

TRIBUNAL DE GRANDE INSTANCE, PARIS

1st Chamber - 1st Section

JUDGMENT DELIVERED ON 16 JUNE 1993

RP No 61 655
 RG No 6218/93

INADMISSIBILITY

No 12

APPLICANTS

Mrs Irina SHCHUKIN,
 lately DE KELLER
 Nationality: French
 Address: 'La Cadenière'
 Avenue du Docteur Belletrud
 06530 – LE TIGNET

Jean KONOWALOFF
 voluntary third party intervener

Represented by:
 Bernard JOUANNEAU, advocate – A.96

DEFENDANTS:

LE CENTRE NATIONAL D'ART
 ET DE CULTURE GEORGES POMPIDOU
 19 rue Beaubourg
 75004 – PARIS
 In the person of its President,
 Dominique BOZZO

REPRESENTED BY:
 Marie DELION-BLOCH, advocate – D.852

THE HERMITAGE MUSEUM,
 ST. PETERSBURG
 In the person of its curator, Mr PETROVSKY

THE PUSHKIN MUSEUM, MOSCOW
 In the person of its curator,
 Mrs ANTONOVA

THE RUSSIAN FEDERATION
In the person of His Excellency the Russian
Ambassador to France, of
40, Boulevard Lannes
75016 – PARIS

represented by:
Daniel GUYOT, advocate – C.151

PUBLIC PROSECUTOR
Mr LAUTRU, First Substitute

COMPOSITION OF THE COURT

Presiding judges:

Mrs RAMOFF, President
Mrs EVEN, Vice-President
Mr BREILLAT, Vice-President

REGISTRAR
Mrs BAYARD

PROCEEDINGS: at the public hearing of 12 May, 1993

JUDGMENT: delivered in open court, in adversarial proceedings.

1st Chamber
1st Section

Hearing of
16 June 1993

No 12 Contd.

Having regard to the oral conclusions of the Public Prosecutor;

From 25 February until 21 June 1993, the CENTRE NATIONAL D'ART ET DE CULTURE GEORGES POMPIDOU (THE POMPIDOU CENTRE) is holding an exhibition entitled 'HENRI MATISSE 1904-1917' which brings together one hundred and thirty paintings, including masterpieces from the collections of the HERMITAGE MUSEUM, St. Petersburg, the PUSHKIN MUSEUM, Moscow, the MUSEUM OF MODERN ART, New York, and the STATENS MUSEUM FOR KUNST, Copenhagen, in addition to works from the collections held by the Centre.

Taking advantage of the presence in France of works by MATISSE sent by Russian museums, Irina SHCHUKIN, widow of the late Mr DE KELLER, having been authorised to institute proceedings on 25 February 1993, brought an action in due form on 12 May 1993 against the POMPIDOU CENTRE, and the HERMITAGE and PUSHKIN MUSEUMS for the purpose of obtaining a sequestration order in respect of 21 works by MATISSE being exhibited which formed part of the collection which her father Sergei SHCHUKIN had amassed in Moscow at the beginning of the 20th century, but which had been nationalised by decree of 29 October 1918, signed by Lenin, without any equitable prior compensation. Taking the view that this measure constituted spoliation, which was contrary to French public policy and could not therefore take effect in France, Irina SHCHUKIN claims that the Tribunal should, pursuant to the provisions of Article 1961 of the Civil Code, order the sequestration of the works at issue, the POMPIDOU CENTRE having been appointed as depository, until such time as a final decision has been handed down on the ownership claim which she intends to bring, once the other heirs of Sergei SHCHUKIN have been duly summoned.

By a document of the same date, sent to the Public Prosecutor but forwarded by means of a note from the Ministry of Foreign Affairs to the Russian Ambassador in Paris, Irina SHCHUKIN also summoned THE RUSSIAN FEDERATION to appear, on the appointed date, for the same purpose.

In a statement of 5 May 1993, Jean [Ivan] KONOWALOFF declared that he was intervening voluntarily in support of the applicant, for the same purpose and on the same grounds, in his capacity as sole heir of Ivan MOROSOV who, like his friend Sergei SHCHUKIN, had also amassed an important collection of modern art in Moscow, including four of the works by MATISSE currently being exhibited at the POMPIDOU CENTRE.

Considering likewise that the nationalisation of that collection pursuant to a further decree of December 1918, also signed by Lenin, constituted spoliation which was contrary to French public policy and hence without effect in France, he claimed that,

‘pursuant to Articles 815-11 et seq. of the Civil Code’, the Tribunal should adopt measures to protect his rights over the movable assets of his forebear’s estate which happened, albeit temporarily, to be located in France, until such time as a judgment could be given on the ownership claim which he intended to bring, availing himself of the jurisdiction benefit afforded under Article 14 of the Civil Code.

On 11 May 1993, the RUSSIAN FEDERATION, the defendant, having been ordered to appear before this court, claimed the immunity from jurisdiction and enforcement granted to all foreign States, declared that it had been sued before this court and claimed that the court should rule that the claims against it were inadmissible.

In order to provide the court with full information, the RUSSIAN FEDERATION describes in excessive detail the circumstances in which the RSFSR, by an act of the public authority, proceeded to nationalise the SHCHUKIN collection belonging to one of its nationals and situated in its territory.

It maintains, moreover, that the sequestration measure sought would also be in breach of the immunity from enforcement enjoyed not only by the State but also by the two museums cited, which are its subsidiary organs and which lent the paintings, for which they are merely the depositaries, in the context of their public cultural service remit pursuant to the authorisation given by their supervisory authority, the Ministry of Culture.

At the hearing, Irina SHCHUKIN and Jean KONOWALOFF entered statements discontinuing their claims to have the MATISSE paintings sequestered.

Irina SHCHUKIN stated verbally that she did not wish, out of respect for the memory and wishes of her father, to block the free movement and exhibition of the works from his collection; however, she did not waive her claim to ownership of the works, a matter which was in the process of being notified to the RUSSIAN FEDERATION and brought before this court.

The three museums which had lodged statements on the same day submitting that the claims were inadmissible, and the RUSSIAN FEDERATION, rejected orally this waiver which they regard as improper, maintaining that it is in the interest of the international community for the inter-State exchange of works of art to be ensured and that it should not be jeopardised at will by ill-considered actions at law.

The Hermitage and Pushkin State Museums claimed that, in their capacity as public entities with a public service remit and as depositories of the works at issue, which are ‘the federal property of the State’, they are entitled to the same immunities from jurisdiction and enforcement as the RUSSIAN FEDERATION, of which they are dependent entities.

The POMPIDOU CENTRE, which is the temporary holder of the national collections of the RUSSIAN FEDERATION and certainly lacking in capacity to dispute the applicant’s ownership claim, nonetheless considers that it has an interest in submitting pleas of fact and of law concerning the application for sequestration, which seriously disrupts the policy of cultural exchanges between States in relation to high-profile

exhibitions, a field where France is a major player, and for which, as a national public institution of an administrative nature, it is partly responsible.

It therefore claims that the court should, pursuant to the rules of international public law governing relations between States, declare the application to be inadmissible as a result of the immunities from jurisdiction and enforcement enjoyed by the RUSSIAN FEDERATION and the State museums.

Finally, the defendants also object that the claim of Jean KONOWALOFF is inadmissible and they contend that his voluntary third party intervention is inadmissible pursuant to Articles 325 et seq. of the New Code of Civil Procedure in the absence of a sufficient link with the claim made by the applicant.

The Public Prosecutor, whose oral observations were heard, claimed that the court should rule that, since the contested nationalisation decree constituted a government act, the court had no jurisdiction to give a decision pursuant to the rule of international public law governing relations between States.

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Whereas, on 12 May, on the date of the hearing, Irina SHCHUKIN and Jean KONOWALOFF lodged a statement to the effect that they were discontinuing their claim; whereas the defendants, including the duly summoned museums, had that same day lodged statements claiming that the application was inadmissible; whereas furthermore the RUSSIAN FEDERATION, whilst maintaining that it had been incorrectly summoned to appear, had appointed an advocate and had lodged documents the day before the hearing seeking the same form of order;

Whereas the defendants are therefore entitled, pursuant to Article 395 of the New Code of Civil Procedure, to object to the discontinuance of the action;

Whereas the defendants also claim that there is a legitimate ground for not accepting the discontinuance, within the meaning of Article 396 of the said Code, on the grounds that, failing a discontinuance of the action, they needed a decision on the plea of non-admissibility which they had entered against applicants' claims to the extent that the latter constitute an element of uncertainty for inter-State cultural relations which the defendants are responsible for promoting in the public interest;

Whereas it is not disputed that the paintings at issue and whose sequestration has been sought were subject to a nationalisation decree in 1918;

Whereas the fact that this measure could possibly be regarded as spoliation cannot alter the fact that it is a sovereign act;

Whereas, since the State has not waived its privilege, the court may not, due to the immunity from jurisdiction of that State, order a protective measure against it, albeit a limited measure such as sequestration which does not affect the outcome of the main action, which has been instituted separately.

ON THE ABOVE GROUNDS

The court allows the voluntary third party intervention of Jean KONOWALOFF;

Declares the discontinuance of the applicants' claim to be inadmissible as it has not been accepted by the defendants;

Declares the application to be inadmissible due to the immunity from jurisdiction of the RUSSIAN FEDERATION;

Orders the applicants to pay the costs;

Done and judged in PARIS
16 JUNE 1993

THE REGISTRAR

THE PRESIDENT

P. BAYARD

F. RAMOFF