

# New York Law Journal



NEW YORK, FRIDAY, AUGUST 25, 2006

## Heirs' Bid to Prove Rights To Schiele Work Advances

BY DANIEL WISE

TWO HEIRS of an Austrian Jew whose collection of 450 art works was allegedly stolen by the Nazis have been given the chance to show that they are the rightful owners of a drawing by the expressionist Egon Schiele auctioned last year by Sotheby's in London for \$726,000.

Southern District Judge William H. Pauley III in *Bakalar v. Vavra*, 05-3037, refused to dismiss claims with respect to the Schiele drawing on the grounds of laches. He found that questions of fact need to be resolved to determine whether there had been unjustified and prejudicial delay in raising the claims.

Leon Fisher, whose family fled the Nazis after they invaded Belgium in 1940, and Milos Vavra, who now lives in the Czech Republic, were certified in 2002 by an Austrian court as heirs to Fritz Grunbaum, who along with his wife, Elizabeth, was arrested by the Nazis in 1938 and later perished in concentration camps.

Messrs. Fisher and Vavra, who are both now in their 60s, were first informed that they had an interest in the Grunbaum collection by a genealogist in 1999, according to their attorney,

Raymond J. Dowd. Mr. Fisher is a grandson of Mr. Grunbaum's brother-in-law and Mr. Vavra is a grandson of Mr. Grunbaum's sister. Mr. Fisher has lived in New York for the past 25 years.

The two heirs claim that the Schiele drawing auctioned in London in 2005 was among 450 drawings stolen by the Nazis from the Grunbaum's apartment in Vienna.

The drawing, "Seated Woman with Bent Left Leg (Torso)," was owned by David Bakalar, a Massachusetts businessman and philanthropist, who had attempted to sell it at Sotheby's. The sale was aborted when Messrs. Fisher and Vavra asserted claims after the auction but before the sale was finalized.

Mr. Bakalar bought the drawing from a New York gallery in 1963 for \$3,300. One of Mr. Bakalar's lawyer's, William L. Charron of Pryor Cashman Sherman & Flynn, said Messrs. Fisher and Vavra failed to present any evidence "linking Mr. Bakalar's drawing to the Nazis." He pointed out that an inventory completed by the Nazis in 1938 did not identify the titles of any of the 75 Schiele drawings in the Grunbaum collection.

Because the artist, who died in 1918 at the age of 28, produced 2,700 drawings during his lifetime, the odds that Mr. Bakalar's drawing was

stolen from the Grunbaums' apartment "falls way short of the 'more likely than not' standard," he said.

Mr. Dowd responded that Mr. Bakalar had acknowledged in court filings that the Schiele drawing came from the Grunbaum apartment.

### Diligence at Issue

Judge Pauley ruled the two Grunbaum heirs can pursue their claims to the Schiele drawing because outstanding factual issues remain precluding the dismissal of their suit on the grounds of laches.

Judge Pauley wrote that there were indications that the heirs might not have acted promptly on information that could have led them to discover their interest in the Grunbaum artworks. For instance, Mr. Vavra's brother had asserted that



'Seated Woman with Bent Left Leg (Torso)'

their grandmother had made inquiries into the Grunbaum artwork but had run "into dead ends."

Also, the record indicates that in making its way to Mr. Bakalar, the Schiele drawing was sold in the mid-1950s by Mr. Grunbaum's sister-in-law to a Swiss art dealer. In his deposition, Judge Pauley noted, Mr. Fisher said he had never heard of the Grunbaums, but that his family had been in touch with the sister-in-law, Mathilde Lukacs, whom the Swiss art dealer contends sold him "Seated Woman with Bent Left Leg (Torso)."

Mr. Dowd said his clients contend that the documents maintained by the Swiss art dealer, Eberhard Kornfeld, showing that he legitimately purchased the drawing, were forged.

Messrs. Fisher and Vavra first asserted their interest in the Grun-

baum estate shortly after being advised in 1999 that they were heirs, Mr. Dowd said. They took legal action in Austria and filed a claim with the Austrian government, he added.

Similarly, as soon as the heirs realized the Schiele drawing was being auctioned at Sotheby's, Mr. Dowd stated, they asserted a claim, which forced the sale's cancellation.

A month later, in March 2005, Mr. Bakalar initiated the litigation now before Judge Pauley, suing the heirs for a declaratory judgment to let the auction proceed.

Mr. Charron disagreed with Judge Pauley's ruling, saying "the evidence in the record of what the families have and have not done is sufficient to warrant a laches ruling."

### **Class Action Rejected**

However, while Judge Pauley let the action related to the single drawing go forward, he denied the heirs' motion to have the case certified as a class action against all individuals and institutions who either own, or were involved in the sale of, the 450 Grunbaum artworks. An expert hired by the two heirs has valued the collection at \$100 million, according to Mr. Dowd. The class action ruling was published in the Law Journal on Aug. 3.

In denying the request for a class action, Judge Pauley noted that since Schiele had such a large lifetime oeuvre, the odds were "at most" 2.8 percent that any single Schiele work came

from the Grunbaums' apartment.

"The Heirs' optimism that they will unearth evidence concerning Grunbaum's ownership of Schiele works is remote," Judge Pauley wrote. He held that the scope of the class is not "precise, objective and presently ascertainable."

Mr. Dowd said that individual actions would be pursued against those holding artworks traceable to the Grunbaum collection. Five oil paintings were identified by title in the 1938 inventory, he said, and one of them, "Dead City," was at the center of a 1998 investigation by the Manhattan District Attorney's Office.

"Dead City" was one of two paintings on display at the Modern Museum of Art that prosecutors sought to hold in New York while they investigated claims that the paintings had been looted by the Nazis. But the New York Court of Appeals ruled in *People v. Museum of Modern Art*, 93 NY2d 729, that state law barred prosecutors from issuing a subpoena to hold the painting and it was returned to the Leopold Foundation in Austria.

One of the first individual actions that Messrs. Vavra and Fisher will bring will be against the Leopold Foundation, Mr. Dowd said.

In addition to Mr. Charron, Mr. Bakalar was represented by James A. Janowitz and Suyin So, also of Pryor Cashman.

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