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Contact: Michael S. Shuster
(212) 506-1700
mshuster@kasowitz.com

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Federal Court Rejects Hungary's Motion to Dismiss and Delivers Key Victory to Herzog Heirs in Holocaust Looted Art Case

Decision Requires Hungary to Open Its Records and Vaults for Looted Art

Washington, DC; September 2, 2011 – The U.S. District Court in Washington yesterday rejected Hungary's motion to dismiss the lawsuit filed against it and its museums and university for artworks looted from the Herzog family during the Holocaust. Judge Ellen Segal Huvelle ruled against Hungary's meritless arguments to dismiss this lawsuit, thus ensuring judicial review of the merits of the Herzog heirs' claims. The only portion of the claim that was dismissed concerned 11 artworks that were previously the subject of judicial proceedings in Hungary, which the Court declined to revisit on grounds of comity. The Court's ruling paves the way for discovery and will require Hungary to open government and museum records, marking the first time the country will face such direct scrutiny of its Holocaust-era actions and its inventory of looted artworks.

Throughout this litigation, Hungary still does not dispute the family's claim that it never voluntarily parted with its art collection, although the country continues to resist restitution. Yesterday's decision was applauded by the Herzog heirs and is available here: <http://www.hungarylootedart.com/wp-content/uploads/2011/09/HerzogSept1Decision.pdf>.

In its decision, the Court rejected Hungary's claim that it and its state-owned museums and university are immune from the jurisdiction of the United States courts under the United States Foreign Sovereign Immunities Act for claims arising out of the looting of the Herzog Collection. The Court agreed with the Herzog heirs that "[t]he Complaint clearly alleges substantial and non-frivolous claims that the Herzog Collection was taken without just compensation and for discriminatory purposes." The Court also agreed that under the "extraordinary facts" of this case, it was clear that the Hungarian government had "*de facto* stripped ... all Hungarian Jews of their citizenship rights" during the Holocaust such that the doctrine that a state's taking of the property of its own citizens does not generally constitute an international law violation should not apply.

The Court also rejected the claim made by the Hungarian government, for more than a decade, that it acquired the Herzog Collection through a 1973 Claims Settlement Agreement with the United States. This claim has been Hungary's sole justification for the government's position in its public statements on the case and in its response to United States government officials, including then-Senator Hillary Clinton, who demanded the return of the paintings in 2007 and 2008.

The Court also rejected the defendants' arguments that the claims should be dismissed on grounds of forum non conveniens, statute of limitations, the act of state doctrine, the political question doctrine, or on the ground that the complaint fails to state a claim upon which relief may be granted.

Michael Shuster, counsel to the Herzog family, welcomed the ruling and the opportunity for the family's claims to proceed.

"We are pleased with the Court's ruling and will continue to fight for the return of the Herzog family's artworks," said Shuster. "The Court's decision rightfully rejects Hungary's attempts to avoid dealing with the merits of this case, which overwhelmingly favor the Plaintiffs. We look forward to proceeding with discovery of the Hungarian government's shameful conduct in taking and refusing to return the family's artworks."

Shuster also noted that Hungary agreed with 47 other nations in 2009 at an international conference on Holocaust looted property that claims should be decided on the merits.

Heirs to the Herzog Collection filed suit in July 2010 to seek the return of artworks illegally held by Hungary since the Holocaust. In their lawsuit, the heirs also demand a full and transparent accounting of looted art from the Herzog Collection held by Hungary. The lawsuit initially sought the return of over 40 artworks with a combined value of over \$100 million, including masterworks by El Greco, Francisco de Zurbarán, and Lucas Cranach the Elder and will now proceed as to 30 of those works. The works come from the collection of Baron Mór Lipót Herzog, a passionate Jewish art collector. Hungary, a World War II-era ally of Nazi Germany, has held the artworks since the genocide of its Jewish population and continues to circumvent justice by refusing to retribute the artworks.

Additional materials, including a copy of the decision and photos of the artwork, are available online at <http://www.hungarylootedart.com/>.

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