



October 16, 2012, 4:07 pm

## After 42 Years, a Lichtenstein Goes Home

By *PATRICIA COHEN*

In 2006 the Roy Lichtenstein Foundation put an image of a lost painting by Lichtenstein, “Electric Cord,” on its holiday greeting card. The foundation used the occasion to ask for help in tracking down the work, and the fruit of that effort was on display on Tuesday when Preet Bharara, United States Attorney in Manhattan, finally returned “Electric Cord,” gone for 42 years, to its owner.

The art dealer Leo Castelli had bought the painting, a 1961 work that was one of Lichtenstein’s first efforts at Pop Art, for \$750 and sent it out in 1970 to be cleaned by an art restorer, Daniel Goldreyer. Soon after, Mr. Goldreyer told Mr. Castelli that the painting had mysteriously disappeared from the premises. In July, “Electric Cord” was recognized when it turned up in a storage facility in New York. It had been sent there by Quinta Galeria in Bogotá, Colombia, where Mr. Goldreyer’s widow, Sally, using an assumed name, had tried to sell it, according to the United States Attorney’s office. Ms. Goldreyer said she had found the painting in the locker of a former employee after her husband died in 2009 and was trying to sell it on behalf of a friend.

Mr. Bharara declined to comment on whether a criminal investigation was in the works. Meanwhile, Mr. Castelli’s widow, Barbara, was on hand Tuesday to pick up the long-lost painting — now valued at \$4 million. Asked what she would do with it Ms. Castelli replied, “I think I’m going to hang it up in my home.”

A version of this article appeared in print on 10/17/2012, on page C3 of the New York edition with the headline: Lichtenstein Painting Returned After 42 Years.

## IN THE AIR

Art News & Gossip

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October 15, 2012, 4:18 pm

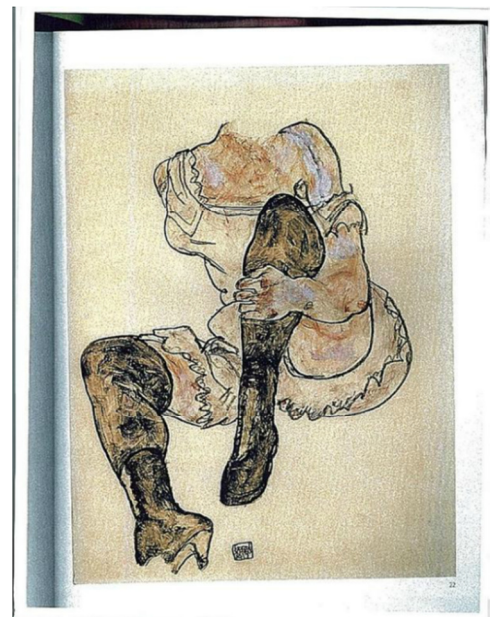
### Claims of Nazi-Era Art Theft Fall Short in Trial Over Egon Schiele Drawing



A judge in the U.S. District Court for the Southern District of New York ruled in favor of the defendant on Thursday in a legal dispute over “Seated Woman With Bent Left Leg (Torso),” a 1917 drawing by the Austrian Expressionist **Egon Schiele**. After a seven-year fight between collector **David Bakalar** and the descendants of **Fritz Grunbaum**, an Austrian cabaret singer who was murdered by the Nazis, the decision signals a new era of stability and peace of mind among collectors who buy paintings or sculptures in good faith but who later face claims that the artworks were stolen from a previous owner.

A report in [Art Fix Daily](#) indicates at least two major points of the proceeding that led judge **William H. Pauley** in the Second Circuit Court of Appeals to rule in the defendant’s favor. Firstly, lawyers for Mr. Bakalar were able to present evidence that a woman named **Mathilde Lukacs**, Grunbaum’s sister-in-law, had sold the drawing to a Swiss art dealer in 1956. The dealer himself testified; it seemed unlikely that the drawing could have been dispossessed during the Second World War, and speculations by the claimants that Lukacs herself could have stolen the painting remained thin and controvertible.

Meanwhile, the Bakalar team also employed a version of the “laches defense,” a strategy frequently used by good faith purchasers who later face frivolous or dated title claims on their property. While it would normally rest on a defendant to prove that a work of art he owned never passed through the hands of a thief, Bakalar’s lawyers asserted that the claimants



had waited more than a little while to stake out “Torso” as their own. In their view, this shifted the burden of proof decisively to the claimants.

“The Court’s ruling is significant in holding that the laches defense, and the question of delay in gathering evidence, does not reset with each successive generation,” says **James A. Janowitz**, a senior partner in the litigation group at **Pryor Cashman**, the firm representing Bakalar, told Art Fix Daily. “The duty to search and act in a timely matter should rest with the first generation to lose the property.”

— *Reid Singer*

## **Holocaust Victim's Heirs Can't Claim Schiele Piece: 2nd Circ.**

By Matthew Heller

Law360, New York (October 12, 2012, 6:00 PM ET) -- In what may mark the end of a seven-year-old art law dispute, the Second Circuit ruled Thursday that the heirs of a Jewish man murdered in the Holocaust cannot force an art collector to hand over an Egon Schiele drawing they say belongs to their family.

The heirs of Fritz Grunbaum, an Austrian cabaret artist who died at Dachau concentration camp, had called collector David Bakalar's acquisition of the 1917 drawing "Seated Woman With Bent Left Leg (Torso)" the "legal equivalent of buying it off the back of a truck." They claimed the artwork was looted by Nazis and still belonged to them.

But a three-judge Second Circuit panel said there was "no clear error" in the findings of a federal judge that Bakalar bought the drawing in good faith and the heirs, Milos Vavra and Leon Fischer, waited too long to press their claim.

It was "sound" of the lower court "to recognize Bakalar's title [to the drawing] on the basis of his laches defense," the panel said, referring to a legal doctrine that says a legal claim will not be allowed if a long delay in asserting the claim has prejudiced the adverse party.

The case was being closely watched by the art dealer community because of how it might create law on when a claimant to a work of art loses the right to demand that it be confiscated from a good faith owner.

"This ruling offers very important protection for good faith buyers and sellers of art in New York," Bakalar's attorney William Charron said in a statement. "The ruling should also be highly instructive for cases nationwide where a laches defense is asserted."

Bakalar bought the painting in 1963 from a New York art dealer, but the two sides disputed how the crayon and gouache picture of a plaintive woman made its journey to his hands.

Grunbaum, who was arrested by the Gestapo in 1938, had his property confiscated after Nazis used his imprisonment as leverage to coerce his wife to sign it over. "Seated Woman" was among 81 Schiele paintings he owned, his heirs said.

Bakalar said the piece was sold legally to a gallery in 1956 by Mathilde Lukacs, Grunbaum's sister-in-law, might never have been owned by Grunbaum, and was not, in any case, stolen by Nazis — an explanation the lower court judge, U.S. District Judge William H. Pauley, favored.

In its decision affirming Judge Pauley, the Second Circuit said the heirs' hypothesis that the Nazis stole the drawing only to later return or sell it to Grunbaum's Jewish sister-in-law "does not come close to showing that the district court's finding was clearly erroneous."

Vavra and Fischer also argued that Judge Pauley erred by inferring that they knew of their potential claim to the painting "based upon previous actions or inactions of other family members."

But the Second Circuit said it was “obviously necessary for the court to do just that; the alternative was to reset the clock for each successive generation.”

“There is no clear error in the findings that Vavra and Fischer's ancestors knew or should have known of a potential claim to the drawing, that they took no action in pursuing it, and that Bakalar was prejudiced in this litigation as a result of that delay,” the panel concluded.

“The court's ruling is significant in holding that the laches defense ... does not reset with each successive generation,” said James Janowitz, another attorney for Bakalar. “The duty to search and act in a timely manner should rest with the first generation to lose the property.”

Counsel for Vavra and Fischer did not immediately respond to a request for comment Friday.

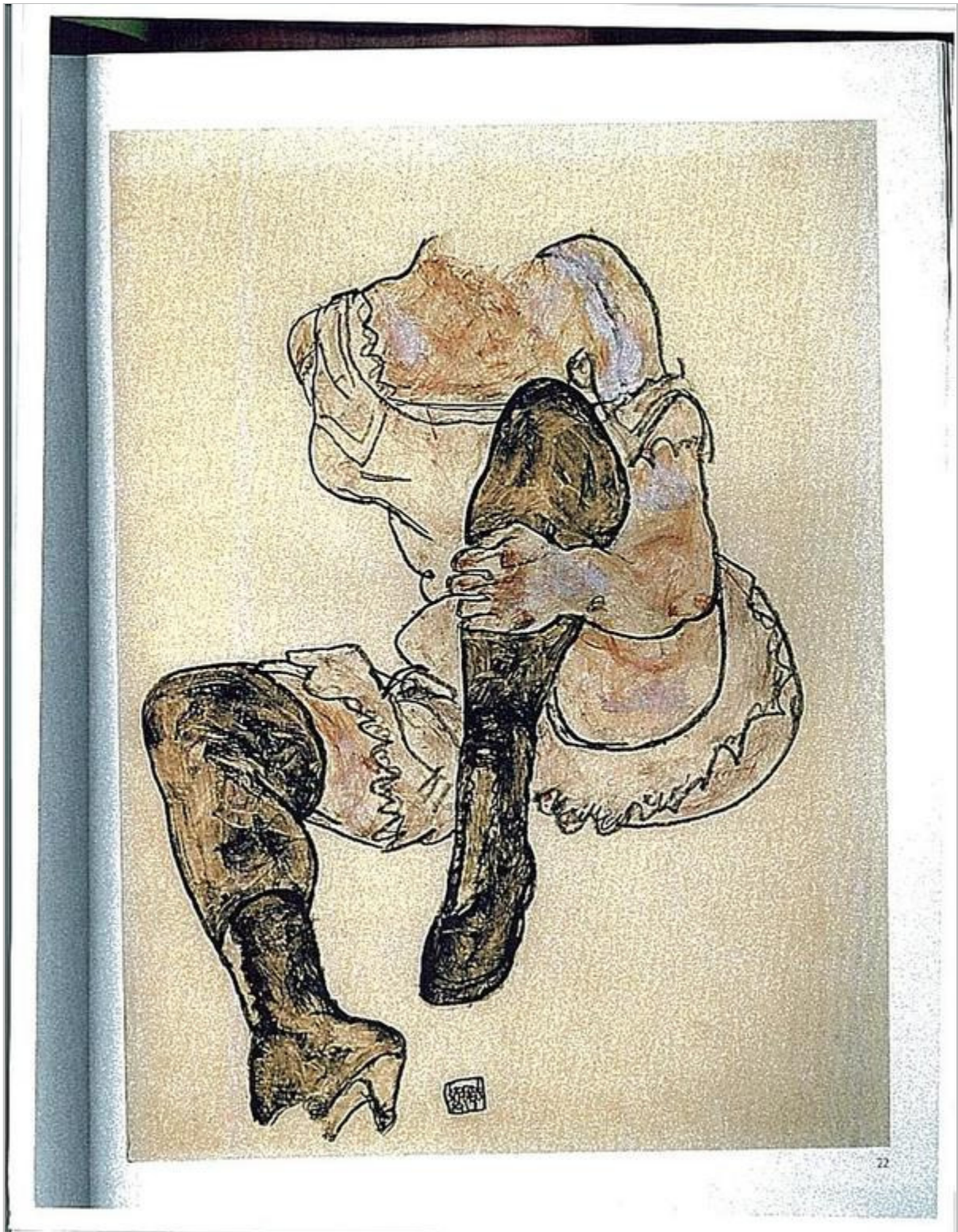
Circuit Judges Dennis Jacobs, Robert D. Sack and District Judge John Gleeson sat on the panel for the Second Circuit.

Bakalar is represented by William L. Charron, James A. Janowitz and Mona Simonian of Pryor Cashman LLP.

Vavra and Fischer are represented by Raymond J. Dowd, Luke McGrath and Thomas V. Marino of Dunnington Bartholow & Miller LLP.

The case is Bakalar v. Vavra, case number 11-4042, in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Richard Vanderford. Editing by Andrew Park.



A drawing by the artist Egon Schiele, known as Seated Woman With Bent Left Leg  
(Torso).  
*(Courtesy Pryor Cashman)*

On October 11, a seven-year legal dispute over the ownership of an Egon Schiele drawing concluded when the Second Circuit Court of Appeals in New York ruled that the current owner could keep full

title despite claims by the heirs of a Schiele collector who contended that the work was stolen by Nazis during World War II.

The case, *Bakalar v. Vavra*, revolved around Schiele's "Seated Woman With Bent Left Leg (Torso)" which collector David Bakalar purchased in the early 1960s for about \$3,300 from Galerie St. Etienne in Manhattan.

Heirs of the alleged former owner of the drawing, a Viennese cabaret singer named Fritz Grunbaum, who was murdered by the Nazis in 1941, said the Schiele was taken from his estate after he was arrested in Vienna in 1938.

In 2004, Bakalar sold the Schiele at Sotheby's in London for about \$675,000, but the sale was stopped when the claimants in the case, Milos Vavra and Leon Fischer, who have been declared in Austria to be the sole heirs of Fritz Grunbaum, asserted that "Torso" was stolen from Grunbaum by the Nazis. (The Nazis considered Schiele's work to be "degenerate" and not worth collecting.)

Grunbaum was a known collector of Egon Schiele works, however, there was no direct evidence that Grunbaum had ever actually owned the drawing or that the drawing had ever been confiscated by the Nazis or their agents.

Evidence emerged that the drawing had been sold by Grunbaum's sister-in-law, a woman named Mathilde Lukacs, in Switzerland in 1956, according to Bakalar's legal team at Pryor Cashman. The Swiss art dealer who had purchased the drawing from Lukacs produced all of his records from that time period and also testified in the case.

Based on this piece of evidence, Judge Pauley of the U.S. District Court for the Southern District of New York found as a matter of inference that Grunbaum more likely than not did once own the drawing, but also agreed with Pryor Cashman's argument that the drawing had not been stolen by the Nazis and had instead remained with the family. Pryor Cashman successfully argued that same point on appeal to the U.S. Court of Appeals for the Second Circuit.

The ruling is particularly significant because Bakalar was required to disprove Nazi theft under controlling New York law, which strictly holds that good faith purchasers of property (like Bakalar) can never take good title if the property was once in the hands of a thief. Such burden-shifting is rare in the United States.

The Grunbaum heirs had alternatively alleged that if Lukacs did possess the drawing after World War II, then she had stolen the drawing from the Grunbaum estate. Bakalar's lawyers successfully argued under New York's so-called "laches defense" that the heirs and their predecessors, i.e., their parents and grandparents who had more direct knowledge of the situation and who knew Lukacs, had unreasonably delayed in pursuing such a claim against Lukacs and had consequently allowed the critical evidence to disappear, thereby unduly prejudicing Bakalar's ability to disprove that Lukacs herself had been a thief.

"The Court's ruling is significant in holding that the laches defense, and the question of delay in gathering evidence, does not reset with each successive generation," says James A. Janowitz, a senior partner in Pryor Cashman's Litigation Group, and counsel for Bakalar. "The duty to search and act in a timely matter should rest with the first generation to lose the property."

The Second Circuit's ruling regarding the laches defense is particularly significant to New York's art

market. While New York strictly favors the rights of dispossessed former owners over the rights of good faith purchasers of stolen property, the laches defense provides an important measure of balance so that good faith purchasers may defend their title against stale or frivolous claims, when there is very little direct evidence concerning the situation.

“This ruling offers very important protection for good faith buyers and sellers of art in New York,” adds William L. Charron, also a partner in Pryor Cashman’s Litigation Group and co-counsel for Bakalar. “The ruling should also be highly instructive for cases nationwide where a laches defense is asserted.”

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# Ruling on Disputed Schiele Drawing Offers Collectors Protection Against Some Ownership Claims

By Rozalia Jovanovic 3:01pm

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Egon Schiele, 'Seated Woman With Bent Left Leg (Torso),' 1917. (Courtesy Pryor Cashman LLP)

Yesterday, the Second Circuit Court of Appeals affirmed a lower court's decision in a seven-year legal dispute over the ownership of a drawing by Egon Schiele, saying the current owner of the drawing could keep it despite a claim by heirs of a collector killed during World War II that it had once been stolen from his estate. The case gives a measure of relief, in some instances, to people who buy art in good faith and then have their ownership questioned by allegations that the art was once stolen.

The subject of the suit is Schiele's *Seated Woman With Bent Left Leg (Torso)*, a drawing in the artist's signature muted colors of a seated woman wearing undergarments and knee-high black boots.

The current owner, David Bakalar, purchased the drawing in the early 1960s from a gallery in Manhattan. The heirs to Fritz Grunbaum, a Viennese

cabaret singer who was murdered by the Nazis in 1941, claimed the work had been confiscated following his arrest in 1938.

Under a New York law, someone who buys a work of art that has at any point been stolen can't have "good title," even if the person bought the work in good faith. Thus, the heirs claimed, Mr. Bakalar didn't have good title, and the work should be given to them.

Unfortunately for the heirs, the court ruled that they had been unable to prove that the drawing had in fact been stolen by the Nazis. According to a statement by Mr. Bakalar's attorneys, James Janowitz and William Charron of Pryor Cashman, there was "compelling evidence" that, after Grunbaum's death, the work had been sold by Grunbaum's sister-in-law, showing that the work had remained in the family.

Particularly important in this case, though, is the court's decision regarding New York's so-called "laches defense," a regularly used defense in ownership disputes made by good-faith buyers to protect themselves against frivolous claims.

The heirs argued that if the sister-in-law did own the drawing, then she had stolen it from Grunbaum's estate. But Mr. Bakalar claimed, via his lawyers, under New York's "laches defense"—which aims to bar cases in which there has been a lengthy delay in filing a claim—that that argument was made a few generations too late and that crucial evidence had disappeared. The parents and grandparents of the heirs would have been in a better position

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to make the argument since they had more direct knowledge of the situation, the appellate court affirmed.

Regarding the laches defense, Raymond Dowd of Dunnington, Bartholow and Miller LLP, the attorneys for the heirs, rejected Mr. Bakalar's arguments, saying the laches doctrine is a "classic 'sit on your hands' defense," which traditionally has placed a very heavy burden for claimants, as reported in a May story in *The Art Newspaper*. Mr. Dowd said his clients were not aiming to eliminate the procedure, but wanted to put the burden on the buyer to show that they exercised due diligence when acquiring the work. Attorneys for Grunbaum's heirs were not immediately available for comment.

The implications of the case were deemed important enough by the Art Dealer's Association of America, the Society of London Art Dealers and U.K. dealer Richard Nagy that they jointly submitted an *amicus curiae*, or "friends of the court" brief that argued against limiting the Laches doctrine.

"The court's ruling is significant in holding that the laches defense, and the question of delay in gathering evidence, does not reset with each successive generation," said James A. Janowitz, a senior partner at Pryor Cashman, in a statement. "The duty to search and act in a timely matter should rest with the first generation to lose the property."

While New York generally tends to favor the rights of dispossessed former owners over the rights of good-faith purchasers, this reconfirmation of the laches defense should provide some peace of mind to people who buy art in good faith against people making claims when a great deal of time has passed since alleged thefts.

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