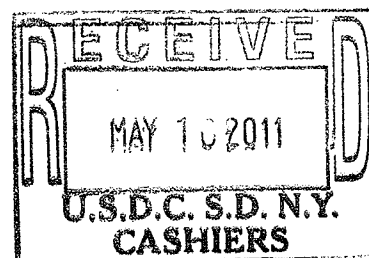


11 CV 3143

John D. Winter
Krista D. Caner
PATTERSON BELKNAP WEBB & TYLER LLP
1133 Avenue of the Americas
New York, New York 10036-6710
Telephone: (212) 336-2000
Fax: (212) 336-2222
E-Mail: jwinter@pbwt.com



Attorneys for Plaintiff The Metropolitan Museum of Art

David R. Baum
Kimberly Kalmanson
SNR Denton US LLP
1221 Avenue of the Americas
New York, New York 10020
Phone: (212) 768-6700
Fax: (212) 768-6800
E-mail: david.baum@snrdenton.com

Attorneys for Plaintiff Jan Cowles

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
THE METROPOLITAN MUSEUM OF ART AND
JAN COWLES, :

Plaintiffs, :

v. :

SAFFLANE HOLDINGS, LTD. AND ROBERT
WYLDE :

Defendants. :

COMPLAINT

-----X

Plaintiffs, The Metropolitan Museum of Art (the "Museum") and Jan Cowles ("Mrs. Cowles"), hereinafter collectively "Plaintiffs", for their Complaint against defendants, Safflane Holdings, Limited ("Safflane") and Robert Wylde ("Mr. Wylde"), hereinafter collectively "Defendants", allege as follows:

INTRODUCTION

1. This action involves a painting, *The Innocent Eye Test* by Mr. Mark Tansey (the "Painting").
2. Plaintiffs have owned the Painting in its entirety since at least December 2001. The Painting originally had been owned by Charles Cowles ("Charles") who made an initial gift of a 1% interest in the Painting to the Museum in 1988. Thereafter, Mrs. Cowles purchased a 99% interest in the Painting from Charles and gifted a 30% interest in the Painting to the Museum. The Painting had been on display at the Museum from time to time until it was placed in Charles's possession in November, 2005.
3. Thereafter, without the knowledge or consent of either Plaintiff, the Painting was purportedly sold to Defendants on or about August 3, 2009 in an arrangement involving Charles and Gagosian Gallery, Inc. ("Gagosian"). Upon information and belief, the Painting was thereafter placed in the possession of Defendants in Europe and is presently in the care, custody or control of Defendants in the United Kingdom or the Principality of Monaco.
4. Plaintiffs had no knowledge of any purported sale of the Painting until 2010. Promptly after the discovery of the purported sale to Defendants, Plaintiffs demanded that the Painting be returned to the Museum, but Defendants have failed and refused to do so. Upon information and belief, although Defendants also were informed by Gagosian of Plaintiffs' ownership of the Painting in April 2010, and although Gagosian had offered to return the full purchase price paid by Defendants, Defendants nonetheless have retained possession of the Painting in contravention of Plaintiffs' rights of ownership. Plaintiffs continue to be damaged by Defendants' unauthorized possession of the Painting.
5. Accordingly, Plaintiffs seek a declaratory judgment that Defendants have no ownership interest in the Painting and that Plaintiffs are the owners of the Painting and an

order directing that Defendants deliver possession of the Painting to Plaintiffs, the rightful owners of it.

THE PARTIES

6. The Metropolitan Museum of Art is one of the world's largest and finest art museums. It was founded on April 13, 1870 by the State of New York and is located in New York City. Its mission is to collect, preserve, study, exhibit and stimulate appreciation for and advance knowledge of works of art that collectively represent the broadest spectrum of human achievement at the highest level of quality, all in the service of the public and in accordance with the highest professional standards.

7. Mrs. Cowles is a resident of Florida and has long been a collector of fine art works, a number of which were purchased from or through her son, Charles, including the Painting.

8. Mrs. Cowles is acting herein through her duly appointed attorney-in-fact, Lester Marks.

9. Upon information and belief, Safflane is a corporation duly organized under the laws of the Republic of Cyprus, with its principal place of business in Nicosia, Cyprus.

10. Upon information and belief, Mr. Robert Wylde is a citizen of the United Kingdom of Great Britain and Northern Ireland who resides in Monaco.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this controversy pursuant to 28 U.S.C. § 1332 (a)(2). The amount in controversy exceeds \$75,000, exclusive of interest and costs, and the controversy is between citizens of a state and citizens or subjects of a foreign state.

12. This Court has jurisdiction over Defendants because a substantial portion of the events and omissions giving rise to Plaintiffs' claims occurred in this district. In this regard, Plaintiffs understand that Defendants examined the Painting in New York and then negotiated and consummated the purported purchase of the Painting in New York.

13. Because a substantial portion of the events and omissions giving rise to Plaintiffs' claims occurred in this district, venue is proper in this district pursuant to 28 U.S.C. § 1391(a)(2). In the alternative, if the Court concludes that venue is not appropriate under 28 U.S.C. § 1391(a)(2), venue is appropriate in this district under § 1391(a)(3) as there is no judicial district in the United States in which all Defendants reside.

FACTUAL BACKGROUND

Plaintiffs' Ownership of the Painting

14. Prior to June 7, 1988, Mrs. Cowles's son, Charles, was the sole owner of the Painting.

15. On June 7, 1988, Charles donated a 1% interest in the Painting to the Museum, and confirmed a promised gift to the Museum of the remaining 99% of the Painting. This donation and promised gift were accepted by the Museum on June 14, 1988, and Charles was informed of the Museum's acceptance by letter dated June 15, 1988.

16. Mrs. Cowles purchased a 50% interest in the Painting from Charles in 1992 and another 49% interest in the Painting in 2001. Mrs. Cowles donated a 20% interest in the Painting to the Museum in 2003 and another 10% interest to the Museum in 2004. At present, the Museum owns a 31% interest in the Painting and Mrs. Cowles owns a 69% interest. Collectively, they own 100% of the Painting.

17. Annual Reports of the Museum for the Museum's fiscal years 2003-2004 and 2004-2005 document Mrs. Cowles's gifts of percentage interests in the Painting to the Museum in 2003 and 2004, respectively. These Annual Reports were publicly available (including on the Museum's website) prior to the purported sale of the Painting to Defendants.

18. The Museum states that from 1996 until November 2005, it was in possession of the Painting and exhibited the Painting for extended periods of time, with a label identifying it as the promised gift and partial gift of Mrs. Cowles and Charles. The Museum's co-ownership of the Painting was and is a well-known fact.

19. Simple searches of publicly available information available in July and August 2009, in addition to the Museum's Annual Reports, demonstrate Plaintiffs' ownership interest in the Painting. In both scholarly and trade publications, there were articles containing pictures of the Painting with descriptions that attribute an interest in the Painting to the Museum. The Museum's website identified (and continues to identify) the Painting as "Partial and Promised Gift of Jan Cowles and Charles Cowles, in honor of William S. Lieberman, 1988", bearing Museum Accession Number 1988.183.

20. In November 2005, at a time that the Painting was not on display at the Museum, the Painting was placed in Charles's possession, at his request, to be placed in his home. This transfer of possession was made based on an understanding that Charles would return the Painting to the Museum in accordance with the Museum's rights as a co-owner with Mrs. Cowles.

Defendants' Unauthorized Possession of the Painting

21. Upon information and belief, Mr. Wylde began discussing the purchase of the Painting with Gagosian in July 2009. Plaintiffs were unaware of these discussions.

22. Upon information and belief, Mr. Wylde inspected the painting at Charles' home on July 27, 2009. Plaintiffs were unaware of this trip by Mr. Wylde to Charles' home to look at the Painting.

23. Upon information and belief, Gagosian purported to convey and sell the Painting to Defendant Safflane for a purchase price of \$2,500,000 on or around July 31, 2009 and issued to Defendant Safflane an invoice for the purported sale of the Painting on that same day. Upon information and belief, Defendants completed the payments owed for the Painting on or about August 5, 2009, and the Painting was thereafter delivered to Defendant Safflane. Plaintiffs were unaware of the purported sale and transfer of possession of the Painting at all times prior to January 2010.

24. Upon information and belief, at the time of the purported sale to Defendants, Gagosian was either the primary or exclusive worldwide representative of Mark Tansey ("Mr. Tansey") and, therefore, possessed detailed knowledge of Mr. Tansey's works, including the Painting and its ownership by Plaintiffs. Despite the Plaintiffs' co-ownership of the Painting being a matter of public record, neither Gagosian nor the Defendants ever contacted either of the Plaintiffs prior to the purported sale of the Painting.

25. Defendants admit that the Museum is a 31% owner of the Painting at paragraphs 21-22 of a complaint filed by Defendants in the United States District Court for the Southern District of New York, captioned *Safflane Holdings Ltd. and Robert Wylde v. Gagosian Gallery, Inc.* No. 11-cv-1679 (hereinafter the "Wylde-Safflane Complaint").

26. According to an article in *The New York Times* (March 12, 2011), Charles has admitted that he purported to sell Museum property: "I didn't even think about whether the

[Museum] owned part of [the Painting] or not”, then “one day I saw it on the wall and thought, ‘Hey, I could use money’ and so I decided to sell it.”

Plaintiffs’ Demand for the Painting’s Return

27. Mrs. Cowles learned of the purported sale of the Painting in early 2010. Mrs. Cowles, through Lester Marks, her attorney-in-fact, informed the Museum of the situation on February 24, 2010.

28. Plaintiffs never, by action, acquiescence or otherwise, empowered Charles or Gagosian to transfer any of their rights in the Painting to anyone else.

29. The Museum communicated with Charles, Gagosian and Defendants in March and April 2010, informing them of Plaintiffs’ ownership of the Painting, and had subsequent communications with Gagosian and Defendants in an effort to have the Painting returned to Plaintiffs. Mrs. Cowles also informed Gagosian of her ownership of the Painting and demanded that Gagosian make suitable arrangements with the Defendants to obtain its return. Despite repeated demands that Defendants return the Painting, including the Museum’s April 15, 2010 written demand, Defendants have refused to do so.

30. At paragraph 25 of the Wylde-Safflane Complaint, Defendants admit that Safflane was informed of the Museum’s ownership interest in the Painting on April 2, 2010.

**COUNT I
DECLARATORY JUDGMENT**

31. Plaintiffs restate and reallege paragraphs 1 through 30 as though fully set forth herein.

32. An actual controversy has arisen and now exists between Defendants and Plaintiffs in that Plaintiffs contend that they are the rightful owner of the Painting and that Defendants are in wrongful possession of the Painting.

33. Because Defendants have refused to return the Painting to the Plaintiffs, Plaintiffs are in need of a judicial declaration regarding their ownership interests in the Painting.

34. Plaintiffs seek a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202 that the Painting is properly owned by Plaintiffs and that Defendants have no ownership interest in the Painting.

COUNT II
REPLEVIN

35. Plaintiffs restate and reallege paragraphs 1 through 34 as though fully set forth herein.

36. At all times relevant herein Plaintiffs were the sole owners of the Painting, and Plaintiffs are entitled to immediate possession thereof.

37. Plaintiffs have communicated their demand that the Defendants return the Painting to them as the rightful owners and the Defendants have refused.

38. Defendants' continued possession and refusal to return the Painting despite the demand for its return by its rightful owners constitutes a wrongful detention of property.

39. Plaintiffs are being denied use and possession of their property and are suffering damages in an amount in excess of \$75,000.

WHEREFORE, Plaintiffs pray that this Court:


(1) Enter a declaratory judgment that Defendants have no ownership interest in the Painting and that Plaintiffs are the owners of the Painting;

(2) Enter an order directing Defendants to deliver possession of the Painting to Plaintiffs, the rightful owners of it; and

(3) Award Plaintiffs their attorneys' fees and costs, and such other relief as the Court deems appropriate under the circumstances.

Dated: New York, New York
May 10, 2011

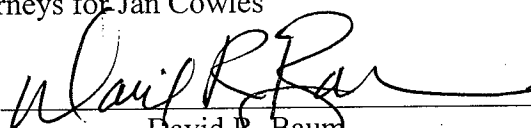
PATTERSON BELKNAP WEBB & TYLER LLP
Attorneys for The Metropolitan Museum of Art

By: 

John D. Winter

1133 Avenue of the Americas
New York, New York 10036-6710
Telephone: (212) 336-2000
Fax: (212) 336-2222

SNR DENTON US LLP
Attorneys for Jan Cowles

By: 

David R. Baum

1221 Avenue of the Americas
New York, New York 10020
Telephone: (212) 768-6700
Fax: (212) 768-6800