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### 'Innocent Buyer' of Stolen Art Loses Out to French Museum

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"Le Marché" by Camille Pissarro

The unwitting buyer of an artwork stolen 30 years ago from a French museum and smuggled by the thief into the United States will have to surrender the piece following a decision by the U.S. Court of Appeals for the Second Circuit.

Upholding lower court rulings and a verdict of forfeiture, the circuit said Sharyl R. Davis has to give up "Le Marché," a Camille Pissarro monotype lifted from the Musée Faure in Aix-les-Bains in 1981.

"Unlike in the Judgment of Solomon, see 1 Kings 3:16-28, neither party has blinked," Judge Gerard E. Lynch wrote for the circuit in [United States v. Davis](#), 10-300-cv, "and we are therefore in the unenviable position of determining who gets the artwork, and who will be left with nothing despite a plausible claim of being unfairly required to bear the loss."

The reason that Ms. Davis has to bear the loss is that the government proved to a jury's satisfaction that the monotype, an impression on paper of a painting, was stolen by Emil Guelton. Mr. Guelton then consigned the work to a San Antonio gallery owner who, in turn, sold it in 1985 to a company partially controlled by Ms. Davis.

The price was \$8,500 and, after the company dissolved in 1992, Ms. Davis displayed the work in her home for more than 10 years before consigning it to Sotheby's for sale at auction.

Before the auction occurred, the French National Police informed U.S. law enforcement that "Le Marché" was stolen and Sotheby's complied with a request to withdraw it from auction.

French authorities began gathering evidence to prove the painting was stolen. They tracked down Mr. Guelton, who admitted selling artwork to the San Antonio gallery in the 1980s. They interviewed Jacqueline Rivollet, the museum guard on duty the day of the theft.

Ms. Rivollet picked Mr. Guelton out of a photo array as the man she saw enter the museum on Nov. 16, 1981. She said he was the same man she later heard running down some stairs and emerge from a stairwell with something stuffed inside his parka. The United States had the evidence it needed to file a forfeiture action in the Southern District.

Judge Richard J. Sullivan granted summary judgment in 2009 for Ms. Davis on two forfeiture claims based on [18 U.S.C. §981](#) because she was an "innocent owner" of the painting.

But on a third forfeiture claim, this one under a customs statute, [19 U.S.C. §1595a](#), Judge Sullivan ruled that the "innocent owner" defense did not apply.

That section authorizes forfeiture where merchandise is introduced "into the United States contrary to law" if the merchandise "is stolen, smuggled, or clandestinely imported or introduced."

To show that it was "contrary to law," the government charged a violation of the National Stolen Property Act, [18 U.S.C. §§2314, 2315](#), which criminalizes the knowing possession or sale of stolen goods valued at \$5,000 or more.

Judge Sullivan ruled that the government had met its burden of showing probable cause for forfeiture—and the burden for showing "Le Marché" was not stolen shifted to Ms. Davis at a jury trial.

On Jan. 11, 2010, a jury found she failed to meet that burden and it ruled for the government. Judge Sullivan entered a final judgment one week later and denied Ms. Davis' motion for attorney's fees on May 25, 2010.

Ms. Davis' appeal was heard on Feb. 2 by Judges Lynch, Guido Calabresi and, sitting by designation, Southern District Judge Denise L. Cote.

Ms. Davis first argued that the National Stolen Property Act violations cannot serve as a predicate offense to seize something that is shipped "contrary to law" without the presence of a customs violation.

Writing for the court, Judge Lynch said, "In effect, she urges us to read the phrase 'contrary to law' as 'contrary to customs law.'"

He added, "If Congress had intended to limit the scope of §1595a to violations of customs laws, it could have said so. Since it did not, §1595a(c) would appear to require only that the property in question be introduced into the United States illegally, unlawfully, or in a manner conflicting with established law."

The court rejected her claim that Judge Sullivan improperly granted summary judgment by finding that the value of the monotype cleared the \$5,000 threshold.

The Second Circuit then took on Ms. Davis' argument that she should have been allowed to assert an innocent owner defense to §1595a.

Judge Lynch said the statute states that property introduced into the U.S. contrary to law "*shall*" be forfeited.

"The word 'shall' indicates that Congress intended forfeiture under §1595a(c)(2) to happen as a matter of course," he said. "Such definite language is not susceptible to an interpretation that a legitimate possessory interest in the property might defeat an otherwise valid forfeiture claim."

Judge Lynch said it is "unsurprising" that the law, enacted as part of the Tariff Act of 1930, "would require forfeiture regardless of the owner's culpability."

Most early statutes to enforce customs laws contained no innocent owner defense, he said, and he quoted the U.S. Supreme Court in an opinion handed down just two years after the Tariff Act of 1930 was passed, [\*General Motors Acceptance Corp. v. United States\*](#), 286 U.S. 49 (1932).

"The penalty is at times a hard one," the high court said, "but it is imposed by the statute in terms too clear to be misread."

The court went on to reject Ms. Davis' arguments on the shifting of the burden of proof and the constitutionality of the forfeiture under the excessive fines clause of the Eighth Amendment and the takings clause of the Fifth Amendment.

Finally, Ms. Davis was not entitled to attorney's fees for winning summary judgment on two of the forfeiture claims as a claimant who "substantially prevails" under the Civil Asset Forfeiture Reform Act of 2000.

"Davis' partial victory at summary judgment merely narrowed the issues presented in this case," Judge Lynch said. "It did not entitle her to retain ownership of 'Le Marché.'"

Barbara Hoffman of The Hoffman Law Firm represented Ms. Davis.

Assistant U.S. Attorneys Jeffrey Alberts and Virginia Chavez Romano represented the government.

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