

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;

