



Lauren Bursey
Justine Ferland
Marc-André Renold

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Case Young Couple in a Landscape – Feldmann Heirs and British Museum

Artwork/Oeuvre d’art – Arthur Feldmann – British Museum – Nazi-looted art/spoliations nazies – Negotiation/négociation – Settlement agreement/accord transactionnel – Deaccession – Due diligence – Ownership/propriété – Ex gratia payment/versement à titre gracieux

Czech-Jewish Arthur Feldmann’s collection of drawings, including “Young Couple in a Landscape”, was illegally seized and liquidated by the Gestapo in 1939. The painting was later acquired by the collector Edmund Schilling in the 1960s, who donated it to the British Museum in 1997. Uri Peled, Feldmann’s grandson, made a claim to the drawing a few years later. Since Peled wanted the drawing to remain in the British Museum in honour of his grandfather, the Museum gave Peled an ex gratia payment for the £6,000 market value.

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ART-LAW CENTRE – UNIVERSITY OF GENEVA

PLATFORM ARTHEMIS

art-adr@unige.ch - <http://unige.ch/art-adr>

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I. Chronology

Nazi-Looted Art

- **1939:** **Arthur Feldmann's** collection, including a medieval German **drawing** in the style of Georg Pencz titled *Young Couple in a Landscape*, was **seized by the Gestapo** in Brno, Czech Republic, during Nazi occupation.
- **1946:** The drawing was **sold** at a sale at Sotheby's along with other drawings from the Feldmann collection.
- **1960s:** The collector **Edmund Schilling acquired** the drawing.
- **1997:** The drawing was **donated** to the **British Museum** by Rosi Schilling, the late Edmund Schilling's wife, as part of a small album of 75 drawings compiled for her by her husband.
- **2013:** Following the restitution claim of **Uri Peled**, Feldmann's grandson regarding the drawing *Young Couple in a Landscape*, the **British Museum** decided to **retain** the work and to award Peled an *ex gratia* payment.¹

II. Dispute Resolution Process

Negotiation – Settlement Agreement

- Negotiations were conducted directly between Uri Peled and the British Museum.² This was possible because the many questions at stake had already been clarified by a settlement between the same parties concerning four other drawings looted by the Nazis from the Feldmann collection.³ This is the reason why the parties did not resort to the Spoliation Advisory Panel,⁴ which instead was determinant to the resolution of that earlier case.

III. Legal Issues

Deaccession – Due diligence – Ownership

- In 2002, when Uri Peled filed the claim for the four drawings looted from the Feldmann collection, the British Museum was barred from deaccessioning any object belonging to its collections by the then-existing legislation, namely Section 3 of the *British Museum Act*

¹ "Spoliation Case Settled," *The British Museum Press Releases*, accessed June 9, 2015, https://www.britishmuseum.org/about_us/news_and_press/press_releases/2013/spoliation_case_settled.aspx.

² Martin Bailey, "British Museum Pays Jewish Collector's Heir for Nazi-Looted Drawing," *The Art Newspaper*, October 9, 2013, accessed June 9, 2015, <http://www.theartnewspaper.com/articles/British-Museum-pays-Jewish-collectors-heir-for-Nazilooted-drawing/30661>.

³ On this case see Anne Laure Bandle, Raphael Contel, Marc-André Renold, "Case 4 Old Master Drawings – Feldmann Heirs and the British Museum," Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

⁴ The Spoliation Advisory Panel was set up in 2000 by the British Government following its commitment to the Principles on Nazi-Confiscated Art adopted at the Washington Conference on Holocaust-Era Assets of 1998. The mandate of the Panel is to consider claims from anyone who lost possession of a cultural object during the Nazi era, where such object is now in the possession of a UK national collection or a UK museum or gallery established for the public benefit (Art. 3 of the Panel Terms of Reference).

(1963). This provided that the Museum could only deaccession an artwork if there was a duplicate, if the object was not made prior to 1850, or if the object was unfit to be retained in the Museum's collections and could be disposed of without detriment to the interests of students. In 2005, the High Court of London upheld the Act's prohibition on returning works of art.⁵

- However, in 2009, the UK passed the *Holocaust (Return of Cultural Objects) Act*. This Act allows 17 cultural institutions, including the British Museum, to return Nazi-looted art if this action is recommended by the Panel and approved by the Secretary of State.⁶ In the case of the drawing *Young Couple in a Landscape*, it can be argued that this Act could possibly have allowed the British Museum to deaccession and return it to Peled. However, he preferred to have the drawing remain in the British Museum in honour of his grandfather, together with the other four drawings, and be acknowledged of his ownership by an *ex gratia* payment.
- Following Peled's claim, the British Museum undertook extensive research and due diligence to determine that the drawing had once belonged in the Feldmann collection.⁷

IV. Adopted Solution

Ex gratia payment

- An *ex gratia* payment was made to Arthur Feldmann's heirs representing the market value of the drawing *Young Couple in a Landscape*, about £6,000. The drawing remains in the British Museum in honour of Uri Peled's grandfather, along with the other four drawings for which previous payment had been made.
- The solution of an *ex gratia* payment was one to which both parties could easily turn, once the research permitted to ascertain that the drawing had been part of the Feldmann collection and in light of both parties' wish that the drawing remains in the British Museum.⁸

V. Comment

- This is an example of how Nazi-looted art cases can be settled without the actual restitution of stolen objects. In many cases it is possible to give the heirs some form of recognition of their ownership, which many heirs are quite happy with, because they see an injustice righted while allowing a museum or collection to look after the work and allow the greater public to enjoy it.⁹
- Jonathan Williams, deputy director of the British Museum, commented that "this drawing, and others from the original Feldmann collection, will serve as a permanent memorial both to

⁵ Attorney-General v. The Trustees of the British Museum, Chancery Division Sir Andrew Morritt VC, [2005] EWHC 1089 (Ch), (2005) Ch 397.

⁶ See also "UK Museums Can Return Looted Art," *BBC*, November 13, 2009, accessed June 11, 2015, http://news.bbc.co.uk/2/hi/entertainment/arts_and_culture/8358902.stm.

⁷ "Spoliation Case Settled." *The British Museum Press Releases*.

⁸ "Spoliation Case Settled." *The British Museum Press Releases*.

⁹ "Spoliation Case Settled." *The British Museum Press Releases*.

the outstanding importance of Dr. Felmann's collection, and to the terrible circumstances of its spoliation and dispersal".¹⁰

- Issues of a museum being in possession of stolen art can be best prevented by proper and extensive due diligence prior to the museum accepting any work of art. Museums are asked to be especially suspect of any work of art that changed hands during the period of Nazi power, or 1933-1945.

VI. Sources

a. Court decisions

- *Attorney-General v. The Trustees of the British Museum*, Chancery Division Sir Andrew Morritt VC, [2005] EWHC 1089 (Ch), (2005) Ch 397.

b. Legislation

- British Museum Act 1963.
- Holocaust (Return of Cultural Objects) Act 2009.

c. Documents

- Anne Laure Bandle, Raphael Contel, Marc-André Renold, "Case 4 Old Master Drawings – Feldmann Heirs and the British Museum," Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

d. Media

- "Spoliation Case Settled," The British Museum Press Releases, accessed June 9, 2015, https://www.britishmuseum.org/about_us/news_and_press/press_releases/2013/spoliation_case_settled.aspx.
- Buganim, Eitan. "British Museum Compensates Collector's Heirs for Art Looted by Nazis: Family of Arthur Feldmann Proved Gestapo had Seized Work of Art in Czechoslovakia in 1939." *Haaretz*, October 17, 2013. Accessed June 11, 2015. <http://www.haaretz.com/jewish-world/jewish-world-news/.premium-1.552869>.
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- "UK Museums Can Return Looted Art." *BBC*, November 13, 2009. Accessed June 11, 2015. http://news.bbc.co.uk/2/hi/entertainment/arts_and_culture/8358902.stm.

¹⁰ Eitan Buganim, "British Museum Compensates Collector's Heirs for Art Looted by Nazis: Family of Arthur Feldmann Proved Gestapo had Seized Work of Art in Czechoslovakia in 1939," *Haaretz*, October 17, 2013, accessed June 11, 2015, <http://www.haaretz.com/jewish-world/jewish-world-news/.premium-1.552869>.