

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

YALE UNIVERSITY,)	
)	
Plaintiff and Counterclaim)	
Defendant,)	Case No.: 3:09-CV-00466 (AWT)
)	
And)	
)	
THE NIGHT CAFÉ, a PAINTING,)	
)	
Plaintiff-in-rem and)	
Counterclaim-Defendant-in-rem,)	
)	
v.)	
)	
PIERRE KONOWALOFF,)	
)	
Defendant and Counterclaim)	
Plaintiff.)	
)	

**DEFENDANT’S REQUEST FOR
RESUMPTION OF SETTLEMENT CONFERENCE**

As set forth below, Defendant Pierre Konowaloff (“Konowaloff”) hereby respectfully requests that this Court refer this matter back to Magistrate Judge Garfinkle for a continuation of the settlement conference conducted on December 7, 2009.

1. In its complaint, Yale has requested that this Court make a declaration of title to the painting. Such a judicial declaration is intrinsically tied to an examination of all pertinent evidence with regard to the acquisition of the particular painting, and allowance for all interested parties to step forward upon proper notification. As set forth in recent affidavits provided to the Court by Konowaloff, an investigation by an official organ of the Russian Federation reveals the absence of any legal authorization by the Soviet Union to sell the painting in 1933. In light of these findings it is incumbent upon Yale in its quest for a declaration of good title to name the

Russian Federation as a party who may claim an adverse interest in the painting pursuant to C.G.L. c. 821, §47-31.

2. Pursuant to this Court's approval, Konowaloff obtained relevant information surrounding the circumstances of the sale from the Russian Federation's Archives which now make clear that the Court cannot ultimately award title to Yale based solely on its invocation of the act of state doctrine. As The Supreme Court ruled in *W.S. Kirkpatrick & Co. v. Environmental Tectonics Corp., International*, 493 U.S. 400 (1990), that doctrine is designed to prevent US courts from damaging US foreign relations by interfering in the internal affairs of another state, and unduly causing embarrassment. Here, adjudication of title presents no such prospect as the Russian Federation on its own initiative has provided documents, properly stamped and sealed, to this Court. It has cooperated in efforts aimed at a fair adjudication of title, rather than favoring abstention under the rubric of an act of state doctrine.

3. Moreover, in contra-distinction to the 2nd Circuit decision in the MET case upon which Yale relies, this case involves Yale, as the moving party, requesting a declaration of good title, and, accordingly, bearing the burden of proof. Even seen in the most favorable light, Yale would merely be entitled to a ruling leaving title in limbo, rather than a determination of good title. Where a technical defense is raised and where there may be another claimant to title a court may not grant a declaration of good title. See *Block v. North Dakota ex rel. Bd. Of University and School Lands*, 461 U.S. 273, 103 S. Ct. 1811, 1819-22 (1983) (holding that where quiet title claim was subject to a statute of limitations it does not effectuate a transfer of title; dismissal under the statute of limitations merely means that the title dispute remains unresolved).

4. The inclusion of Russia is imperative to a determination of good title because a critical issue in this case is the validity of the 1933 sale to Clark, and whether that sale was

authorized by the Russian government. Obviously, Russia is an essential party for determining the bona fides of that sale. Yet in its pleading, Yale tries to steer the Court away from considering any of the circumstances of that sale. Indeed, in its claim for relief, Yale asks the Court to ignore the potential rights of any party other than the Defendant by asking the Court to rule only that Konowaloff “has no valid claim of ownership to the painting.” Comp. Par.114.

5. Such an order would not put an end to litigation over the painting because the order would give Yale no rights against anyone other than Konowaloff. The rights of other parties, such as the Russian Federation, would remain unresolved. Such a result is not what actions to quiet title are intended to achieve. See, e.g, *Gemmell v. Lee*, 42 Conn. App. 682 (1996) holding that under Connecticut General Statute § 47-31(b), the statute under which Yale brings its action, a lawsuit to determine title must consider the rights of all parties in interest. Indeed, such a result would not even give Yale the relief it says it seeks when it tells the Court, in describing the nature of this case, that Yale “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.” Comp. Par. 4. Such “repose” can only be obtained by a determination that Yale is the owner of the painting with a right superior to all other parties, not just Konowaloff.

6. Recognizing the above restraints to a determination of good title, Konowaloff proposes in the interests of a fair and expeditious resolution of outstanding title that mediation be renewed with an invitation to the Russian Federation to participate. Mediation can have the benefit of avoiding any potential sovereign immunity concerns that could affect a foreign sovereign's appearance in a US court insofar as mediation would be informal, recommendatory and not binding. Accordingly, mediation is likely to provide the best

opportunity for title issues to be ultimately resolved in a manner favorable to the current parties as well as the Russian Federation.

Wherefore, Konowaloff requests that this Court refer this matter to Magistrate Judge Garfinkle for resumption of the settlement conference conducted previously by Magistrate Judge Garfinkle with the Russian Federation invited to participate and for such other and further relief as this Court deems just and proper.

Dated: February 21, 2014

Respectfully submitted,
PIERRE KONOWALOFF,
By his attorneys,

/s/Philip Y. Brown
Allan Gerson (Pro Hac Vice)
AG International Law
2131 S St. NW
Washington, D.C. 20008
Phone: 202-234-9717
Fax: 202-234-9727
ag@ag-il.com

Philip Y. Brown (Pro Hac Vice)
Rackemann, Sawyer & Brewster
160 Federal Street
Boston, MA 02110
Phone: 617-951-1165
Fax: 617-542-7437
pbrown@rackemann.com

Of Counsel
Linda A. Malone (Pro Hac Vice)
Marshall-Wythe Foundation Professor
Of Law and Director, Human Rights
And National Security Law Program
William & Mary Law School
P.O. Box 8795
Williamsburg, VA 23187-8795
Phone: 757-221-3844
Fax: 757-221-3261
lindamalon@aol.com

Certificate of Service

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/s/Philip Y. Brown