

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

JACK SOLOMON,)
)
Plaintiff/Counter-Claimant,)
)
vs.)
)
JUDY GOFFMAN CUTLER,)
)
Third-Party Defendant/Counter-Plaintiff.)
_____)

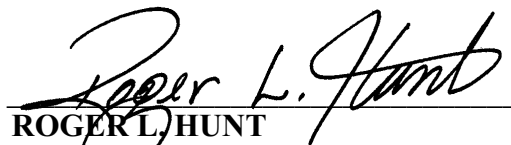
Case No.: 2:07-cv-645-RLH-PAL

JUDGMENT

JUDGMENT

Pursuant to the Findings of Fact and Conclusions of Law heretofore entered,
IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment is
entered in favor of Cutler on her counterclaims for declaratory relief and against Solomon on his
counterclaims for declaratory relief, quiet title, conversion, and replevin. The Court also quiets
title to *Russian Schoolroom* in favor of Judy Cutler and declares her the true owner of the painting.
Cutler is hereby authorized to take possession of *Russian Schoolroom*.

Dated: April 8, 2010.



ROGER L. HUNT
Chief United States District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JACK SOLOMON,)
)
Plaintiff/Counter-Claimant,)
)
vs.)
)
JUDY GOFFMAN CUTLER,)
)
Third-Party Defendant/Counter-Plaintiff.)
_____)

Case No.: 2:07-cv-645-RLH-PAL

**DECISION, FINDINGS OF FACTS,
AND CONCLUSIONS OF LAW**

A bench trial was held on this matter from March 8 to March 11, 2010. After having heard the testimony of witnesses and having considered all exhibits accepted into evidence, the Court now renders its Decision, Findings of Fact, Conclusions of Law, and Judgment, as follows:

DECISION

Plaintiff/Counter-Claimant Jack Solomon has proven by a preponderance of the evidence that he owned *Russian Schoolroom* when it appeared at the Louisiana Purchase Auction in 1988. Third-Party Defendant/Counter-Plaintiff Judy Goffman Cutler has proven by a preponderance of the evidence that Solomon knew *Russian Schoolroom* was being sold at the auction. Solomon has failed to prove by a preponderance of the evidence that Cutler committed conversion when she purchased *Russian Schoolroom* at the Louisiana Purchase Auction. The Court therefore finds against Solomon on his counterclaims for declaratory relief, quiet title, conversion, and replevin, and in favor of Cutler on her claims for declaratory relief.

FINDINGS OF FACT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1. Jack Solomon, a Nevada resident, is an art dealer who buys and sells paintings. He also owns, or used to own, a number of art galleries across the United States.

2. Judy Goffman Cutler, a Rhode Island resident, is an art dealer specializing in American illustration art.

3. *Russian Schoolroom*, a painting by Norman Rockwell, appeared in the October 3, 1967 issue of *Look* magazine.

4. Sometime before 1973, Solomon purchased *Russian Schoolroom* from Danenberg Galleries in New York City.

5. In June 1973, Jack Solomon consigned *Russian Schoolroom* to one of his art galleries—Arts International Gallery—in Clayton, Missouri.

6. Also in June 1973, a St. Louis art collector named Bert Elam purchased *Russian Schoolroom* from Arts International for \$25,000. Elam wrote a check for the painting but agreed to allow the painting to temporarily remain on display at Arts International.

7. On June 25, 1973, *Russian Schoolroom* was stolen from Arts International Gallery.

8. After *Russian Schoolroom* was stolen, Arts International rescinded the sale to Elam and returned his check.

9. Chubb Insurance, Solomon’s insurer, paid Solomon \$20,000 for the loss of *Russian Schoolroom*.

10. Sometime in or prior to 1988, Morton Goldberg Auction Gallery, an auction house located on Royal Street in New Orleans, Louisiana, obtained *Russian Schoolroom*.

11. During this time period, Solomon owned an art galley called Circle Gallery also on Royal Street in New Orleans, Louisiana.

12. In May 1988, Morton Goldberg, the owner of Goldberg Auction Gallery, contacted Cutler, a dealer in American illustration art, to see if she was interested in buying *Russian Schoolroom* for an amount between \$100,000 and \$150,000.

1 13. Cutler informed Goldberg she was not interested in purchasing the painting at that price.
2 After the phone call, Cutler created an index card to track information concerning *Russian*
3 *Schoolroom*.

4 14. Goldberg Auction Gallery's largest auction each year was the Annual Louisiana Purchase
5 Auction. In October 1988, Goldberg advertised this auction in a half-page advertisement in *The*
6 *Magazine Antiques*, which at the time had a circulation of 62,544. The advertisement featured a
7 photograph of *Russian Schoolroom*.

8 15. Goldberg Auction Gallery also featured *Russian Schoolroom* in an advertisement for the
9 Louisiana Purchase Auction in the October 1988 issue of *The Antiques and Arts Weekly*.

10 16. Goldberg Auction Gallery also printed its own catalog. In a full-color picture on the front
11 of its October 1988 catalog, the gallery advertised the sale of *Russian Schoolroom* at the upcoming
12 Louisiana Purchase Auction.

13 17. Goldberg Auction Gallery sent its monthly catalogs to subscribers and friends of the
14 gallery.

15 18. David Goldberg, Morton Goldberg's son, worked at Goldberg Auction Gallery in October
16 1988. He believes he sent a catalogue for the 1988 Louisiana Purchase Auction to Circle Gallery,
17 a gallery owned by Solomon.

18 19. Martin Diamond, an acquaintance of Solomon, saw the *Antiques and Arts Weekly*
19 advertisement featuring *Russian Schoolroom*. Knowing the painting had been stolen, Diamond
20 called Solomon's office to inform him of the upcoming auction. Diamond was advised by
21 Solomon's office that Solomon and his staff knew about the auction and were taking care of the
22 situation.

23 20. Also prior to the auction, Diamond informed Margot Denedy, an FBI agent in New York,
24 of the upcoming sale of *Russian Schoolroom*.

25 21. David Fine, a New Orleans art collector, saw the advertisement for *Russian Schoolroom* in
26 *Antiques and Arts Weekly* and became interested in the painting.

1 22. While previewing the painting just prior to the auction, Fine spoke with Morton Goldberg,
2 who informed him that *Russian Schoolroom* had been stolen but that Goldberg Auction Gallery
3 was authorized to sell the painting because police authorities, the insurer, and the previous owner
4 had already resolved the issue of title to the painting.

5 23. Cutler also saw Goldberg Auction Gallery's advertisement for *Russian Schoolroom*, and
6 she decided to bid on the painting by phone.

7 24. Both Cutler and Fine placed bids for *Russian Schoolroom* at the auction. Cutler was the
8 highest bidder, and she purchased the painting for a total sale price of \$70,400.

9 25. After Diamond informed the FBI that *Russian Schoolroom* was going to be sold at the
10 Louisiana Purchase Auction, it began investigating the facts surrounding the painting's
11 reappearance. Cutler has submitted FBI documentation from this investigation into evidence. The
12 documents indicate that FBI agents spoke with Solomon regarding the painting and that Solomon
13 informed them of the following:

14 (a) *Russian Schoolroom* was stolen in 1973 from his art gallery in Clayton, Missouri.

15 (b) Solomon's insurance company paid him \$20,000 for the loss of the painting.

16 (c) Solomon's friends contacted him to tell him that the painting was being auctioned at
17 the Louisiana Purchase Auction later that week.

18 (d) Solomon and his insurance company contacted Goldberg Auction Gallery with regard
19 to the painting.

20 (e) Solomon, his insurance company, and Goldberg entered into a settlement agreement
21 whereby 10% of the sale proceeds would go to Goldberg Auction Gallery; \$20,000 would be paid
22 to the insurance company, and the remaining proceeds would be split 50-50 between Solomon and
23 the individuals that brought *Russian Schoolroom* to Goldberg to be sold.

24 26. Prior to bidding on *Russian Schoolroom*, Cutler looked at the provenance provided in the
25 auction house catalog. Cutler's review of the provenance did not raise any red flags. She believed
26 the provenance made sense because it listed Circle Gallery and Danenberg Gallery, both of which

1 had connections to Rockwell's works: Circle Gallery regularly sold Rockwell lithographs and
2 Danenberg regularly sold Rockwell originals.

3 27. Also prior to bidding on *Russian Schoolroom*, Cutler called the Norman Rockwell
4 Museum to see if museum officials had any additional information on the painting. They did not.

5 28. Also prior to bidding on *Russian Schoolroom*, Cutler consulted the Definitive Catalogue by
6 Laurie Norton Moffatt, where she saw similar provenance to that provided in the auction house
7 catalogue. She also noted that the Definitive Catalogue listed *Russian Schoolroom* as
8 "whereabouts unknown," as it did for approximately 1,400 of the 4,000 entries.

9 29. Based on Cutler's investigation into the provenance, she believed there was no reason to
10 contact Solomon before purchasing *Russian Schoolroom*.

11 30. *Antiques and the Arts Weekly* reported Cutler's purchase of *Russian Schoolroom* in its
12 November 25, 1988 issue.

13 31. *The Maine Antique Digest* reported Cutler's purchase in its January 1989 issue. The digest
14 included a picture of *Russian Schoolroom* in its report.

15 32. Shortly after obtaining possession of *Russian Schoolroom*, Cutler reframed the painting
16 and placed it in a traveling exhibit that appeared in Peoria, Illinois and New York City.

17 33. Cutler advertised *Russian Schoolroom* for sale in a half-page, full-color advertisement in
18 the July 1989 issue of *The Magazine Antiques*.

19 34. Cutler also advertised *Russian Schoolroom* in a half-page advertisement in the July/August
20 1989 International Directory issue of *Art & Auction*. The International Directory contained listings
21 for Judy Goffman Fine Art and Goldberg Auction Gallery.

22 35. Mary Ellen Shortland, who worked for Circle Gallery in the Chicago office when *Russian*
23 *Schoolroom* was stolen in 1973, saw one of Cutler's advertisements for sale of the painting in the
24 summer of 1989.

25 /

26 /

1 36. Shortland called Circle Gallery on two occasions to tell Solomon the painting had been
2 found. Shortland left two messages—one with a person and one on an answering machine. Her
3 calls were never returned.

4 37. Shortland also called William Stage, a news reporter for *The Riverfront Times*, to tell him
5 about the stolen painting.

6 38. Stage decided to write an article about the theft and reappearance of *Russian Schoolroom*.
7 As part of his investigation, Stage called Circle Gallery in Chicago and left a voice mail message.
8 Circle Gallery never returned Stage's call.

9 39. In August 1989 Cutler offered to sell *Russian Schoolroom* to Barry Podgorsky, who was a
10 regional manager for Circle Fine Art in New York.

11 40. At the time, Jack Solomon owned Circle Fine Art.

12 41. Podgorsky was neither surprised nor alarmed when Cutler offered to sell *Russian*
13 *Schoolroom*.

14 42. Cutler sold *Russian Schoolroom* to Steven Spielberg in September 1989 for \$200,000.

15 43. In 2007, Spielberg informed the FBI that he was in possession of *Russian Schoolchildren*.
16 Shortly thereafter, the FBI informed Solomon that Spielberg had *Russian Schoolroom*, and
17 Solomon filed suit seeking possession of the painting.

18 44. Solomon has proven by a preponderance of the evidence that he owned *Russian*
19 *Schoolroom* at the time it reappeared in 1988.

20 45. Solomon knew Goldberg Auction Gallery was selling *Russian Schoolroom* at auction, and
21 he consented to the sale of the painting.

22 46. The FBI reports most clearly demonstrate Solomon's knowledge of, consent to, and profit
23 from the sale. David Fine's testimony regarding Morton Goldberg's statements at the auction
24 preview also corroborates the contents of the FBI reports.

25 47. The Court notes Solomon objected to the admission of both the FBI reports and Fine's
26 testimony into evidence. Even without this evidence, however, the Court finds there is sufficient

1 evidence to indicate that Solomon knew or should have known that *Russian Schoolroom* was
2 being sold at the Louisiana Purchase Auction. Such evidence includes:

3 (a) Martin Diamond's testimony that he called Circle Gallery in October 1988 to tell
4 Solomon *Russian Schoolroom* was going to be auctioned and that he was told Circle Gallery knew
5 about the auction.

6 (b) Diamond's testimony that he informed FBI Agent Margot Denedy that *Russian*
7 *Schoolroom* was about to be sold at auction.

8 (c) Mary Ellen Shortland's testimony that Circle Gallery did not return her calls
9 regarding the sale of *Russian Schoolroom* in 1989.

10 (d) William Stage's testimony that he called Circle Galley in 1989 and left an
11 unreturned message about the reappearance of the painting.

12 (e) Cutler's testimony that Barry Podgorsky was not alarmed when Cutler offered to
13 sell *Russian Schoolroom* to him in August 1989.

14 (f) Chubb Insurance's letter—written after Solomon filed this case—indicating it
15 waived its ownership interest in the painting.

16 (g) David Goldberg's testimony that he thinks he mailed a catalog for the 1998
17 Louisiana Purchase Auction to Circle Gallery in New Orleans, Louisiana.

18 (h) Martin Diamond, Mary Ellen Shortland, and David Fine's testimony that they saw
19 advertisements for the sale of *Russian Schoolroom* in prominent art magazines.

20 48. Solomon denies being contacted by the FBI in October 1988, and he denies consenting to
21 the auction of *Russian Schoolroom*. In light of the testimony of other witnesses, many of whom
22 have no personal stake in this litigation, the Court finds Solomon's denial of these events is not
23 credible.

24 49. Cutler's investigation into the provenance of *Russian Schoolroom* prior to purchasing the
25 painting met the standard of care for art dealers in the industry.

26 /

1 **CONCLUSIONS OF LAW**

2 **I. Declaratory Relief, Quiet Title, and Replevin**

3 50. Nevada law applies to Solomon and Cutler’s equitable claims seeking title and possession
4 to *Russian Schoolchildren* because the painting is currently located in Nevada. Under Nevada
5 law, the law of the place where the property is located governs the dispute. *General Motors Corp.*
6 *v. Eighth Jud. Dist. Ct. of Nev.*, 134 P.3d 111, 116 (Nev. 2006); *see also* 16 Am. Jur. 2d Conflict
7 of Laws § 52.

8 51. The evidence is sufficient to find in favor of Cutler on Solomon’s counterclaims for
9 declaratory relief, quiet title, and replevin. Because Solomon knew of and consented to the sale of
10 *Russian Schoolchildren* in 1988, these counterclaims are barred under Nevada’s statute of
11 limitations.

12 52. The evidence is also sufficient to find in Cutler’s favor on her counterclaims for
13 declaratory relief stating that she has good title to *Russian Schoolroom* and that the statute of
14 limitations has run on Solomon’s counterclaims.

15 53. Even if (as Solomon argues) New York law applied to this case, Solomon’s counterclaims
16 would still be barred under New York’s applicable statute of limitations and Cutler would still be
17 entitled to the declaratory relief she seeks.

18 **II. Conversion**

19 54. Louisiana law applies to Solomon’s conversion claim because the alleged conversion took
20 place at the Louisiana Purchase Auction. Under the Restatement (Second) of Conflict of Laws §
21 147, in an action for injury to a tangible item (such as conversion), courts are to apply the local
22 law of the state where the injury occurred, unless some other state has a more significant
23 relationship with respect to the particular issue.

24 55. Cutler is not liable to Solomon for conversion for two reasons. First, Solomon consented
25 to the sale of *Russian Schoolroom* in 1988. A party cannot assert a conversion claim if it

26 /

1 consented to the transfer of the property in question. *Craven v. Canal Bridge Co., Inc.*, 135 Fed.
2 Appx. 632, 634 (5th Cir. 2004) (applying Louisiana law).

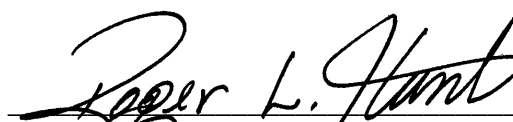
3 56. Second, Cutler is not liable for conversion because she did not wrongfully acquire *Russian*
4 *Schoolroom*. Under Louisiana law, conversion occurs when “possession [of personal property] is
5 acquired in an unauthorized manner.” *Dual Drilling Co. v. Mills Equipment Investments, Inc.*, 721
6 So.2d 853, 857 (La. 1998). The Court finds Cutler acted with the necessary due diligence before
7 purchasing *Russian Schoolroom* at the Louisiana Purchase Auction.

8 57. Even if New York law applies to Solomon’s conversion claim, Cutler would still not be
9 liable. See *Meese v. Miller*, 79 A.D.2d 237, 242 (N.Y. App. Div. 1981) (“Conversion is any
10 unauthorized exercise of dominion or control over property by one who is not the owner of the
11 property.”).

12 58. If any Finding of Fact is considered to be a Conclusion of Law, or any Conclusion of Law
13 is considered to be a Finding of Fact, it is the Court’s intention that it be so considered.

14 Judgment will be entered accordingly.

15 Dated: April 8, 2010.

16
17 
18 **ROGER L. HUNT**
19 Chief United States District Judge
20
21
22
23
24
25
26