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Panel Allows Stolen Artwork Claims to Move Forward

Jason Grant, New York Law Journal

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"Seated Woman with Bent Left Leg (Torso)" by Egon Schiele

A lawsuit brought by the heirs of a Jewish entertainer and art collector executed in the Holocaust that aims to recover artwork allegedly stolen by Nazis can proceed, a Manhattan appeals court has ruled.

A unanimous panel of the Appellate Division, First Department, on Tuesday affirmed a lower court's denialof a motion to dismiss the heirs' 2015 claims in *Reif v. Nagy*, 161799/15.

Justices David Friedman, John Sweeny, Dianne Renwick, Richard Andrias and Sallie Manzanet-Daniels said the findings in a separate lawsuit over a related art piece do not mandate dismissal under principles of collateral estoppel.

"Collateral estoppel requires the issue to be identical to that determined in the prior proceeding," the panel said. "[That has not] ... been shown here where the purchaser, the pieces, and the time over which the pieces were held differ significantly."

The lawsuit is part of a long-running fight to reclaim art once owned by Austrian Jew Fritz Grunbaum, who amassed a rare 449-piece art collection that was confiscated by Nazis in 1938, his heirs say. Grunbaum died at the Dachau concentration camp.

Plaintiffs and heirs Timothy Reif, David Fraenkel and Milos Vavra are seeking in the New York suit two drawings by artist Egon Schiele that their attorney, Raymond Dowd, a partner at Dunnington Bartholow & Miller, said are worth $5 million.

While the panel modified Commercial Division Justice Charles Ramos' ruling to dismiss one other cause of action brought by the heirs, Dowd said Tuesday's decision "really clarifies that each of these artworks is to treated separately, and our hands are not tied by the past," he said.

The attorney for defendant Richard Nagy, Nixon Peabody partner Thaddeus Stauber, did not return a call seeking comment.

Related Decisions:

- Reif v. Nagy, 161799/15