



Schuler v. Baldwin

Schuler v. Baldwin¹

594 F.2d 1285
(13th Cir. 1987)

This appeal concerns a dispute over ownership of a painting by Claude Monet that disappeared from Germany at the end of World War II and has been in the possession of a good-faith purchaser for the last thirty years. The issue on appeal is whether the plaintiff-appellee exercised reasonable diligence in trying to locate the painting in order to postpone the running of the statute of limitations in a suit against a good-faith purchaser, the defendant-appellant. The issue arises on an appeal from a judgment

of the District Court for the Southern District of East Carolina, awarding recovery of the painting to plaintiff-appellee Katherine Schuler, a citizen of West Germany who owned the Monet from 1922 until 1943, from defendant-appellant Martha Baldwin, an American citizen who purchased the painting in East Carolina in 1957 and who has possessed it ever since. We conclude that the undisputed facts show that Schuler failed to exercise reasonable diligence in locating the painting after its disappearance, and that her action for recovery is untimely. We therefore reverse the judgment of the district court.

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Background

The oil painting is an impressionistic landscape painted by

1. This heavily edited text is based on *DeWeerth v. Baldinger*, 836 F.2d 103 (2d Cir. 1987).

Monet. The painting's estimated worth is in excess of \$500,000.

Plaintiff Katherine Schuler is a citizen of West Germany. Schuler kept the painting in her home from 1922 until 1943.

In August 1943, Schuler sent the Monet and other valuables to the home of her sister for safekeeping during World War II. Schuler's sister lived in a castle in southern Germany. Her sister hung the painting in the castle. In 1945, at the end of the war, American soldiers were stationed in the castle. Following the soldiers' departure, Schuler's sister noticed that the Monet was missing. She informed Schuler of the painting's disappearance in the fall of 1945.

Schuler contacted several authorities concerning the lost Monet. In 1946, she filed a report with the military government administering the Bonn-Cologne area after the war. The report no longer exists, but Schuler testified that it was a standard government form **1286** in which she briefly described items she had lost during the war. In 1948, in a letter to her lawyer regarding insurance claims on property she had lost, Schuler expressed regret about the missing Monet and inquired whether it was "possible to do anything about it." Her lawyer wrote back that the Monet would not be covered by insurance; he did not begin an investigation. In 1955, Schuler sent the 1943 photograph of the Monet to an art expert and asked him to investigate the painting's whereabouts. The art expert responded that the photo was insufficient evidence with which to begin a search, and Schuler did not pursue the matter with him further.

Finally, in 1957 Schuler sent a list of art works she had lost during the war to the West German federal bureau of investigation. None of Schuler's efforts during the period 1945-1957 helped her to locate the Monet. Schuler made no further attempts to recover the painting after 1957.

In the meantime, the Monet had reappeared in the international art market by 1956. In December of that year, Galwyler & Co., Inc., an art gallery in Carolina City, acquired the Monet on consignment from an art dealer in Geneva, Switzerland. From December 1956 until June 1957, the painting was in the possession of the Galwyler art gallery in East Carolina, where it was shown to several prospective buyers. Defendant Martha Baldwin eventually purchased the painting in June 1957 for \$30,900. The parties agree that Baldwin purchased the painting for value, in good faith, and without knowledge of any adverse claim.

Since 1957, Baldwin has kept the Monet in her Carolina City apartment, except for two occasions when it was displayed at public exhibitions. From October 29 to November 1, 1957, it was shown at a benefit at a local hotel, and in 1970 it was loaned back to the Galwyler art gallery for a one-month exhibition.

Schuler learned of Baldwin's possession of the Monet through the efforts of her nephew, Max Kern. In 1981, Kern was told by a cousin that Schuler had owned a Monet that had disappeared during the war. Shortly thereafter, Kern identified the painting in a published book of Monet's works. The book indicated that the painting had been sold by the Galwyler art

gallery in 1957 and that the gallery had exhibited it in 1970. In 1982, Schuler retained counsel in East Carolina and requested that the Galwyler art gallery identify the current owner. By letter dated December 27, 1982, Schuler demanded the return of the Monet from Baldwin. By letter dated February 1, 1983, Baldwin rejected the demand.

Schuler filed the present action to recover the Monet on February 16, 1983. At the conclusion of discovery, the parties submitted the case to the district court judge for decision on the record. The district court adjudged Schuler the owner of the painting and ordered Baldwin to return it. The judge found that Schuler had superior title and that the action was timely as she had exercised reasonable diligence in finding the painting.

Discussion

In this diversity action, we must apply the substantive law of East Carolina. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 61 S. Ct. 1020, 85 L. Ed. 1477 (1941). The East Carolina statute of limitations governing actions for recovery of stolen property requires that suit be brought within three years of the time the action accrued. E.C. Code § 4-201. Where the owner proceeds against one who innocently purchases the property in good faith, the statute of limitations period begins to run when the good faith purchaser acquired the property. Because Schuler did not bring an action within the three-year time period, her action will be barred unless equity justifies tolling the statute of limitations.

In order to avoid unjust results that might be caused by a strict application of the statute, we hold that under East Carolina law an original owner's "cause of action will not accrue until the injured party discovers, or by exercise of reasonable diligence and intelligence should have discovered, facts which form the basis of a cause of action." *O'Keeffe v. Snyder*, 416 of A.2d 862, 869 (N.J. 1980).

1287 The question of what constitutes due diligence that tolls the statute of limitations depends upon the circumstances of the case. When the action is for the return of stolen property, one of the key circumstances is the nature and value of the property at issue. *See id.* at 873. It has been recognized that when the property is valuable art, the search efforts that may reasonably be expected of an owner may be more exacting than where the property is of a different kind or of a lesser value. *Id.*

Schuler's investigation was minimal. The "reports" filed with the military government and West German federal bureau of investigation amounted to no more than a standard form listing personal items lost during the war and a one-sentence letter submitting a list of works that read only, "I lost during and after the war." Neither of these reports gave any details as to how, where, or when the Monet had disappeared, nor any other information that would be essential to a credible search. Schuler's contacts with her lawyer and the art expert were no more meaningful. She wrote to her lawyer regarding her insurance coverage. She mentioned that the Monet was among the art she had lost and inquired generally, "Is it possible to

do anything about it?" It is not clear whether this was a request to find the painting or simply a question about insurance coverage. In any event, when her lawyer wrote back that the Monet would not be covered by insurance, Schuler let the matter drop. Schuler did ask the art expert to find the Monet. But, as with her lawyer, the investigation never was started; the art expert replied that he had insufficient information on which to proceed, and Schuler then abandoned the effort.

More revealing than the steps Schuler took to find the Monet are those she failed to take. Conspicuously absent from her attempts to locate the painting is any effort to take advantage of several mechanisms specifically set up to locate art lost during World War II. One such mechanism was a program initiated by the allied forces in Europe to handle works of art looted during the war. Under this program, Central Collecting Points (CCPs) were established throughout Germany where works of art turned in to the occupying forces were catalogued and stored until claimed by their rightful owners. In 1949, administration of the program was transferred to the German government, and the paintings then located in the CCPs were given to a Trust Administration of the Federal Republic of Germany. Another program was run by the United States Department of State, which engaged in its own independent effort to locate stolen art. Schuler informed none of these agencies about the Monet, although she was aware of the CCPs; her family had attempted to recover other art from them. Nor did Schuler publi-

cize her loss of the Monet in any one of several available listings designed to keep museums, galleries, and collectors vigilant for stolen art.

Most indicative of Schuler's lack of diligence is her failure to conduct any search for 24 years, from 1957 until 1981. Significantly, if Schuler had undertaken even the most minimal investigation during this period, she would very likely have discovered the Monet, since there were several published references to it in the art world. First, the Monet was pictured in the catalogues of two public exhibitions at which the painting was shown. Finally, the Monet is included in a published book that led to the painting's discovery by Kern. Consultation of any of these publications would likely have led Schuler to the Monet, as each one is connected to the Galwyler art gallery, which sold the painting to Baldwin.

The district court excused Schuler's failure to search for the Monet after 1957 on the grounds that she was elderly and that published references to the Monet were not generally circulated. But in 1957, when Schuler made her last attempt to locate the painting, she was only 63 years old. Moreover, though the published references may not have been generally circulated, they were accessible to anyone looking for them. Finally, although an individual, Schuler appears to be a wealthy and sophisticated art collector; even if she could not have mounted a more extensive investigation herself, she could have retained someone to do it for her.

The judgment of the district court, therefore, is reversed.