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CONTACT: Cindy Schlanger
OSEN LLC
(201) 265 6400
cts@osen.us
(US Counsel)

Matthias Druba
F P S RECHTSANWÄLTE & NOTARE
Tel.: +49 (0) 30 - 885927 - 40
druba@fps-law.de
(Berlin Counsel)

LOOTED ART CASE TAKES BIZARRE TURN AS GERMAN APPELLATE COURT AFFIRMS THAT FAMED POSTER COLLECTION STOLEN BY NAZIS IS IN FACT OWNED BY VICTIM'S SON BUT HOLDS THAT HE HAS NO LEGAL REMEDY TO COMPEL RETURN OF COLLECTION FROM GERMAN STATE MUSEUM

The German Federal Appellate Panel Holds That Peter Sachs is “Lawful Owner” of Stolen Poster Collection But the Applicable Laws of the Allied Military Government Did Not Expressly Authorize Restitution of Property in These Circumstances.

February 18, 2010 (BERLIN, GERMANY): A Berlin Appellate Court issued its formal ruling yesterday that one of the largest and most famous poster collections in the world legally belongs to the American son of the collector, whose life's work was stolen by the Gestapo in 1938, but that under governing German law, he has no authority to compel the German state museum that currently houses the collection to return the posters to him.

In a decision certain to have broader implications for other cases involving World War II era looted art, the Berlin Appellate Court affirmed that Peter Sachs was the rightful owner of his father's collection and that it had been unlawfully seized by the Nazis, but also held that he had no civil remedy to compel return of the posters because his rights are governed exclusively by the laws of the Allied Military Government as later codified in § 7 of the so-called BRüG restitution law which did not contemplate the physical return of property outside of its territorial jurisdiction (the posters had been moved to East Berlin after the war).

Reacting to the court's decision, Peter Sachs said, “I'll leave the legal technicalities to the lawyers in the case, but the idea of the court's ruling that the posters belong to me but I have no way of getting them back just seems like something out of George Orwell.” His Berlin attorney, Matthias Druba, added, “I think there are solid grounds for a further appeal, but legal analysis aside, if left standing, the decision would lead to a practical outcome that is morally perverse.”

Peter Sachs' American counsel, Cindy Schlanger, is even more blunt: "I think everyone understands that the German government has lost much of its moral credibility in dealing with issues related to looted art because of this case. We now have a situation where a German government museum is holding an art collection belonging to the family of a Nazi persecutee only because it physically has possession of the collection."

A recent article in the *Jerusalem Post* observed, "[B]y allowing the Sachs collection to become enmeshed in a convoluted legal limbo, in which a rightful Jewish owner cannot collect his property, Germany had done precisely the damage it hoped to avoid."

Background of the Litigation

In March 2008, Peter Sachs filed a lawsuit in the civil court (Landgericht) in Berlin, seeking the return of a poster originally owned by his father from the German Historical Museum in Berlin. The lawsuit represented the culmination of an unsuccessful three-year effort by Mr. Sachs to amicably resolve a case involving the theft of what many consider the largest and most significant poster collections in the world -- the Hans Sachs Collection.

In 2005, Peter Sachs began investigating the whereabouts of his father's long lost collection through the internet and located references to the Museum's collection of Sachs posters. In order to help him regain his father's collection, he retained the U.S. law firm of Osen LLC. Since 1998, when the German government adopted the recommendations expressed in the so-called Washington Conference and co-authored the Washington Principles (1998) it has publicly committed itself to the identification of cultural assets and the return of Nazi confiscated art. Based on this commitment, Osen LLC attempted to obtain return of the collection which was unquestionably stolen during the Nazi period without resorting to litigation. Unfortunately, despite the fact that the German Historical Museum is a state-owned institution and the Washington Principles committed Germany to return stolen art--including art found in state museums, archives, and libraries -- to its rightful owners, hopes of an amicable settlement were soon dashed.

In view of the impasse, Germany's Culture Minister, Bernd Neumann, recommended that the parties submit to non-binding arbitration before the Advisory Commission of the German Federal Government to verify if the museum should return the posters to Peter Sachs. The Commission, under Chairman Jutta Limbach, was created pursuant to an agreement between the Federal Commissioner for Cultural and Media Affairs, the Conference of Ministers of Culture of the Länder and the central municipal associations. The arbitration convened on January 25, 2007, at which time Peter Sachs was permitted to address the Commission.

Later that day, the Commission issued its decision in favor of the Museum. In a brief press release, the Commission stated that Hans Sachs always considered the collection to be "a public service" and would therefore have wanted the posters to remain with the Museum.

For obvious reasons, Peter Sachs could not accept the strained reasoning of the Commission. On March 3, 2008, he filed a civil suit against the Museum in the Landgericht Berlin seeking return of a single 1932 poster, *The Blonde Venus*, featuring Marlene Dietrich.

The Museum responded by denying that the poster belonged to the Sachs Collection and countersuing, asking for the court to determine that none of the posters in the entire collection belonged to Peter Sachs because his father allegedly sold the collection to an “Aryan” banker in 1938. Instead, the Court rejected the counterclaim filed by the Museum and found that Peter Sachs was, in fact, the owner of the collection and was entitled to the return of his posters.

The German government appealed and the Berlin Appellate Court has now partially reversed the lower court – upholding the lower court’s finding that Peter Sachs is the rightful owner of the collection, but reversing the lower court’s order to return the actual posters to him.

In an interview last month, Georg Heuberger, a representative of the Jewish Claims Conference in Germany told Bloomberg News, “We should return to the spirit of the Washington Principles, which call for a fair and just solution... I find it sad that this has to be dragged through the courts.”

For now, the Hans Sachs Poster Collection remains captive in the German Historical Museum annex ... and its owner continues to wait for justice.

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