

Going for Gold

Gustav Klimt's 1907 portrait of Adele Bloch-Bauer surrounded by golden stylised designs is one of his most distinctive works. Now it is at the centre of an international legal battle which could see the Austrian government sued by Bloch-Bauer's heirs in a US court.

The stage is set for the US Supreme Court to decide whether it will haul the Republic of Austria into the courtroom, to have its say in one of the world's most high-profile battles over art looted in the Holocaust. During World War II many thousands of artworks went missing as Adolf Hitler, who once made his living as an artist, passed decrees to seize and 'Aryanise' Jewish collections, and planned to set up the world's greatest collection of art in his home town of Linz.

Early this year the Supreme Court will decide whether it accepts jurisdiction in a dispute over six paintings by Austrian painter and illustrator Gustav Klimt, that currently hang in the Austrian Gallery in Vienna alongside Klimt's most famous work, *The Kiss*. The paintings originally belonged to Adele Bloch-Bauer, the wife of Jewish sugar magnate Ferdinand Bloch-Bauer – four are landscapes, and two are portraits of her. In 1925 Adele died suddenly of meningitis, leaving a 1923 will that left all her possessions to her husband – but asked him to give the six Klimt paintings to the Austrian National Gallery after his death.

In 1938, after Austria was annexed to Germany, Bloch-Bauer fled Vienna for Czechoslovakia and his huge collection of art was plundered. Some were given to Hitler and Hermann Goering, others bought for the planned museum in Linz, while Nazi lawyer Erich Führer, who was responsible for liquidating the estate, kept some for himself.

What happened next is murky. Of the six Klimt paintings, three had found their way to the Austrian National Gallery by the end of the war – exactly how is disputed. The remaining three were donated to the museum after the war, as the family struggled to reach a settlement with the Austrian government for the return of Ferdinand's property.



ALTMANN AND SCHOENBERG... ADVICE

In 1945 Ferdinand Bloch-Bauer died in exile in Switzerland, cut off from his family and all his possessions, and practically penniless. His will left all his property to his niece Maria Altmann and her brother and sister. Altmann managed to escape to the US via the Netherlands and England with her husband Fritz, who was released after spending several months imprisoned in Dachau concentration camp. She has lived in Los Angeles since 1942, and became a US citizen in 1945. For years she has been negotiating with

Austria for the return of her uncle's property – but the talks have brought no resolution. Now in her late 80s, advised by Randol Schoenberg (pictured left), Altmann is preparing to take Austria– advised by Scott P Cooper of LA firm Proskauer Rose – to court.

The US District Court of the 9th Circuit last autumn denied Austria's petition to stop the hearing going ahead, and Schoenberg is preparing his arguments on why the US courts should accept jurisdiction over the case for early 2004. 'I would suppose our chances at 25 per cent that we will win,' he says. 'That is more than it's been at every stage so far – the weights have always been stacked against us.' The attorney took on the case because his maternal grandfather was



GUSTAV KLIMT: 'PORTRAIT OF ADELE BLOCH-BAUER' 1907

friends with Fritz Altmann before both fled Vienna – his paternal grandfather, incidentally, was the famous composer Arnold Schoenberg.

Holocaust themes

According to Karen Sanig (pictured left), head of Mishcon de



SANIG...
QUESTIONS

Reya's art law department, the same themes are often repeated in looted art cases – 'Who has the legal title, and on what evidence is this based?

Through which jurisdictions has the artwork passed? Are there time bars in the relevant jurisdictions which could prevent successful claims?' These issues are central to the *Altmann* case. Schoenberg's first hurdle is to convince the

US courts to accept jurisdiction over the acts of the Austrian state. While the US Foreign Sovereign Immunities Act (FSIA) means the US cannot have jurisdiction over the acts of other sovereign states, it contains an exception covering commercial issues – which Schoenberg will argue gives the US jurisdiction over *Altmann*.



PARKHOUSE... PAPER TRAIL

In the case of *Siderman v Argentina*, an Argentine family, whose daughter was an American citizen, sued Argentina for torturing them and seizing their possessions. The US Court of Appeals for the 9th Circuit ruled that the FSIA gave Argentina immunity from the torture claims, but that expropriation of property fell within the act's exception for commercial activity.

If the US courts do accept jurisdiction over the *Altmann* case it could have serious political implications, and the US government, along with several other countries, has urged the courts not to take the matter any further. 'It reflects a principle of generally applicable public international law, which is that one state will not interfere with a step taken by another sovereign state, and that does raise its head a number of times in these art cases,' says Adrian Parkhouse (pictured above), head of Farrer & Co's disputes and art and heritage teams. He notes the case of *Princess Paley Olga, widow of Grand Duke Paul of Russia v Weisz* in 1929. The princess fled the Russian revolution to England in 1917 and the contents of her husband's palace near St Petersburg were nationalised by the Soviet revolutionaries. In 1928 an art dealer named Weisz bought several articles from the palace from the Soviet authorities and brought them to England, where Princess Paley filed a suit to claim them back. The UK court refused to enquire into the

actions of a recognised foreign government done within its own territory.

'Life gets a bit complicated after World War II, because one of the features of the Nazis was that they were very good at legalising what they did by laying a paper trail of law – it was rarely outright "stealing",' says Parkhouse. Later decrees by the Allies rendered a lot of those laws null and void, but some remained, complicating the issue.

'The implications are potentially enormous if the US has jurisdiction now over foreign states for post-war activities,' says Sanig. 'For example, this may impede the free flow of historical information by current governments, which is often crucial for establishing the true position and obtaining a satisfactory compromise. Looted art cases raise moral and ethical as well as legal issues. Some governments, including Austria, have already introduced legislation to facilitate the restitution of art from museums. This may not continue if there is a risk of being policed by the US.'



VALENTIN... WINGS

Waiting in the wings

Withers litigation partner Pierre Valentín (pictured left) believes many other potential claimants are waiting in the wings to see the outcome of the *Altmann* case, and bring their own claims should it succeed. 'I have little doubt that those claimants will come out of the woodwork and try the same thing against other foreign governments,' he says.

Parkhouse says there could be an impact on the viewing public if states fear artworks from their national collections may be claimed in other countries. He cites an ongoing case between the heirs of a Jewish gallery owner in Vienna and another Vienna collection, the Leopold Gallery. When the Leopold Gallery lent two Egon Schiele paintings, *Portrait of Wally* (1912) and *Dead City* (1911) to New York's Museum of Modern Art, Schiele's heirs claimed the paintings had been seized from the Austrian Jewish collection under Nazi rule and never returned to their rightful owners. The museum refused to give up the paintings, but in January 1998 Manhattan's district attorney issued a subpoena to keep the paintings in New York as evidence for a grand jury criminal investigation.

'It is already difficult enough to have confidence in the loan system, and while *Altmann* isn't about a loan, the more threat there is that items may not be recovered when they are lent, the less likely a country is to want to lend them,' says Parkhouse. 'It

could have an impact on the viewing public as countries may feel even less inclined than they are at the moment to lend items out, if it is feared that on top of all the other issues there is also a threat of sovereign immunity not working.'

In the *Altmann* case, title, not jurisdiction, is the substantive issue. The Austrian government believes that Adele Bloch-Bauer's request that the paintings should go to the Austrian National Gallery is a legally binding bequest – which Schoenberg vehemently denies. 'The Austrians would have given the paintings back already if it were not for their improper reliance on this will,' he says. An opinion by leading Austrian legal expert Rudolf Welsch, professor of civil law at the

University of Vienna, backs up his view that the request in the will is a 'non-binding wish, and therefore does not constitute the basis for any estate law claims.'

But in an open letter to the Austrian *Daily Standard* in July 1999, Austrian culture minister Elisabeth Gehrer argued that Adele's will gives Austria legal ownership of the paintings. 'Adele Bloch-Bauer's will of 19 January 1923 uses the word 'bequest' in relation to the paintings. That means that the restitution law (1998 Austrian law to reconstitute Holocaust looted art) does not apply to Adele Bloch-Bauer's legacy. The paintings were neither looted during the war nor restituted after the war, and have been kept here under the ban on exports.'

'I really see this as a very narrow case,' comments Schoenberg, who says the issue at stake is purely a legal one. 'The facts are so unusual, so out of the ordinary for cases like this. I'm very doubtful that even if we win this would have any applicability to other cases.'

Final hurdle

Should Altmann's case be accepted and a US court find she has title to the paintings, she could face the final hurdle of a limitation period – if such a period is in place, she may have brought her case too late for it to be valid. Limitation periods vary from country to country, and will depend on which jurisdiction applies.

Valentin notes a case heard in London's High Court, in which the German City of Gotha, advised by Eversheds' Michael Carl, claimed back an old master looted by the Soviet army after World War II from vendor Cobert-Finance, which wanted to sell the work through Sotheby's auction house. Mr Justice Moses, ruling on the case in 1998, made it clear that limitation periods would not be used to override the claims of rightful owners. 'The legal

issues raised by World War II restitution cases are complex, and a strict application of the law may clash with moral issues,' comments Valentin.

'Each case must be considered on its own merits, rather than trying to find solutions fit for all restitution cases.'

At this stage, the prospects of success are so distant that Schoenberg cannot say what the heirs will do if they are able to claim back the paintings, although he says: 'I don't think anyone expects these paintings to end up in a private collection.' Certainly it would seem a shame for the Austrian gallery, home to the best collection of Klimt pieces in the world, to lose such an integral part of its collection, and for Vienna, where Klimt's cultural impact is clearly visible in architecture and art, to lose a large part of its cultural history. But lawyers question whether privately owned, illegally looted art that has found its way into national museums should become part of cultural property, and say that this is a matter for rightful owners to decide.

And so the stage is set for a legal battle which could rock the art world and revolutionise the claims of Holocaust survivors and their heirs to artworks looted during the war. Or could it? 'If these disputes are resolved by piecemeal litigation alone there can never be an international uniformity of approach,' says Sanig. 'International treaties have tried to create harmony going forward, and negotiation – either by formal mediation or otherwise – is a better way of dealing with complex multi-jurisdictional issues thrown up by looted art cases. That is my personal view as a litigator!' ■