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Case Landscape with Smokestacks – Gutmann Heirs and Daniel Searle

Friedrich Gutmann – Daniel Searle – Artwork/œuvre d'art – Nazi-looted art/spoliations nazies – Judicial claim/action en justice – Negotiation/négociation – Settlement agreement/accord transactionnel – Ownership/propriété – Repurchase/rachat – Co-ownership/co-propriété

The heirs of Holocaust victims Friedrich and Louise Gutmann, Nick and Simon Goodman and Lili Gutmann, filed a claim against the art dealer Daniel Searle. Searle was the owner of the painting "Landscape with Smokestacks" by Edgar Degas and was a Trustee of the Art Institute of Chicago, where the painting was on loan. The painting was allegedly looted by the Nazis during the Second World War. After four years of litigation, the parties agreed to share the ownership of the painting. The Gutmann heirs' interest in the ownership was bought by the Art Institute of Chicago.

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

- **1932:** The wealthy art collectors Friedrich and Louise Gutmann acquire the painting by Edgar Degas, “Landscape with Smokestacks” (1890), from a French collector.¹ Their collection comprises artworks by renowned artists such as Degas, Renoir, Botticelli and Franz Hals.
- **1939:** Friedrich Gutmann sends the painting to the Parisian dealer Paul Graupe to be put in storage for safekeeping.
- **During World War II:** Massive confiscations by the Nazis target Jewish art collectors. The couple dies in Nazi concentration camps: Louise in Auschwitz; Friedrich in Theresienstadt (1943). All their belongings are dispersed or disappear. The Degas is transferred to the Swiss dealer Hans Wendland, who, it was said, had good connections to Nazi officials.²
- **1945:** Hans Wendland sells “Landscape with Smokestacks” to his brother-in-law Hans Frankhauser, a Swiss citizen.
- **1946:** The painting is exposed in the Fischer Gallery, Lucerne. Later it reappears in Basel.³ In the same period the Gutmanns’ children (Lili and Bernard) initiate a search for their family’s pieces of art. The mission is pursued by Lili and Bernard’s sons, Nick and Simon (whose surname had been changed into Goodman) with the help of “art investigators” such as Willi Korte.⁴
- **1951:** The Degas is purchased by a New York collector (Emile Wolf).
- **1987: Daniel Searle**, Trustee of the Art Institute of Chicago and pharmaceutical magnate **buys** the painting for \$ 850,000. From then on, the painting is on **loan** at the **Art Institute of Chicago**.
- **1994:** The painting is on display at the Art Institute of Chicago’s **exhibition** “Degas Landscapes”.⁵
- **1995:** The Gutmann heirs (Lili and her nephews, Nick and Simon Goodman) send a **request for the restitution** of the painting to Daniel Searle by **mail**.
- **1996:** The heirs **file suit against Daniel Searle** claiming for the restitution of the Degas painting.⁶

¹ See Ron Grossman, “Tracing Histories – How A Family’s Degas Traveled From Their Estate To The Center Of Controversy,” *Chicago Tribune*, January 28, 2001, accessed July 15, 2011, http://articles.chicagotribune.com/2001-01-28/news/0101280384_1_art-institute-art-and-antiques-smokestacks.

² Judd Tully, “Landscape with Plunder,” *artnet.com Magazine*, accessed July 15, 2011, http://www.artnet.com/magazine_pre2000/news/tully/tully8-30-96.asp.

³ Scorrane, Roberta, “Il viaggio di Degas è (in)finito”, *Corriere della Sera, La Lettura* (supplement), no 271, February 5, 2017.

⁴ Ibid.

⁵ See Judd Tully, “Landscape with Plunder,” *artnet.com Magazine*, accessed July 15, 2011, http://www.artnet.com/magazine_pre2000/news/tully/tully8-30-96.asp.

⁶ *Goodman v. Searle*, Complaint, No. 96-6459 (N.D. Ill. 1996).

- **1998:** The case raises great public attention urging the members of the **Association of Art Museum Directors** to delve into their collections for Nazi-looted art.⁷ Several restitution claims by Holocaust victims have been met since then by various institutions such as the Museum of Fine Arts in Boston, the Seattle Art Museum and the North Carolina Museum of Art.⁸
- **August 1998:** Daniel Searle and the Gutmann heirs settle their dispute out-of-court.
- **2000:** Daniel Searle's attorney, Howard J. Trienens, publishes a book entitled "Landscape with Smokestacks: the Case of the Allegedly Plundered Degas", in which he divulges his feeling that his client "didn't get a fair shake in the court of public opinion", and his frustration that "the media uncritically took the claimants' side, portraying the dispute as a morality play starring an insensitive big businessman and the ghosts of Holocaust victims."⁹

II. Dispute Resolution Process

Judicial claim – Negotiation – Settlement agreement

- Both sides called upon expert witnesses at trial. The Gutmann heirs referred to the author and Nazi-looting expert Lynn Nicholas; Searle on the other hand mandated the art appraiser Hermine Chivian-Cobb.¹⁰ During the four years of litigation, the dispute mainly focused on the question of ownership (see Legal Issues below). The court rejected Daniel Searle's motion for summary judgment.¹¹
- Seeking a settlement, the Gutmann heirs besought Hector Feliciano, author and Nazi-looted art expert, who has helped locate thousands of missing works of art. According to Feliciano, the heirs had already spent \$ 200,000 in legal fees at that point.¹² Feliciano then approached the director of the Art Institute of Chicago, James Wood, to inquire whether a settlement could possibly be reached between the parties.¹³
- A previous settlement proposal between the claimants and the Art Institute was not successful. The parties were strongly motivated to resolve their issues in view of the approaching cost and time consuming trial.
- Ultimately, the parties settled their dispute on the eve of the trial.

⁷ See Ron Grossman, "Tracing Histories."

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ See Patty Gerstenblith, "Acquisition and Deacquisition of Museum Collections and the Fiduciary Obligations of Museums to the Public," *Cardozo Journal of International and Comparative Law* 11 (2003): 440.

¹² See Hector Feliciano, "1999 Symposium: Theft of Art During World War II: Its Legal and Ethical Consequences – The Aftermath of Nazi Art Looting in the United States and Europe: The Quest to Recover Stolen Collections," *DePaul University Journal of Art and Entertainment Law* 10 (1999): 4.

¹³ Ibid.

III. Legal Issues

Ownership

- Litigation mainly focused on the issue of the restitution claim's limitation period and the possible application of the good faith doctrine to Searle's acquisition of the painting also in view of a conflict of law analysis.
- In essence, the parties disagreed on Friedrich Gutmann's motive for transferring the painting to Paris; Searle claimed Gutmann sold the Degas at the beginning of World War II because of financial pressure, whereas the heirs alleged it was sent to Paris for safekeeping. A clarification of the facts on this matter was, however, imperative in order to determine whether the purchaser of the Paris dealer acquired good title to the painting. This may only be said if the painting had been in fact sold by the Paris dealer to the subsequent possessor, notwithstanding any compensation paid to Friedrich Gutmann for the sale.¹⁴
- Evidence to this regard was missing. In fact, there is no bill of sale or other document which could confirm any of the sales which occurred during and subsequent to the war.¹⁵ The first undoubted entry on the list of purchasers dated back to 1987, when Searle bought the Degas from the art dealer "Hans Wendland, Paris".¹⁶ For the Goodmans, "Wendland was a notorious Nazi collaborator [and] a key operative in disposing of looted art"¹⁷. Searle's attorney derided this as a false accusation.¹⁸
- These questions were never satisfactorily answered.¹⁹

IV. Adopted Solution

Repurchase – Co-ownership

- The Gutmann heirs and Searle agreed to equally divide the ownership of the painting. Searle then transferred his share to the Art Institute of Chicago, where he was a Trustee. In turn, the Art Institute bought the heirs' interest at fair market value, as assessed by an independent expert.²⁰

¹⁴ See Patty Gerstenblith, "Acquisition and Deacquisition of Museum Collections," 439.

¹⁵ As reported by Howard J. Trienens, Searle's attorney, in his book, *Landscape with Smokestacks: the Case of the Allegedly Plundered Degas* (Evanston (Illinois): Northwestern University Press, 2000).

¹⁶ The dealer who acted in 1951 in the purchase of the painting on behalf of Emilie Wolf refused to confirm that she was involved in the sale transaction. See Judd Tully, "Landscape with Plunder," and Ron Grossman, "Tracing Histories."

¹⁷ Ibid.

¹⁸ On the person of Wendland, see for instance Thomas Buomberger, *Raubkunst – Kunstraub: Die Schweiz und der Handel mit gestohlenen Kulturgütern zur Zeit des Zweiten Weltkriegs* (Orell Füssli Verlag: Zürich, 1998), 194 et seqq.

¹⁹ See Patty Gerstenblith, "Acquisition and Deacquisition of Museum Collections," 440.

²⁰ Norman Palmer, "Memory and Morality: Museum Policy and Holocaust Cultural Assets," *Art Antiquity and Law* Vol. 6 Iss. 3 (September 2001): 278-279.

- The Institute agreed to credit both families by placing a label commemorating the misappropriation next to the displayed painting. It was firstly exhibited for a limited period starting 9 October 1998, and since then rotated with other paintings.
- The Gutmann heirs ultimately received about \$ 500,000.²¹
- Both parties bore their own legal fees. According to the family, the amount received only just covered the costs of litigation.²²

V. Comment

- The family, who ultimately sold its interest in the painting to the Art Institute was compelled to do so given the high legal fees they had to bear.
- The financial burden of litigation could have been avoided had the parties been able to negotiate their dispute in the first place. There was in fact a first proposal to negotiate which did not succeed. Instead, the decisive motivating factor to initiate an amicable dispute resolution process arose on the eve of the trial. The costly and lengthy court proceedings might have convinced the parties to settle their dispute amicably.
- The case raised awareness on the issue of Holocaust-looted art amongst US art museums. In fact, subsequent to the commencement of the lawsuit, the Association of Art Museum Directors encouraged its members to begin thoroughly examining the provenance of the artworks held in their collections. The Art Institute of Chicago has since then proceeded to systematically verify the provenance of artworks which are likely from the Holocaust era.
- In 2000, to the irritation of the heirs, Searle's attorney published a book narrating his viewpoint on the case. As conclusive evidence was still missing, the book was criticized by the heirs for simply reviving the debate without bringing any new information on the merits of the case.²³
- Alternative dispute resolution brings the advantage of enabling the parties to circumvent questions on the substantial merits of the case and to focus instead on the interests of those involved. It is therefore surprising that one of the protagonists has revisited the case after its settlement.

²¹ Ron Grossman, "Battle Over War-Loot Degas Comes to Peaceful End," *Chicago Tribune*, August 14, 1998, accessed July 15, 2011, http://articles.chicagotribune.com/1998-08-14/news/9808140105_1_art-institute-daniel-c-searle-nick-goodman.

²² See Ron Grossman, "Tracing Histories."

²³ See Ron Grossman, "Tracing Histories."

VI. Sources

a. Bibliography

- Buomberger, Thomas. *Raubkunst – Kunstraub: Die Schweiz und der Handel mit gestohlenen Kulturgütern zur Zeit des Zweiten Weltkriegs*. Orell Füssli Verlag: Zürich, 1998.
- Feliciano, Hector. “1999 Symposium: Theft of Art During World War II: Its Legal and Ethical Consequences – The Aftermath of Nazi Art Looting in the United States and Europe: The Quest to Recover Stolen Collections.” *DePaul University Journal of Art and Entertainment Law* 10 (1999): 1–10.
- Gerstenblith, Patty. “Acquisition and Deacquisition of Museum Collections and the Fiduciary Obligations of Museums to the Public.” *Cardozo Journal of International and Comparative Law* 11 (2003): 409 et seqq.
- Palmer, Norman. “Memory and Morality: Museum Policy and Holocaust Cultural Assets.” *Art Antiquity and Law* Vol. 6 Iss. 3 (September 2001): 259–292.
- Spiegler, Howard N. “Recovering Nazi-Looted Art: Report from the Front Lines.” *Connecticut Journal of International Law* 16:2 (2001): 297–312.
- Trienens, Howard J. *Landscape with Smokestacks: the Case of the Allegedly Plundered Degas*. Evanston (Illinois): Northwestern University Press, 2000.

b. Court decisions

- *Goodman v. Searle*, Complaint, No. 96-6459 (N.D. Ill. July 17, 1996).

c. Media

- Scorrane, Roberta. “Il viaggio di Degas è (in)finito.” *Corriere della Sera, La Lettura* (Supplement), No. 271, February 5, 2017.
- Grossman, Ron. “Battle Over War-Loot Degas Comes to Peaceful End.” *Chicago Tribune*, August 14, 1998. Accessed July 15, 2011, http://articles.chicagotribune.com/1998-08-14/news/9808140105_1_art-institute-daniel-c-searle-nick-goodman.
- Tully, Judd. “Landscape with Plunder.” *artnet.com Magazine*. Accessed July 15, 2011, http://www.artnet.com/magazine_pre2000/news/tully/tully8-30-96.asp.
- Grossman, Ron. “Tracing Histories - How A Family’s Degas Traveled From Their Estate To The Center Of Controversy.” *Chicago Tribune*, January 28, 2001. Accessed July 15, 2011, http://articles.chicagotribune.com/2001-01-28/news/0101280384_1_art-institute-art-and-antiques-smokestacks.
- “Case over painting stolen by Nazis settled.” *CNN.com*, August 14, 1998. Accessed July 15, 2011, <http://edition.cnn.com/US/9808/14/looted.art/>.