

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE MUSEUM OF MODERN ART, and THE :
SOLOMON R. GUGGENHEIM FOUNDATION, :

Plaintiffs, :

BOY LEADING A HORSE, and LE MOULIN DE :
LA GALETTE, two paintings by Pablo :
Picasso, :

Plaintiffs in rem, :

-v- :

JULIUS H. SCHOEPS, :

Defendant. :

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JULIUS H. SCHOEPS, EDELGARD VON :
LAVERGNE-PEGUILHEN, and FLORENCE :
KESSELSTATT, :

Counterclaim- :
Plaintiffs, :

-v- :

THE MUSEUM OF MODERN ART, and THE :
SOLOMON R. GUGGENHEIM FOUNDATION, :

Counterclaim- :
Defendants. :

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JED S. RAKOFF, U.S.D.J.

07 Civ. 11074 (JSR)

ORDER

On October 7, 2008, plaintiffs in this action moved for summary judgment granting their request for declaratory relief and dismissing all counterclaims brought by counterclaim-plaintiffs Julius Schoeps, Edelgard von Lavergne-Peguilhen, and Florence

Kesselstatt. Following full briefing, the Court heard oral argument on December 18, 2008, followed by supplemental briefing.¹

If the context of this case were an ordinary one, the failure of counterclaim-plaintiffs to come forward with more particularized evidence supporting their assertions might well have resulted in plaintiffs' obtaining summary judgment; but the combination of the unique historical circumstances that form the backdrop to this case and the absence of living witnesses to most of the events in question persuades the Court that, at least at the summary judgment stage, greater liberty must be accorded to the drawing of extended inferences than might more ordinarily be the case. Accordingly, the Court concludes that genuine issues of material fact remain that preclude granting plaintiffs' motion at this stage and the motion is therefore denied.

An opinion more fully detailing the reasons for this ruling will issue in due course. However, to help guide counsel in preparation for the upcoming trial of this case, which is firmly fixed to commence at 9:00 a.m. on February 2, 2009, the Court here apprises counsel that the Court has determined, inter alia, that German law governs the issue of duress relating to the sale or transfer of the paintings and that New York law governs the issue of whether counterclaim-plaintiffs' claims are barred by laches. The

¹ Counterclaim-plaintiffs' supplemental submissions did not adhere to the limits placed by the Court on the scope of these submissions and will be disregarded to the extent they exceeded those limitations.

Court also notes that, since disputed questions of material fact preclude its ruling finally at this time on the issue of laches, that issue will be tried by the Court simultaneously with the jury's trial of the merits; but if there is any evidence proffered that bears solely on the issue of laches, it will be taken outside the presence of the jury.²

To simplify matters at trial and in any further proceedings in this case, the Court is considering repositioning the parties and recasting the caption of the case so that Julius Schoeps, Edelgard von Lavergne-Pequilhen, and Florence Kesselstatt are treated as Plaintiffs and the Museum of Modern Art and the Solomon R. Guggenheim Foundation as Defendants. If any party objects to this, such party should fax the Court a letter, not to exceed three single-spaced pages, by January 9, 2009, explaining the grounds for the objection.

Finally, the Court received today a letter from an entity named Courtroom View Network seeking to record and provide audio-visual coverage of the trial in this case. Before determining

²The Court recognizes that this raises the possibility that after the jury trial has been concluded, the Court may still find that the claims of counterclaim-plaintiffs are barred by laches. As the Second Circuit has advised, however, concerns of judicial efficiency dictate that in cases where the trial judge has doubts before trial as to whether a given fact-intensive issue will be dispositive of the matter at hand, it is preferable to conduct the trial and obtain a jury verdict and then rule on that issue. This allows the Court of Appeals, if it disagrees with a judge's ruling of law dismissing the case, to reinstate the jury's verdict without the need to order a new trial. See, e.g., Williams v. County of Westchester, 171 F.3d 98, 102 (2d Cir. 1999) (noting that such efficiency concerns make it preferable to grant judgment as a matter of law after the jury has rendered its verdict).

whether to grant or deny the application, the Court wishes to have the views of the parties, in the form of a letter from each party, not to exceed two single-spaced pages, which should be faxed to the Court and to counsel for Courtroom View Network, by January 15, 2009. Courtroom View Network may respond to any such letter by its own letter, not to exceed three single-spaced pages, which should be faxed to the Court and to counsel of record by January 21, 2009.

SO ORDERED.

Dated: New York, NY
December 30, 2008



JED S. RAKOFF, U.S.D.J.