

## Articles

### "US Court Orders Return of Drawings Stolen After World War II to Kunsthalle Bremen"

Thomas R. Kline & Willi A. Korte, Historian, Washington, DC  
*The Spoils of War International Newsletter*  
November 5, 1995

Reprinted with permission from ***The Spoils Of War International Newsletter***

*Thomas R. Kline, Lawyer, Andrews & Kurth L.L.P., Washington, D.C., Willi A. Korte, Historian, Washington, D.C.*

The Kunsthalle Bremen, a private art museum in Germany, recently prevailed in litigation in the United States seeking the return of three drawings stolen from the museum in the closing days of World War II. On January 5, 1995, the U.S. District Court for the Southern District of New York ordered that the drawings be returned.

The drawings include (1) an aged, bearded man, sometimes referred to as "God Father" or "Father Time" possibly by Pellegrino Tibaldi, (2) a Bacchanal with the name La Fage, and (3) a depiction of Saint George and the Dragon by an unknown artist. These drawings were originally part of the Kunsthalle's celebrated collection of prints and drawings, thousands of which disappeared at the end of World War II. The Kunsthalle had placed its collections in storage, towards the end of the War, for protection from air raids. One storage facility, the Castle of Karnzow, ended up in the Soviet zone of occupation. The castle storeroom holding the Kunsthalle's collection was located and looted.

Recently, artwork belonging to the Kunsthalle that had been stored at the Castle of Karnzow has begun appearing on the New York art market. Yuly Saet, a Russian refugee, offered these three Kunsthalle drawings to various dealers in New York. Saet claimed to have acquired the drawings lawfully in the 1950s before emigrating to the U.S. One of the dealers reported this occurrence to Dr. Constance Lowenthal of the International Foundation for Art Research in New York. Law enforcement authorities were notified; the Federal Bureau of Investigation arranged a sting operation and seized the drawings. U.S. authorities, however, determined not to initiate a criminal prosecution of Saet, and the government filed suit in federal district court in New York, asking the court to resolve the conflicting claims of the Kunsthalle and Saet.

The court's determination that the drawings must be returned to the Kunsthalle came in response to the Kunsthalle's motion for summary judgment. That motion, filed with the court in late 1994, reviewed the historical facts and applicable law, and asked the court to award the drawings to the Kunsthalle as a matter of law. Saet's lawyers, recognizing the overall force of the Kunsthalle's motion, advised Saet that it would do him no good to oppose the motion. No opposition was ever filed, even though the Judge, Hon. Peter K. Leisure, ordered Saet to respond. Judge Leisure then ruled in favor of the Kunsthalle.

Under U.S. law, a judge is not required to grant a summary judgment motion that is unopposed. The judge must still determine that there is no genuine issue of material fact requiring trial of the case. By ordering Saet to respond to the Kunsthalle's papers, Judge Leisure must have considered that the motion appeared to be well-founded and without apparent defects. The Order granting the motion on default follows from Saet's failure to comply with the Court's earlier Order directing him to respond, but judgment would not have been entered in favor of the Kunsthalle if the Court did not believe the museum's motion for summary judgment had merit.

This case is, therefore, analogous to the recent settlement between the Metropolitan Museum in New York and the Republic of Turkey. After Turkey established definitively the find spot of a disputed object, the museum was forced to abandon its defense of the case that had been brought by Turkey to recover the object.

The Kunsthalle was represented in the case by Thomas R. Kline of the Washington D.C. office of the law firm of Andrews & Kurth L.L.P. Dr. Willi A. Korte, a German lawyer and researcher, also assisted the Kunsthalle with the development of its case. Mr. Kline and Dr. Korte previously represented the Lutheran Church of Quedlinburg, Germany, in locating and recovering the Quedlinburg Treasures, which also disappeared at the end of World War II and were ultimately found in private hands in the United States. The Kunsthalle's victory demonstrates, once again, that U.S. courts provide a

## Articles

sympathetic forum for the recovery of stolen art and cultural property. Because U.S. courts take a flexible approach to the statute of limitations, generally holding that the statute does not begin to run as long as a theft victim is diligent in searching for its stolen property, even property stolen during World War II may be recovered if found in the U.S.