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Case Matisse Painting – Jeanneret v. Vichey

Marie Louise Jeanneret – Anna and Luben Vichey – Italy/Italie – Artwork/œuvre d'art – Judicial claim/action en justice – Illicit exportation/exportation illicite – Breach of contract/violation du contrat

A painting by Henri Matisse was unlawfully exported from Italy to New York because its owner, Anna Vichey, never acquired the mandatory export license in 1970. The painting was then sold to a Swiss art dealer named Marie Jeanneret and delivered to Geneva, Switzerland. After discovering the cloud on the title of the painting, Mme. Jeanneret was unable to sell the painting. Mme. Jeanneret sued the Vicheys on breach of implied and express warranties, fraudulent misrepresentation, and breach of contract. Before any final decision was made, Mme. Jeanneret voluntarily withdrew her action after she supposedly received an Italian judgment that allowed her to legally sell the painting.

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I. Chronology

- **24 July 1970:** The title of the painting, *Portrait sur Fond Jaune* by Henri Matisse (Painting) vested in Anna Vichey through inheritance.¹
- **1970:** The Painting was brought to New York City from Italy. Vichey did not obtain an export license or permit to do so.²
- **January 1973:** The negotiations began between Marie Louise Jeanneret, a Swiss art dealer in Geneva, and Anna and Luben Vichey for the Painting's purchase.³
- **March 1973:** Luben Vichey transported the painting to Mme. Jeanneret in Geneva and the payment was made in June of that year.⁴
- **November 1974:** Mme. Jeanneret went to Rome and met with Signora Bucarelli, the superintendent of exporting paintings and discovered that the Painting may have been illegally exported from Italy.⁵
- **21 November 1974:** Mme. Jeanneret wrote a letter to Mme. Vichey stating that Signora Bucarelli was searching for the Painting because she believed it was illegally exported. Mme. Jeanneret suggested annulling the deal by returning the Painting to New York City and the Vicheys would refund her the purchase price.⁶
- **5 January 1975:** M. Vichey rejected Mme. Jeanneret's proposal by letter.
- **July 1977:** Mme. Jeanneret filed a complaint for breach of implied and express warranties of title, breach of contract, false and fraudulent misrepresentation, and tax evasion. She wished to recover not only the value she paid for the Painting (US \$230,000), but the value it should be worth without the defect in title, as well as monetary damages for loss of reputation and business for a total of US \$5,000,000.
- **28 March 1979:** The Assistant Minister of Culture issued a notification stating that the Painting was "an important work by the French painter Henri Matisse, datable between 1920 and 1923" which was of "particular artistic and historical interest." It was within the meaning of the 1939 law and "therefore subject to all the regulations regarding custody included therein."⁷
- **12 January 1982:** The District Court for the Southern District of New York denied Vicheys' motion for summary judgment and the case went to trial. The jury returned a verdict for the Vicheys for breach of express warranty and fraudulent misrepresentation while it returned a verdict to Mme. Jeanneret for \$1,688,000 for breach of implied warranty of title and breach of contract.⁸

¹ *Jeanneret v. Vichey*, 541 F. Supp 259, 260 (2nd Cir. 1982).

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.* at 261.

⁷ *Ibid.* at 263-263.

⁸ *Ibid.*

- **16 September 1982:** The United States Court of Appeals for the Second Circuit heard the appeal and reversed and remanded for a new trial due to disputes about the painting's age.⁹ Before the parties began a new trial, Mme. Jeanneret voluntarily withdrew her federal action.

II. Dispute Resolution Process

Judicial Claim

- After discovering the issue with the export documents, Mme. Jeanneret proposed to the Vicheys to annul the sale, which they rejected. She then brought claims of breach of contract, breach of implied and express warranties of title, and fraud in front of a court and the Court ruled in favor of Mme. Jeanneret. The United States Court of Appeals for the Second Circuit reversed the Trial Court's judgment and remanded for a new trial. The Court did not make a final decision because Mme. Jeanneret withdrew her claim.

III. Legal Issues

Illicit Exportation – Breach of Contract

- Mme. Jeanneret and three art dealers' un-contradicted testimonies stated that the Painting could not be sold to any auction house or reputable art-dealer.¹⁰ The appellate court agreed with the district judge's view that when an art dealer cannot sell a painting through ordinary channels, according to customary trade usages, it creates a "heavy cloud" over the title.¹¹ However, the appellate court was reluctant to rule on this issue because of the major effects it would have on the New York art market.¹²
- During the initial trial, there was a great amount of Italian law testimony regarding art exportation: Regulations for the Execution of Law No. 364 of June 20, 1909, Approved by Royal Decree No. 363 of January 30, 1913 ("the 1913 regulations") and the "Protection of items or historical interest," Law No. 1089 of June 1, 1939 ("the 1939 Law"). The 1913 regulations specifically stated that "Paintings ... made by living artists or not more than fifty years old, including copies and imitations, must be submitted to Exports Offices...in order to

⁹ Ibid. at 269.

¹⁰ John Tancock, a vice-president of Sotheby Parke Bernet discussed if the Painting lacked "the necessary documents from any country where it had been located," that "no reputable auction house or dealer would be prepared to handle it" and the market "value is zero." (*Vichey*, 693 F.2d at 263). Another art dealer, Nancy Schwartz, when finding out about the Painting stated "I had a client who was ready to buy it, but as you said the painting left Italy clandestinely I realized that this painting cannot be sold." (Ibid.) Finally, an independent art dealer, Graham Leader refused to handle the painting and said "from the moment that I learned that the painting had been clandestinely exported from Italy by its former owner...and that it could thus be subject to suit by any authority." (Ibid.)

¹¹ *Vichey*, 693 F.2d at 268.

¹² The appellate court did not want to rule because there was no previous case law in New York courts on this issue in addition to an unsatisfactory record on the issue.

obtain an export permit.”¹³ Violation of this regulation resulted in seizure of the object, but it would be returned if a fine was paid. Article 1 of the 1939 Law goes into greater detail about which objects are included by the 1913 regulations but it excludes works of art by living artists and those that are not more than fifty years old. Experts debated whether the 1913 regulations’ provision concerning artwork by living artists or less than fifty years old survived the 1939 law. The answer was in the unclear Article 73 of the 1939 law stating, “The provisions of the regulations approved under Royal Decree No. 363 (3) of January 30, 1913, shall remain in force, insofar as they are applicable, until such time as the regulations to be issued in execution of this law take effect.”¹⁴ This could mean either that the 1939 law only allowed the 1913 regulations concerning works that were more than fifty years old to remain because they were within the scope of Article 1 or that the 1913 laws could remain in force that do not conflict with the 1939 law.¹⁵ Vichey requested the jury be heavily instructed on this Italian law, but the district judge refused.¹⁶

- On appeal, the Court analyzed whether Vichey breached section 2-312 of the Uniform Commercial Code, which discusses warranty.¹⁷ There was no evidence that Vichey breached the warranty in § 2-312(1)(a) because it was uncontested that Carlo Frua DeAngeli lawfully owned the painting and it rightfully passed to Anna Vichey by succession.¹⁸ There were no New York cases dealing with a situation such as this, but there was case law dealing with defect of title allowing recovery by a buyer by showing “the mere casting of a substantial shadow over his title, regardless of the ultimate outcome.”¹⁹
- Mme. Jeanneret had the burden to prove that the Painting was over fifty years old.²⁰ Mme. Jeanneret presented evidence to support this but it was, ultimately, not sufficient to confirm a verdict.²¹ The Court ordered a new trial to discover a more definitive date of the painting and to remedy faulty jury instructions.²²
- The Court further analyzed the outcomes of the case using the 1913 regulations and the 1939 laws if the Painting was less than 50 years old with regards to § 2-312(1)(b). If the 1913

¹³ *Vichey*, 693 F.2d at 261.

¹⁴ *Ibid.*

¹⁵ During the trial court proceedings, this issue had not been yet resolved and different conflicting opinions were presented by different lawyers and professors. *Jeanneret*, 693 F.2d at 263.

¹⁶ Vichey wished to instruct the jury that he was “unable to determine what the Italian law is” because of its ambiguity. *Jeanneret*, 693 F.2d at 265.

¹⁷ (1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that: (a) the title conveyed shall be good, and its transfer rightful; and (b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

¹⁸ *Vichey*, 693 F.2d at 266.

¹⁹ See *American Container Corp. v. Hanley Trucking Corp.*, 111 N.J. Super. 322, 331, 268 A.2d 313, 318 (Ch. 1970); *Ricklefs v. Clemens*, 216 Kan. 128, 133, 531 P.2d 94, 100 (1975); and *Cailin Aviation Co. v. Equilease Corp.*, 626 P.2d 857, 860 (Okla, 1981).

²⁰ To be over fifty years old, Matisse must have painted the Painting before the spring or early summer of 1920. *Vichey*, 693 F.2d at 269.

²¹ Mme. Jeanneret submitted many items into evidence to prove the age of the painting: the receipt she gave Luben Vichey for the painting stated 1924; a handwritten file card with the date of 1923; an exhibition catalogue with a 1924 date. The only evidence presented that had a date as early as 1920 was an art appraiser’s statement that the painting could have been painted in the “early 1920s, 1919, 1922, something like that.”

²² *Vichey*, 693 F.2d at 269.

regulations were still valid for paintings of this age, violating these regulations would not be enough to create a “heavy cloud” and breach the warranty. The Court also rejected Jeanneret’s claim that the uncertainty of the painting’s age would fall into a violation of the 1939 law and be treated as a defect in title.²³

IV. Adopted Solution

- Mme. Jeanneret initially asked the Court for financial compensation alleging breach of contract, breach of express and implied warranties of title, and fraud, because she did not receive export documents from the Italian government. During the trial court, the jury returned a verdict in the plaintiff’s favor for the breach of implied warranty and contract, but the defendants appealed. The United States Court of Appeals for the Second Circuit reversed the Trial Court’s judgment and remanded for a new trial. The remand was based on the Trial Court erring in instructing the jury of the importance of the painting’s age. For if the painting was over 50 years old, it would be subject to Italian export laws.²⁴ Before the parties began a new trial, Mme. Jeanneret voluntarily withdrew her federal action after she supposedly received an Italian judgment that allowed her to legally sell the painting.²⁵ It is unclear what Italy did to allow Mme. Jeanneret to legally sell the painting.

V. Comment

- It is interesting that, according to the trial court, the illegal export claim made by Italy did not need to be valid in order to establish a defect in title – there only had to be an assertion that it was illegally exported.²⁶ By focusing on this issue, the Court did not analyze the issue of whether any violation of Italy’s exportation laws could be considered a “substantial cloud of title.”²⁷ It was sufficient to just make the claim and then a court of law would later analyze the validity and significance of the claim and whether judgment was necessary. The Court also did not analyze whether an exporting nation can impair marketability of an illegally exported work of art or cloud its title, which is the large underlying issue of this case.²⁸
- The mere fact that the United States Courts would support Italian legal claims would significantly affect the United States art market; it would limit the amount of art that comes into the United States and it would impede the sale of works imported from other States.²⁹

²³ Ibid. at 268.

²⁴ *Vichey*, 693 F.2d at 259.

²⁵ Ralph E. Lerner, and Judith Bresler, *Art law: the guide for collectors, investors, dealers, and artists*, 2nd ed (New York, N.Y.: Practising Law Institute, 1998), 575.

²⁶ Ibid.

²⁷ Mary McKenna, “Problematic Provenance: Toward a Coherent United States Policy on the International Trade in Cultural Property,” *Journal of International Law* 12: 100.

²⁸ William Pearlstein, “Jeanneret v. Vichey: Sales of Illegally Exported Art under the Uniform Commercial Code,” *Northwestern Journal of International Law & Business* 6: 279.

²⁹ McKenna, “Problematic Provenance,” 100.

This case was tried in the United States under New York law, instead of under Swiss or Italian Law despite many of the major events occurred in these countries. Initially, both parties assumed that New York law governed the defendant's liability, so the Courts followed that initial assumption with regards to choice of law.³⁰ The negotiations between the Vicheys and Mme. Jeanneret occurred in New York but the payment and delivery of the Painting was in Switzerland. Dealers may have a disincentive to participate in international transactions and imports in the United States without proper reassurance of their legal protection within the jurisdiction of such claims.³¹

- If Mme. Vichey brought the painting back to Italy, Italy would have had the right to seize the painting when it entered Italian territory since it was illegally exported.

VI. Sources

a. Bibliography

- Lerner, Ralph E., and Judith Bresler. *Art law: the guide for collectors, investors, dealers, and artists*. 2nd ed. New York, N.Y.: Practising Law Institute, 1998.
- McKenna, Mary. "Problematic Provenance: Toward a Coherent United States Policy on the International Trade in Cultural Property." *Journal of International Law* 12: 83-124.
- Merryman, John Henry, and Albert E. Elsen. *Law, ethics, and the visual arts*. 2nd ed. Philadelphia: University of Pennsylvania Press, 1987.
- Pearlstein, William. "Jeanneret v. Vichey: Sales of Illegally Exported Art under the Uniform Commercial Code." *Northwestern Journal of International Law & Business* 6: 275-319.

b. Court decisions

- *Jeanneret v. Vichey*, 541 F. Supp. 80 (S.D.N.Y. 1982).
- *Jeanneret v. Vichey*, 541 F. Supp 259 (2nd Cir. 1982).

c. Legislation

- Uniform Commercial Code § 2-312(1)(a)
- Uniform Commercial Code § 2-312(1)(b)
- Italian law No. 364 of June 20, 1909, Approved by Royal Decree No. 363 of January 30, 1913 on the exportation of works of art.
- Italian law No. 1089 of June 1, 1939 on the exportation of works of art

³⁰ *Vichey*, 693 F.2d at 266.

³¹ McKenna, "Problematic Provenance," 100.