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### Appeals court overturns Holocaust loote Norton Simon suit continues

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A federal appeals court today struck down as unconstitutional a 2002 Calif and heirs to artworks looted by the Nazis extra time -- until the end of 2010

But the 2-1 ruling by a three-judge panel of the U.S. 9th Circuit Court of Ap not settle the specific case at hand:

Does the Norton Simon Museum in Pasadena really own one of the most pi galleries, Lucas Cranach the Elder's depiction of Adam and Eve in the Garden of Eden, moments before the Fall -- or should the paintings on two wood panels be handed over to the daughter-in-law of a Jewish art dealer who left the panels in Holland when he fled the invading Germans in 1940?

The German artist painted them around 1530, and they were valued at \$24 million in 2006, when the museum had them appraised for insurance purposes.

Under the appellate ruling, Connecticut resident Marei Von Saher no longer can take advantage of the special law -- now overturned. But the appeals panel still opened a door for her to proceed -- if she can convince the trial judge who previously dismissed her case that she sued in time to satisfy California's regular statute of limitations, which gives victims three years to sue for the return of property, starting from the date they learn the lost items' whereabouts.

The appeals court agreed with John F. Walter, the U.S. District Court judge in Los Angeles [who threw out Von Saher's suit in October 2007](#) that California officials overstepped their authority when they



passed the state's Holocaust art-restitution law, because they intruded on what is strictly a federal government prerogative to shape policies on war and foreign affairs.

But the appeals court ruled that Walter should not have dismissed the case altogether, and needs to reconsider whether Von Saher has a right to sue under the regular statute of limitations, whose cutoff date in her case is unclear. Although the Norton Simon Art Foundation bought the Cranach panels from a Russian owner in 1971, the appellate court said the statute of limitations clock would not have begun to run on Von Saher until "she discovered or reasonably could have discovered" that she had an ownership claim to the Cranachs," and that they were hanging at the Norton Simon Museum. "It is not clear that the statute of limitations has expired," they said -- and that's now an issue for the two

sides to argue, and for Walter to decide.

Von Saher's father-in-law, Jacques Goudstikker, bought the life-size nudes of Adam and Eve in 1931 when they were put up for auction in Berlin by Josef Stalin's financially hard-pressed Soviet regime. When Goudstikker fled Holland, his firm sold the paintings to the Nazis under duress.

After World War II, Goudstikker's family reached a settlement with the Dutch government that left the Cranachs in Dutch hands. The Dutch government then transferred ownership to George Stroganoff-Scherbatoff, an heir to an old Russian family, who said the Bolsheviks had confiscated the paintings from his forebears during the Russian Revolution. Stroganoff-Scherbatoff subsequently sold them to Norton Simon, the Los Angeles industrialist who established the Norton Simon Museum.

In her 2007 suit against the museum, Saher said that she learned in late 2000 that the Cranachs were at the Norton Simon Museum; the museum contended that she first came forward with her claim in 2001. Mediation sessions in 2005 and March 2007 failed to resolve the dispute, according to a suit the [Norton Simon Foundation filed](#) in May 2007 asserting its right to the Adam and Eve paintings.

In a prepared statement, the Norton Simon Art Foundation said Wednesday that its legal title to the

Cranachs is “unassailable” and that it will “defend ... vigorously” its right to keep them.

“We are satisfied with today’s ruling and look forward to a quick resolution to this matter,” Norton Simon officials added.

Von Saher's lawyer, Lawrence Kaye, said that she "is certainly gratified that ... she will have her day in court" using the three-year statute of limitations. He said it's too early to say whether Von Saher will appeal to preserve the broader deadline she clearly had met under the now-overturned state law. In its written opinion, the Ninth Circuit's panel of judges noted that Norton Simon attorneys already have submitted news clippings and other published items to show that the Adam and Eve paintings were famous attractions at the museum decades before Von Saher came forward with her claim -- evidence that the museum can use to argue that Von Saher came forward far too late to satisfy the standard, three-year statute of limitations that she must now meet.

One of the three appellate judges, Harry Pregerson, dissented from the legal opinion by Dorothy W. Nelson and David R. Thompson. Pregerson argued that the state law extending the statute of limitations for claims on Nazi-looted art does not mean California is butting in on a federal prerogative – setting policies for war reparations – but serves the state’s “legitimate interest in regulating museums and galleries.”

The state attorney general's office filed a friend-of-the-court brief in the Von Saher case, taking no position on whether the museum should turn over the paintings to her, but arguing to uphold the California law extending the statute of limitations for claims seeking the return of art allegedly looted during the Holocaust.

Antonette Cordero, the deputy attorney general who wrote the brief, said it would be up to Von Saher whether to appeal today's decision to a larger, 15-member panel of the Ninth Circuit appeals court -- and then to the U.S. Supreme Court.

Cordero said three other California laws on Holocaust redress also have been found to be unconstitutional intrusions into foreign affairs: in 2003, the U.S. Supreme Court overturned the Holocaust Victims' Insurance Relief Act, which required insurers to disclose information about policies they sold in Europe between 1920 and 1945, and the Ninth Circuit court of appeals invalidated a law extending the statute of limitations for claims for payment for slave labor. In 2005, the California Court of Appeal found that an extension of the statute of limitations for Holocaust-era insurance claims was not valid.

-- Mike Boehm

*Photo: Lucas Cranach the Elder's Adam and Eve. Credit: Norton Simon Museum.*

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