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## Hiram H. Hoelzer v. City of Stamford 933 F.2d 1131 (2d Cir. 1991)

Kristen Benner-Mulvihill

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### Recommended Citation

Kristen Benner-Mulvihill, *Hiram H. Hoelzer v. City of Stamford 933 F.2d 1131 (2d Cir. 1991)*, 2 DePaul J. Art, Tech. & Intell. Prop. L. 26 (1991)

Available at: <https://via.library.depaul.edu/jatip/vol2/iss1/8>

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that Murphy, the subsequent writer, had access to the idea and that *“Coming to America”* was sufficiently similar to find that Paramount breached its contract with Buchwald. Ω

*Frank A. Monago*

1. *Art Buchwald v. Paramount Pictures, Corp.*, 13 U.S.P.Q.2d 1497 (Cal. Super. 1990).

2. *Id.* at 1507.

3. *Id.* at 1506.

4. *Id.* at 1507.

5. *Id.* at 1501 (court stated that the case was not about Eddie Murphy stealing Art Buchwald’s idea, but only based on breach of contract).

6. *Id.* at 1502.

7. *Id.*, citing *Golding v. R.K.O. Pictures, Inc.*, 221 P.2d 95 (Cal. 1950); *accord Fink v. Goodson-Todman Enterprises, Ltd.*, 9 Cal. App. 3d 996, 1013 (1970).

8. *Id.*

9. *Id.* at 1503, citing *Stanley v. Columbia Broadcasting System*, 35 Cal. 2d 653, 660 (1950).

10. *Id.*, citing 3 M. NIMMER, NIMMER ON COPYRIGHT § 16.08[B], at n. 58 (1991).

11. *Id.* at 1504, citing *Fink v. Goodson-Todman Enterprises, Ltd.*, 9 Cal. App. 3d 996, 1008 (1970) (“[W]hether . . . defendants have based their series on a material element of plaintiff’s program.”); *Weitzenkorn v. Lesser*, 256 P.2d 947 (Cal. 1953) (“The contract obligated defendants to pay for plaintiff’s composition if they used it or any portion of it, regardless of its originality.”).

12. *Id.* at 1507.

13. *Id.* at 1506, citing *Fink v. Goodson-Todman Enterprises, Ltd.*, 9 Cal. App. 3d at 1013.

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## Hiram H. Hoelzer v. City of Stamford, 933 F.2d 1131 (2d Cir. 1991).

### Introduction

The U.S. Court of Appeals for the Second Circuit granted the City of Stamford, Connecticut title to artwork that it had misplaced for over a decade, thus denying the plaintiff’s claim that the city repudiated its rights by abandoning the artwork.

Plaintiff Hiram Hoelzer, a restorer of art, claimed that the statute of limitations on artwork ownership had expired, thus barring the city from staking its claim on the work. Affirming the lower court’s decision, the appellate court ruled that the statute of limitations begins to run when the original owner makes a demand for the piece.<sup>1</sup>

### Facts

The paintings at issue, a set of murals commissioned by the Work Progress Administration (WPA) in 1934, had hung in the Stamford High School halls for 35 years. In 1970, the Board of Education

requested that the murals be stored while the school underwent renovation. The murals were removed inadvertently by construction workers and placed near outdoor dumpsters where a former student rescued them and stored them in his parent’s garage.

In 1971, the student learned of the efforts of the federal government to locate and preserve WPA art and contacted the fine arts administrator of this program. The administrator verified the authenticity of the works and then delivered the works to Hoelzer, requesting that they be stored and restored when money became available. Hoelzer was then told that the artwork should be returned to the federal government since the government would be funding the storage and restoration of the work.

Beginning in 1971, school and city officials commenced inquiries regarding the fate of the murals, but met with no success. No further action was taken by the school district until 1980 when, through the artist’s son, the school district discovered the murals were in Hoelzer’s possession. A school official visited Hoelzer shortly thereafter to discuss restoration, but did not contact Hoelzer again.

In 1986, a Stamford city official visited Hoelzer to discuss a grant to cover the costs of restoration. It was at this time that Hoelzer refused to cooperate with officials and asserted that the art was his. Claiming the art was “knowingly trashed” by the city, he refused the city’s request for the return of the art.

Eventually, Hoelzer brought suit against the city to quiet title in the murals. After a ruling in favor of the city, Hoelzer appealed and claimed that the city unreasonably delayed in demanding return of the work, and that the statute of limitations had run for the city to assert this action. Hoelzer also claimed that the city’s abandonment of the murals precluded any claim of ownership.

### Legal Analysis

In addressing the statute of limitations claim, the Court of Appeals cited *DeWeerth v. Baldinger* which dealt with a dispute over a Monet painting.<sup>2</sup> The *DeWeerth* court held that “the limitation period begins to run only when the owner demands return of the property and the purchaser refuses.”<sup>3</sup> The court also noted that “where demand and refusal are necessary to start a limitations period, the demand may not be unreasonably delayed.”<sup>4</sup>

In the present case, the Court of Appeals found that until 1986 Hoelzer did nothing that might have alerted the city to an adverse claim. It therefore