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La Bergère – Meyer Heirs and Fred Jones Jr. Museum of Art

Raoul Meyer – Fred Jones Jr. Museum of Art at the University of Oklahoma – Artwork/œuvre d’art – Nazi looted art/spoliations nazies – Judicial claim/action en justice – Judicial decision/décision judiciaire – Settlement agreement/accord transactionnel – Due diligence – Ownership/propriété – Procedural issue/limites procedurals – Conditional restitution/restitution sous condition – Donation – Cultural cooperation/coopération culturelle – Loan/prêt – Shared custody/co-possession – Symbolic gesture/geste symbolique

Raoul Meyer’s art collection, which included Camille Pissarro’s painting “La bergère rentrant des moutons” (hereinafter “La Bergère”), was looted by Nazi troops during the occupation of France in early 1940s. Decades later, Meyer’s daughter and heir, Léone Meyer, discovered the painting at the Fred Jones Jr. Museum of Art at the University of Oklahoma, and initiated a lawsuit in the United States seeking its return. After a three-year litigation and State legislative pressure on the Fred Jones Museum to return the painting, the two sides reached a settlement in 2016. The settlement transferred title to “La Bergère” to Léone Meyer.

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

- **Prior to 1940:** Gaston Lévy, a French collector, sold Camille Pissarro's painting "*La bergère rentrant des moutons*", or "Shepherdess bringing in sheep" (hereinafter "*La Bergère*"),¹ to Théophile Bader, the founder of Groupe Galeries Lafayette. *La Bergère* ended up with Yvonne Meyer, the daughter of Théophile Bader and wife of Raoul Meyer, when Bader's collection was divided between her and her sister Paulette Heilbronn.²
- **Early-1940s:** When **Nazi forces targeted prominent Jewish families in France** to seize their art collections during the Vichy Regime, the Meyer family placed its collection, including *La Bergère*, in a safe at a branch of the Crédit Commercial de France in Mont-de-Marsan, France. However, the *Devisenschutzkommando*, a German financial investigative agency in Paris eventually **seized** the Meyer collection and transferred it, including *La Bergère*, to Jeu de Paume, from where the painting was either exchanged for more desirable artwork or handed over to intermediaries for shipment to Switzerland.³
- **Mid-1940s:** Léon de Sépibus **brought** *La Bergère* to Switzerland, where Christoph Bernoulli, a prominent Basel art dealer, acquired it. He then sold it to André Maus.⁴
- **Early-1950s:** Raoul Meyer **discovered** *La Bergère* was in Geneva, in the possession of Maus, following which Bernoulli regained custody and control over the painting.⁵
- **1953:** Raoul Meyer brought a **civil lawsuit** against Bernoulli for the return of *La Bergère* in Basel, Switzerland.⁶
- **1956:** David Findlay Galleries in New York **acquired** *La Bergère* from an art dealer in Amsterdam (E.J. van Wisselingh & Co).⁷
- **1957:** Findlay Galleries **sold** *La Bergère* to Aaron M. and Clara Weitzenhoffer.⁸
- **2000:** The estate of Clara Weitzenhoffer made a **bequest** to the **Fred Jones Jr. Museum of Art at the University of Oklahoma**, which included *La Bergère*.⁹
- **2009:** Annette Schlagenhauff, associate curator at the Indianapolis Museum of Art, submitted documents on *La Bergère* covering the years of 1952 and 1953 to the Fred Jones Museum regarding Bernoulli, which included letter exchanges confirming Raul Meyer was in the process of **seeking the return of the painting**.¹⁰
- **26 March 2012:** Léone Meyer, the daughter and heir of Raoul Meyer, learned that *La Bergère* was on display in the Fred Jones Museum from a blog post by Marc Masurovsky at the **Holocaust Art Restitution Project**.¹¹

¹ Kutner, "How a Nazi-Looted Painting Made Its Way to University of Oklahoma", p. 3.

² First Amended Complaint, para. 32.

³ Ibid., paras. 34-39.

⁴ Ibid., paras. 48, 50, 52, 55. See also, Memorandum in Law in Support of Motion to Dismiss First Amended Complaint, p. 5.

⁵ First Amended Complaint, para. 53.

⁶ Memorandum in Law in Support of Motion to Dismiss First Amended Complaint, p. 5.

⁷ Ibid., paras. 4, 62. See also, Memorandum in Law in Support of Motion to Dismiss First Amended Complaint, p. 6.

⁸ First Amended Complaint, para. 62.

⁹ Ibid., para. 5.

¹⁰ Ibid., paras. 54-55.

¹¹ Ibid., para. 2. See also, Memorandum of Law in Opposition to Defendants' Motion to Dismiss Plaintiff's First Amended Complaint, p. 6.

- **9 May 2013: Meyer filed a Complaint** against the Board of Regents of the University of Oklahoma in the US District Court for the Southern District of New York, seeking the return of the painting.¹²
- **7 March 2014: Meyer filed an Opposition** to the Oklahoma Defendants' motion to dismiss the First Amended Complaint, requesting, in the alternative, to have the case transferred to the US District Court for the Western District of Oklahoma should the Court find she has failed to make a prima facie showing of personal jurisdiction.¹³
- **14 May 2014:** The US District Court for the Southern District of New York granted the Oklahoma Defendants' motion to dismiss the First Amended Complaint, concluding the Court lacked personal **jurisdiction** over them.¹⁴
- **5 June 2014:** Meyer filed an Appeal in the US Court of Appeals for the Second Circuit, arguing the case should be transferred to the US District Court for the Western District of Oklahoma in the **interest of justice**.¹⁵
- **12 March 2015:** The Second Circuit issued a Summary Order, remanding the case back to the US District Court for the Southern District of New York to decide whether **transferring** the case to the US District Court for the Western District of Oklahoma, as requested in the alternative by Meyer in her Opposition to the Defendants' motion to dismiss, served the **interest of justice**.¹⁶
- **7 April 2015:** The US District Court for the Southern District of New York **transferred** the case to the US District Court for the Western District of Oklahoma.¹⁷
- **23 February 2016:** The parties reached a **settlement agreement**, whereby the University of Oklahoma agreed to transfer title of the painting to Meyer.¹⁸

II. Dispute Resolution Process

Judicial claim – Judicial decision – Settlement agreement

- From the start, Raoul Meyer was committed to the recovery of his art collection lost at the hands of the Nazis. While he recovered a number of his paintings by submitting an inventory of his works of art looted by the Nazis to the French Commission for Art Recovery (Commission de Récupération Artistique), *La Bergère* was not among them.¹⁹ However, once he tracked the painting to Basel, Switzerland, Raoul Meyer brought a civil lawsuit for the return of *La Bergère* against the Swiss art dealer, Christoph Bernoulli, who was in possession of the painting.²⁰ Throughout a period of over a year, settlement negotiations took place

¹² Memorandum in Law in Support of Motion to Dismiss First Amended Complaint, p. 4.

¹³ Memorandum of Law in Opposition to Defendants' Motion to Dismiss Plaintiff's First Amended Complaint, p. 1.

¹⁴ Memorandum Decision and Order Dismissing Action as against the Oklahoma Defendants for Lack of Personal Jurisdiction, p. 2.

¹⁵ First Notice of Appeal, Docket Entry No. 59. See also True Copy Order of USCA, Docket Entry No. 64, p. 3.

¹⁶ True Copy Order of USCA, Docket Entry No. 63, p. 3.

¹⁷ Order Transferring Case to the Western District of Oklahoma. See also *Meyer v. University of Oklahoma Board of Regents et al.*, Docket No. 5:16-ma-00001, 16 May 2016.

¹⁸ Ellis and Silas, "University of Oklahoma Settlement Agreement Revealed in Nazi-Looted Art Case".

¹⁹ First Amended Complaint, para. 41.

²⁰ Memorandum in Law in Support of Motion to Dismiss First Amended Complaint, p. 5.

between the parties involved but the dispute was not resolved until the Basel Civil Court ruled on the lawsuit.²¹ Bernoulli tried to resell the painting to Raoul Meyer following the judgment, but Raoul Meyer refused to pay for what he believed was his property, and he lost track of the painting from that point on.²²

- *La Bergère* was again involved in legal proceedings several decades later, this time in the United States, when Raoul Meyer's daughter and heir, Léone Meyer, discovered its whereabouts and filed a lawsuit in the US District Court for the Southern District of New York. The lawsuit became quite controversial as the defendants did not dispute that the painting had been looted by the Nazis during the occupation of France, but instead based their objections to the restitution of *La Bergère* to the heir on procedural matters.²³ It is not uncommon for institutions to use legal technicalities such as the statute of limitations to block Nazi-era art claims.²⁴
- Notably, while the dispute was ongoing, in **May 2015** Oklahoma State legislators became involved in the dispute by adopting a non-binding resolution, taking note of the instant case and urging the University of Oklahoma and the Fred Jones Museum to conduct thorough provenance research on its collection and return any compromised works to their rightful owners.²⁵
- Following the case being dismissed in New York and transferred to Oklahoma on procedural grounds, the two sides reached a settlement agreement in February 2016.

III. Legal Issues

Due diligence – Ownership – Procedural issue

- In the litigation in Switzerland, the court came out against Raoul Meyer for failure to prove Bernoulli had acquired *La Bergère* in bad faith. The special legal procedure allowing claimants to seek restitution of Nazi looted artworks from possessors located in Switzerland regardless of whether they acquired them in good faith or bad faith had expired in 1950; thus, civil claims such as Raoul Meyer's, fell under the Swiss Civil Code, which required proof of bad faith.²⁶ The court came out against Raoul Meyer concluding the five-year period to reclaim lost or stolen property purchased in good faith had expired in 1949 as the painting had been lost to him no later than 1944, when the German forces withdrew from Paris.²⁷ Moreover, the court ruled against Raoul Meyer reasoning the claim of bad faith was brought too late, at

²¹ First Amended Complaint, paras. 55, 57.

²² Kutner, "How a Nazi-Looted Painting Made Its Way to University of Oklahoma", p. 4.

²³ Bowley, "University of Oklahoma Agrees to Return Pissarro Painting Looted by Nazis".

²⁴ Kutner, "How a Nazi-Looted Painting Made Its Way to University of Oklahoma", p. 3.

²⁵ For the floor version of the Resolution, see http://webserver1.lsb.state.ok.us/cf_pdf/2015-16%20FLR/HFLR/HR1026%20HFLR.PDF. H.R. 1026, 2015 Leg., 1st Sess. (Okla. 2015). See also Cascone, "University of Oklahoma Will Return Camille Pissarro Painting to Holocaust Survivor".

²⁶ First Amended Complaint, para. 56-57. See also Cascone, *ibid*.

²⁷ The five-year period for requisition is prescribed by Article 934(1) of the Swiss Civil Code for lost or stolen chattels purchased in good faith. See also Case 1:13-cv-03128-CM Basel Civil Court, p. 6.

- the consultation, and the buyer's acknowledgement that the painting came from a private owner in Basel was not indicative of lack of good faith.²⁸
- In the United States, the District Court for the Southern District of New York dismissed the action for lack of personal jurisdiction over the Oklahoma Defendants (the Board of Regents of the University of Oklahoma, David Boren, individually and as President of the University of Oklahoma and the University of Oklahoma Foundation, Inc.).²⁹ The court turned on whether it could exercise general jurisdiction over the Oklahoma Defendants in the State of New York based on New York Civil Practice Law and Rules 301.³⁰ In a strongly worded order, the New York court granted the Defendants' motion to dismiss, on the basis that the Defendants were not "at home" in New York to satisfy the *Daimler* standard for general jurisdiction, and stated the case should have never been brought in a New York court.³¹
 - However, following the dismissal, the Plaintiff was successful in her appeal to transfer the case to the US District Court for the Western District of Oklahoma, since she had in her Opposition to the motion to dismiss requested in the alternative to transfer the case if she failed to establish personal jurisdiction, which the New York court had not considered in granting the Defendants' motion to dismiss.³² The US Court of Appeals for the Second Circuit acknowledged the Plaintiff's arguments to transfer the case in the interest of justice for the following reasons but remanded to the District Court to make the decision to transfer: (1) the statute of limitations might have had run out for a new lawsuit in Oklahoma; (2) the claim was meritorious; (3) Meyer had filed the claim in New York in good faith belief that the other defendants who were later dismissed fell under its personal jurisdiction; and (4) the Defendants would not be prejudiced by the transfer.³³
 - As regards the provenance of *La Bergère*, Raoul Meyer's ownership was not challenged by the Defendants who never denied that the painting was looted by the Nazis during the occupation of France. Instead, subsequent good faith acquisition by Aaron M. and Clara Weitzenhoffer was the backbone of the defense.³⁴ Not surprisingly, an acknowledgment of the Weitzenhoffer family's good faith purchase and subsequent transfer to the University was part of the settlement agreement.³⁵

²⁸ The unlimited period for requisition is prescribed by Article 936 of the Swiss Civil Code for bad faith purchases. *Ibid.*

²⁹ Memorandum Decision and Order Dismissing Action as against the Oklahoma Defendants for Lack of Personal Jurisdiction, p. 2.

³⁰ Memorandum Decision and Order Dismissing Action as against the Oklahoma Defendants for Lack of Personal Jurisdiction, p. 3.

³¹ The court concluded that the Oklahoma Defendants were "at home" in Oklahoma and not New York, noting that the University was located in Oklahoma, the Trustees governed it in Oklahoma, and Boren resided and worked in Oklahoma, lacking any substantial operations in the State of New York to render them "at home" there. *Ibid.*, pp. 4-7.

³² See *supra* n. 12, 14, 15.

³³ True Copy Order of USCA, Docket Entry No. 63, p. 3.

³⁴ Kutner, "How a Nazi-Looted Painting Made Its Way to University of Oklahoma", p. 4.

³⁵ Ellis and Silas, "University of Oklahoma Settlement Agreement Revealed in Nazi-Looted Art Case".

IV. Adopted Solution

Conditional restitution – Cultural cooperation – Donation – Loan – Shared custody – Symbolic gesture

- After a three-year legal battle, Léone Meyer and the University of Oklahoma reached a settlement agreement with each party paying for its own attorney fees and Meyer not receiving any monetary compensation. Under the settlement agreement, the title to the painting is transferred to Léone Meyer, who is required to eventually gift it to a mutually agreed upon art institution in France.³⁶ Following the initial five-year display at such French institution, the latter will facilitate all future three-year rotating displays of *La Bergère* there and at the Fred Jones Museum.³⁷ All future displays of *La Bergère* will include an accompanying label describing the history of the painting.³⁸
- Another striking term of the agreement is the prohibition against selling movie, television, or other commercial rights to the story of the legal dispute involving *La Bergère* without the consent of both parties.³⁹

V. Comment

- The instant case sets a good example for Nazi-looted art restitution that seeks to maintain public access to the object in dispute with the intent to educate the broader public about its provenance and historical significance.
- While initial negotiations were negative, the two sides were eventually able to come to a mutually agreeable agreement in a matter of a few months.⁴⁰ The heir successfully kept the focus of the dispute on the goal of maintaining public access *La Bergère* in several ways, not the least of which was her choice to forego any monetary compensation in the settlement. By only seeking the transfer of ownership and ensuring that in all future displays of the painting would be accompanied with a label detailing the history and provenance of the painting, Meyer has implicitly grounded the value of the work in its history, making its Nazi-looted identity an inseparable part of the artwork for future generations. This is of tremendous significance as by grounding the art-historical value of a Pissarro piece in the socio-historical context of the 1940s, the heir has ensured that the public is educated about the history of the painting as much as they are with the artist's technique when they go to see it in person. Furthermore, the alternating display which the parties agreed to, is a welcome collaboration that ensures the piece is not uprooted from either community it has come to belong to over the course of its history – Oklahoma, USA and France.

³⁶ Ibid.

³⁷ Meyer or the French institution will bear the costs of transportation and display of the painting in France following the initial five-year display in France which will be covered by the defendants. Each institution will bear the costs of insuring the painting while it is displayed in its facilities in the future. Ibid.

³⁸ This term of the settlement agreement follows in the trend to ensure history of Nazi-looted art is included in the display of such works as seen, for instance, in the settlement between the heirs of Gentili di Guisepppe and the Boston Museum of Fine Arts, on which see Marcus, "Nazi Looted Art: Setting Precedence for Museum Decisions", p. 45.

³⁹ Cascone, "University of Oklahoma Will Return Camille Pissarro Painting to Holocaust Survivor".

⁴⁰ Kutner, "How a Nazi-Looted Painting Made Its Way to University of Oklahoma", p. 7.

VI. Sources

a. Court decisions

- *Meyer v. University of Oklahoma Board of Regents et al.*, Docket No. 5:16-ma-00001, 16 May 2016.
- *Meyer v. University of Oklahoma Board of Regents et al.*, Docket No. 1:13-cv-03128, 9 May 2013.
- Case 1:13-cv-03128-CM Basel Civil Court, Switzerland, 25 July 1953.

b. Legislation

- H.R. 1026, 2015 Leg., 1st Sess. (Okla. 2015).
- N.Y. Civil Practice Law and Rules 301.
- Articles 934(1) and 936 of the Swiss Civil Code.

c. Media

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