

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ONE PAINTING ENTITLED “WINTER,”  
aka “SKATERS” aka “SNOW”

Defendant.

Civil Action No.: 1:19-cv-1271 (MAD/CFH)

**VERIFIED COMPLAINT FOR FORFEITURE *IN REM***

The United States of America brings this verified complaint for forfeiture *in rem* against the above-captioned asset (the “painting”) and alleges as follows in accordance with Rule (G)(2) of the Federal Rules of Civil Procedure, Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions:

**THE PARTIES**

1. Plaintiff is the United States of America.
2. The *in rem* defendant property is a painting, entitled “Winter,” by artist Gari Melchers. At times “Winter” has been known as “Skaters” and “Snow.” A depiction of the painting, and label on the back of its frame, is attached as Exhibit A. The painting is in the possession of the Federal Bureau of Investigation (FBI).

**NATURE OF THE ACTION**

3. This is an action *in rem* brought pursuant to 18 U.S.C. § 981(a)(1) and Rule G of the Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions. The painting is subject to forfeiture for the two reasons described in paragraphs 4 and 5 below.

4. In 1933, members of the Nazi party stole, unlawfully converted, or took, the painting from its rightful owner. The painting, valued at more than \$5,000, crossed a United States boundary in violation of the National Stolen Property Act (NSPA), 18 U.S.C. §§ 2314 & 2315.

5. Alternatively, because the property was stolen, unlawfully converted, or taken, when it entered the United States, it was introduced contrary to law, and is therefore subject to forfeiture. 19 U.S.C. § 1595a(c).

### **JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1345 and 1355.

7. This Court has *in rem* jurisdiction over the defendant painting pursuant to 28 U.S.C. §§ 1355(b) & 1395 because the property was recovered in Canajoharie, New York and is currently held in Albany, New York, within Northern District of New York.

8. Venue is proper in this district pursuant to 28 U.S.C. §§ 1355 and 1395 because the painting was found, and remains, within this judicial district.

### **FACTS GIVING RISE TO FORFEITURE**

9. Rudolf Mosse was a German publisher and philanthropist who lived from 1843-1920. Rudolf Mosse, along with his family, was of Jewish descent.

10. Rudolf Mosse was the founder of Rudolf Mosse Company oHG, which published several periodicals in Berlin, Germany during the early twentieth century, including the *Berliner Tageblatt*.

11. In July 1900, Rudolf Mosse acquired the painting directly from the artist Gari Melchers at the Great Berlin Art Exhibition.

12. In 1920, Rudolf Mosse died and all of his holdings, including the painting, passed to Emilie Mosse, Rudolf Mosse's wife.

13. In 1924, Emilie Mosse died, and all of her holdings, which included the painting, passed to Felicia Lachmann Mosse, Rudolf Mosse's adopted daughter and her husband, Hans Lachmann Mosse, who were both shareholders in the Rudolf Mosse Company oHG.

14. After 1924, Felicia Lachmann Mosse and Hans Lachmann Mosse owned and controlled the Rudolf Mosse Company, oHG, which included the *Berliner Tageblatt*, as well as the Mosse family's art collection, which contained almost 200 pieces of art, including the subject painting.

#### **The Nazis come to power in Germany**

15. The *Berliner Tageblatt* was critical of the Nazi Party as it came to power in the 1920s and early 1930s.

16. Adolf Hitler criticized the *Berliner Tageblatt*, among other Jewish-owned publishing companies, during his rise to power in the 1920s and early 1930s.

17. When the Nazis came to power, they began a process of "Aryanization," designed to remove Jews from German economic life.

18. Beginning in early 1933, the Nazi party persecuted the Mosse family because they were Jewish, and because of their affiliations with the *Berliner Tageblatt*.

19. Felicia and Hans Lachmann Mosse emigrated from Germany during the first half of 1933, and their assets, including the family art collection, were placed into state administration.

20. The Nazis commissioned Karl Haberstock of the Rudolf Lepke auction house, to liquidate the Mosse family's art collection.

21. Karl Haberstock was a German art dealer who has a well-documented history of working for the Nazis.

22. The painting (then known as “Schlittschuhläufer” or “Skaters”) was included in a May 21, 1933 inventory of the Rudolf Mosse Art Collection, and was mentioned in the introduction to the Rudolf Lepke Auction catalog.

23. On May 29, 1934, an unknown purchaser bought the painting (then known as “Schlittschuhläufer” or “Skaters”) at the Lepke Auction House for 1100 Reichsmarks.

24. In October 1934, the painting, then known as “The Skaters,” appeared at the MacBeth Art Gallery in New York City, likely consigned by the Henry Schultheis Gallery, also of New York City.

25. The Mosse family never received compensation from the sale of their art collection.

26. The legal process of dispossessing the Mosse family of its property was found to be a charade. A German appellate court, the Civil Senate of the Higher Regional Court of Berlin, found the Mosse’s “surrender” of their assets to be non-voluntary and part of the Nazi’s Aryanization measures against Jewish business owners. *See* Kammergericht Berlin [KG Berlin], Jan.11, 1954, docket no. 14/3 W 4443.52.

#### **Bartlett Arkell purchases “Winter”**

27. Bartlett Arkell was a co-founder, and president, of the Imperial Packing Company, which ultimately became Beechnut Packing Co. located in Canajoharie, New York.

28. Bartlett Arkell also collected thousands of art pieces from all over the world, and frequently purchased artwork from the MacBeth Art Gallery.

29. In October or November 1934, Bartlett Arkell purchased the painting from the MacBeth Art Gallery.

30. Bartlett Arkell arranged to ship the painting to Canajoharie, New York, where it became part of his personal art collection, which ultimately became the Arkell Museum's collection. The Arkell Museum is also known as the "Canajoharie Library and Art Gallery."

31. The painting remained in the Arkell Museum's collection until September 10, 2019, when Federal Bureau of Investigation (FBI) agents recovered the painting.

32. When the FBI recovered the painting, Charles J. Tallent, a trustee of the Arkell Museum, executed a document that "waive[d] any right, title, and interest in [the painting]..." Suzan Friedlander, Executive Director of the Museum, witnessed Mr. Tallent's waiver.

33. The painting is now in the FBI's possession, at its Albany, New York facility.

### CONCLUSION

The facts set forth above support a reasonable belief that the painting is subject to forfeiture and the government will be able to meet its burden of proof at trial. Specifically, probable cause exists to believe that the defendant painting is subject to forfeiture because it is valued at more than \$5,000 and was stolen, unlawfully converted, or taken from its rightful owner, and crossed a United States boundary, in violation of the NSPA. Alternatively, the painting is subject to forfeiture pursuant to 19 U.S.C. § 1595a(c), because it was introduced to the United States contrary to law.

WHEREFORE, pursuant to Supplemental Rule G, plaintiff the United States of America, respectfully requests that the Court:

- (1) Issue a Warrant of Arrest *In Rem*, in the form submitted with this Complaint;
- (2) Direct any person having any claim to the defendant painting to file and serve their Verified Claims and Answers as required by 18 U.S.C. § 983(a)(4) and Supplemental Rule G;

(3) Enter judgment declaring the defendant painting to be forfeited for disposition according to law; and

(4) Award such other and further relief to the United States as it deems proper and just.

Dated: October 15, 2019

GRANT C. JAQUITH  
United States Attorney

By: /s/ Christopher R. Moran  
CHRISTOPHER R. MORAN  
Assistant United States Attorney  
Bar Roll No. 700767

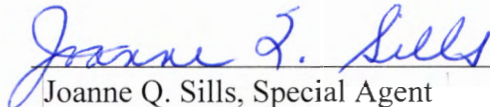
VERIFICATION

STATE OF NEW YORK            )  
  ) ss:  
COUNTY OF ALBANY         )


Joanne Q. Sills being duly sworn, deposes and states:

I am a Special Agent with the Federal Bureau of Investigations. I have read the foregoing Complaint for Forfeiture *In Rem* and assert that the facts contained therein are true to the best of my knowledge and belief, based upon knowledge possessed by me and/or on information received from other law enforcement officers.

Dated this 11<sup>th</sup> day of October, 2019.

  
\_\_\_\_\_  
Joanne Q. Sills, Special Agent  
Federal Bureau of Investigations

Sworn to and subscribed before me this 11<sup>th</sup> day of October, 2019.

  
\_\_\_\_\_  
Notary Public

JESSICA FREEDAY  
Notary Public, State of New York  
No. 01510019  
Qualified in Albany County  
Commission Expires January 6, 2023

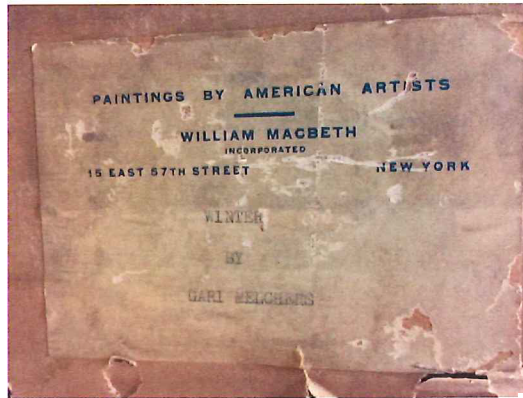


EXHIBIT  
A  
FENCAD 800-531-6989



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) Christopher R. Moran, Assistant U.S. Attorney (518) 431-0247 United States Attorney's Office, 445 Broadway, Albany, New York 12207

DEFENDANTS

ONE PAINTING ENTITLED "WINTER," aka "SKATERS" aka "SNOW"

County of Residence of First Listed Defendant Montgomery (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff (checked)
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding (checked)
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 18 USC 2314, 2315, 19 USC 1595a(c)
Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

10/15/2019 s/Christopher R. Moran

FOR OFFICE USE ONLY

RECEIPT # AMOUNT waived APPLYING IFP JUDGE MAD MAG. JUDGE CFH

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.