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Case The Windmill – Rüdénberg Heirs v. City of Hannover

Max Rüdénberg – City of Hannover – Artwork/oeuvre d'art – Nazi looted art/spoliations nazies – Institutional facilitator/facilitateur institutionnel – Mediation/médiation – Negotiation/négociation – Settlement agreement/accord transactionnel – Ownership/propriété – Procedural issue/limites procedurals – Unconditional restitution/restitution sans condition

Max Rüdénberg, a Jewish salesman and art collector, acquired several modern art pieces beginning in the late 1910s. Due to the discriminatory Nazi politics, the Rüdénberg family was forced to sell the art collection, including the painting “The Windmill” by Karl Schmidt-Rottluff, together with other properties, before being deported. The painting “The Windmill” was returned to the Rüdénberg heirs in January 2017.

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

- **Since 1916:** Max Rüdénberg acquired several works of art in exhibitions organized by the Kestner Society (*Kestner-Gesellschaft*), an association of collectors and patrons of contemporary art based in Hannover, of which he was one of the founding members.¹
- **1922:** The Kestner Society purchased 13 watercolours by the painter Karl Schmidt-Rottluff. It is strongly assumed that Max Rüdénberg acquired the work “Marsh landscape with red windmill” (hereinafter “The Windmill”) in this context.²
- **1938/1939:** Due to the Nazi discriminatory legislation, Max Rüdénberg and his wife Margarethe were forced to sell their collection to be able to make the payments according to the so called “Jewish Property Tax” (*Judenvermögensabgabe*). It is assumed that Max Rüdénberg sold “The Windmill” on this occasion.
- **Summer 1939:** Margrit and Bernhard Sprengel acquired “The Windmill” from the art dealer Erich Pfeiffer in Hannover.
- **Autumn 1942:** Max and Margarethe Rüdénberg were murdered in Theresienstadt concentration camp.³ Their children, Ernst and Eva Rüdénberg, had fled to South Africa and Great Britain between 1936 and 1939.
- **July 1946:** Ernst and Eva Rüdénberg began searching the collection.
- **1952:** “The Windmill” was presented to the public by the Sprengel family.
- **1969:** Bernhard Sprengel donated “The Windmill” to the City of Hannover.⁴ Later it became part of the Sprengel Museum’s collection.
- **April 2013:** The lawyer of the Rüdénberg’s heirs demanded the restitution of “The Windmill” to the City of Hannover.
- **July 2015:** The claimants and the City of Hannover agreed to submit the case to the Advisory Commission on the Return of Cultural Property Seized as a result of Nazi Persecution, especially from Jewish Possession⁵ (hereinafter “Advisory Commission”).
- **January 2017:** The Advisory Commission recommended the restitution of the watercolour to the Rüdénberg heirs.⁶

¹ The collection of Max Rüdénberg comprised Modern art pieces and East Asian art. See Hickley, “Nazi-Loot Panel Asks Sprengel Museum to Return Schmidt-Rottluff Work to Heirs”.

² On the main facts see Voigt, *Kunsthändler und Sammler der Moderne im Nationalsozialismus*, p. 262 ff.

³ Schacht, “Hannover verliert Klassiker des Expressionismus”.

⁴ Landeshauptstadt Hannover, *Protokoll – 4. Sitzung des Kulturausschusses am Freitag 10. März 2017*, pp. 10-11.

⁵ *Beratende Kommission im Zusammenhang mit der Rückgabe NS-verfolgungsbedingt entzogener Kulturguts, insbesondere aus jüdischem Besitz*, also known as the “Looted Art Commission” or “Limbach-Commission”.

⁶ Landeshauptstadt Hannover, *Pressemeldung vom 12.01.2017*.

II. Dispute Resolution Process

Institutional facilitator – Mediation – Negotiation – Settlement agreement

- Direct negotiations over the restitution of “The Windmill” between the Rüdénberg heirs and the City of Hannover were unsuccessful in 2013. The parties disagreed on the provenance of the Schmidt-Rottluff watercolour as it could not be proven without doubt that it formed part of the Rüdénberg collection.
- The parties agreed on a different manner to resolve the dispute in 2015, when they eventually submitted it to the Advisory Commission. Established in 2003 by the German Government, the Advisory Commission “can be called upon to mediate in cases of dispute involving the restitution of cultural assets which were confiscated during the Third Reich, especially from persecuted Jewish citizens and are now held by museums, libraries, archives or other public institutions in the Federal Republic of Germany. The Commission can mediate between the institutions which manage the collections and the former owners or heirs of the cultural goods, if desired by both sides. It can also offer recommendations for settling differences of opinion”.⁷

III. Legal Issues

Ownership – Procedural issue

- The Rüdénberg heirs supported their restitution claim before the Advisory Commission with an inventory document of the Sprengel collection and the documentation in the catalogue edited by Gunther Thiem. The former document reads: “Purchased at Pfeiffer, Hannover 1939, previous owner: unknown”. However, it appears that this inventory document was modified – presumably by Margrit Sprengel in the 1960s – as stating that the previous possessor was the “Family Max Rüdénberg, Hannover-Limmer”. The document in the catalogue of Gunther Thiem, at that time director of the Stuttgart State Gallery Print Cabinet and expert of Karl Schmidt-Rottluff, stated about the provenance of “The Windmill”: “Max Rüdénberg, Hannover-Limmer (probably from a collection of the Kestner Society), Bernhard Sprengel, Hannover”.⁸ Consequently, it could be presumed that “The Windmill” was sold, together with other artworks, due to the discriminatory Nazi legislation. The City of Hannover argued against this “prima-facie-evidence”.⁹
- The doctrine of “prima-facie-evidence” was developed by the Supreme Restitution Court to establish a relation of causality between the loss of (cultural) assets and Nazi legislation.¹⁰

⁷ See at : <https://www.kulturgutverluste.de/Webs/EN/AdvisoryCommission/Index.html>.

⁸ Landeshauptstadt Hannover, *Informationsdrucksache Nr. 1652/2015*, p. 7; see also Förster, “Kriminalistischer Dienst an der Kunst”.

⁹ *Beratende Kommission, Empfehlung*, p. 4.

¹⁰ Anton, *Rechtshandbuch Kulturgüterschutz*, vol. II, p. 439 ff.; see also *Handreichung zur Gemeinsamen Erklärung vom November 2007*, pp. 93-94.

Prima-facie-evidence required: (a) that the context of loss is proven; and (b) that historical knowledge exists, which gives information on typical procedures in such cases. In the case of “The Windmill”, neither the acquisition of the painting for the Rüdberg collection nor its sale in the 1930s due to Nazi discrimination could be proven. The Advisory Commission decided in favour of the heirs of Nazi victims only due to the higher probability of Max Rüdberg being the original owner.¹¹

IV. Adopted Solution

Unconditional restitution

- With a binding recommendation of 10 January 2017, the Advisory Commission recommended the unconditional restitution of “The Windmill” to the Rüdberg heirs.
- The City Council of Hannover complied with the recommendation by returning the Schmidt-Rottluff watercolour on 27 June 2017.¹²

V. Comment

- The main feature of the present case is that it could be demonstrated neither that “The Windmill” had been in the Rüdberg’s collection nor that it was sold under duress by the Rüdberg family around 1938.
- The City of Hannover contended that a presumption in favour of Max Rüdberg (“prima-facie-evidence”) as the original owner could neither result from the Principles adopted on the occasion of the Washington Conference on Nazi-Confiscated Art,¹³ nor the “Law No. 59” concerning the restitution of Nazi-seized assets,¹⁴ nor the respective German recommendation.¹⁵
- Considering possibilities of reforming the Advisory Commission, Matthias Weller, then Professor at the EBS University for Business and Law of Wiesbaden, affirmed that it would be necessary a “Restatement of Restitution Principles” in order to guarantee more homogeneous argumentation and consequently coherent and fair solutions.¹⁶ This case surely supports this claim.

¹¹ See Voigt, *Kunsthändler und Sammler der Moderne im Nationalsozialismus*, p. 262-285; Voigt, “Provenance Research at the Sprengel Museum Hannover”, pp. 104-107; and Voigt, “Das Schicksal der Sammlung Max Rüdberg in Hannover”, pp. 83-90.

¹² Förster, “Ein Indizien-Prozess”.

¹³ On the initiative of the United States, the conference took place in December 1998 in order to find a general solution to the problem of the cultural assets looted by the Nazis.

¹⁴ The “Law No. 59” (VOBl. für die Britische Zone 1949 Nr. 26, p. 152 ff.) was passed by the military government for the British occupation zone, which included the City of Hannover. This law regulated the restitution of assets lost in the period 30 January 1933 - 8 May 1945 due to discrimination based on race, religion, nationality or political beliefs.

¹⁵ Landeshauptstadt Hannover, *Informationsdrucksache Nr. 1652/2015*, p. 7.

¹⁶ Weller, *Gedanken zur Reform der Limbach-Kommission*, p. 43.

- At present “The Windmill” is not accessible to the public, but it is hoped, also by the City of Hannover, that this situation will change in the near future.

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