

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TIMOTHY REIF and DAVID FRAENKEL, as
Co-Trustees of the LEON FISCHER TRUST
FOR THE LIFE AND WORK OF FRITZ
GRUNBAUM and MILOS VAVRA,

Plaintiffs,

– against –

OBERLIN COLLEGE d/b/a ALLEN
MEMORIAL ART MUSEUM,

Defendant,

An Artwork *GIRL WITH BLACK HAIR* (1911)
by the Artist Egon Schiele,

Defendant-in-rem.

Case No. 1:23-cv-02108

[rel. 23-cv-00346; 23-cv-02443; 23-cv-03009;
22-cv-10625]

**DECLARATION OF MATTHEW LAHEY IN SUPPORT OF
DEFENDANT OBERLIN COLLEGE d/b/a ALLEN MEMORIAL ART
MUSEUM’S MOTION TO DISMISS PLAINTIFFS’ AMENDED COMPLAINT**

MATTHEW LAHEY, declares under penalty of perjury as follows:

1. I am the Vice President, General Counsel and Secretary of Defendant Oberlin College d/b/a Allen Memorial Art Museum (“Oberlin”). I respectfully submit this Declaration in support of Oberlin’s Motion to Dismiss Plaintiffs’ First Amended Complaint in the above-captioned matter. I am fully familiar with the facts and circumstances set forth herein based on my personal knowledge gained through the performance of my duties at Oberlin, including in particular my familiarity and work with Oberlin’s historical records.

2. On or about January 24, 2006, Oberlin received a written demand letter from counsel representing Milos Vavra (“Vavra”) and Leon Fischer (“Fischer”) “to formally demand” that Oberlin turn over to them a drawing by the artist Egon Schiele known as *Girl With Black Hair*

(1911), which Oberlin acquired in 1958. A true and correct copy of that demand letter is annexed as **Exhibit A**.

3. Following the denial of Vavra's and Fischer's class certification motion in *Bakalar v. Vavra*, No. 05-cv-3037 (WHP) (S.D.N.Y.) in 2006, in which Vavra and Fischer had tried to make Oberlin a class representative and member of a counterclaim-defendant class action with respect to Oberlin's ownership of *Girl With Black Hair*, Vavra and Fischer (through the same counsel) made an additional, correspondence-based demand on Oberlin in or about early 2009. A true and correct copy of such correspondence is annexed as **Exhibit B**.

4. Nevertheless, Vavra and Fischer did not further pursue a claim against Oberlin concerning *Girl With Black Hair* until December 2022, when they commenced this action.

5. Oberlin has continued to own and publicly exhibit *Girl With Black Hair* since 2006, including as part of its *On Line: European Drawings, 16th-19th Centuries* exhibition between September 2007 and January 2008 (<https://amam.oberlin.edu/exhibitions-events/exhibitions/2007/09/25/on-line-european-drawings-16th19th-centuries>); its *Out of Line: Drawings from the Allen from the Twentieth Century and Beyond* exhibition between September – December 2009 (<https://amam.oberlin.edu/exhibitions-events/exhibitions/2009/09/01/out-of-line-drawings-from-the-allen-from-the-twentieth-century-and-beyond>); and its *Modern and Contemporary Realisms* exhibition between August 2013 and January 2014 (<https://amam.oberlin.edu/exhibitions-events/exhibitions/2013/08/06/modern-and-contemporary-realisms>).

Dated: Oberlin, Ohio
June 7, 2023


MATTHEW LAHEY

EXHIBIT A

FRANTZ WARD LLP
ATTORNEYS AT LAW

2500 Key Tower • 127 Public Square • Cleveland, Ohio 44113-1999 • 216.515.1650 • FAX 216.515.1650

FAX COVER PAGE

Date: February 1, 2006 **3 page(s) (including cover)**

Sent To: Ms. Stephanie Wiles
Company: Oberlin College
Phone: (440) 775-8665
Fax: (440) 775-6841

From: Michael J. Frantz
Phone: (216) 515-1606

Comments:

RECEIVED

FEB 01 2006

ALLEN ART MUSEUM

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D O W D & M A R O T T A L L C

ATTORNEYS AT LAW

www.dowdmarottalaw.com

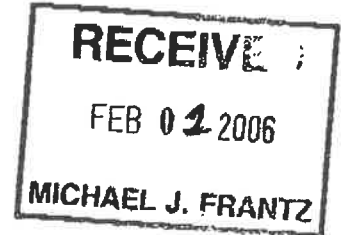
RAYMOND J. DOWD
DANIEL C. MAROTTA*

MARGARET RICKMAN

* ADMITTED NEW YORK and NEW JERSEY

THE BROADWAY-CHAMBERS BUILDING
277 BROADWAY • SUITE 1310
NEW YORK, NY 10007TEL: (212) 349-1200
FAX: (212) 349-4056

January 24, 2006

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTEDMike Frantz, Esq.
Frantz Ward LLP
2500 Key Center
Cleveland, OH 44114Re: Legal Claims Against Oberlin College/ Allen Memorial Art Museum
Bakalar v. Vavra (05 Civ. 3037)(S.D.N.Y. Pauley, J.)

Dear Sir/Madam:

We are writing on behalf of Leon Fischer and Milos Vavra, co-heirs to the estate of Fritz Grunbaum. We are writing to formally demand the return of art works owned by Grunbaum that were taken from him when he was placed in a concentration camp. While he was in a concentration camp, his apartment was "Aryanized". Its contents, including the artworks, went into the custody of Schenker & Co., a Nazi-owned storage company. Grunbaum never regained his freedom and died in a concentration camp. Under Austrian law, any transfer of Grunbaum's property while he was imprisoned is considered null and void. Under the law of all jurisdictions, one may not take title from a thief. Schenker, the world's largest freight forwarder and logistics company was the "thief" in the chain of title. To this date, Schenker has refused to provide a satisfactory explanation of the disappearance of the art collection and the world's museum community has been content to enjoy this stolen art without searching for heirs and explanations. It is time for this shameful conspiracy of silence to end.

We hereby demand the return of the artworks held at your institution in connection with the above referenced matter. We have attached a Declaration of Herbert Gruber dated January 5, 2006 ("the Gruber Declaration") on the CD-Rom that accompanies this letter. Paragraph number 44 of the Gruber Declaration is a schedule listing institutions and the Grunbaum artworks we believe each institute holds. The Gruber Declaration sets forth the Grunbaum works that we believe your institution holds. We believe the attached works listed in your institution's name belong to the estate of Fritz Grunbaum. We have also included documents on the CD-Rom that we believe compel the conclusion that the co-heirs have title to the work and are entitled to their immediate return.

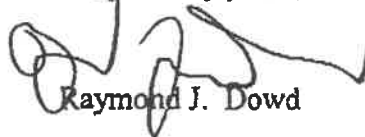
We have amassed a large amount of evidence showing Grunbaum provenance and legal title. We also have enclosed opinions of Austrian counsel and Swiss counsel relevant to transactions and law applicable to those countries. We have enclosed an opinion of a handwriting expert which contains evidence showing that the documents showing that Matilde Lukacs allegedly sold the Grunbaum works to Eberhard Kornfeld are forgeries. This is not the first time that Eberhard Kornfeld has been involved in transactions tainted with serious evidence of forgery. We have enclosed the Tunick v. Kornfeld cases involving Kornfeld's alleged sale of a forged Picasso. If you would like more information on the Co-Heirs' ownership claims, we will provide it. If you fail to notify us of your intention to return the works, it is our intention to assert claims against your institution for the return of the works in an amended pleading that we must file on February 6, 2006.

Clearly, as shown by Exhibit C to the Answer and Counterclaims, the Nazis had possession of the art collection as of September 1938. This unequivocally shows a thief in the chain of title. Since it is undisputable that the works were never returned to Grunbaum's legal heirs, we respectfully demand that your institution return these stolen works to the rightful heirs. On December 3, 1998, 44 museums and governments agreed to the Washington Principles on Nazi-confiscated art. www.lootedartcommission.com. Shamefully, no museum or government has assisted the Grunbaum co-heirs in pursuing the truth. Shamefully, no museum or government has criticized Austria for breaching its treaty obligations with the United States by purchasing the looted art in the Leopold Foundation through the legal fiction that the Leopold Foundation is "private". Shamefully, when confronted with this overwhelming evidence, the international museum community sits uneasily, hoping that the heirs will run out of money or resolve. Schenker & Co. reaps profits as the official logistics provider to the Olympics, yet no one has joined the co-heirs in demanding an explanation of what happened to the looted art in their possession.

As most of you know, Rita Reif and her family spent over 30 years searching for Grunbaum works and Grunbaum heirs. The Portrait of Wally case originally involved Dead City III, a Grunbaum work. Disgracefully, this stolen work is currently displayed in the Vienna 1900 exhibition at the Grand Palais in Paris. After months, Harvard's Fogg Museum has not even responded to us.

We hope that your institution will have the courage to step forward and do the right thing.

Respectfully yours,



Raymond J. Dowd

- encl. CD Containing:
 - Gruber Declaration dated January 5, 2006
 - Hofer Declaration
 - Mosimann Declaration
 - Answer & Counterclaims
 - Farthofer Declaration (Exhibit F to Gruber Declaration)
 - Tunick v. Kornfeld Cases

EXHIBIT B

OCM il

Scott Wargo <[REDACTED]>

Fwd: Estate of Fritz Grunbaum - Girl With Black Hair

4 messages

Sandhya Subramanian <[REDACTED]>
To: Scott Wargo <[REDACTED]>
Cc: Ben Jones <[REDACTED]>

Thu, May 14, 2009 at 6:03 PM

FYI -- per my voice-mail message.

Begin forwarded message:

From: Raymond Dowd <[REDACTED]>
Date: May 14, 2009 11:31:21 AM EDT
To: "sandhya.subramanian" <sandhya.subramanian@[REDACTED]>
Cc: "gfarkas" <gfarkas@[REDACTED]>, "broof" <broof@[REDACTED]>, Aaron Bulloff <abulloff@[REDACTED]>, Stephen Kadish <skadish@[REDACTED]>
Subject: Estate of Fritz Grunbaum - Girl With Black Hair

Dear Sandhya: This is to memorialize our conversation today during which you terminated our settlement discussions. You expressed that Oberlin's position is that it has seen no evidence that Fritz Grunbaum owned *Girl With Black Hair* in 1938. When I asked you whether you had considered the opinions of Rudolph Leopold, Eberhard Kornfeld and Jane Kallir that *Girl With Black Hair* was Grunbaum's you repeated your answer.

When I asked you whether Oberlin had concluded that Fritz Grunbaum owned *Girl With Black Hair* as of 1925 or 1928 (based on the Wuerthle or Hagenbund documents) you refused to answer my question. When I asked you to share what concerns your researchers had and what type of evidence they might consider, you refused to answer the question.

I pointed out that we had entered settlement discussions with the expectation that following our initial presentation there would be some type of a discussion of evidence on both sides. I expressed my disappointment with Oberlin's extreme and hardline position. I further expressed that Oberlin's refusal to share its research violated the Washington Principles and is inconsistent with Oberlin's academic mission.

When I asked you whether Oberlin had any proposals for mutual discussions short of litigation, you declined to make any proposal.

I am deeply disappointed that President Marvin Krislov and Director Stephanie Wiles have taken this extreme and unwarranted position. Oberlin College acquired unprovenanced stolen property for \$500 and has published false, incomplete and misleading provenance information regarding *Girl With Black Hair* to this day. Oberlin has shamed itself by this stonewalling and failure to publish and share its findings. By doing so, Oberlin has placed itself outside not only a community of common morality, but by this concealment of stolen property has placed itself in a position of criminality.

Respectfully yours,

Raymond J. Dowd
Partner
Dunnington Bartholow & Miller LLP
1359 Broadway, 6th Floor
New York NY 10018

[REDACTED]

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Sandhya Subramanian
General Counsel and Secretary
Oberlin College

[Redacted]
[Redacted]
[Redacted]

Sandhya Subramanian <[Redacted]@oberlin.edu>
To: Scott Wargo <[Redacted]@oberlin.edu>
Cc: Ben Jones <[Redacted]@oberlin.edu>

Sun, May 17, 2009 at 5:32 PM

FYI. FW suggests a more substantive response explaining some of the historical uncertainties. My inclination is to respond again with general language, agree to look at the presentation, and correct the inaccuracies in his message -- e.g., I didn't cut off all substantive discussion but merely pointed out that I didn't think a factual discussion made sense at this point as we are attorneys, rather than art historians. What do you think?

Begin forwarded message:

From: Raymond Dowd <[Redacted]@scammington.com>
Date: May 15, 2009 4:31:54 PM EDT
To: Sandhya Subramanian <[Redacted]@oberlin.edu>, Sandhya Subramanian <[Redacted]@oberlin.edu>
Cc: "Gregory R. Farkas" <[Redacted]@scammington.com>, "Brian Roof, Esq." <[Redacted]@scammington.com>, "Aron H. Bulloff" <[Redacted]@scammington.com>
Subject: Re: Estate of Fritz Grunbaum - Girl With Black Hair
Reply-To: Raymond Dowd <[Redacted]@scammington.com>

Dear Sandhya: You have refused to discuss or provide Oberlins research into the provenance of Girl with Black Hair. You have stated that you are not prepared to discuss this. If you read the Washington Principles, Oberlin is required to share this information. I have been asking for this for months. Please try to explain to me why Oberlins position is not violative of the Washington Principles, a radical departure from the practices that US museums promised to uphold and not criminal concealment of the title of property in Oberlins possession. As you recall you cut off all substantive conversation about the merits. If President Krislov has had a change of heart, please share it with us.

I am in Berlin to give a presentation on the property robbed from Fritz Grunbaum. Oberlin. I met with a team of scholars today and I think the opinions I expressed previously are in line with contemporary scholarship.

You refusal to answer the question of whether Oberlin concluded that Fritz Grunbaum owned Girl With Black Hair based on the Wurthle and Hagenbund documentation has no ethical basis. The fact that Oberlin's Holocaust scholars have told us to "go to hell" is really beyond the pale. Schmulit Magnus presents herself as a scholar within a principled tradition, this conclusion and concealment will be disappointing to the worlds scholars, most of whom fight against Holocaust denial.

Krislov's hard line and. Oberlin's Holocaust Studies Dept's repudiation of the Washington Principles will of course be at the center of the international discussion. As a purported civil rights lawyer, Krislov and Oberlins purported Holocaust scholars have disgraced themselves. I have given them every opportunity to rejoin Western civilization. You will personally recall that I personally pleaded with you for Oberlin not to disgrace itself before the world.

If you would like, I am happy to provide you with a copy of the Powerpoint presentation I am making to international scholars on Monday.

Respectfully yours,

Ray

Sent via BlackBerry from T-Mobile

From: Sandhya Subramanian
Date: Fri, 15 May 2009 13:23:51 -0400
To: Raymond Dowd <[Redacted]@scammington.com>
Subject: Re: Estate of Fritz Grunbaum - Girl With Black Hair

Dear Ray,

I wanted to take this opportunity to clarify Oberlin's position, as your message does not accurately reflect our conversation in its entirety. Rather than commenting here on the disputed factual or legal issues that you raised, I would like to point out that, as I noted during our telephone call, we remain open to considering any information you would like to provide to support your position that Fritz Grünbaum owned *Girl with Black Hair* in 1938, and we therefore have not terminated our exchange. Moreover, Oberlin continues to be committed to taking a responsible and principled approach to the issue of provenance, and your assertions that Oberlin has "shamed itself" or "placed itself in a position of criminality" are not only unfounded but unproductive.

Sincerely,
Sandhya Subramanian

[Quoted text hidden]

[Quoted text hidden]

Ben Jones <ben.jones@oberlin.edu>

Sun, May 17, 2009 at 9:07 PM

Reply-To: ben.jones

To: Sandhya Subramanian <[redacted]>, [redacted] Scott Wargo

Good times! :-) let's chat tomorrow...

Sent from my Verizon Wireless BlackBerry

From: Sandhya Subramanian

Date: Sun, 17 May 2009 17:32:14 -0400

To: Scott Wargo <[redacted]>

Subject: Fwd: Estate of Fritz Grunbaum - Girl With Black Hair

[Quoted text hidden]

Sandhya Subramanian <[redacted]>

Mon, May 18, 2009 at 2:12 PM

To: Scott Wargo <[redacted]>

Hi, Scott. I just tried to call you on your cell after talking to Ben -- he said you had a wonderful plan that will take care of everything. :) Can you give me a call at [redacted]? Thanks.

Begin forwarded message:

From: "Ben Jones" <[redacted]>

Date: May 17, 2009 9:07:48 PM EDT

To: "Sandhya Subramanian" <[redacted]>, "Sandhya Subramanian" <[redacted]>, "Scott Wargo"

Subject: Re: Fwd: Estate of Fritz Grunbaum - Girl With Black Hair

Reply-To: ben.jones <[redacted]>

[Quoted text hidden]

[Quoted text hidden]