

Articles

## "U.S. Citizen Can Sue Austria: Supreme Court Rules in Favor of Klimt Claimant"

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The U.S. Supreme Court, in its first decision on Nazi-era art claims, ruled that an American court has jurisdiction over a lawsuit involving six paintings by Gustav Klimt. The works, currently in a Vienna museum, have been claimed by an Austrian-born refugee who is now a citizen of the United States.

On June 7, the Supreme Court affirmed a ruling of the U.S. Court of Appeals for the Ninth Circuit, in San Francisco, in favor of Maria Altmann, 88, who lives in Los Angeles. Altmann sued the Republic of Austria to recover the paintings, which include two famous portraits of Adele Bloch-Bauer, Altmann's aunt. The paintings, which have an estimated value of \$100 million, are in Vienna's Österreichische Galerie Belvedere (see "Unfinished Business," page 152).

"This is a positive step for a very small portion of the pool of potential art claimants who, like Mrs. Altmann, believe a foreign government has custody of art that was expropriated prior to 1976," says attorney Thomas Kline, a specialist in international art claims at the law firm Andrews Kurth in Washington, D.C. "There are a number of European countries which have a sizable amount of art that could be affected by this ruling."

Austria has argued that Adele Bloch-Bauer wrote a will shortly before her death, in 1925, asking her husband, Ferdinand, to bequeath the paintings to the state. Ferdinand fled the Nazis in 1938 without having made arrangements to donate the paintings. He died in exile in Switzerland in 1945, leaving all his property to his brother's children. Maria Altmann is the only surviving heir.

In an appeal to the Supreme Court, Austria argued that it had sovereign immunity that shielded it from suits in the United States. The U.S. government supported Austria's contention that it was protected under the 1976 Foreign Sovereign Immunities Act. At issue was whether the act could be applied retroactively.

Although the U.S. government has a policy calling for restitution of Nazi-looted assets, its attorneys argued in their brief that sovereign immunity was essential to U.S. foreign policy. Government attorneys also were concerned that if the appellate ruling stood, it would set a precedent that could encourage more claims. In oral arguments before the Court last February, however, Justice Stephen Breyer suggested that the courts would not be flooded with lawsuits for expropriated properties, because such lawsuits encounter many procedural obstacles.

Attorney Scott P. Cooper of Proskauer Rose in Los Angeles, who is representing the Republic of Austria, was disappointed by the court's 6-3 ruling, which was narrowly focused on the question of jurisdiction and did not determine ownership of the Klimts. But, Cooper says, "there are a lot of important issues that remain to be decided in the case, and we are confident the American court will reach the proper decision."

The lawsuit will be revisited by the federal district court in Los Angeles, where it was filed in 2000. But procedural issues, such as whether statutes of limitations apply, remain to be decided. "I think we have a good chance of getting beyond those hurdles," said Altmann's attorney, E. Randol Schoenberg, of Los Angeles. "It's just a question of whether Austria really believes that Adele Bloch-Bauer's will gives it the paintings or not. And if they really believe it, let's get on with it, and let's decide that issue. We're very confident that we are going to win."

—Marilyn Henry

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