

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

YALE UNIVERSITY

Plaintiff,

and

THE NIGHT CAFÉ, a PAINTING

Plaintiff-in-rem

v.

PIERRE KONOWALOFF

Defendant.

Case No.: 309 CV 00466

AWT

March 23, 2009

U.S. DISTRICT COURT
NEW HAVEN, CT
2009 MAR 23 P 3:34

FILED

COMPLAINT

NATURE OF THE ACTION

1. For almost fifty years, Yale University has displayed Vincent van Gogh's *The Night Café* in the Yale University Art Gallery, making the painting accessible to the public free of charge. Yale received the painting in 1961 through a bequest of Stephen Carlton Clark, a Yale alumnus and famous art collector who had served as a respected trustee of the Museum of Modern Art, the Metropolitan Museum of Art, and the Baseball Hall of Fame.

2. *The Night Café* is one of the most renowned paintings in the world. For decades, reproductions of it – accompanied by the recognition that Yale is its owner – have appeared in books and articles, published all around the world, in many languages. No one ever questioned Yale's ownership of the painting until Pierre Konowaloff, a French citizen, came forward last year to claim that the painting is his.

3. Mr. Konowaloff asserts that he is the great-grandson and heir of Ivan Morozov, a Russian industrialist and aristocrat, who in 1918 owned the painting. Like the property of other Russians, Ivan Morozov's property – his factories and real estate and paintings – was nationalized by the Russian government in the wake of that country's October 17 communist revolution. The Soviet government later sold the painting, as it did many others. A European gallery purchased the painting and sold it to a New York gallery, which in turn sold it to Mr. Clark. Mr. Clark owned it for nearly thirty years, lending it for display in widely publicized exhibitions. At his death, he bequeathed it to Yale. Mr. Konowaloff claims that the Soviet nationalization of property was illegal, so that title never passed from his great-grandfather. The implication of his argument is that American courts should try to undo the entire program of property reform undertaken by the Russian government in the early part of the twentieth century, invalidating the transfers of title of Russian citizens' property that Russia effectuated within its own borders.

4. Paintings that were nationalized by the Soviet government figure prominently in the collections of premier institutions throughout the world, including leading museums in Russia and the United States. It was accepted at the time, as it is now, that the sales by the Soviet government were valid, as were later acquisitions of the paintings. Yale had no reason to question the legitimacy of Mr. Clark's generous bequest in 1961. Nor does it today. It brings this action to quiet its good title to *The Night Café*, so that it may enjoy the repose to which it is entitled by law while ensuring that the painting remains on display to the public, without charge, as it has been for nearly half a century.

THE PARTIES

5. Yale University (the “University” or “Yale”) is a not-for-profit institution of higher education located in New Haven, Connecticut. One of the oldest institutions of higher learning in the United States, the University was founded in 1701 and is organized as a specially chartered nonprofit corporation under the laws of the State of Connecticut.

6. Among the University’s educational resources is the Yale University Art Gallery (the “Gallery”). The Gallery is the oldest university art museum in the western hemisphere. Its permanent and special exhibits are free and open to the public, allowing thousands of visitors each year to view some of the world’s finest art without charge.

7. The Gallery’s mission is to encourage appreciation and understanding of art and its role in society through direct engagement with original works of art. The Gallery organizes exhibitions and educational programs to offer enjoyment and encourage inquiry, while building and maintaining its collections in trust for future generations.

8. *The Night Café*, Plaintiff in-rem, is a painting by Vincent van Gogh that permanently resides at the Gallery in New Haven, Connecticut.

9. Pierre Konowaloff is an individual who resides in France. He claims to be the great grandson of Ivan Morozov (also known as Ivan Morosov), a Russian aristocrat who lived in the late nineteenth and early twentieth centuries and who in 1918 owned *The Night Café*.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), because there is complete diversity of citizenship between Plaintiff and Defendant and the matter in controversy exceeds \$75,000, exclusive of interest and costs.

11. This Court may exercise *in rem* and *quasi in rem* jurisdiction in this matter pursuant to 28 U.S.C. § 1655, because Plaintiff seeks in this suit to remove a cloud on the

title of personal property located in New Haven, Connecticut. This Court may also exercise *in rem* and *quasi in rem* jurisdiction pursuant to Conn. Gen. Stat. § 47-31, because Plaintiff claims title to, and seeks to quiet the title of, personal property located in New Haven, Connecticut.

12. This Court has jurisdiction to grant the requested declaratory relief pursuant to 28 U.S.C. § 2201(a), 28 U.S.C. § 2202, 28 U.S.C. § 1655, and Conn. Gen. Stat. § 47-31.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(d) because Defendant is an alien. In addition, because the property that is the subject of this action is located in New Haven, Connecticut, venue is proper under 28 U.S.C. § 1391(a)(2)-(b)(2). Venue is also proper in this district pursuant to 28 U.S.C. § 1655.

BACKGROUND

The Painting's Bequest to the University

14. Stephen Carlton Clark, an American art collector, died on September 17, 1960.

15. After graduating from Yale in 1903, Clark attended law school and then entered a career in publishing, business and politics.

16. He served with the Second Army Corps in France during World War I, eventually marching down the Champs Elysees in 1918 to celebrate the Allied victory and later receiving a Distinguished Service Medal for his military service.

17. After his return from the service, Clark began to collect art.

18. Clark was the first person asked to join the Board of Trustees of the Museum of Modern Art after it was incorporated, and he served for years as its Chairman.

19. He also served as a director of the Metropolitan Museum of Art.

20. Clark founded the Baseball Hall of Fame in his hometown, Cooperstown, New York, and served as its president.

21. His large art collection included *The Night Café*, known in French as *Le Café de Nuit* (the “Painting”). *The Night Café* was painted by Vincent van Gogh in Arles, France in September 1888.

22. Clark died on September 17, 1960. Due to his fame as an art collector and public benefactor, Clark’s death was reported in prominent publications, including an article the next day in *The New York Times* entitled “Stephen C. Clark, Art Patron, Dead.”

23. In his will, which was dated December 16, 1959, Clark left most of his money to charity. He bequeathed six million dollars to a hospital and two million dollars to a historical association, among other nonprofit organizations. And he bequeathed *The Night Café* to the University, his alma mater.

24. Through his gifts or bequests to the Museum of Modern Art, the Metropolitan Museum of Art, and the Yale University Art Gallery, Clark assured that millions of people a year would have access to some of the most important works of modern art.

25. Charles J. Nourse, Charles E. Main and James Bordley III were appointed the executors of Clark’s estate.

26. Clark’s will was probated in Otsego County, New York.

27. At the time of Clark’s death, New York’s Surrogate Court Act §§ 207 & 208 governed publication of notice by executors of estates, and established a seven-month period from the date of issue of letters testamentary within which a claim could be asserted against the estate.

28. No claims regarding the Painting were made against Clark’s estate. Pierre Konowaloff (then a minor) did not make a claim, his father Ivan Konowaloff did not

make a claim, and Ivan Konowaloff's mother, Eudoxie Morozov – the daughter of Ivan Morozov – did not make a claim.

29. Clark's bequest to Yale of the Painting made national news. Two weeks after its obituary of Clark, *The New York Times* ran an Associated Press article entitled "Charity and Art Willed Millions," which noted that a van Gogh painting was among the 40 works bequeathed to Yale by Clark.

30. Yale received the painting on June 21, 1961.

31. Two days later, on June 23, 1961, the painting was formally accessioned into the permanent collection of the Gallery. A line on the Gallery document used to establish the formal accession states "Bequest of Stephen Carlton Clark, B.A. 1903."

Yale's Exhibition of the Painting

32. Within months, the Gallery hung the Painting on its walls, making it available for viewing to the public. The wall didactic stated that it was received through the "Bequest of Stephen Carlton Clark, B.A. 1903." That language has remained on the wall next to the Painting for the entire period of its display at Yale.

33. The Gallery's display of the Painting was widely covered by the media. The *New Haven Journal* published an article entitled "Major Art Display Scheduled by Yale" on October 9, 1961, running a picture of the Painting with a caption that read: "THE NIGHT CAFÉ -This famous oil painting by Vincent Van Gogh is among 40 from the art collection of New Yorker Stephen C. Clark, Yale '03, to go on exhibit Thursday at the Yale Art Gallery." The *New York Herald Tribune* published an article on October 29, 1961 entitled "Clark Bequest Exhibited for First Time: Yale Gallery's New Art Treasures on Display," and referred to the Painting as "Van Gogh (1853-1890), 'Night Café', painted at Arles in 1888."

34. In its Winter 1961-62 issue, *The Art Journal*, a widely read arts publication, reported on Clark's bequest of the Painting and Yale's display of it in an article entitled "Yale Exhibits Clark Bequest," referring to the Painting as "the world-famous Night Café by van Gogh, 1888, formerly in the Museum of Modern Western Art, Moscow." A reproduction of the Painting appeared on page 118 of the publication, with a caption stating:

Vincent van Gogh, *The Night Café*, 1888.

Yale, Stephen Clark bequest.

35. Another widely read arts publication, *Art Quarterly*, reported on Yale's accession of *The Night Café* in its 1961 article on "Accessions of American and Canadian Museums." An image of the Painting appears on page 400, with the caption "Yale University Art Gallery."

36. French publications of the time also reported on Clark's bequest of the Painting to Yale. In February 1962, the *Gazette des Beaux-Arts* published a reproduction of the Painting to accompany an article entitled "La Chronique des Arts," along with a caption reading "Yale University Art Gallery, New Haven (legs Stephen Carlton Clark, '03)." *Gazette des Beaux-Arts*, 6. period, 59 (February, 1962), p. 47, no. 157 [ill.].

37. The Yale University Art Gallery also proudly spread the news of the bequest. A reproduction of the painting appeared on the cover of the Gallery's December 1962 bulletin, and the bequest was described inside the bulletin in the article "Recent Gifts and Purchases," *Bulletin*, Yale University Art Gallery, 28 (December, 1962), p. 48.

38. For the remainder of the twentieth century, numerous prominent publications reproduced the Painting, making plain that Yale had received *The Night Café* by a bequest from Stephen Clark.

39. For example, Francoise Forster-Hahn's book, *French and School of Paris Paintings in the Yale University Art Gallery* (New Haven, 1968), discusses the Painting at pages eleven to thirteen, and reproduces it at plate 19 with the caption "Bequest of Stephen C. Clark, B.A. 1903."

40. A book by Andrew Carnduff Ritchie (then director of the Yale University Art Gallery) and Katharine B. Neilson, *Selected Paintings from the Yale University Art Gallery*, published in 1972 in both New Haven and London, reproduces the Painting at plate no. 72, with a caption stating: "Bequest of Stephen Carlton Clark, B.A. 1903."

41. Diane Kelder's book, *The Great Book of French Impressionism*, published in 1980, reproduces the Painting at plate 323 on page 316, with a caption stating "Yale University Art Gallery, New Haven Connecticut. Gift of Stephen C. Clark."

42. John Russell's book, *The Meanings of Modern Art*, published in 1981, reproduces the Painting on page 40, with caption stating "Yale University Art Gallery, New Haven, Connecticut. Bequest of Stephen Carlton Clark."

43. John Rewald's book, *Post-Impressionism from Van Gogh to Gauguin*, published in 1982, reproduces the Painting with the caption "Yale University Art Gallery, New Haven, Connecticut (Bequest of Stephen C. Clark)."

44. *Yale University Art Gallery Selections*, a 1983 book by Alan Shestack, then the Director of the Yale University Art Gallery, reproduces the Painting with the caption "Bequest of Stephen Carlton Clark, B.A. 1903."

45. The catalogue for an exhibition held at the Metropolitan Museum of Art in New York City in the autumn of 1984, published as *Van Gogh in Arles* by Ronald Pickvance, reproduces the Painting with the caption “Yale University Art Gallery, New Haven. Bequest of Stephen Carlton Clark.”

46. In 1985, *Art in Context*, by Jack A. Hobbs, reproduced the Painting with a caption reading “Yale University Art Gallery: Bequest of Stephen Carlton Clark, B.A. 1903.”

47. In 1986 – when Pierre Konowaloff was 33 and his father Ivan Konowaloff was 64 – Susan Alyson Stein’s book, *Van Gogh: A Retrospective*, reproduced the Painting with the caption “Yale University Art Gallery, New Haven: Bequest of Stephen Carlton Clark.”

48. In 1993 and 1994, an exhibition specifically organized around the former collections of Ivan Morozov and another Russian collector traveled to the Pushkin Museum of Fine Arts (Moscow) and then the Hermitage Museum (St. Petersburg). The exhibition catalogue, published in 1993 and entitled *The Collectors: Shchukin and Morozov: Monet to Picasso*, reproduced the Painting with the caption “Yale University Art Gallery, New Haven Inv. No. 1961.18.34 Stephen C. Clark Bequest, 1960 (formerly I.A. Morozov Collection).” The catalogue was also published in German and Russian.

49. Dozens – possibly thousands – of other publications reproduced the Painting, in many languages and around the world. A few illustrate the scope of those publications: it appeared in Sophie Monneret, *L'impressionnisme et son époque: dictionnaire international illustré* (Paris: 1978) v. III, p. 129 [ill.] (with caption “Yale University Art Gallery, legs Stephen C. Clark New Haven”); *Van Gogh zen gashu* (Tokyo: Kodansha, 1978); Robert John Goldwater, *Symbolism* (London 1978) pl. 111 p.132 (with caption

“Yale University Art Gallery, New Haven”); Jean-Paul Clebert and Pierre Richard, *La Provence de Van Gogh* (Aix-en-Provence: Edisud, 1981), p. 32 [ill.] (with caption “Yale University, Art Gallery, New Haven, USA”); Jean-Francois Barrielle, *La Vie et l’oeuvre de Vincent van Gogh* (French Edition) (Paris: Vilo, 1984), p. 126 [ill.] (with caption “Yale University Art Gallery, New Haven. Donation S. Carlton Clarke”); Bruce Bernard, ed., *Vincent by Himself* (London: Orbis, 1985), color repro. p. 244 (with caption “Yale University Art Gallery, bequest of Simon [sic] Carlton Clark, B.A. 1903”); Herman Meyer, *Spiegelungen Studien zur Literatur & Kunst*, (Max Niemeyer Verlag, 1986); Erkki Kivalo, *Taiteilija ja hanen sairautensa: Vincent van Gogh 1853-1890* (Helsingissa, 1989), color repro., pl. 18; *L’Art du XIXe siècle, 1850-1905* (Paris: Citadelles, 1990), pg. 140, fig. 74 (with caption “New Haven, Yale University Art Gallery”); William Feaver, *Van Gogh* (London: Studio Editions, 1990), p. 78-79 [ill.] (with caption “Yale University Art Gallery”); *Vincent van Gogh*, cat. #58 pg. 148, color illus. p. 151 (catalogue for exhibition at the Rijksmuseum, Amsterdam, March 3, 1990 – July 30, 1990); Matthias Arnold, *Vincent van Gogh: Werk und Wirkung* (1995), p. 317-18, colorplate p. 318; Exhibition catalogue, *Van Gogh’s Van Goghs: Masterpieces from the Van Gogh Museum Amsterdam* (National Gallery, Washington and L.A. County Museum, 1998-99), p. 103-4, fig. 29 (with caption “Yale University Art Gallery, New Haven”); Gabriele Crepaldi, *Gli Impressionisti* (Milano: Arnoldo Mondadori Editore S.p.A.: 2001), p. 380 (with caption “New Haven, Yale University Art Gallery”); *I Colori Della Luce, I Luoghi di Monet, van Gogh, Gauguin* (Italy: Linea D’Ombra Libri SRL 2005); Marit Lande, *Med Ild I Sjelen – Vincent van Gogh for Barn Og Unge* (Ursus Forlag, Norway, 2003); Rainer Metzger and Ingo F. Walther, *Van Gogh: 1835-1890*

(Spanish Edition) (Mexico: Numen, 2003), p. 128 (with caption: “New Haven (CT), Yale University Art Gallery”; Werner Schmalenbach, *Über die Liebe zur Kunst und die Wahrheit der Bilder* (Hatje Cantz, 2004).

50. For years, Yale’s ownership and possession of the Painting, as well as the fact that Yale received the Painting from Stephen Clark, has been widely reported on the Internet. For instance, the “Vincent van Gogh Gallery,” a website maintained at www.vggallery.com devoted to van Gogh’s paintings, has reported since at least December 2005 that *The Night Café* is at the Yale University Art Gallery.

51. As the countless publications make clear, Yale has publicly asserted dominion over the Painting from the time it received it.

52. Since 1961, Yale has received well over a thousand requests for permission to publish a reproduction of the Painting.

53. Nearly two hundred of those requests came from foreign publishers.

54. Since 1961, Yale has consistently required that any and all publications of the Painting be accompanied by the following credit:

Yale University Art Gallery

Bequest of Stephen Carlton Clark

55. Since 1965, Yale has used a standardized application form for publication requests. While the form has been modified several times, every version states, in relevant part: “Permission is hereby requested to reproduce . . . the following objects owned by the Yale University Art Gallery.”

56. Approximately two dozen of those foreign requests originated with publishing or media companies located in France, including two requests for permission to broadcast the painting in a French television series or film.

Clark's Purchase and Subsequent Public Exhibition of the Painting

57. Stephen Clark had purchased the Painting from the Knoedler Gallery in New York City in 1933 or 1934.

58. He did not keep it hidden in his home. Within two years, the Painting was publicly exhibited at the Museum of Modern Art in a solo show devoted to the work of van Gogh that opened on November 4, 1935. The exhibition proved so popular that lines stretched down the block, visitors flocked from far away; Eleanor Roosevelt, the First Lady of the United States, attended twice.

59. A little over three years later, on May 10, 1939, the Painting appeared in another exhibit at the Museum of Modern Art, called "Art in Our Time." Clark was listed as the owner of the Painting, and the catalogue reproduced it with the caption "Lent by Stephen C. Clark, New York." Seven thousand people attended on opening night alone. That night, CBS did a radio program about the show, which was moderated by Lowell Thomas, with commentary by Edsel Ford, Walt Disney and President Franklin Roosevelt.

60. In 1954, the Knoedler Gallery mounted an exhibition in New York entitled "A Collector's Taste: Selections from the Collection of Mr. and Mrs. Stephen C. Clark," in which *The Night Café* was displayed.

61. Those were only three of the many public exhibitions to which Clark loaned *The Night Café*. Between 1933 and 1960, it was publicly exhibited at the Art Institute of Chicago (1934; 1936; 1950), the Museum of Modern Art (1934-35; 1935-36; 1940;

1955), the Philadelphia Museum of Art (1936), the Museum of Fine Arts-Boston (1936), the Cleveland Museum of Art (1936; 1948), the California Palace of the Legion of Honor (1936), the William Rockhill Nelson Gallery of Art and Atkins Museum (1936), the Minneapolis Institute of Art (1936), the Detroit Institute of Art (1936), and the Metropolitan Museum of Art (1949-50; 1958; 1959), among other places.

62. Though Clark had been publicly identified as the owner of *The Night Café* by the late 1930s, no claim was made against Clark by Ivan Morozov's widow Eudoxie Losine, his daughter Eudoxie Morozov, or his grandson, Ivan Konowaloff, from whom Pierre Konowaloff claims to have inherited a claim to the Painting.

Previous Owners of the Painting

63. On information and belief, the Knoedler Gallery in New York City purchased the Painting from the Matthiesen Gallery in Berlin, Germany, which in turn had purchased it from the Soviet government through a government entity (the "Central Office for State Trading of the Union of Soviet Socialist Republics for the Purchase and Sale of Antique Objects"). Until the sale, the Soviet government had held the Painting in the Museum of Modern Western Art in Moscow, then the capital of both the Russian Socialist Federated Soviet Republic (the "RSFSR") and the Union of Soviet Socialist Republics ("USSR") of which it was a part.

64. On November 7, 1917, the RSFSR was established, following the October Revolution in Russia. The RSFSR adopted its Constitution on July 10, 1918.

65. Beginning in the summer of 1918, the Soviet government undertook to nationalize the economy, land, industry and art.

66. On information and belief, on June 28, 1918, Morozov's textile factories were nationalized, as were factories across Russia.

67. On December 19, 1918, the RSFSR issued a decree (the "Decree") nationalizing the art collections of Ivan Morozov, whose collection included *The Night Café*, and of two other Russian collectors.

68. In relevant part, the Decree stated that "The Council of People's Commissars has decreed: That the art collections of A.I. Morozov, I.S. Ostroukhov, and V.I. Morozov be declared state property of the Russian Socialist Federated Soviet Republic and transferred to the jurisdiction of the People's Commissariat of Enlightenment, which is to immediately formulate and put into action a Statute about the use of the collections in accord with the contemporary needs and tasks involved in democratizing the artistic and educational-cultural Institutions of the Russian Socialist Federated Soviet Republic."

69. The Decree was signed by Vladimir Lenin, the leader of the RSFSR, in Moscow, Russia, as the Chairman of the Council of People's Commissars.

70. The Decree represented the public and official act of a sovereign nation regarding property within its borders.

71. Morozov's real property was also nationalized, as was real property throughout Russia.

72. The Russian nationalization of property, undertaken to advance the communist ideology that had triumphed in that nation's October Revolution, was sharply at odds with American economic and political values. But it did not violate international law.

73. The RSFSR was one of four Soviet republics that together formed the Union of Soviet Socialist Republics ("USSR" or "Soviet Union") in 1922.

74. By the late 1920s, the USSR concluded that it needed foreign currency to undertake governmental priorities, including agricultural reform. As one means of raising foreign currency, the USSR decided to sell some pieces of nationalized art.

75. On information and belief, the USSR sold the Painting from the Museum of Modern Western Art in Moscow to the Matthiesen Gallery in Berlin in or around 1933.

76. By the late 1920s, the Russian émigré community in Europe knew of the Soviet sales of nationalized art and objected.

77. The Soviet sales of nationalized art were well known in the United States by at least 1980, when Harvard University Press published *Russian Art and American Money, 1900-1940*, a book by historian Robert C. Williams that described “massive Soviet government art sales in Europe and America from 1928 to 1938.” Williams discussed the sales of paintings that had been nationalized from Morozov and other collectors, and sales to the Knoedler Gallery and other galleries.

78. Several years later, another account of Soviet sales of nationalized art was told in *The Collectors: Shchukin and Morozov: Monet to Picasso*, the catalogue for a 1993-94 exhibit in Germany and Russia. Albert Kostenevich, a curator at the Hermitage Museum, describes the Decree and states that the Knoedler Gallery, working through the Matthiesen Gallery, had bought *The Night Café* for Stephen Clark from the Museum of Modern Western Art, and that Clark had later bequeathed it to Yale. The exhibition catalogue contains a reproduction of the Painting at plate 38, along with a caption reading “Yale University Art Gallery, New Haven / Bequest of Stephen C. Clark / formerly I.A. Morozov Collection.” In its notes to the Painting, the catalogue reiterates that it belongs to “Yale University Art Gallery, New Haven, Inv. No. 1961.18.34 / Stephen C. Clark

Bequest, 1960 (formerly I.A. Morozov Collection).” And the catalogue provides provenance information on page 390, stating “. . . from 1908 I.A. Morozov Collection; from 1918 Second Museum of Modern Western Painting; from 1923 State Museum of Modern Western Art; Spring 1933 Galerie Knoedler, New York; from 1933 or 1934 Stephen C. Clark Collection, New York; from 1961 Yale University Art Gallery, New Haven (Stephen C. Clark Bequest).”

79. The Congress of Soviets of the RSFSR voted to secede from the Soviet Union on December 12, 1991, and the RSFSR was renamed the Russian Federation on December 25, 1991.

80. The United States recognized the USSR for decades before it dissolved. The United States now recognizes the Russian Federation and exchanges ambassadors with it.

81. The Russian Federation continues to possess and display many works that were nationalized from Morozov’s collection.

82. As recently as December 2007, in response to a threat of legal action from Pierre Konowaloff and Andre-Marc Delocque-Fourcaud (a descendant of another early twentieth century Russian collector, Sergei Shchukin), the Russian Federation asked the Royal Academy in London, England to delay an exhibition of paintings loaned from Russia that had been nationalized from Morozov’s collection until the United Kingdom enacted a statute immunizing the paintings from third-party seizure. The United Kingdom swiftly enacted such a statute and the exhibition proceeded.

83. Other nationalized paintings were sold abroad around the same time as *The Night Café*, and later given to prominent museums, including the National Gallery of Art and the Metropolitan Museum of Art.

Legal Action and Legal Threats by Morozov and Shchukin's Descendants

84. Though Morozov and his descendants did not bring claims against Clark, Clark's estate, or Yale at any time in the last seventy years, they and the descendants of Sergei Shchukin have initiated several legal actions and threats of legal action directed at the owners or displayers of art that was nationalized by the Russian government.

85. In 1954, Irina Shchukina, then living in Paris, filed suit seeking an injunction impounding thirty-seven Picassos then on exhibit at the French government-run Maison de la Pensee Francaise, claiming that they had been illegally confiscated from her father Sergei Shchukin in 1918. The application for an injunction was denied.

86. The lawsuit received significant press attention in France where, on information and belief, Konowaloff's predecessors-in-interest then lived.

87. In 1993, Ivan Konowaloff (a/k/a Konovalov), Pierre Konowaloff's father, filed suit in a French court seeking an injunction impounding Matisse paintings that had been nationalized from Morozov, and that were then on display at the Pompidou Centre in Paris. The lawsuit was filed against the Pompidou Centre, the Pushkin Museum of Fine Arts, the Hermitage Museum, and the Russian Federation. A similar suit was brought by Irina Shchukina. A court hearing on May 12, 1993 was attended by representatives of many European museums, including the Folkwang Museum in Essen, Germany, where the exhibit, *Collectors: Shchukin and Morozov: Monet to Picasso*, opened a month later. The French court denied the injunctions sought by Konowaloff and Shchukina.

88. In 2000, Irina Shchukina's son, Andre-Marc Delocque-Fourcaud, filed suit in a Rome court, demanding that Italian authorities confiscate *La Danse* by Henri Matisse, which was one of 100 paintings lent by the Hermitage to the Quirinale Palace in Italy for

an exhibition. The painting was returned to Russia before a scheduled preliminary hearing could be held.

89. Delocque-Fourcaud brought a similar suit in 2003 against the Los Angeles County Museum of Art (“LACMA”). It was dismissed.

90. Though the former owners of Russian-nationalized art brought lawsuits in Europe seeking to recover the art as early as 1929, and though Pierre Konowaloff’s father brought such a suit in France more than fifteen years ago, neither Pierre Konowaloff, his father, nor their predecessors-in-interest has ever brought any legal action claiming ownership to *The Night Café*.

91. On March 14, 2008, Catherine Konowaloff (who is, on information and belief, the wife of Pierre Konowaloff) sent an email to the Yale University Art Gallery, inquiring about the provenance of the Painting.

92. On July 17, 2008, an attorney for Pierre Konowaloff sent a letter to Jock Reynolds, Director of the Yale University Art Gallery, alleging that Konowaloff owned the Painting. His attorney later sent a draft complaint of a federal action, bearing a caption for the District of Connecticut, and asserting various claims under both state and federal law.

Yale Acquired Good Title Through the Clark Bequest

93. Yale acquired good title to the Painting by means of its receipt of Stephen Clark’s bequest.

The Statute of Limitations Bars Konowaloff's Threatened Claims

94. Konowaloff is barred from pursuing an action to recover the Painting or its value because he failed to commence an action within three years from the commencement of what he claims to be Yale's wrongful detention.

95. As noted above, Yale's receipt of the bequest from Stephen Clark was widely reported. In the nearly fifty years since then, the Painting has been repeatedly reproduced, with Yale identified as its owner.

96. While the relevant law does not require such knowledge, the repeated publications of the Painting in books, journals and other media make plain that Konowaloff and his predecessors-in-interest knew or should have known years ago that Yale owned *The Night Café*.

97. These facts establish beyond a doubt that Konowaloff or his predecessors-in-interest knew, or reasonably should have known, the whereabouts of the Painting as early as 1961, if not before. At no time since Yale received the Painting would a reasonably diligent owner have had any difficulty tracing it to the University.

98. The prominence of Yale's ownership of *The Night Café* has been extraordinary, owing primarily to the fact that it is one of the most important paintings in the history of art.

99. Under these circumstances, the fact that Konowaloff and his predecessors-in-interest failed until 2008 to assert to Yale the possibility of a claim to the Painting squarely implicates the purposes of statutes of limitations in this context: to permit those to whom property has been bequeathed to enjoy quiet title by weeding out stale claims and punishing non-diligent claimants for sleeping on their putative rights.

Konowaloff's Unreasonable and Prejudicial Delay Gives Rise to Laches

100. Konowaloff's threatened action to recover the Painting also is barred by laches.

101. It has been more than ninety years since Ivan Morozov had possession of the Painting. Yet neither Konowaloff nor his predecessors-in-interest sought to recover the Painting from any of its subsequent owners until they wrote to Yale in 2008.

102. The delay in seeking to recover the Painting occasioned by Konowaloff and his predecessors-in-interest is unreasonable as a matter of law.

103. Yale has been prejudiced by the unreasonable delay.

104. In the more than ninety years since the Painting was nationalized, the more than seventy years since the Soviet government sold the painting, and the almost fifty years since Clark bequeathed it to Yale, witnesses have died and documentary evidence has been lost.

105. Konowaloff and his predecessors-in-interest have failed to discharge their obligation in law and equity to assert their claimed rights in a timely manner. Under these circumstances, he has no valid claim to the Painting as a matter of law.

FIRST CLAIM FOR RELIEF – ORDER QUIETING TITLE UNDER 28 U.S.C. § 1655, C.G.S. § 47-31, 28 U.S.C. § 2201

Quasi in rem and in rem

106. Plaintiff restates and realleges the allegations set forth in Paragraphs 1 through 105 above, as if fully set forth herein.

107. Plaintiff is the owner of *The Night Café*.

108. Konowaloff has falsely claimed, to both Yale and third parties, that he owns *The Night Café*.

109. Konowaloff has publicly asserted that he wishes to have title to the Painting transferred to the Russian state and to receive personal “financial compensation.”

110. Konowaloff has imposed a cloud on Yale’s valid title to the painting.

111. Plaintiff is entitled to an order from this Court removing the cloud that Konowaloff has put on Yale’s good title to *The Night Café*.

112. Plaintiff is entitled to a declaratory order from this Court that Defendant has no valid claim of ownership to the painting *The Night Café*.

113. Yale is also entitled to a declaration that Konowaloff’s claims to *The Night Café* are barred by the statute of limitations.

114. Yale is entitled to a declaration that Konowaloff’s claims to *The Night Café* are barred by laches.

SECOND CLAIM FOR RELIEF – INJUNCTIVE RELIEF

Quasi in rem

115. Plaintiff restates and realleges the allegations set forth in Paragraphs 1 through 114 above, as if set out in full herein.

116. Pursuant to 28 U.S.C. § 2202 and this Court’s inherent power to fashion equitable relief, and by virtue of all of the foregoing, Plaintiff is entitled to an order from this Court permanently enjoining the Defendant from threatening and/or instituting any legal or other actions against Plaintiff and or any of their agents or representatives regarding the Painting.

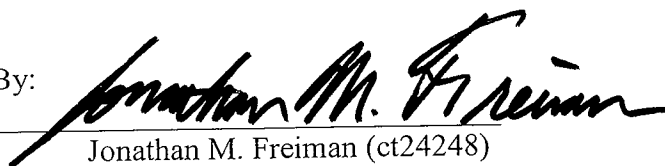
PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

1. Grant Plaintiff the quiet title and declaratory judgment to which it is entitled as alleged herein; and
2. Grant Plaintiff the injunctive relief it is entitled as alleged herein; and
3. Grant such other and further relief as the Court deems just and proper.

PLAINTIFF YALE UNIVERSITY

By:



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