

Hearing date: February 10, 2012

V ZR 279/10

Kammergericht – 8 U 56/09 – Decision of January 28, 2010

Dr. Hans Sachs, Plaintiff's father, was the owner of a large poster collection of value in terms of cultural history which was taken from him in 1938 upon orders of the then Reich Propaganda Ministry. Because of the persecution of Jews he left Germany at the end of 1938 and emigrated to the USA.

After the war the collection was lost. In 1961 Dr. Sachs received a compensation amount of DM 225,000.00 in a settlement according to the provisions of BRÜG. Only later did he learn that parts of the collection had surfaced in the GDR. Today, the poster collection is in Defendant's (DHM a foundation under public law) possession. Presently 4,259 posters have been identified.

Dr. Sachs died in 1974 and his wife was his heir. She died in 1998 without having filed any claims regarding the collection after reunification.

Plaintiff succeeded to her estate. He filed suit for the return of two posters ("Mastiff" and "The Blonde Venus"). By means of a counterclaim Defendant wishes to obtain the ruling that Plaintiff is not the owner of the poster collection, in the alternative, that he is not entitled to demand the return of the posters.

The Landgericht Berlin sentenced Defendant to return the poster "Mastiff" and dismissed the further suit and counterclaim. Upon alternative counterclaim motion by Defendant the Kammergericht – while dismissing all other motions – established that Plaintiff is not entitled to demand the restitution of posters from his father's collection which are in Defendant's possession.

The Kammergericht holds that Dr. Sachs has not lost ownership of his collection in 1938 nor within the framework of the restitution proceedings. Also it holds that these posters did not become property of the people of the GDR. Nonetheless, Plaintiff as legal successor and present owner cannot demand the return according to § 985 BGB, since according to the legal practice of the BGH claims based on National Socialist measures of injustice can only be asserted according to BRÜG and Compensation Laws. Accordingly, the precedence of the relevant ordinance of the Allied Headquarters Berlin (restitution ordinance for the Land Berlin) would have to be observed, according to which a return could have only been demanded within the deadlines (which have long expired).

The Kammergericht did not grant Revision. Upon the petition for leave to appeal filed by the Plaintiff the Senate allowed Revision because of the fundamental importance of this legal matter. Furthermore, the question of the relationship of restitution law to general civil law needs to be reviewed and clarified, particularly cases of restitution claims that could not be filed at the time for factual reasons – as in the present case – (the collection was lost).

Plaintiff accepts the dismissal of his restitution motion for the poster “The Blonde Venus” and continues to pursue his motions filed in the appeals instance. He is prepared to pay back the compensation amount paid to his father if the poster collection is restituted to him.