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Heirs Of Holocaust Victim Push 2nd Circ. To 'Return' Drawing

By **Richard Vanderford**

Law360, New York (September 06, 2012, 5:34 PM ET) -- The heirs of a Jewish man murdered in the Holocaust pressed the Second Circuit on Thursday to force an art collector to hand over an Egon Schiele drawing they say belongs to their family, arguing that the artwork was looted by Nazis and still belongs to them.

A lawyer for the heirs of Fritz Grunbaum, an Austrian cabaret artist who died at Dachau concentration camp, asked the appeals court at oral arguments to overturn a decision that affirmed that art collector David Bakalar owns a work by Schiele, a major painter in the early 20th century.

“This is the legal equivalent of buying it off the back of a truck,” Raymond James Dowd of [Dunnington Bartholow & Miller LLP](#) told a three-judge panel. “This was a shady transaction.”

A lower court found that Bakalar bought the work, a 1917 drawing called “Seated Woman With Bent Left Leg (Torso),” in good faith and that the heirs, Milos Vavra and Leon Fischer, waited too long before going after it. The case is being closely watched by the art dealer community because 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.

Bakalar bought the painting in 1963 from a New York art dealer, but the two sides dispute 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 Grunbaum owned, his heirs say. Grunbaum died at Dachau in 1941, while his art was shipped through Switzerland, they claim.

Bakalar says 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.

The judge said the heirs did not try early enough to make a claim on the work anyway. The heirs

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, the judge said.

Dowd argued that Bakalar should have been the one to inquire about the painting's provenance, saying the \$4,300 he spent to buy “Seated Woman” would have bought a Corvette in 1963 dollars.

“If you buy a car, you check where it came from,” he said, though his argument met some skepticism from the panel.

“Suppose you want a drawing that cost \$2,500,” Circuit Judge Dennis Jacobs said. “Wouldn't the kind of investigation you're talking about cost \$50,000?”

An attorney for Bakalar highlighted the lower court's ruling — Nazis did not steal the painting, **William L. Charron of [Pryor Cashman LLP](#)** said.

“Mathilde got it legally,” he said. And given that the family made no claim decades ago, when events were fresh in people's minds, far-removed heirs should not treat the drawing as stolen, he said.

The Art Dealers Association of America and Society of London Art Dealers, two decades' old art dealers' societies, have both asked the court to side with Bakalar, saying a win for the Grunbaum heirs could bog down art sales as far-flung heirs emerge to make claims on art whose ownership appeared to be settled.

The judges said they would rule on the issue later.

Charron said after the argument that heirs' position, if adopted by the court, "would severely and unreasonably unsettle the rights of bona fide purchasers of property in New York" and would cause serious harm to the state's art and cultural artifacts marketplace.

Bakalar brought the suit himself in 2005, after the heirs raised ownership issues when he tried to sell it through the auction house [Sotheby's Inc.](#)

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

The heirs are represented by Raymond James Dowd of Dunnington Bartholow & Miller LLP.

Bakalar is represented by William L. Charron of Pryor Cashman LLP.

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