

Christie's hid Nazi past of painting

Auction house could face legal action from family of original Jewish owners who died in Auschwitz. Nils Pratley on the trail of a work of art sold in Berlin in 1937

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Nazi loot: Jacob Duck's Merry Company with a Woman Playing a Lute

Christie's covered up its discovery that an Old Master painting it had hoped to auction had been looted by the Nazis, failing to alert art market authorities or the heirs of the original owners of the picture, a Guardian investigation has established.

Christie's may now face legal action from the family of the original owners, who have been traced by the Guardian and are consulting lawyers to decide whether to claim against one of the world's leading auction houses.

Paintings stolen by the Nazis from Jewish families are one of the most sensitive areas of the art market and Christie's has claimed in the past to be "a force for good by helping to restore items to the rightful owners". However, internal documents and emails between Christie's employees show that it took the opposite approach in the case of Merry Company With A Woman Playing A Lute by the Dutch master Jacob Duck.

Christie's researchers discovered that the painting had been stolen by the Nazis in 1937 from Ulla and Moritz Rosenthal, a Jewish couple who later died in the Auschwitz concentration camp. But the company made no attempt to contact the descendants of the Rosenthals.

Instead, it returned the picture to Carl Schünemann, a German private collector and a long-standing Christie's client, who had hoped to sell it in the firm's London auction rooms in July 2000 for £40,000-£60,000.

Christie's failure to reveal that it was in temporary possession of Nazi loot runs counter to the spirit of international calls for the art market to aid the return of such goods to the heirs of the original owners.

Internal emails suggest a member of Christie's staff thought the firm's action was highly questionable. An email from a Christie's researcher in Germany, who had identified the Jacob Duck as stolen, to Johanna Hall, one of the firm's in-house legal advisers in London, said: "So, we are withdrawing the picture, it will be broken gently to the consignee on Wednesday. Let's hope no

journalist will have the idea to do this research all over again."

Christie's researchers were prompted to investigate the provenance of Merry Company because it was known to have been sold at the Gerhard Harms auction house in Berlin in 1937. Sales at Harms in prewar and war years are notorious among Holocaust historians because they were often so-called "Jew auctions" - that is, sales of items seized from the houses of Jews fleeing persecution or sold under duress. German law has acknowledged since 1989 that works in such auctions should be regarded as looted.

Stephanie Tasch, a Christie's researcher in Germany, suspected the Jacob Duck could fall into this category and examined the details of the 1937 auction, which are still held at the Landesarchiv in Berlin. She reported to her colleagues that 800 items were sold from the Rosenthal's house and that "Aufgabe der Villa" - "abandonment of the villa" - was given as cause of the auction.

That wording was a strong indication that the property had been looted after the Rosenthals fled Nazi Germany and Ms Tasch's email concluded by saying "This does not look too good". She promised to conduct more research.

Two days later, she reported that her suspicions had proven well-founded in an email that started "bad news". She had consulted the regional archives to the Berlin Memorial Book for the Jewish Victims of National Socialism and established that Ulla Rosenthal emigrated to the Netherlands six months earlier, on December 8 1936.

"The auction at Gerhard Harms must have taken place therefore in the absence of the (presumably dispossessed) owners," she said, noting that this had also happened in several other cases where owners had fled the Nazis.

The Rosenthals left a flourishing laundry business which Moritz, who was active in local Berlin politics, had established in 1906 and operated with Ulla. Their escape to the Netherlands was tragically in vain. After the German occupation of the country, they were arrested by the Gestapo in September 1943 and died together at Auschwitz on the same day, July 7 1944.

Crucially, Ms Tasch's research for Christie's also uncovered details of the Rosenthals' four children and the fact that one had been sent to Auschwitz and survived. Christie's was aware of the married names of the daughters and the countries to which all four children emigrated after the war.

There was sufficient detail within Ms Tasch's research for the Guardian to do what Christie's did not attempt - find the descendants. The task was made easier by the fact that a plaque in memory of Ulla and Moritz Rosenthal was erected in 1999 - a year before Christie's investigations - on the site of their former laundry business, now the home of Berlin's water company. It was relatively simple to establish contact with the lawyers who acted for the Rosenthal family over the plaque.

George Heinrich, one of the grandsons of Ulla and Moritz, who lives in the US, said: "I have been informed that Christie's may have decided not to auction a painting which may have belonged to my grandparents. I cannot determine if Christie's has any liability; attorneys in England and the US must determine this.

"The heirs will attempt to contact the current owners of any paintings involved and attempt to reach a settlement with them directly."

One of the problems they may face is that the location of the Jacob Duck is

now unclear. Mr Schünemann - though he gave a detailed response to other questions from the Guardian - did not say whether the painting was still in his possession.

The law in this area is vague, largely because the issue of looted art has only been debated seriously for the last 10 years. However, in 1999 the Council of Europe called on governments to legislate in cases where art dealers and intermediaries find themselves in possession of known or suspected Nazi loot.

Resolution 1205 stated: "Provision should be made in law requiring them to hold on to it and alert the relevant authorities, and every effort should be made to locate and alert the dispossessed owner or his or her heirs."

No such law has been passed in Britain, but Christie's has accepted publicly that a legalistic approach towards Holocaust claims is impossible. In a speech last year, Richard Aydon, the company's group legal director, said: "These are not issues if ever you have to face them in practice that can be analysed, dealt with or indeed advised upon in purely legal terms. There is a very strong and pressing moral dimension to this."

He added that Christie's "obviously want, not only to do the right thing but to be seen that we are doing the right thing."

In the case of Merry Company, it seems that Christie's reaction on discovering the true history was not to seek a court ruling on ownership, or to broker a settlement between the two parties - remedies used in many other Holocaust cases.

Instead, it returned the picture to Mr Schünemann. An email from Suzanna Meyer-Abich, a senior member of Christie's German office, one week after Ms Tasch confirmed her suspicions, says: "Christiane and Marina [colleagues in Germany] have spoken to the client [Mr Schünemann] today re the withdrawal of his Jacob Duck, lot 16 in the July sale. He has accepted the reasons that we have for withdrawing it and we should get the picture back to him as soon as possible."

In a statement to the Guardian last night, Christie's confirmed that it withdrew the painting because it "may have been a forced sale" and returned it to Mr Schünemann.

It continued: "Balancing the rights of the respective parties is legally far from straightforward. Many of these works have legitimately changed hands since the confiscation in circumstances where those involved in the chain of title will usually have acted in good faith and will have no idea of its history.

"Although we were able, in this case, to establish sufficient information to allow us to make the decision to withdraw the painting from sale, the question of whether or not this particular sale was in fact a forced sale and, if it was, whether or not the heirs of the original owner would have a claim to title was a complex and factual and legal issue to which Christie's could not be expected to have an answer."

Victims

Christie's said it encouraged Mr Schünemann to contact the Art Loss Register, which helps victims of art theft, for help in contacting the Rosenthal heirs since "the painting would be unsaleable unless this issue was addressed and resolved".

The company added that although it tried to establish which family members survived the Holocaust, "we do not know whether or not they are still alive or

their present whereabouts". It added: "If they do contact us we will be happy to try to put them in contact with the seller. We will also, as we have on many occasions in the past, provide support to both parties in trying to resolve this issue."

It said the Art Loss Register, of which it is one of the leading shareholders, is the usual means by which heirs register claims. In this case Christie's was not contacted by the register, the statement said.

Mr Schünemann, who runs a printing business in Bremen, said he was unaware of any Holocaust issues surrounding Merry Company when he bought it from Frye & Son, a dealer in the German city of Munster which had acquired it in 1992.

"After several years I delivered it to Christie's for their Old Master auction," he said. "The picture was then pictured in their catalogue. I got the picture back with a verbal observation, which Christie's phrased to me this way: the picture had been auctioned in 1937 and the Berlin auction house had, among other things, also auctioned pictures from Jewish citizens.

"This of course does not mean that the Nazis confiscated the picture. I am naturally unable to know whether the sale was done freely or under compulsion. Of the apparent experience of the Rosenthals, I know nothing and could not know anything. I dealt with this picture in good faith."

Problems of provenance and authenticity are common in the Old Master market. Mr Schünemann said he was also the unwitting purchaser of two other pictures that turned out to have problems after he had offered them to Christie's. One was exposed as a fake and withdrawn from auction; the other was unsold at auction but was later revealed to have been stolen.

The first incident happened three years before the Jacob Duck case. Mr Schünemann offered Christie's a postcard-sized picture of insects supposedly by Jacob Woutersz Vosmaer, a Dutch painter best known for his floral still lifes. In a letter to the auction house, Mr Schünemann claimed it was "the only insect still life which is known of by this painter."

Christie's advertised the painting as lot 4 in an auction in Wookey Hole, Somerset, on October 6 1997, with a price guide of £40,000-£60,000. But Christie's withdrew the painting after analysis revealed that the picture, supposedly by a painter who died in 1641, contained chemicals first used in the late 19th century and that "the painting is therefore a modern reproduction" and had been "deliberately aged."

Last night, Mr Schünemann said he had owned the picture for 23 years, having bought it from Castendijk, a renowned gallery in Rotterdam, and it had been exhibited as a genuine masterpiece.

"A gentleman from Christie's visited me at home and suggested I deliver the picture to Christie's for auction given that the work's first-class provenance would lend itself to a very good sale," he said. "I would like to point out that the work features in a book by LJ Bol in German and English about 17th century Dutch painting."

A third painting offered to Christie's by Mr Schünemann became the centre of a case in the court of appeal this year. It was *The Backgammon Players* by Jan Steen, another Dutch Old Master, which was stolen from the London home of its owner, Philippe Marcq in 1979.

The painting resurfaced in 1997 when Mr Schünemann offered it for sale in a

Christie's auction in London with a reserve price of £90,000. Nobody spotted that it had been stolen, even though Mr Marcq had registered his loss with the police and the Art Loss Register, which since 1991 has kept a central record of stolen art and checks the catalogues of all the big auction houses.

The Backgammon Players was unsold and was returned to Mr Schünemann. The New York office of Christie's later rejected it for auction for reasons that are unclear. It was next advertised for sale by the Dutch gallery Douwes in 2000 and this time was spotted by the Art Loss Register. Mr Marcq was alerted.

He then attempted to claim damages from Christie's on the grounds that it should have returned the picture to him, as the true owner, rather than Mr Schünemann. Mr Marcq lost the case, with the court accepting Christie's strike-out application and its argument that it had no knowledge that the painting was stolen.

The court ruled that Christie's was not liable because the painting had not sold and was returned to the client in good faith, although Lord Justice Tuckey said: "Auctioneers such as Christie's must of course take care to avoid dealing with works of doubtful title since they will be strictly liable if they sell on behalf of anyone other than the true owner."

Mr Schünemann said he was again an innocent buyer: "I acquired the Jan Steen picture in 1984 from the then world-famous Jewish gallery Waterman in Amsterdam. The picture had been shown at an antiques fair and had been written about in the fair's catalogue as a particular highlight. It was only when I went to sell the picture 16 years later that I discovered the picture had allegedly been stolen."

• Additional reporting by Luke Harding in Berlin