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Case Picasso's "Nature morte au tableau" - Schlesinger and Phillips heirs

Ernst Schlesinger - Duncan C. Phillips - Nazi-looted art/spoliations nazies - Artwork/oeuvre d'art - Negotiation/negotiation - Mediation/médiation - Settlement agreement/accord transactionnel - Due diligence - Legacy/legs - Ownership/propriété - Sale/vente

In 1925, Ernst Schlesinger bequeathed to Johanna Meyer-Udewald the usufruct of a painting by Picasso ("Nature morte au tableau"). Johanna Meyer-Udewald, of Jewish faith, was taken prisoner by the Nazis and the painting passed through various hands before being acquired by Duncan C. Phillips, who did not know its history. Fifty years later, with the help of the Art Loss Register, the heirs of Ernst Schlesinger and Duncan C. Phillips signed an agreement on the ownership of the painting, the terms of which were kept secret. Following this agreement, the painting was sold by Christie's in 2006.

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

- In **1906**, Pablo Picasso painted *Nature morte au tableau* in Gósol, a Spanish village.¹
- In **1911**, the painting belonged to the Kahnweiler gallery.
- In **1913**, the German collector Franz Kluxen bought the painting.
- In **1925**, the painting was in the **collection of Ernst Schlesinger**.
- In **1925**, Ernst Schlesinger died and **bequeathed the usufruct of** the painting to one of his friends, Dr. **Johanna Meyer-Udewald, on condition** that upon her death the work would be returned to Ernst Schlesinger's wife, Käthe Schlesinger.
- In **1939**, Johanna Meyer-Udewald, of Jewish faith, left Germany and fled to the Netherlands to escape the Nazis. She lent the painting to the Stedelijk Museum in Amsterdam for the exhibition entitled *Parijsche Schilders*.
- In **1940**, **Johanna Meyer-Udewald** emigrated to Belgium and moved from one protected place to another until she was **taken prisoner by the Nazis**.
- In **1942**, the *Nature morte au tableau* was in the hands of Joseph Albert Dederen, a Brussels' resident.
- On **20 September 1943**, Johanna Meyer-Udewald was deported to **Auschwitz** where she died.²
- In **1950**, the painting was in the possession of **Dr. Georges Robyn**.
- In **1950**, the painting was bought by the Bolag Gallery in Zurich, which sold it to the Galerie D. Benador Gallery in Geneva.
- In **1952**, **Duncan C. Phillips** acquired the painting in Geneva and gave it to his wife Marjorie Acker Phillips.
- In **1985**, **upon the** death of Marjorie Acker Phillips, her grandson **Duncan V. Phillips** inherited the painting.
- In **2002**, the heirs of Johanna Meyer-Udewald contacted the **Art Loss Register (ALR)** to have the painting registered in their database. The ALR located the work in the collection of **Duncan V. Phillips in Chicago**. The ALR also found **Ernst Schlesinger's will** and contacted his heirs, the true legatees of the painting.³
- Between **2002** and **2006**, the **ALR** conducted an investigation to trace the history of the painting and **acted as a mediator** between the **heirs of Ernst Schlesinger and Duncan V. Phillips**.⁴ The two parties signed a **confidential agreement** regarding the ownership of the painting.
- In **2006**, the painting was sold by Christie's for \$US 800,000 in New York.⁵

¹ Most of the information in this section comes from Christie's website.

<http://www.christies.com/lotfinder/LotDetailsPrintable.aspx?intObjectID=4807501> (19.02.2014). Information from other sources is mentioned in specific footnotes.

² JACKSON, N. 110.

³ JACKSON, N. 95-102.

⁴ JACKSON, N. 95-102.

⁵ Christie's web page <http://www.christies.com/lotfinder/lot/pablo-picasso-nature-morte-au-tableau-4807501-details.aspx?intObjectID=4807501> (19.02.2014).

II. Dispute Resolution Process

Negotiation - Mediation (ALR) - Settlement Agreement

- In 2002, Johanna Meyer-Udewald's grandnephews contacted the ALR with the aim of having the Picasso *Nature morte au tableau* that had belonged to their great-aunt entered into their stolen property database. As proof of ownership, they brought a page from a catalogue of an exhibition held at the Stedelijk Museum in Amsterdam in 1939 which stated that the painting had been on loan from a private collector. The museum archives identified Johanna Meyer- Udewald as the lender.⁶
- The ALR quickly located the painting and then conducted an investigation over several years and in eleven different countries⁷ to discover how the painting came to be in the hands of Duncan V. Phillips. During this investigation, the ALR discovered Ernst Schlesinger's will, which revealed that the Meyer-Udewald heirs were not the heirs to the painting, their great- aunt having received only the usufruct of the painting.⁸
- The ALR contacted the heirs of Ernst Schlesinger and negotiated a settlement on their behalf and with the legal representative of Duncan V. Phillips (Thomas Kline).⁹ They were able to reach an amicable agreement; both parties wished to avoid litigation and each recognized the validity of the other's ownership rights in the painting. The negotiation took place in the greatest secrecy to avoid any press intrusion. Sarah Jackson, who was head of research at the ALR, emphasizes the role of her department as mediator in the negotiation.¹⁰

III. Legal Issues

Legacy - Ownership - Due diligence

- The Picasso *Nature morte au tableau* case involves three families - the Schlesinger family, the Meyer-Udewald family, and the Phillips family - and pits them against each other in a successive ownership dispute.
- In 1925, Ernst Schlesinger, the owner of the painting in question, died. In his will, he bequeathed the life usufruct of the painting to his friend Johanna Meyer-Udewald, thus allowing her to enjoy the use (*usus*) of the painting without transferring ownership to him. On the death of Johanna Meyer-Udewald, the painting was to be returned to Käthe Schlesinger, who had inherited the painting since the death of her husband.
- The heirs of Johanna Meyer-Udewald, who had not been aware of the exact terms of the will, thought that she was the owner. It was they who initiated the case by asking the ALR to register the painting in its database. However, once the will was found, it became clear that they had no

⁶ JACKSON, N. 95-102.

⁷ DOVKANTS, N. 204.

⁸ JACKSON, N. 95-102.

⁹ BAER, P. 3.

¹⁰ Speech by Sarah Jackson, 30 January 2008, Amsterdam: “[...] *This is the moment to stress that we do not see ourselves as lawyers in the resolution of claims. The ALR does, however, play an increasingly active mediation role between claimants and current holders by promoting open and amicable dialogue and sharing views and documentation from each other in a transparent and fair manner, particularly necessary when in most cases, holder and claimant are innocent parties.* (http://www.lootedart.com/web_images/artwork/Sarah%20Jackson%20Speech%20for%20Sothebys%20Symposium%20in%20Amsterdam.doc) (10. 01.2014).

claim to the Picasso painting as their great aunt had never owned it.

- The second ownership dispute is between the Schlesinger heirs and Duncan V. Phillips. The former were victims of the Nazis who looted their property. The painting then went through several successive sales before arriving in the hands of Duncan C. Phillips who offered it to his wife. His grandson, Duncan V. Phillips, inherited it when his grandmother died.
- Duncan C. Phillips' good faith does not seem to have been questioned in this case:¹¹ he bought the painting from a Geneva gallery in 1952 without being able to suspect that it had been looted by the Nazis. Duncan V. Phillips, however, after learning that the painting in his possession had been looted by the Nazis, agreed to negotiate with the heirs of Ernst Schlesinger.

IV. Adopted Solution

Sale

- The Schlesinger and Phillips heirs negotiated a settlement over the ownership of the Picasso *Nature morte au tableau* with the help of the ALR, which acted as mediator.
- The details of the agreement are being kept secret. The only information that has leaked out is the announcement that Christie's has put the painting up for sale and that the parties have shared the proceeds of the auction,¹² which amounted to \$US 800,000.¹³
- Duncan C. Phillips made the following statement to the press: *"This painting has been very important to me and my family for more than five decades. Nevertheless, I would not want to benefit from it at the cost of another family's suffering. Our settlement benefits all participants. I will be delighted to see this painting have a clean start in a new home."*¹⁴

V. Comment

- The agreement between the Schlesinger heirs and the Phillips heirs and the sale of the painting has "cleaned" the painting of its dark history since it can no longer be considered a painting looted by the Nazis and can be purchased without risk by a collector or museum.
- Sarah Jackson praised the exemplary attitude of both parties that made it possible to reach such a conclusion and considers that this agreement constitutes an example that will be followed by many collectors who unknowingly possess works of art looted by the Nazis and who will have to face requests for restitution - "moral claims"¹⁵ in the words of one journalist - formulated by the Jewish families who were wronged.¹⁶

¹¹ Sarah Jackson, in her speech delivered on 20 January 2008 in Amsterdam, indeed explains that each side recognized the validity of the other's ownership rights ("[...] *each side accepted and respected from the outset the validity of the other side's ownership rights* [...]")

http://www.lootedart.com/web_images/artwork/Sarah%20Jackson%20Speech%20for%20Sothebys%20Symposium%20in%20Amsterdam.doc (10. 01.2014).

¹² Christie's web page

<http://www.christies.com/lotfinder/lot/pablo-picasso-nature-morte-au-tableau-4807501-details.aspx?intObjectID=4807501> (19.02.2014).

¹³ Christie's web page (<http://www.christies.com/lotfinder/lot/pablo-picasso-nature-morte-au-tableau-4807501-details.aspx?intObjectID=4807501>) (19.02.2014).

¹⁴ DOVKANTS, N. 235.

¹⁵ DOVKANTS, N. 5.

¹⁶ *"The Phillips family has set a benchmark for other private collectors who unwittingly own works of art tainted by the*

VI Sources

a. Media

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Holocaust in its readiness to recognize the claim of the heirs of Ernst Schlesinger. The willingness of all sides to agree so swiftly to a settlement on a picture of this importance and without recourse to litigation is encouraging". Christie's press release, *Picasso's still life with portrait* to be offered at Christie's New York, 27 October 2006 (<http://www.christies.com/presscenter/pdf/10272006/122459.pdf>) (04.01.2014).

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