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January 2012

Reference: Alessandro Chechi, Raphael Contel, Marc-André Renold, "Case Odalisque Painting – Paul Rosenberg Heirs and Seattle Art Museum," Platform ArThemis (http://unige.ch/art-adr), Art-Law Centre, University of Geneva.

Case Odalisque Painting – Paul Rosenberg Heirs and Seattle Art Museum

Paul Rosenberg – Seattle Art Museum – Artwork/œuvre d'art – Nazi looted art/spoliations nazies – Judicial claim/action en justice – Negotiation/négociation – Breach of contract/violation du contrat – Due diligence – Ownership/propriété – Procedural issue/limites procédurales – Settlement agreement/accord transactionnel – Unconditional restitution/restitution sans condition

In June 1999, the Seattle Art Museum returned the painting Oriental Woman Seated on Floor (also known as Odalisque), by Henri Matisse, to the heirs of Paul Rosenberg. The painting was donated to the museum in 1991 by the Bloedel family. The museum decided to return the artwork following a thorough and independent investigation into the painting's past that revealed that it was stolen by the Nazis from Paul Rosenberg's collection in the 1940s.

I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted Solution; V. Comment; VI. Sources.

I. Chronology

Nazi looted art

- **1941**: Nazi authorities confiscated the art collection of Paul Rosenberg, a prominent Jewish art dealer based in Paris. The collection consisted of about 162 paintings and included the painting *Oriental Woman Seated on Floor* (also known as *Odalisque*), by Henri Matisse.
- **1954**: The *Odalisque* was acquired by the New York art gallery Knoedler & Co. from the Paris based Galerie Drouant-David. In the same year, the Knoedler gallery sold the painting to Prentice and Virginia Bloedel.
- **1991**: The Bloedels bequeathed the painting to the Seattle Art Museum (SAM).[1]
- **1997**: The heirs of Paul Rosenberg fortuitously discovered the location of the painting.[2] Consequently, the Rosenbergs notified the museum that the *Odalisque* had been looted by the Nazis and demanded its restitution. The SAM refused but obtained a "tolling agreement", which gave the museum time to evaluate the restitution request.[3]
- **1998**: The SAM asked the Holocaust Art Restitution Project (HARP) to investigate the provenance of *Odalisque*.[4]
- **August 1998**: The Rosenbergs filed suit in the Federal District Court against the SAM in order to recover the *Odalisque*.[5]
- **14 June 1999**: The SAM returned the painting to the heirs of Paul Rosenberg after HARP's research confirmed that it was one of the paintings stolen from Paul Rosenberg.[6]

II. Dispute Resolution Process

Judicial claim – Negotiation

- The Rosenbergs sought the return of the painting through negotiation. In order to succeed, they provided the museum with proof that it was stolen from Paul Rosenberg. In particular, the Rosenbergs heavily relied on the research contained in Hector Feliciano's book *The Lost Museum: The Nazi Conspiracy to Steal the World's Greatest Works of Art* (1996).

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[1] Press Statement of SAM Public Relations, SAM to Return Matisse Odalisque to Rosenbergs, 14 June 1999.
[2] In 1997, one of Rosenberg's granddaughters brought to a party a copy of Hector Feliciano's book *The Lost Museum: The Nazi Conspiracy to Steal the World's Greatest Works of Art* (1996). This traced the history of five Jewish art collections. Included were dozens of photos, including one of a Matisse painting called *Oriental Woman Seated on Floor*. At that same party was a grandson of Prentice Bloedel. Browsing through the book, he recognized the Matisse painting as one he had seen in his grandfather's house. Mark D. Fefer, "SAM Ponders Its Options as Deadline Nears on 'Hot' Matisse," *Seattle Weekly*, May 27, 1998, accessed December 13, 2011, http://www.seattleweekly.com/1998-05-27/news/sam-ponders-its-options-as-deadline-nears-on-hot-matisse/.
[3] Ibid.
[4] HARP is an independent research organization that provides Holocaust victims with information on works of art that disappeared or were transferred during the Second World War.
[5] Judith H. Dobrzynski, "Seattle Museum Is Sued for a Looted Matisse," *The New York Times*, August 4, 1998, accessed December 13, 2011, http://www.nytimes.com/1998/08/04/arts/seattle-museum-is-sued-for-a-looted-matisse.html.
[6] Press Statement of SAM Public Relations, SAM to Return Matisse Odalisque to Rosenbergs, 14 June 1999.

- With respect to the Rosenberg claim, Feliciano affirmed in an interview that it was a "very solid claim where you have documents all the way through from the 1930s through the 1960s showing that the painting belonged to the Rosenbergs".[7]
- Although the Seattle Museum did not return the painting immediately upon request, it did not reject the claim. As said by Marianne Rosenberg, there was no hostility on the part of museum's representatives, who had been "very helpful and very genteel".[8] As an institution that holds its works in the public trust, SAM asked some time to fully research the claim of the Rosenbergs. In effect, the parties concluded a "tolling agreement". Under its terms, SAM obtained an unspecified period of time[9] to await the conclusion of HARP's independent investigation into the painting's past ownership. This was a time-consuming process, but it was necessary for the museum in order to decide the most suitable course of action. HARP's research was essential to confirm that the painting stolen from Paul Rosenberg was the same painting in SAM's collection and not one of many other Matisse works with similar titles and subjects. In addition, HARP had to confirm that this painting was not among the stolen artworks that Rosenberg or his family recovered before his death in 1959.[10]
- Although the result of HARP's investigation was unequivocal, SAM's representatives concluded that they could not return *Odalisque* without a legal proceeding.[11] Essentially, the museum asked the family to sue so that it could reach a comprehensive settlement that would include the New York art gallery Knoedler & Co. Accordingly, the Rosenbergs filed a lawsuit against the museum. On the one hand, this allowed the museum to return the *Odalisque*. On the other hand, the lawsuit allowed SAM to implead Knoedler in order to recover the market value of the painting.[12] The SAM alleged that the gallery acquired and resold the painting knowing that it was stolen by the Nazis and therefore contended that Knoedler breached title warranty and misrepresented the painting's provenance. This dispute was also settled out-of-court.[13]

[7] Judith H. Dobrzynski, "Seattle Museum Is Sued for a Looted Matisse," *The New York Times*, August 4, 1998, accessed December 13, 2011, http://www.nytimes.com/1998/08/04/arts/seattle-museum-is-sued-for-a-looted-matisse.html.
[8] Mark D. Fefer, "SAM Ponders Its Options as Deadline Nears on 'Hot' Matisse," *Seattle Weekly*, May 27, 1998, accessed December 13, 2011, http://www.seattleweekly.com/1998-05-27/news/sam-ponders-its-options-as-deadline-nears-on-hot-matisse/.
[9] Ibid.
[10] Press Statement of SAM Public Relations, SAM to Return Matisse Odalisque to Rosenbergs, 14 June 1999.
[11] Judith H. Dobrzynski, "Seattle Museum Is Sued for a Looted Matisse," *The New York Times*, August 4, 1998, accessed December 13, 2011, http://www.nytimes.com/1998/08/04/arts/seattle-museum-is-sued-for-a-looted-matisse.html.
[12] The legal action was allowed only in March 2000, when the museum proved that the Bloedels had transferred their legal rights on the painting to it. Previously, a federal judge had ruled that the museum had no standing to represent the Bloedels. "Seattle Art Museum Sues over Matisse Painting," *Las Vegas Sun*, March 27, 2000, accessed December 13, 2011, http://m.lasvegassun.com/news/2000/mar/27/seattle-art-museum-sues-over-matisse-painting/.
[13] Sheila Farr, "Seattle Gets Pick of Paintings after Matisse Loss," *The Seattle Times*, October 13, 2000, accessed December 13, 2011, http://community.seattletimes.nwsource.com/archive/?date=20001013&slug=4047641.

III. Legal Issues

Breach of contract – Due diligence – Ownership – Procedural issue

- The settlement of the *Odalisque* case was possible thanks to the evidence demonstrating that the SAM's Matisse was seized, along with other pieces, from the art collection of Paul Rosenberg. This means that the Rosenbergs overcame one of the most difficult procedural hurdles which characterize Holocaust-related cases, namely the problem of gathering evidence of the original ownership title. Since more than half a century has passed since the end of the Second World War, evidence is now lost or extremely difficult to collect. Many of those involved have passed away, while those who are still alive or their descendants may have no documentation, photos or witnesses. Indeed, this evidentiary burden is a huge deterrent for many people with otherwise valid claims. This is demonstrated by the cases whereby Holocaust survivors or their families have not attained the recovery of looted artworks, even if they have located them.
- The issue of due diligence is another typical issue that routinely emerges in Holocaust-related disputes. This issue can be analysed considering the behaviour of both parties.
- A spokesperson for the SAM emphasised that the Matisse had been on continual display at the museum between 1992 and 1996 and hence hinted that the Rosenbergs had not been diligent in their research.[14] However, SAM did not use this defence. This was probably due to the overwhelming evidence demonstrating that *Odalisque* was one of the paintings stolen from Paul Rosenberg. Moreover, it can be submitted that the good faith argument was discarded because even SAM's conduct was not immune from criticism. In effect, the provenance and the ownership of the painting were not obscure when the Bloedels bequeathed the painting to SAM. As underlined by Marianne Rosenberg, "[i]f anybody had bothered to check with the Matisse family they would have seen [the *Odalisque* painting] listed as 'Estate of P. Rosenberg—missing'".[15] Finally, it cannot be excluded that the museum chosen this course of action in order to abide by the ethical guidelines of the Association of Art Museum Directors.[16] This is hinted by the statement by Mimi Gardner Gates, SAM's Director, who said that "[b]y our action […], the Seattle Art Museum [drew] a clear ethical line. Since day one, SAM […] committed to doing the right thing".[17]
- With regard to the action against the Knoedler art gallery, Mimi Gardner Gates, SAM's Director, said that "[t]he museum [had] a duty to our public, including museum donors, to hold Knoedler fully accountable for the loss to our permanent collection resulting from Knoedler's improper sale to the Bloedels".[18] As said, SAM filed a complaint against the New York-based dealer for breach of warranties of title and misrepresentation of the

[14] Ibid.
[15] Mark D. Fefer, "SAM Ponders Its Options as Deadline Nears on 'Hot' Matisse," *Seattle weekly*, May 27, 1998, accessed December 13, 2011, http://www.seattleweekly.com/1998-05-27/news/sam-ponders-its-options-as-deadline-nears-on-hot-matisse/.
[16] See Association of Art Museum Directors, *Professional Practices in Art Museums* (2011), which states: "There are a number of reasons why deaccessioning might be contemplated. Primary among these are the following: […] C. The museum's possession of the work is not consistent with applicable law", p. 21 (Appendix B).
[17] Press Statement of SAM Public Relations, SAM to Return Matisse Odalisque to Rosenbergs, 14 June 1999.
[18] Press Statement of SAM Public Relations, SAM to Return Matisse Odalisque to Rosenbergs, 14 June 1999.

painting's provenance. SAM alleged that the Knoedler acted dishonestly by selling knowingly a painting stolen by the Nazi regime.

IV. Adopted Solution

Settlement agreement – Unconditional restitution

- The Board of Trustees of the Seattle Museum decided to return the *Odalisque* to the heirs of Paul Rosenberg on 14 June 1999 following the HARP's report demonstrating that *Odalisque* was seized, along with other pieces, by the Nazis.[19]
- It is also interesting to describe the content of the out-of-court settlement reached by SAM and the Knoedler art gallery. Under the settlement, the SAM was allowed to choose at least one painting from the inventory of the Knoedler art gallery or the "equivalent" in cash. Knoedler also agreed to reimburse the museum for its legal fees and the costs connected with the suit and waived the right to collect attorney's fees that the court had previously ordered the museum to pay.[20] In exchange, SAM withdrew the accusations of fraud and negligent misrepresentation.

V. Comment

- The dispute over the *Odalisque* painting was the first lawsuit over Holocaust-related art against a museum of the United States.[21] Two aspects of this case are noteworthy.
- The first is that the settlement reached by SAM and the Rosenbergs confirmed the fundamental principle contained in the London Declaration of 1943.[22] This warned the enemy States and neutral nations that the Allies intended "to defeat the methods of dispossession practiced by the" Nazis and reserved the right to annul transfers or dealings which took the form of open looting or plunder as well as seemingly good faith transactions. The objective was to avoid that museums, art professionals or individuals could profit from the suffering of victims, on the one hand, and that the gross wrongs committed by the Nazi regime could be condoned, on the other. In other words, the agreement acknowledged that, although SAM obtained the artwork through no wrongdoing on its part, it could not assert a valid ownership claim to it because the museum's predecessors-in-interest did not have title to the painting. Indeed, it is a basic tenet of common law jurisdictions that no one, not even a good faith purchaser, can obtain good title to stolen property. The mere fact that a person

[19] Following its return, the heirs sold the painting to the Bellagio's Gallery of Fine Art of Las Vegas. The painting was then resold to a Swiss anonymous buyer through Acquavella Contemporary Art in New York. Sheila Farr, "Seattle Gets Pick of Paintings after Matisse Loss," *The Seattle Times*, October 13, 2000, accessed December 13, 2011, http://community.seattletimes.nwsource.com/archive/?date=20001013&slug=4047641.
[20] See supra note 12.
[21] Judith H. Dobrzynski, "Seattle Museum Is Sued for a Looted Matisse," *The New York Times*, August 4, 1998, accessed December 13, 2011, http://www.nytimes.com/1998/08/04/arts/seattle-museum-is-sued-for-a-looted-matisse.html.
[22] *Declaration of the Allied Nations against Acts of Dispossession Committed in Territories under Enemy Occupation or Control*, 5 January 1943 (8, Department of State Bulletin 21).

acquires a stolen object in good faith does not extinguish the title of the true owner, and gives the purchaser neither a valid title, nor the right to receive compensation.[23] Therefore, the agreement confirmed that legal title to *Odalisque* had remained in Paul Rosenberg.

- The second relevant aspect relates to the settlement agreement concluded between the Seattle Art Museum and the Knoedler art gallery. The content of this agreement demonstrates that the art gallery feared a court decision, probably because it did not possess evidence in support of its assertion that the Rosenbergs' claim was invalid.[24] More importantly, it also illustrates that – under certain circumstances – museums can hold the seller accountable on behalf of its donors.[25]

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[23] Kurt Siehr, "The Protection of Cultural Heritage and International Commerce," *International Journal of Cultural Property* (1997): 304-305
[24] Press Statement of SAM Public Relations, SAM to Return Matisse Odalisque to Rosenbergs, 14 June 1999.
[25] Sheila Farr, "Seattle Gets Pick of Paintings after Matisse Loss," *The Seattle Times*, October 13, 2000, accessed December 13, 2011, http://community.seattletimes.nwsource.com/archive/?date=20001013&slug=4047641.