



Art Collector Can Keep Holocaust Victim's Drawing

By **Carolina Bolado**

Law360, New York (August 24, 2011) -- A New York federal judge ruled last week that an art collector can keep a drawing by Austrian painter Egon Schiele once owned by a Holocaust victim because relatives of the victim had failed to pursue stolen property claims for decades.

In an order filed Aug. 17, U.S. District Judge William H. Pauley III said the claims of relatives of Austrian Jewish cabaret artist Fritz Grunbaum, who was the artwork's original owner and who died at the Dachau concentration camp in 1941, were barred by the doctrine of laches because they had failed to act with reasonable diligence to claim Grunbaum's extensive art collection.

The piece in question, a 1917 drawing in crayon and gouache known as "Seated Woman With Bent Left Leg (Torso)," was most likely in Grunbaum's possession in 1938, when a Nazi art appraiser inventoried his collection and noted 81 Schiele works, but listed only five by name.

In 1956, the piece was sold by Mathilde Lukacs, Grunbaum's sister-in-law, to a gallery, which sold the painting later that year to a gallery in New York. The plaintiff in the suit, David Bakalar, bought the drawing in 1964 from the New York gallery.

Bakalar filed the declaratory judgment action against two of Grunbaum's relatives, Milos Vavra and Leon Fischer, in 2005, seeking a ruling that he is the rightful owner of the artwork. Vavra and Fischer argued that the piece had been stolen by the Nazis and that it was rightfully theirs.

But Judge Pauley said that Lukacs' possession of the drawing in 1956 "strongly indicates" that the Nazis never seized the piece.

"The most reasonable inference to draw from these facts is that the drawing remained in the Grunbaum family's possession and was never appropriated by the Nazis," Judge Pauley said. "The alternative inference — that the drawing was looted by the Nazis and then returned to Grunbaum's sister-in-law — is highly unlikely."

Fischer, the grandson of Grunbaum's brother-in-law, and Vavra, the nephew of Grunbaum's niece, argued that laches didn't apply because they were unaware of the piece in question and of any possible claims against Bakalar until 2005.

But the judge noted that they had each known since childhood of a family connection to Grunbaum yet had made few efforts to claim title to any property. Their ancestors were similarly negligent — Fischer's grandfather, despite being in close contact with Lukacs, never inquired about any property, according to the order.

The last time an heir had attempted to recover Grunbaum property was when his sister made an aborted effort in 1952 to recover his music royalties, according to the order.

"Ultimately, both Vavra's and Fischer's ancestor were aware of their relationship to the Grunbaums and their eventual deaths in concentration camps," the judge said. "Given this knowledge, this court finds by a preponderance of the evidence that defendants' ancestors were aware of — or should have been aware of — their potential intestate rights to Grunbaum property, and Vavra and Fischer are bound by the knowledge of their respective families."

But according to the defendants' attorney Raymond Dowd of [Dunnington Bartholow & Miller LLP](#), Grunbaum's sister was living behind the Iron Curtain in Czechoslovakia when she made her attempt to recover Grunbaum's royalties. The judge did not take into account the fact that it would have been essentially impossible for a Jewish woman living in the Soviet Union to claim large sums of property on the other side of the Iron Curtain, according to Dowd.

On appeal to the Second Circuit, Dowd plans to contest Judge Pauley's decision to exclude a report from an expert on Nazi art looting who concluded that the artwork was stolen by the Nazis. Vavra and Fischer maintain that the story about Lukacs selling the drawing was made up by a Swiss art dealer.

"It's one of our main contentions on appeal," Dowd said. "The story was contradicted by his own written records. We will rely on the art dealer's written records which contradict his oral testimony and we believe that the Second Circuit will agree with us."

This is the second time that the defendants will appeal the case to the Second Circuit. After a bench trial in July 2008, Judge Pauley applied Swiss law to whether Bakalar owned the title to the drawing and awarded him judgment in the case.

But in September 2010, the Second Circuit vacated the judgment and remanded the issue for consideration under New York law.

A representative for Bakalar could not immediately be reached for comment on Wednesday.

Bakalar is represented by James Janowitz, William Charron and Mona Simonian of [Pryor Cashman LLP](#).

Vavra and Fischer are represented by Raymond J. Dowd of Dunnington Bartholow & Miller LLP.

The case is Bakalar v. Vavra et al., case number 1:05-cv-03037, in the U.S. District Court for the Southern District of New York.