

Between Ethics and Opportunity: The Gray Area of Art Deals in Nazi Germany

On January 20th, the descendants of a prominent German-Jewish family filed suit against the Guggenheim Foundation claiming ownership of a 1904 Picasso Painting: *Woman Ironing*.¹ The subject of the suit, Karl Adler, originally purchased the piece in 1916 from Heinrich Thannhauser, the owner of a prestigious gallery in Munich.² As tensions grew and persecution began in Nazi-Germany, Adler sought to move his family to South America.³ Due to high costs of visas for South America, Nazi-imposed flight taxes on traveling Jews, and frozen bank accounts, Adler and many other Jewish art collectors fleeing Germany were forced to sell their art.⁴ Thus, once Adler fled Germany, he sold the painting to Heinrich's son—Justin Thannhauser—who was living in Paris at the time.⁵ The complaint notes that the painting sold for the equivalent of \$1,552 US dollars, which was one ninth of Adler's asking price for the painting six years prior and miniscule compared to the painting's \$100–200 million value today.⁶

Years later, the painting entered the Guggenheim's collection as a promised gift from Justin Thannhauser.⁷ Prior to this acquisition being finalized, Guggenheim administrators looked into the painting's past and contacted Adler's son—Eric—who did not raise concerns about the painting's sale.⁸ Now, 83 years since Adler sold the painting, descendants of the family claim the right to ownership of the painting or restitution due to Adler's selling the painting under economic duress.

Victims of Nazi-persecution seeking recovery for confiscated or misappropriated works of art is not a new legal issue. For instance, the Holocaust Expropriated Art Recovery Act of 2016 was passed to extend the statute of limitations and provide victims of Nazi persecutions opportunities to recover their art.⁹ Further, New York passed a series of laws in August 2022 including a law requiring New York museums to indicate artworks that “changed hands due to theft, seizure, confiscation, forced sale, or other involuntary means” during the Nazi regime's rule.¹⁰

Interestingly, the Adler descendants/Guggenheim dispute at hand seems to be in a gray area of the established law. Thannhauser himself was a German-Jew and moved to Paris to

¹ Complaint at 2, *Bennigson v. The Solomon R. Guggenheim Found.*, (N.Y. Sup Ct. Jan. 20, 2023) (No. 650416).

² *Id.* at 5.

³ *Id.* at 10.

⁴ *Id.* at 7.

⁵ *Id.* at 10.

⁶ Matt Stevens, *Jewish Heirs Sue Guggenheim Over Ownership of a Prized Picasso*, NEW YORK TIMES (Jan. 29, 2023), <https://www.nytimes.com/2023/01/29/arts/guggenheim-picasso-lawsuit-jewish-heirs.html>.

⁷ *Id.*

⁸ *Id.*

⁹ Holocaust Expropriated Art Recovery Act of 2016, Pub. L. No. 114–308 (2016).

¹⁰ S. 117A, 2022 Leg. Sess. (NY 2022), <https://www.nysenate.gov/legislation/bills/2021/S117#:~:text=S117%20%2D%20Summary,the%20Nazi%20>; Taylor Dafoe, *A New Law Requires New York Museums to Indicate if Artwork on View Passed Through Nazi Hands*, ART NET (Aug. 12, 2022), <https://news.artnet.com/art-world/new-york-holocaust-laws-2159480>.

escape Nazi persecution, just as the Adlers did.¹¹ Since the current statutes govern confiscation and acquisition of artwork by Nazis, we are left with a perplexing question: can a German-Jew claim duress when making a sale to another German-Jew who presumably faced similar hardship?

Although Thannhauser was also Jewish, scholars have pointed out that this is not the first of Thannhauser's art deals that has been scrutinized and wrought with controversy. In 2009, the Guggenheim settled a lawsuit claiming *Le Moulin de la Galette* was purchased by Thannhauser under economic duress.¹² Although the Guggenheim published the findings and history of the artwork, scholars point out that no case has ever resolved whether Thannhauser was a friend or foe of Jews fleeing from Germany.¹³

This case could serve as a turning point and an opportunity for courts to answer the question of the role that Thannhauser played in the Nazi-period transactions. If the court finds Thannhauser was a foe of fleeing Jews and taking advantage of their desperate economic situations, this could lead to a slew of legal disputes relating to art deals made in this time period.

BACKGROUND: I am a 2L from Maumelle, Arkansas. I went to the University of Alabama and I plan to remain in Nashville to practice after graduation.

¹¹ *Guggenheim Settles Litigation and Shares Key Findings*, GUGGENHEIM, (March 25, 2009), <https://www.guggenheim.org/news/guggenheim-settles-litigation-and-shares-key-findings> ("As a result of persecution by the Nazis, Thannhauser and his family, who were Jewish, emigrated from Berlin to Paris in April 1937, where he operated a private gallery.")

¹² *Id.*

¹³ *Id.*; Jennifer Anglim Kreder, Essay, *Guarding the Historical Record From the Nazi-Era Art Litigation Tumbling Toward the Supreme Court*, 159 U. PA. L. REV. PENNUMBRA 253, 264–65 (2011), https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1054&context=penn_law_review_online.