must be stated that even if Frédéric GENTILI di GIUSEPPE'S heirs "had not been moved by the summons, it has, nevertheless, been established, that they were aware of the procedure, having confirmed the same".
- In addition, the major works of art forming Frédéric GENTILI di GIUSEPPE'S collection have not been sold.
- In reality, the latter's heirs "had made a selection of works of art to be sold based on the instructions provided by Marcel GENTILI di GIUSEPPE to Mr. MOULIN in March 1941".
- All these details prove that the litigious paintings were sold in the interests of Frédéric GENTILI di GIUSEPPE'S heirs with a view to settle the estate liabilities and to avoid the auction by court order solely of the real estate comprised in the succession as also the dispersal of the deceased's entire collection of paintings and books.
- Consequently, in the first place, the plaintiffs are not well-founded in availing themselves of article 1 of the order dated 21<sup>st</sup> April 1945 bearing in mind, first of all, that acts of sale of litigious paintings are not acts of disposal within the meaning of this text, that the measures were not "taken out of hand" and finally, they do not constitute exorbitant common law measures inspired by the enemy.
- In the second place, there is no reason for article 11 of this same to apply in so far as on the one hand, the litigious paintings were sold for a "fair price", (exception



provided for in paragraph 2 of this text which they put forward at the required moment) and, on the other hand, it must be stated in connection with this sale, that Frédéric GENTILI di GIUSEPPE'S heirs (who managed to defend their personal interests) had not been the object of no violence.

- Thirdly, the plaintiffs may not put forward the order dated 9<sup>th</sup> June 1945 in the absence of their proving an "act of despoilment" as well as of the constraints brought to bear on the victim of such act.
- Finally, the plaintiffs may not be declared acceptable in invoking alleged vitiated consent considering, on the one hand, that the sale of the litigious paintings was ordered by court and, on the other hand, a nullity action based on such flaw is barred by limitation.

After examination of the Public Prosecutor's speech calling for the confirmation of the provision of the disputed order concerning the raising the barring, the setting aside of the other provisions of the said order and the restitution of the litigious paintings to the plaintiffs,

**TAKING THE FOREGOING INTO ACCOUNT, Court declares as follows:**

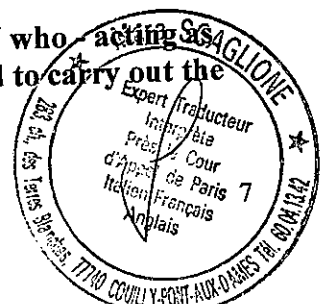
Whereas, in law, in accordance with article 1, paragraph 1 of order N°45-770 dated 21<sup>st</sup> April 1945, it is possible for natural or artificial persons or their assignees whose assets, rights or interests have been the subject (even with their material assistance) of acts of disposal carried out subsequent to sequestration, provisional administration, management, liquidation, confiscation or any other of the exorbitant common law measures in force on 16<sup>th</sup> June 1940 and carried out either pursuant to alleged laws, decrees and ministerial orders, regulations or decisions of de facto authorities claiming to be the government of the French State or by the enemy or on his orders or under his inspiration, to have the nullity of the same recorded, the foregoing by virtue of the order dated 12<sup>th</sup> November 1943 concerning the nullity of acts of despoilment carried out by the enemy or under his control as well as pursuant to the order dated 9<sup>th</sup> August 1944 concerning the re-establishment of republican legality on the continental territory.

Whereas pursuant to paragraph 2 of this same article, this nullity is lawful.

Whereas, in the event, first of all, the grounds for defence drawn from the alleged material assistance provided by Frédéric GENTILI di GIUSEPPE'S heirs (directly or through third parties) concerning the carrying out of the operations related to the sale of the litigious paintings is ineffective considering that, according to the aforementioned provisions, such assistance does not exclude the penalising decision laid down by the said provisions.

Whereas, subsequently, these paintings which - on the opening of Frédéric GENTILI di GIUSEPPE'S succession in an apartment owned by him located at 22, Avenue Foch in Paris - were sold by public auction in April 1941 by Solicitor Rheims, official auctioneer.

Whereas the order to proceed with such sale came from Mr. MOULIN who, acting as the manager of Frédéric GENTILI di GIUSEPPE'S estate, duly appointed to carry out the



said duties by order dated 17<sup>th</sup> March 1941 of the Presiding Judge of the Seine Civil Court of First Instance - had been granted the authorisation to sell the said paintings.

Whereas even if such appointment and authorisation do not, in themselves, set up the exorbitant common law measures in force on 16<sup>th</sup> June 1940, they are of the same nature due the conditions, both factual and legal, under which they were granted.

Whereas, indeed, in compliance with common law, the action for the nomination of a person to manage Frédéric GENTILI di GIUSEPPE'S estate was brought by a certain Julien GIRAUD, calling for the sum of 90 000 francs which he claimed the deceased owed him.

Whereas, in support of his petition, the concerned party stated that "since the death of Mr. GENTILI di GIUSEPPE, his heirs had been totally inactive, not having either made any act of renunciation or any pure and simple declaration of their title as heirs or act of renunciation to their title as heirs to the said estate, having appeared to show an absolute lack of interest in their father's succession".

Whereas, the action brought against Frédéric GENTILI di GIUSEPPE'S heirs aims at penalising them for their alleged defaulting.

Whereas, however, it transpires from the order dated 29<sup>th</sup> October 1940 that neither Adriana GENTILI di GIUSEPPE nor Marcello GENTILI di GIUSEPPE had been aware of the first process served on 24<sup>th</sup> October 1940 at their respective addresses in Paris.

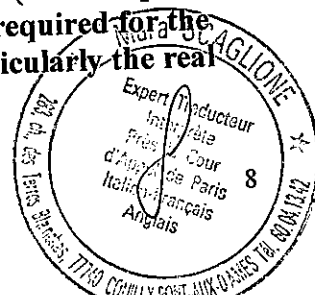
Whereas, according to the same order, Mr. MOULIN had been granted the power "to manage and administer Mr. Frédéric GENTILI di GIUSEPPE'S succession both actively and passively" and "to carry out all the related measures" on the sole grounds that the latter's heirs "did not seem to be in any hurry to take any action regarding the acceptance of the same".

Whereas the order dated 17<sup>th</sup> March 1941 authorising Mr. MOULIN to sell the litigious paintings by public auction solely arose from the previous order dated 29<sup>th</sup> October 1940.

Whereas Adriana and Marcello GENTILI di GIUSEPPE had both left their respective Parisian homes in June 1940 after the signature of the armistice to find refuge outside that part of the French territory which was then occupied by the German army so as to escape from being the subject of the obvious threats weighing on them due to their belonging to the Jewish community.

Whereas, pursuant to article 1, paragraph 2, of the order dated 27<sup>th</sup> September 1940 issued by the Commander-in-Chief of the German Occupation Army, "Jews who had fled from the occupied zone were banned from returning there".

Whereas, thus Adriana and Marcello GENTILI di GIUSEPPE had both found that it was absolutely impossible for them, on the one hand, to return to Paris (for the opening there of their father's succession) with a view to carrying out the acts required for the acceptance and free management of the assets forming the estate, particularly the real





property located at 22, Avenue Foch, Paris, within which the litigious paintings were to be found and, on the other hand, it was absolutely impossible for them to appear before the judge to explain their reasons, the foregoing as result of the exorbitant common law measures in force on 16<sup>th</sup> June 1940.

Whereas taking into account that the sale of the litigious paintings was barred by limitation solely due to Adriana and Marcello GENTILI di GIUSEPPE'S alleged defaulting, it follows that the said exorbitant common law measures are causally related to this sale.

Whereas, as such, the latter is ipso jure void pursuant to the aforementioned provisions.

Whereas the defendants are not well-founded in claiming that the said nullity was covered by the confirmation of the sale by Frédéric GENTILI di GIUSEPPE'S heirs considering that the former produce no proof specifically showing the heirs' intention of not availing themselves of the flaw affecting the validity of the same.

Whereas the recording of the nullity of the sale of the litigious paintings implies that the public corporation MUSEE DU LOUVRE, precarious holder of the same pursuant to the provisions of decree N°49-1344 dated 30<sup>th</sup> September 1949, is under the obligation of returning them to Adriana and Marcello GENTILI di GIUSEPPE'S assignees.

Whereas, finally, the plaintiffs have no proof specifically backing up their claim to paintings other than the litigious paintings.

Whereas there is no alternative other than to dismiss their claim on this count.

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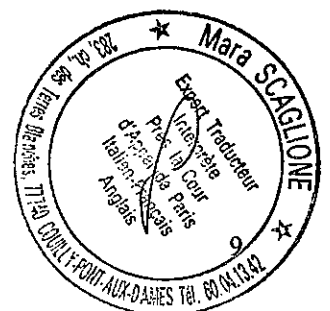
Whereas considering that the French State and public corporation MUSEE DU LOUVRE are not winners in the case, it is necessary to sentence them to meeting expenses and to accept, to a partial extent, the claim filed against them by the opposing parties pursuant to article 700 of the New Code of Civil Procedure.

**ON THESE GROUNDS, Court rules as under:**

To confirm the order issued concerning the parties on 10<sup>th</sup> July 1998 solely, however, with regard to its barring provision.

To set aside all its other provisions.

To record the nullity of the public auction sale in April 1941 by Solicitor RHEIMS, official auctioneer, of the following paintings and to order that the public corporation MUSEE DU LOUVRE return Mrs. Christiane GENTILI di GIUSEPPE née CASTEL, Mrs. Emmanuele MAUPAS née SALEM, Mr. Daniel SALEM and Mr. Lionel SALEM, the paintings designated below:



- . "La Visitation" – Moretto Da BRESCIA (MNR 277)
- . "La Sainte Famille" – Bernardo STROZZI (MNR 290)
- . "Alexandre et Campaspe chez Apelle" – Giambattista TIEPOLO (MNR 305)
- . "Joueurs de cartes devant une cheminée" – Alessandro MAGNASCO (MNR 790)
- . "Portrait de femme" – pastel – Rosalba CARRIERA (REC 73)

To dismiss all other claims.

To sentence the French State and the public corporation MUSEE DU LOUVRE to paying Mrs. Christiane GENTILI di GIUSEPPE née CASTEL, Mrs. Emmanuele MAUPAS née SALEM, Mr. Daniel SALEM and Mr. Lionel SALEM the sum of 40 000 francs pursuant to article 700 of the New Code of Civil Procedure.

To sentence the French State and the public corporation MUSEE DU LOUVRE to meeting the expenses incurred in the first instance suit and in the appeal.

The Court Clerk

The First Presiding Judge

Je soussigné, Mara SCAGLIONE, traducteur interprète assermenté, certifie la traduction qui précède conforme à l'original en langue ...  
 mon-même sous le No. 99.498  
 Couilly, le... 13/10/99  
 NE VARIETUR

