

Second Circuit Holds New York's Met Museum Can Keep Picasso's *The Actor*

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On June 26, 2019, the Second Circuit upheld the 2018 decision of the United States District Court for the Southern District of New York that allowed New York's Metropolitan Museum of Art (the Museum) to keep in its collection the monumental work by Pablo Picasso entitled *The Actor*, 1904-1905. The work was originally owned by Paul Friedrich Leffmann, a successful German-Jewish entrepreneur, who owned a manufacturing business and multiple properties as well as a sizable art collection. In the 1930s, after the newly adopted Nuremberg Laws deprived all German Jews of the rights and privileges of German citizenship, Leffmann was forced to sell his home and business and flee from Germany to Italy. In 1938, Leffmann and his wife sold the subject painting, *The Actor*, in order to escape the Nazi regime's growing influence in Italy and to relocate to Brazil. On the grounds that the 1938 sale was under duress, Leffmann's great-grandniece and sole heir, Laurel Zuckerman, sought replevin of the painting from the Museum, which had acquired it nearly 58 years ago.

In deciding the appeal, the Second Circuit took the unusual step of affirming on grounds not reached by the district court, which granted the Museum's motion to dismiss based on the failure to allege duress under New York law. On Zuckerman's appeal, the Second Circuit upheld the district court's decision not based on failure to allege duress but on finding that the claim was time-barred by the doctrine of laches. The Second Circuit's holding contains two main conclusions: (1) that Zuckerman's delay was unreasonable and prejudiced the Museum and (2) that the Holocaust Expropriated Art Recovery Act of 2016 (HEAR Act) did not, in the court's opinion, preempt the defense of laches. This is one of the first cases to explore the boundaries of the HEAR Act.

The defense of laches protects defendants against unreasonable, prejudicial delay in commencing suit. A defendant claiming laches is required to show both unreasonable delay on the plaintiff's part and prejudice to the defendant due to such delay. Absent the showing of such prejudice, the lapse of time alone will not bar a claim. In this instance, the Second Circuit held that both prongs of the laches test had been established. Specifically, the court noted that *The Actor* was a significant work by a celebrated artist, it was sold for a substantial sum to a well-known French art dealer and it had been in the Museum's collection since 1952. Yet, neither the Leffmanns nor their heirs made any demand for the painting until 2010. The court found such delay to be unreasonable under the circumstances. The court also held that while the determination of prejudice is ordinarily fact-intensive, the record

was sufficient to determine that the Museum was prejudiced by that delay, citing deceased witnesses, faded memories, disappearance of documentary evidence and hearsay of questionable value.

Of note, the Second Circuit also held that the HEAR Act did not preempt the defense of laches. The HEAR Act creates a uniform six-year statute of limitations for Holocaust era claims and was enacted to advance United States policy and ensure claimants a “full and fair” hearing “on the merits.” Typically, laches cannot be invoked to bar legal relief within a congressionally mandated statute of limitations. However, the Second Circuit held that this general rule did not apply to the HEAR Act, relying in part on its interpretation of the purpose and the legislative history of the Act, which explicitly sets aside “defenses at law relating to the passage of time.”

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