

French Case on Law Governing Ownership of Paintings

On February 3rd, 2010, the French *Cour de cassation* delivered a judgment on choice of law in personal property matters. This is only the fourth time the Court has directly addressed the issue in the last hundred years.

In 2000, a French born painter living in New York city had provided the defendant with 7 of his paintings. The defendant put them on the walls of the restaurant he had just opened in New York. In 2005, the painter passed away. In 2006, the restaurant closed. The defendant then took the paintings to France to auction them. ❌

In the summer 2007, the widow of the painter sought interim relief before a French court in order to attach the paintings before the sale. The attachment was first granted, but the auction house (Camard & associés) and the defendant applied to set aside the attachment. The French court ruled in their favour in December 2007. The widow appealed to the Paris court of appeal, which dismissed the appeal. She then appealed to the *Cour de cassation*.

The central issue was of course whether the defendant was the owner of the paintings. He could have been transferred the ownership of the paintings either in New York by a valid gift, or simply by being the possessor of the property if possession was enough to transfer ownership. Under French law, a person who holds moveable property, and thinks he is the actual owner of that property, becomes the owner of the property for that sole reason. He is, for the purpose of former art. 2279 of the French Civil Code, a “good faith possessor”, and this is enough in this respect.

The *Cour de cassation* confirmed its former precedents and held that French law alone governs issues of property for moveables situated in France.

la loi française est seule applicable aux droits réels dont sont l’objet des biens mobiliers situés en France

❌ In this case, this meant that article 2279 had applied since the property had

reached the French soil. The widow argued that, under American law, it was up to the beneficiary to show that he had received the paintings as a gift, and that mere possession would not transfer ownership to the holder of the property. The Cour de cassation replied that given that French law had applied since the goods had reached France, article 2279 was enough of a basis to rule that ownership had been transferred by now.