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## Case The Night Café Painting – Morozov Heirs v. Yale University

*Ivan Morozov – Yale University – Artwork/oeuvre d'art – Pre 1970 restitution claims/demandes de restitution pre 1970 – Judicial claim/action en justice – Judicial decision/décision judiciaire – Act of State – Expropriation – Due diligence – Ownership/propriété – Procedural issue/limites procedurals – Request denied/rejet de la demande*

*In 1908, Ivan Morozov, a Russian art collector, purchased Van Gogh's painting "The Night Café". The 1917 Bolshevik Revolution led to the nationalization of private property, and as such Morozov's art collection was confiscated and subsequently sold. In 1933, Stephen Clark purchased the artwork. Upon his death in 1960, Clark bequeathed the painting to Yale University. When Pierre Konowaloff found out in 2002 that he was the official heir of Ivan Morozov's estate, he sought to reclaim "The Night Café" and other works. His claims were unsuccessful and Yale retained the painting.*

*I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted Solution; V. Comment; VI. Sources.*

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## I. Chronology

### Pre 1970 restitution claims

- **1908:** Russian industrialist and art collector **Ivan Morozov purchased** the famous 1888 painting *The Night Café*, by **Vincent Van Gogh**.
- **November 1917:** The **Bolshevik** faction of the Russian Social Democratic Workers Party seized power and declared itself the new government of Russia. They immediately issued the “Decree on the Land”, a piece of legislation **abolishing private property** and declaring that **confiscated** property belonged to the “whole people” of the Soviet State.
- **19 December 1918:** The Russian Socialist Federated Soviet Republic (RSFSR) – later forming the Union of Soviet Socialist Republics (USSR) in 1922 – declared that the art collections of various Russian citizens, including **Ivan Morozov**, were to be **State property**. As a result, these collections were **seized** by State authorities.<sup>1</sup>
- **1928-1933:** The USSR displayed *The Night Café* in the Museum of Modern Art in Moscow. Through the USSR Central Office for State Trading of Antique Objects, **the painting was sold** abroad to Matthiesen Gallery in Berlin.<sup>2</sup>
- **1933:** American art collector **Stephen Carlton Clark purchased** the painting from the Knoedler Gallery in New York, which had purchased the work from the Matthiesen Gallery. Clark subsequently **loaned** it to museums and galleries in the United States for public display, until his death in **1960**. His will stated that he left many works of art, including *The Night Café*, to his alma mater **Yale University**.<sup>3</sup>
- **21 June 1961:** Yale received the artworks from Clark’s estate and formally accessioned *The Night Café* into the Yale University Art Gallery’s permanent collection.<sup>4</sup>
- **2002:** **Pierre Konowaloff** found out to be the official heir to the estate of his great-grandfather Ivan Morozov.
- **2008-2009:** Konowaloff learnt that Morozov had owned the painting *The Night Café*, that it had been sold to Clark in the 1930s and subsequently bequeathed to Yale. Therefore, Konowaloff wrote to Yale inquiring about the provenance and ownership of *The Night Café*. Yale filed an **action** in the District Court of Connecticut to quiet title and for declaratory and injunctive relief against Konowaloff.<sup>5</sup> In response, Konowaloff filed **counterclaims** seeking injunctive declaratory relief and replevin of the painting, or money damages (over \$75,000)

<sup>1</sup> *Yale University v. Pierre Konowaloff*, No. 3:09-cv-00466, stayed (D. Conn. 1 November 2011); granting summary judgment (D. Conn. 20 March 2014), pp. 2-3, para. I.

<sup>2</sup> *Yale University and The Night Café, a painting v. Pierre Konowaloff*, 3:2009-cv-00466 (D. Conn. 27 April 2011), para. 63.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Yale University v. Pierre Konowaloff*, No. 3:09-cv-00466, stayed (D. Conn. 1 November 2011); granting summary judgment (D. Conn. 20 March 2014), p. 4, para. I.

<sup>5</sup> *Ibid.*

- for the possession and painting's retention by Yale.<sup>6</sup> Consequently, Yale filed a **request** to assert its **ownership** rights and deny Konowaloff's claim to the painting, or damages.
- **29 September 2010:** Order granting Yale University's motion to strike Konowaloff's waived defence of lack of personal jurisdiction was handed down.<sup>7</sup>
  - **2011-2014:** The hearing for **summary judgment** was **suspended** by the District Court until judgment in the case *Konowaloff v. Metropolitan Museum of Art* came into force.<sup>8</sup>
  - **20 March 2014:** Judge Alvin Thompson of Connecticut's District Court granted Yale's request for summary judgment to deny the claims to the painting *The Night Café* by Konowaloff.<sup>9</sup> As a result, **Yale's Art Gallery was allowed to retain *The Night Café*.**

## II. Dispute Resolution Process

### Judicial claim – Judicial decision

- Pierre Konowaloff's father, Ivan Konowaloff, grandmother, Eudoxie Morozov (daughter of Ivan Morozov), and Ivan Morozov's widow, Eudoxie Losine, never made claims against Clark's estate and *The Night Café*. However, Ivan Morozov's successors have initiated several legal actions and threats of legal action directed at the owners or displayers of art that was nationalised by the Russian government.<sup>10</sup>
- Pierre Konowaloff's restitution request of 2008 began the confrontation against Yale's ownership. Upon disagreement and unsuccessful negotiation the parties engaged with the court system to settle the dispute.
- The resolution was prolonged by the District Court as this awaited the judgment in the case *Konowaloff v. Metropolitan Museum of Art*. This case was resolved in December 2012, when the US Court of Appeals for the Second Circuit affirmed the District Court's 2011 decision in favour of the Metropolitan Museum. This decision was followed by the District Court of Connecticut of the case under examination.

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<sup>6</sup> Konowaloff had the painting evaluated, at US\$120-150 million. Nora Caplan-Bricker, "Yale Moves to Drop Museum Suits," *Yale Daily News*, October 27, 2009, accessed February 16, 2015, <http://yaledailynews.com/blog/2009/10/27/yale-moves-to-drop-museum-suits/>.

<sup>7</sup> *Yale University and The Night Café, a painting v. Pierre Konowaloff*, 3:2009-cv-00466 (D. Conn. 27 April 2011).

<sup>8</sup> *Konowaloff v. Metropolitan Museum of Art*, 11-4338-cv (2nd Cir. 2012). This case involved the same scenario: Konowaloff was attempting to recover Paul Cézanne's portrait *Madame Cézanne in the Conservatory* from the Metropolitan Museum of Art. See also Commission for Art Recovery, "Yale University v. Konowaloff," accessed February 16, 2015, <http://www.commartrecovery.org/cases/yale-university-v-konowaloff>.

<sup>9</sup> *Yale University v. Pierre Konowaloff*, No. 3:09-cv-00466, stayed (D. Conn. 1 November 2011); granting summary judgment (D. Conn. 20 March 2014), p. 12, para. IV.

<sup>10</sup> *Yale University and The Night Café, a painting v. Pierre Konowaloff*, 3:2009-cv-00466 (D. Conn. 27 April 2011), paras. 28, 84.

### III. Legal Issues

#### Act of State – Expropriation – Due diligence – Ownership – Procedural issue

- The case was trialled as a summary judgment. Predominantly an American procedure, a summary judgment is a judgment as a matter of law, entered by a court for one party and against another, without a full trial. In this case, the Court explained that it “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law”.<sup>11</sup>
- The essential element of the case was that Pierre Konowaloff had to prove that he “either has title or a superior possessory right to the Painting”.<sup>12</sup> In this regard, Konowaloff claimed that the Soviet government at the time “had acted illegally”<sup>13</sup> in taking the work “by force and without compensation”.<sup>14</sup> He further contended that the “sales of art by the Soviet Government via the criminal Bolshevik Center, to wealthy westerners such as Clark were cloaked in secrecy and employed an intricate laundering operation”.<sup>15</sup> He called “Yale’s acquisition ‘art laundering’”, and argued that “Russian authorities unlawfully confiscated the painting, and that the US deemed the theft a violation of international law”.<sup>16</sup> He also argued that the Soviet government, Stephen Clark and Yale had all acted in bad faith when purchasing and receiving the work, and thus had actual knowledge, or reasonably should have known that the USSR illegally acquired the painting. In response to this argument, Yale’s file of a declaratory judgment against Konowaloff stated that the “sale of artwork ‘nationalized’ by the Soviet Union was valid and as such the painting was a legitimate gift which it has had on display for almost 50 years”.<sup>17</sup>
- Two doctrines affected the case’s finding: the Act of State and the defence of laches.
- Judge Thompson affirmed that under the Act of State doctrine “the courts of the United States, whether state or federal, will not examine the validity of a taking of property within its own territory by a foreign sovereign government, extant and recognised by this country at

<sup>11</sup> United States of America, Federal Rules of Civil Procedure, 1938 (as amended December 1, 2014), Rule 56. See *Yale University v. Pierre Konowaloff*, No. 3:09-cv-00466, stayed (D. Conn. 1 November 2011); granting summary judgment (D. Conn. 20 March 2014), p. 4, para. II.

<sup>12</sup> *Ibid.*, p. 8, para. III.

<sup>13</sup> Sarah Cascone, “Van Gogh Painting Seized by Bolsheviks Will Stay at Yale,” *Artnet News*, March 26, 2014, accessed February 17, 2015, <http://news.artnet.com/in-brief/van-gogh-painting-seized-by-bolsheviks-will-stay-at-yale-7453>.

<sup>14</sup> Laura Gilbert, “Met Museum Is Rightful Owner of Cezanne Portrait, Court Decides,” *New York Observer*, September 25, 2011, accessed February 17, 2015, <http://observer.com/2011/09/met-museum-is-rightful-owner-of-cezanne-portrait-court-decides/>.

<sup>15</sup> *Yale University v. Pierre Konowaloff*, No. 3:09-cv-00466, stayed (D. Conn. 1 November 2011); granting summary judgment (D. Conn. 20 March 2014), p. 3, para. I.

<sup>16</sup> John Christoffersen, “Van Gogh Painting Is Worth Up to \$150m, Claimant Says,” *Boston Globe Media*, January 23, 2010, accessed February 17, 2015,

[http://www.boston.com/ae/theater\\_arts/articles/2010/01/23/claimant\\_says\\_van\\_gogh\\_painting\\_worth\\_up\\_to\\_150m/](http://www.boston.com/ae/theater_arts/articles/2010/01/23/claimant_says_van_gogh_painting_worth_up_to_150m/).

<sup>17</sup> Commission for Art Recovery, “Yale University v. Konowaloff”.

- the time of suit ... even when there is a claim that the taking of property was in violation of customary international law or the foreign state's own laws".<sup>18</sup>
- As the application of the Act of State doctrine to this case was essential, the District Court of Connecticut awaited the findings of the case *Konowaloff v. Metropolitan Museum of Art*. In December 2012, the US Court of Appeals for the Second Circuit rejected Konowaloff's claim against the Metropolitan Museum of Art. Crucially, the Court of Appeals clarified that the Russian nationalisation of property was "sharply at odds with American economic and political values, but did not violate international law".<sup>19</sup>
  - With regard to the Act of State doctrine, Pierre Konowaloff contended that the case *Konowaloff v. Metropolitan Museum of Art* was "different and not on point because 'this case has progressed beyond the pleading to the discovery stage, Yale's motion is for summary judgment and accordingly, the applicability of the Act of State Doctrine necessarily involves factual questions requiring the taking of evidence'".<sup>20</sup> Also, Konowaloff maintained that the "act of state doctrine is a principle of decision or a doctrine of abstention designed to enable the Executive branch to conduct foreign policy, it is not a mechanism that confirms title to property".<sup>21</sup> In any event, Judge Thompson followed the reasoning of the *Konowaloff v. Metropolitan Museum of Art* and Yale was recognized as the legitimate owner of the disputed painting.
  - Another question is whether Yale could avail himself of the defence of laches. This doctrine, which is common in Anglo-American legal systems, can be applied by a court if: (i) there was negligence on the part of the plaintiff that led to a delay in the prosecution; and (ii) the delay prejudiced the defendant.<sup>22</sup> According to the defendant institution, this doctrine was relevant in the case at stake because for over 50 years Ivan Morozov's heirs did not contest Yale's widely reported acquisition, ownership and possession of *The Night Café*.<sup>23</sup> Evidence produced in Court revealed repeated publications of the painting in books, journals and other media, suggesting Konowaloff ought reasonably to have known.<sup>24</sup> As such, the Court found that Konowaloff and his predecessors' prejudicial delay barred their counterclaims.<sup>25</sup>

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<sup>18</sup> *Yale University v. Pierre Konowaloff*, No. 3:09-cv-00466, stayed (D. Conn. 1 November 2011); granting summary judgment (D. Conn. 20 March 2014), p. 7, para. III. The US broke off formal diplomatic relations in the initial stages of the Bolshevik Revolution, but it recognised the de facto government formed under Vladimir Lenin and the subsequent Soviet governments. *Ibid.*, p. 8, para. III.

<sup>19</sup> *Yale University and The Night Café, a painting v. Pierre Konowaloff*, 3:2009-cv-00466 (D. Conn. 27 April 2011), para. 72

<sup>20</sup> *Yale University v. Pierre Konowaloff*, No. 3:09-cv-00466, stayed (D. Conn. 1 November 2011); granting summary judgment (D. Conn. 20 March 2014), p. 10, para. III.

<sup>21</sup> Commission for Art Recovery, "Yale University v. Konowaloff".

<sup>22</sup> *Vineberg and Others v. Maria-Louise Bissonnette and Others*, 529 F.Supp. 2d 300, 301 (2007). The defence based on the statute of limitations was not brought up in the case.

<sup>23</sup> *Yale University and The Night Café, a painting v. Pierre Konowaloff*, 3:2009-cv-00466 (D. Conn. 27 April 2011), para. 50.

<sup>24</sup> *Ibid.*, para. 96.

<sup>25</sup> *Ibid.*, paras. 100, 102.

#### IV. Adopted Solution

##### Request denied

- On 20 March 2014, the Connecticut District Court granted Yale's request for summary judgment to deny the claims to the painting *The Night Café* by Konowaloff. The Act of State doctrine applied to bar Konowaloff's counterclaims. Hence the Court confirmed that Yale acquired good title to the painting by means of its receipt of Clark's bequest.<sup>26</sup>

#### V. Comment

- The Act of State doctrine was the ultimate determinant of this case. Judging on the legality of expropriation of cultural property outside their jurisdiction is avoided by US courts. However, Konowaloff's lawyer stated that the "trend by US courts has been to invalidate confiscations of art".<sup>27</sup> He was probably referring to the case *Maria Altmann v. Republic of Austria* and its progeny.<sup>28</sup>
- Derek Fincham questioned whether the "way courts treat the act of state doctrine in this context may be different from the ways it might treat foreign ownership declarations of other works of art". He then suggested that when museums have long held works, nations are given the benefit of the doctrine, which ultimately assists museums in fending off arising restitutions from the Nazi/Bolshevik era.<sup>29</sup> For this case, if Konowaloff's claim had been successful, the ownership of tens of billions of dollars' worth of art and other goods would be challenged.
- Many art restitution cases, particularly concerning Nazi looted art, but also Bolshevik confiscated art, have failed due to the statute of limitations and other procedural hurdles.<sup>30</sup> The problem is that decades have passed, evidence has been lost and families struggle to determine what belonged to their heirs. In the case under examination, whilst it should have been common knowledge within the Konowaloff family that Pierre was the heir, he claimed to only have been officially recognised in 2002. This unfair and unfortunate situation of families receiving only recent acknowledgement of their status as heirs has been widely experienced.
- An element of Yale's claim was the concern that the case would unnecessarily hinder US foreign relations with Russia. Tensions would arise if any invalidation of the Soviet Decrees

<sup>26</sup> *Yale University v. Pierre Konowaloff*, No. 3:09-cv-00466, stayed (D. Conn. 1 November 2011); granting summary judgment (D. Conn. 20 March 2014), p. 12, para. III.

<sup>27</sup> Associated Press, "Man's Claim to Yale's Van Gogh Painting Is Tossed".

<sup>28</sup> 541 US 677 (US 2004). See Caroline Renold, Alessandro Chechi, Anne Laure Bandle, Marc-André Renold, "Case 6 Klimt Paintings – Maria Altmann and Austria," Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

<sup>29</sup> Derek Fincham, "2nd Circuit Rules for the Met in a Bolshevik-Era Restitution Suit," *Illicit Cultural Property Blog*, December 20, 2012, <http://illicitculturalproperty.com/tag/russia>.

<sup>30</sup> Lawrence Kaye, "Avoidance and Resolution of Cultural Heritage Disputes: Recovery of Art Looted During the Holocaust," *Williamette Journal of International Law and Dispute Resolution* 14:2 (Winter 2006): 243, 252.

from the early 20th century were to occur.<sup>31</sup> Whilst this is a reasonable consideration, fear of a dispute outcome that affects politics should not lead parties forsake their cause.

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<sup>31</sup> Associated Press, “Man’s Claim to Yale’s Van Gogh Painting Is Tossed”.

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