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Case Madonna and Child in a Landscape – North Carolina Museum of Art and Philipp von Gomperz Heirs

*Philipp von Gomperz – North Carolina Museum of Art – Artwork/œuvre d'art –
Nazi looted art/spoliations nazies – Ownership/propriété –
Negotiation/négociation – Settlement agreement/accord transactionnel –
Sale/vente – Symbolic gesture/geste symbolique*

In 2000, the North Carolina Museum of Art handed over the painting “Madonna and Child in a Landscape” to Philipp von Gomperz’s heirs after being presented with evidence that it had been looted by the Nazis. The heirs rewarded the Museum’s response by selling the painting to it at a price substantially below its market value.

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

- **1938:** The painting “Madonna and Child in a Landscape” by Lucas Cranach the Elder was part of a collection **owned by Philipp von Gomperz**, a wealthy Viennese Jew. When Austria was invaded by Nazi Germany, Mr. Gomperz fled Vienna with his family and left the collection behind. Phillip Gomperz passed away in 1948 in Montreux (Switzerland).
- **1940:** The **Nazis confiscated** Mr. Gomperz’s collection, including the painting “Madonna and Child in a Landscape”, which was then acquired by a Nazi leader, Baldur von Schirach.¹
- **1950’s:** The painting showed up in New York, where it was purchased at auction by Marianne Khuner, a Californian art collector of medieval German art.
- **1964:** Marianne Khuner gave the painting to the North Carolina Museum of Art, with the condition that the Museum would retain ownership upon her death.
- **1984:** Upon Marianne Khuner’s death, the painting passed to the North Carolina Museum of Art and became one of the centrepieces of its permanent collection.
- **1999:** The Museum received a letter from the **Commission for Art Recovery of the World Jewish Congress** detailing evidence of the painting’s history. It also indicated the names of the claimants: two elderly Austrian sisters – Marianne and Cornelia Hainisch – who asserted that the painting belonged to their uncle, Philipp von Gomperz. The Museum investigated the provenance of the Cranach in order to verify the Nazi connection.
- **2000:** The Museum restituted the painting to Marianne and Cornelia Hainisch in February 2000. In turn, the Hainisch sisters decided to sell the painting back to the Museum at a price substantially below market value.²

II. Dispute Resolution Process

Negotiation – Settlement agreement

- The swift friendly settlement of this case was possible thanks to the Museum’s refusal to rebuff the restitution claim (it could have relied, for instance, on its ownership rights or on such defences as the statutes of limitations) and to the decision of the Gomperz’s heirs to acknowledge and reward the museum’s perceived good faith.

¹ Emily Yellin, “North Carolina Art Museum Says It Will Return Painting Tied to Nazi Theft,” *The New York Times*, February 6, 2000, accessed December 5, 2011, <http://www.nytimes.com/2000/02/06/us/north-carolina-art-museum-says-it-will-return-painting-tied-to-nazi-theft.html>.

² Yonat Shimron, “A Madonna Stolen by Nazis Takes a Trip Home,” *The News & Observer*, December 1, 2008, accessed December 5, 2011, http://www.newsobserver.com/content/print/front_pdf/1-A-Mon-December-1-08.pdf.

III. Legal Issues

Ownership

- The instant case involved a question which typically arises in Holocaust-related cases, namely whether the Museum had obtained title to the painting. Indeed, the investigation carried out by the Museum focused precisely on this question. In this respect, John Coffey, the then curator of the North Carolina Museum of Art, said: “the fact that one of our paintings might not be ours”, he said, “and that the Nazis might have been a part of its history, added a sort of eerie veneer to the painting”.³
- Aside from national legislation and soft law, the most significant statement concerning the ownership of Nazi looted property is contained in the London Declaration of 1943.⁴ This warned all States, thus both enemy States and neutral nations, that the Allies intended “to defeat the methods of dispossession practiced by the” Nazis and reserved the right to annul transfers or dealings which took the form of open looting or seemingly good faith transactions. The objective was to avoid museums or individuals profiting from the suffering of war victims and that the gross wrongs committed by the Nazi regime could be condoned.

IV. Adopted Solution

Sale – Symbolic gesture

- Under the terms of the agreement, Marianne and Cornelia Hainisch sold the “Madonna and Child in a Landscape” to the North Carolina Museum of Art for \$600,000, that is, half its estimated market value.⁵
- Today the painting is accompanied by the following credit line: “[...] Acquired by the North Carolina Museum of Art as the partial gift of Cornelia and Marianne Hainisch in tribute to their great-uncle Philipp von Gomerz, and as a partial purchase with funds from the State of North Carolina”.⁶

³ Emily Yellin, “North Carolina Art Museum Says It Will Return Painting Tied to Nazi Theft,” *The New York Times*, February 6, 2000, accessed December 5, 2011, <http://www.nytimes.com/2000/02/06/us/north-carolina-art-museum-says-it-will-return-painting-tied-to-nazi-theft.html>.

⁴ *Declaration of the Allied Nations against Acts of Dispossession Committed in Territories under Enemy Occupation or Control*, 5 January 1943 (8, Department of State Bulletin 21), signed by seventeen governments and by the Comité National Français.

⁵ Yonat Shimron, “A Madonna Stolen by Nazis Takes a Trip Home,” *The News & Observer*, December 1, 2008, accessed December 5, 2011, http://www.newsobserver.com/content/print/front_pdf/1-A-Mon-December-1-08.pdf.

⁶ See at: <http://ncartmuseum.org/>.

V. Comment

- The settlement of the case under consideration constitutes a perfect materialization of the London Declaration of 1943 and of the Washington Principles adopted in 1998 at the Conference on Holocaust-Era Assets. As for the latter, these non-binding principles impose upon nations a moral commitment to identify and publicize artworks that had been confiscated by the Nazis and not subsequently restituted, to assist their return to their original owners and to encourage pre-war owners and their heirs to make claims for these artworks. In particular, Principle 8 states that “[i]f the pre-war owners of art that is found to have been confiscated by the Nazis and not subsequently restituted, or their heirs, can be identified, steps should be taken expeditiously to achieve a just and fair solution, recognizing this may vary according to the facts and circumstances surrounding a specific case”.
- Indeed, the settlement achieved by the parties in this case can be considered as a just and fair solution. The Gomperz’s heirs and the North Carolina Museum negotiated a mutually beneficial solution on the basis of ethical and extra-judicial principles such as fairness, transparency, creativity, and flexibility. This demonstrates that cooperative means allow well-disposed parties to set aside legal defences and the question on the legality of the taking, on the one hand, and to focus on the significance of the object at stake for the claimant, on the other hand. Moreover, this non-adversarial settlement proves that, under certain circumstances, requested museums may retain contested works of art through the adoption of cooperative approaches.⁷
- The generous attitude of both the Museum and the nieces of Philipp von Gomperz is to be commended. However, it should be noted that the painting had been donated to the North Carolina Museum. Therefore, it can be argued that it was relatively easy for the Museum’s representatives to relinquish the “Madonna and Child in a Landscape” as the decision involved no financial loss. At the same time, they may have been convinced to pursue this path in order to gain a reputation as an ethical institution.

VI. Sources

a. Bibliography

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b. Media

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⁷ Patty Gerstenblith, “Acquisition and Deacquisition of Museum Collections and the Fiduciary Obligations of Museums to the Public,” *Cardozo Journal of International and Comparative Law* (2003): 409-411.

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