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August 2014

## Case On the Shore of the Seine – United States of America v. Baltimore Museum of Art

*Marcia Fuqua – Baltimore Museum of Art – United States/États-Unis –  
Artwork/œuvre d'art – Post 1970 restitution claims/demandes de restitution  
post 1970 – Judicial claim/action en justice – Judicial decision/décision  
judiciaire – Ownership/propriété – Due diligence – Unconditional  
restitution/restitution sans condition*

*In 1951, Pierre-Auguste Renoir's painting "On the shore of the Seine" was  
stolen from the Baltimore Museum of Art in the United States. Over fifty years  
later, Marcia Fuqua bought this painting for US \$7 at a flea market and tried  
to auction it off after learning of its value. Because of substantial evidence  
surrounding the theft, the Baltimore Museum obtained a judgment whereby it  
was declared the rightful owner of the painting before it was stolen.  
Consequently, Fuqua was ordered to return the painting to the Baltimore  
Museum.*

*I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted  
Solution; V. Comment; VI. Sources.*

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## I. Chronology

### Post 1970 restitution claims

- **1926:** Herbert May purchased a 1879 unsigned Renoir oil painting “On the Shore of the Seine” (Original title, “Paysages bords de Seine” referred to as “Painting”) from an art dealer in Paris.
- **1935:** Herbert May’s wife, Saidie May, wrote a letter to the Baltimore Museum of Art (the “BMA”) expressing her interest in loaning it the Painting. She made her intentions clear that she was willing to indefinitely loan four Renoir paintings, the Painting at issue included, to the BMA if it would insure them.<sup>1</sup>
- **3 May 1937 and December 1940:** BMA took inventories of the four loaned Renoir paintings.<sup>2</sup>
- **29 May 1951:** Saidie May passed away, bequeathing the Painting to the BMA.<sup>3</sup>
- **November 1951:** The BMA displayed the Painting in an exhibition entitled “From Ingres to Gauguin”.
- **17 November 1951:** The BMA reported the Painting stolen from the exhibition to the City of Baltimore Police Department.<sup>4</sup>
- **4 February 1952:** BMA held an Executive Board meeting discussing the US \$2,500 in compensation they would receive from the insurance company for the stolen Painting.<sup>5</sup>
- **2008/2009:** Marcia Fuqua (Fuqua), the claimant, bought the Painting at a West Virginia flea market for US \$7.
- **September 2012:** Fuqua approached the Potomac Company to auction off the Painting once she learned of its value.
- **15 May 2013:** The United States filed an interpleader action requesting the Court to establish who was the rightful owner of the Painting.
- **3 December 2013:** The BMA filed a Motion for Partial Summary Judgment. It reasoned it had superior title from evidence that the Painting was stolen, but Fuqua argued BMA’s evidence was inadmissible and opposed the motion.
- **14 January 2014:** BMA’s Motion for Partial Summary Judgment was granted and Fuqua’s claim to property was dismissed. The Court ordered Fuqua to return the Painting to the BMA.

<sup>1</sup> Saidie May indicated the Painting was valued at US\$1,010. (Memorandum of Points and Authorities in Support of Baltimore Museum of Art’s Motion for Partial Summary Judgment).

<sup>2</sup> BMA gave the paintings, including the Painting at issue, alpha-numeric designations that were entered into the BMA’s catalog.

<sup>3</sup> Saidie May’s Last Will and Testament included text saying, “SECOND : I give and bequeath to the BALTIMORE MUSEUM OF ART, in Baltimore, Maryland, all my objects of art, including paintings, sculptures, textiles, furniture, antiquities, antique jewelry, rugs, tapestries, mirrors, lamps, and accessories and bibelots.” (Mem. In Supp. Of Mot. For Summ. J. Paragraph 20).

<sup>4</sup> The Police Report states that the Painting was stolen sometime between 6 p.m. on November 16, 1951 and 1 p.m. on November 17, 1951. (Mem. In Supp. Of Mot. For Summ. J ¶ 11).

<sup>5</sup> A March 4, 1952 BMA financial ledger shows Fireman’s Fund Insurance Company’s \$2,500 payment for the “theft of the ptg. By Renoir: ‘On the Sore of the Seine.’” (Mem. In Supp. Of Mot. For Summ. J).

- **30 March-20 July 2014:** The Painting displayed in a special exhibit at the BMA, “The Renoir Returns”, with other paintings donated by Saidie May.<sup>6</sup>

## II. Dispute Resolution Process

### Judicial claim – Judicial decision

- The BMA discovered the inventories of the Saidie May paintings days before the scheduled auction that confirmed the BMA’s ownership of the Painting until it was stolen in 1951. As a result, the BMA obtained a civil seizure warrant through the Federal Bureau of Investigation (FBI) and the Painting was taken into the FBI’s custody.
- The United States Attorney, representing Fuqua (the claimant), filed an interpleader action requesting the court to resolve whether the BMA or Fuqua rightfully owned the Painting. The claimant filed this action with the United States District Court in the Eastern District of Virginia, Alexandria Division (Court).<sup>7</sup> As a result, the dispute over the ownership of the Painting was resolved by the Court’s decision.

## III. Legal Issues

### Ownership – Due diligence

- The main issue explored in this litigation was who had proper title to the Painting. Virginia common law observes that “those in possession of property are rightly in possession,” meaning that “actual possession is, prima facie, evidence of a legal title in the possessor” until a better title is found.<sup>8</sup> This placed the burden of proof on BMA to present evidence that it had superior title of the Painting.
- In order to present evidence of superior title to the Court, the BMA produced a detinue action alleging the Painting’s theft and demanding the recovery of the Painting. To successfully plead a detinue action, the BMA needed to prove that it was “unlawfully divested” of the Painting at some point in time before Fuqua obtained it.<sup>9</sup> The Court needed to analyze whether the Painting was, in fact, stolen from the BMA, thus rebutting Fuqua’s ownership claims.
  - The BMA presented evidence that it lawfully possessed the Painting until it was stolen in November 1951. It acquired the Painting in May of 1951 when Saidie May died and left

<sup>6</sup> Baltimore Museum of Art. “Current Exhibitions.” Baltimore Museum of Art, accessed June 4, 2014.

<http://www.artbma.org/exhibitions/>

<sup>7</sup> Virginia law governed this claim; but even if another interested forum’s law applied (i.e. Maryland’s where the BMA is located), the result would be the same because a thief cannot possess or pass title in any United States jurisdiction. (*United States of America v. Baltimore Museum of Art*, 1:13CV347 LMB/TRJ, 2014 WL 128132 (E.D.Va. Jan. 14, 2014), footnote 1.

<sup>8</sup> *Willcox v. Stroup*, 467 F.3d 409, 412 (4th Cir. 2006); see also *State of Maine v. Adams*, 277 Va. 230, 672 S.E.2d 862, 867 (2009).

<sup>9</sup> See *Vicars v. Atl. Disc. Co.*, 205 Va. 924, 140 S.E. 667, 670 (1965); see also *York v. Jones*, 717 F.Supp 421, 427 (E.D.Va. 1989).

- it to the BMA in her will. The BMA acted as if it was the owner of the painting by cataloging, storing and displaying it on two occasions.<sup>10</sup>
- The BMA reported the theft of the painting the day it was discovered as missing. The theft is further supported by evidence presented by the BMA such as catalog notes listing the Painting as stolen, board meeting minutes and financial ledgers with writings that the BMA received insurance money, and the actual police report filed with the City of Baltimore Police Department. These are pieces of evidence proving not only that the theft occurred, but also that the BMA took the steps needed to document its occurrence. The substantial amount of evidence the BMA presented is sufficient to show that it was in lawful possession of the painting until it was stolen.
  - The BMA faced a great challenge in establishing that the Painting was stolen in 1951 because none of the witnesses who discovered the Painting was missing were still alive (if anyone else knew about the theft, it would fall under the “hearsay” rule and would not be applicable as evidence). Luckily the museum used “the business records” exception: one of the hearsay rule’s circumstantial exceptions. A document that was created by someone whose job it was to make such a record during the course of business can be admitted as evidence.<sup>11</sup> This is why the BMA was able to submit both the internal museum documents as well as the police report.
  - Despite the quantum of evidence proving BMA had title to the Painting, Fuqua argued that she had superior title because she was a bona fide purchaser. In particular she claimed that she did not know the Painting was an authentic Renoir oil painting when she bought it at the flea market. She argued that she was an “innocent owner” and had no reason to believe it was a real Renoir; the painting was not signed, there were no other identifying features besides the frame having text saying “Renoir,” and she bought it at a flea market for seven dollars. Fuqua’s argument failed because even a bona fide purchaser cannot acquire title to stolen goods, according to United States Law.<sup>12</sup> Therefore, even if the purchaser properly does due diligence, it would not make a difference in possession of title because the good was still stolen.

#### IV. Adopted Solution

##### Unconditional Restitution

- The Court ordered Fuqua to return the Painting to the BMA, who was found to have superior title.

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<sup>10</sup> This is supported by affidavits and exhibits (Mem. In Supp. Of Mot. For Summ. J.)

<sup>11</sup> O'Donnell, Nicholas. “Flea Market Renoir Battle Focuses on the Hearsay Rule.” *The Art Law Report*, January 3, 2014, accessed June 6, 2014. <http://www.artlawreport.com/2014/01/03/flea-market-renoir-battle-focuses-on-the-hearsay-rule/>

<sup>12</sup> A good faith purchaser cannot gain title to stolen goods. *Toyota Motor Credit Corp. v. C.L. Hyman Auto Wholesale, Inc.*, 256 Va. 243, 506 S.E.2d 14, 16 (1998).

## V. Comment

- This dispute shows the importance and imperativeness of using due diligence when purchasing art and the ever growing importance of the purchaser to obtain a clear provenance of the work's history. Doing so will decrease controversies such as this one especially when purchasers pay more money for a work of art from an appropriate vendor. This is, indeed, an unusual case because the majority of the population will not find a priceless masterpiece at a flea market, but rather purchase them from dealers or auction houses. Documented evidence of an artwork's provenance is essential to ensure one has proper and superior title of their purchase as a safeguard against controversies of title.
- The Court's analysis of the hearsay rule shows that record keeping is imperative in the field of law for use as evidence in cases such as this. If the BMA had not kept records after the theft (i.e. the board minutes and financial records), or filed a police report, it would have had a much more difficult time proving the painting was stolen.
- Many civil law European countries allow transfer of title from a thief to a good faith purchaser. Each country has different time and circumstantial requirements for a good faith purchaser to acquire proper title.<sup>13</sup> This becomes especially tricky when an object of art is stolen in one country and purchased in another because they may have drastically different rules regarding title.<sup>14</sup> This case may have turned out differently if it took place in different European countries. For example, if Fuqua bought the painting in Italy where a bona fide purchaser can immediately attain title from a thief, she would have superior title over the museum.<sup>15</sup>
- Now that "On the Shore of the Seine" has been returned to the BMA, the BMA created a special exhibit to commemorate its return. Along with other artwork from Saidie May's collection, the BMA is using this Painting's journey to promote art to the masses. Whether it is to celebrate the return of the stolen painting or increase its visitors, the BMA has truly promoted the return and voyage of "On the Shore of the Seine".<sup>16</sup>

## VI. Sources

### a. Bibliography

- Gerstenblith, Patty. *Art, Cultural Heritage, and the Law*. 3rd edition. Durham, North Carolina: Carolina Academic Press, 2012.

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<sup>13</sup> Gerstenblith, Patty. *Art, Cultural Heritage, and the Law*. 3rd edition. Durham, North Carolina: Carolina Academic Press (2012), 486.

<sup>14</sup> See *Winkworth v. Christie, Manson & Woods Ltd* [1980], 1 Ch 496, [1980] 1 All ER 1121, [1980] 2 WLR 7.

<sup>15</sup> Gerstenblith at 486.

<sup>16</sup> Shapira, Ian. "'Flea market' Renoir returns to the Baltimore Museum of Art six decades after its theft." *Washington Post*, March 27, 2014, accessed June 3, 2014. [http://www.washingtonpost.com/local/flea-market-renoir-returns-to-the-baltimore-museum-of-art-six-decades-after-its-theft/2014/03/26/a79df14e-b517-11e3-b899-20667de76985\\_story.html](http://www.washingtonpost.com/local/flea-market-renoir-returns-to-the-baltimore-museum-of-art-six-decades-after-its-theft/2014/03/26/a79df14e-b517-11e3-b899-20667de76985_story.html)

## b. Court decisions

- *United States of America v. Baltimore Museum of Art*, 1:13CV347 LMB/TRJ, 2014 WL 128132 (E.D.Va. Jan. 14, 2014).

## c. Legislation

- Interpleader - 28 U.S.C. § 1335 (2012)
- Interpleader - Fed.R.Civ.P 22.
- Diversity of citizenship; amount in controversy; costs - 28 U.S.C. § 1332 (2012).
- Summary Judgment - Fed.R.Civ.P 56(c)(2).
- Exceptions to the Rule Against Hearsay - Fed.R.Evid 803.
- Definitions of Exclusions from Hearsay - Fed.R.Evid 801(c)(2).

## d. Documents

- Memorandum of Points and Authorities in Support of Baltimore Museum of Art's Motion for Partial Summary Judgment, filed Clerk's office of the County of Fairfax in the Commonwealth of Virginia on December 3, 2013.
- Reply to Marcia "Martha" Fuqua's Opposition to the Baltimore Museum of Art's Motion for Partial Summary Judgment, Clerk's office of the County of Fairfax in the Commonwealth of Virginia on December 31, 2013.
- Attachment C – Letter from Marcia Fuqua to the Federal Bureau of Investigation Re: Ms. Marcia "Martha" Fuqua's Claim of Ownership and Contest to Forfeiture of Property, filed with the Clerk's office of the County of Fairfax in the Commonwealth of Virginia on December 19, 2012.

## e. Media

- Shapira, Ian. "Flea market' Renoir returns to the Baltimore Museum of Art six decades after its theft." *Washington Post*, March 27, 2014. Accessed June 3, 2014, [http://www.washingtonpost.com/local/flea-market-renoir-returns-to-the-baltimore-museum-of-art-six-decades-after-its-theft/2014/03/26/a79df14e-b517-11e3-b899-20667de76985\\_story.html](http://www.washingtonpost.com/local/flea-market-renoir-returns-to-the-baltimore-museum-of-art-six-decades-after-its-theft/2014/03/26/a79df14e-b517-11e3-b899-20667de76985_story.html).
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- Baltimore Museum of Art. "Current Exhibitions." Baltimore Museum of Art. Accessed June 4, 2014, <http://www.artbma.org/exhibitions/>.