

Estate of Kainer v UBS AG

2024 NY Slip Op 33928(U)

October 31, 2024

Supreme Court, New York County

Docket Number: Index No. 650026/2013

Judge: Melissa A. Crane

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. MELISSA A. CRANE **PART** **60M**

Justice

-----X

ESTATE OF MARGARET KAINER, KURT BECK, JANET CORDEN, MARTIN CORDEN, SIMON CORDEN, WARNER MAX CORDEN, FIRELEI MAGALI CORTES GRUENBERG, MATILDE LABBE GRUENBERG, HERNAN LABBE GRUENBERG, PETER LITTMAN, HERNAN RENATO CORTES RAMOS, EQUITY TRUSTEES LIMITED

INDEX NO. 650026/2013

MOTION DATE 10/04/2024

MOTION SEQ. NO. 008

Plaintiff,

- v -

**DECISION + ORDER ON
MOTION**

UBS AG, UBS GLOBAL ASSET MANAGEMENT (AMERICAS), INC., NORBERT STIFTUNG, EDGAR KIRCHER, JOHN DOES ONE THROUGH X, CHRISTIES INC,

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 008) 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 244, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268

were read on this motion to/for VACATE STAY

Upon the foregoing documents, it is

In Motion Seq. No. 008, plaintiffs move for an order (1) substituting the deceased plaintiffs and (2) lifting the stay of this action (Doc 227 [NOM]). Defendant Christie's opposes the part of the motion seeking to vacate the stay.

BACKGROUND AND RELEVANT PROCEDURAL HISTORY

Plaintiffs assert that they are heirs to Margaret Kainer's estate pursuant to French certificates of inheritance. Plaintiffs filed this action to dispute rights to proceeds of the sale of a Degas painting, "Danseuses," that Nazis illegally confiscated from Kainer. Kainer died without children in 1968, and her husband predeceased her. Later, in 2009, Christie's sold the painting in New York. The former defendant, Norbert Stiftung (the Foundation), claimed to be the sole

owner of the painting. The Foundation and Christie's entered into a "restitution settlement agreement" for the painting. In that agreement, the Foundation renounced its rights to the painting in exchange for 30% of the sale proceeds. Meanwhile, the Plaintiffs, the Foundation, and other entities have been litigating over their ownership rights in the Kainer estate in European courts over the past two decades (*see generally* Doc 214 [decision and order resolving MTDs] [Friedman, J.]).

The Foundation defendants, not including Christie's, moved to dismiss on the basis of forum non conveniens. The court, after considering the forum non conveniens factors, granted those motions and dismissed the amended complaint as against the Foundation defendants (*see id.*). The court [Friedman, J.] concluded that the purported heirs' competing claims to ownership rights in the estate should be determined in the overseas courts that have jurisdiction. At that time, plaintiffs were already litigating those ownership issues with the Foundation in Switzerland. That Switzerland proceeding is still active today.

In motion seq. 006, Christie's joined in UBS's motion to dismiss on forum non conveniens. The court found:

"Plaintiffs' claims against Christie's in this action may thus proceed if plaintiffs obtain a favorable final determination in the European court(s) that they have rights as heirs to an ownership interest in the Painting. Christie's motion to dismiss on forum non conveniens grounds will accordingly be granted only to the extent of staying the action until plaintiffs receive such a determination"

(*Kainer v UBS AG*, 2017 N.Y. Slip Op. 32316[U], 25 [Sup Ct, New York County 2017], *affd sub nom. Estate of Kainer v UBS AG*, 2019 N.Y. Slip Op. 06053 [1st Dept 2019], *affd*, 2021 N.Y. Slip Op. 07056 [Ct App 2021]).

On appeal, the Appellate Division, First Department affirmed. The First Department noted that "Christie's conduct is at issue only if the Foundation is found not to be the sole lawful

heir, with authorization to release claims to the painting in the RSA” (*Estate of Kainer v UBS AG*, 175 AD3d 403, 406 n1 [1st Dept 2019], *affd.*, 37 NY3d 460 [2021]). In addition, the First Department stated:

“Plaintiffs have asked the Swiss court to find that they are the sole heirs to the Kainer estate, declare the Swiss certificates of inheritance null and void, and order that all assets—not just the painting at issue herein—originating from Kainer’s estate be returned to plaintiffs. Whether the Foundation and Christie’s could enter into their agreement to sell the painting ‘cannot be determined without reference to the underlying issue of ownership—the very issue that is already being litigated abroad’ ”

(*id.* at 405-406).

This 2013 case has been stayed as against Christie’s for seven years (Doc 216 [10/30/17 decision and order resolving MS 06] [Friedman, J.]). The ongoing Swiss action has proceeded at a snail’s pace. Meanwhile, several of the plaintiffs passed away. Now, in Motion Seq. No. 008, plaintiffs move for an order (1) permitting substitution of the deceased plaintiffs and (2) lifting the stay on the basis that Christie’s has recognized, in connection with different artworks, that plaintiffs are Kainer’s heirs with restitution rights. Christie’s opposes the part of the motion seeking to vacate the stay.

DISCUSSION

1. Substitution

The unopposed portion of plaintiffs’ motion is granted. The court permits the following substitutions:

- Simon Charles Corden and Martin Stewart Corden, as co-executors of Warner Max Corden’s Estate, shall be substituted for Warner Max Corden (Doc 229 [Corden probate materials]).
- Ronald P. Beck as executor of Curt Beck’s estate shall be substituted for Kurt Beck a/k/a Curt Beck as executor for Ann Beck’s estate (Doc 230 [Beck probate materials]).
- State Trustees Limited as executor of Peter Littman’s estate shall be substituted for Peter Littman (Doc 231 [Littman probate materials]).

2. The Stay

Plaintiffs argue that the stay should be lifted because Christie's has conceded that plaintiffs are Kainer's heirs in connection with a different artwork. That is, "Christie's has recognized Plaintiffs as the legitimate heirs of Margaret Kainer . . . with the rights to restitution of the artworks looted from her art collection . . . by the Nazis" ((Doc 228, para 5 [Palmer aff])). Palmer explains that Christie's so recognized plaintiffs "by selling at public auction another Nazi-looted painting from the Kainer Collection," publicly vouched for that painting's title "through its restitution to Plaintiffs here as Margaret Kainer's heirs," and paid restitution amounts to plaintiffs from the proceeds of that sale (*id.*). Plaintiffs also argue that the stay is unduly burdensome to plaintiffs.

Christie's argues that the stay should not be lifted because the Swiss action remains pending, thus plaintiffs have not obtained a "favorable final determination in the European court(s) that they have rights as heirs to an ownership interest in the Painting" (Doc 252 [def's mem opp], quoting Doc 216 at 25-26 [this court's decision imposing stay]). Christie's contends that the court's prior order, which the First Department affirmed, is the law of the case.

Christie's counsel is correct that the "[l]aw of the case operates to foreclose re-examination of the question absent a showing of subsequent evidence or change of law" (*Strujan v Glencord Bldg. Corp.*, 137 AD3d 125 [2d Dept 2016]). However, plaintiffs' seek to lift the stay, in part, based on new facts demonstrating that Christie's acknowledged that plaintiffs are Kainer's heirs with respect to a different painting. Accordingly, the court grants plaintiffs' motion to lift the stay for the limited purpose of moving to renew the prior motion to dismiss [MS 06]. It remains to be seen whether, upon renewal, these new facts would change the court's

underlying decision that granted Christie's motion to dismiss on the basis of forum non
conveniens.

The court has considered the parties' remaining contentions and finds them unavailing.

Accordingly, it is

ORDERED that plaintiffs' motion sequence number 008 is granted to the extent set forth
in this decision and order; and it is further

ORDERED that the part of the motion that seeks substitution is granted and the following
new plaintiffs are substituted for the deceased plaintiffs:

- Simon Charles Corden and Martin Stewart Corden, as co-executors of Warner Max Corden's Estate, shall be substituted for Warner Max Corden;
- Ronald P. Beck as executor of Curt Beck's estate shall be substituted for Kurt Beck a/k/a Curt Beck as executor for Ann Beck's estate;
- State Trustees Limited as executor of Peter Littman's estate shall be substituted for Peter Littman;

And it is further

ORDERED that the caption is amended to reflect the substitutions, and all future
proceedings in this case must bear the following amended caption:

X

ESTATE OF MARGARET KAINER, and the following individuals
as heirs of MARGARET KAINER: RONALD P. BECK as executor
of the estate of Kurt Beck a/k/a Curt Beck, JANET CORDEN and
MARTIN CORDEN as co-executors of the estate of Gerald Corden,
SIMON CORDEN as executor of the estate of Gerald Corden, SIMON
CHARLES CORDEN and MARTIN STEWART CORDEN as
co-executors of the estate of Warner Max Corden, FIRELEI MAGALI
CORTES GRUENBERG, MATILDE LABBE GRUENBERG,
HERNAN LABBE GRUENBERG, STATE TRUSTEES LIMITED
as executor of the estate of Peter Littman, HERNAN RENATO
CORTES RAMOS, and EQUITY TRUSTEES LIMITED as
executor of the estate of Elli Alter,

Plaintiffs,

Index No. 650026/2013

- v -

CHRISTIE’S INC. and JOHN DOES 1-X, including a
possessor of a painting entitled *Danseuses* by Edgar Degas, c. 1896,

Defendants.

X

And it is further

ORDERED that the automatic stay is lifted for the limited purpose of permitting
plaintiffs to move to renew Christie’s motion to dismiss [MS 006]; and it is further

ORDERED that plaintiffs shall serve a copy of this order with notice of entry upon the
County Clerk (Room 141B) and the Clerk of the General Clerk’s Office (Room 119), who are
directed to mark the Court’s records to reflect the change in the caption herein, and to lift the
automatic stay; and it is further

ORDERED that service upon the County Clerk and Clerk of the General Clerk’s Office
shall be made in accordance with the procedures set forth in the Protocol on Courthouse and
County Clerk Procedures for Electronically Filed Cases (accessible at the “E-filing” page on the
court’s website – www.nycourts.gov/supctmanh).

10/31/2024

DATE



HON. MELISSA A. CRANE, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: