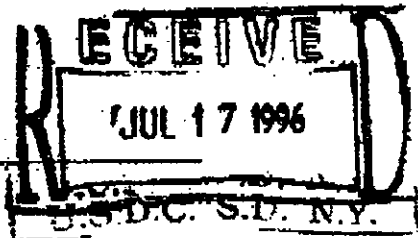


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



NICK GOODMAN, SIMON GOODMAN,  
AND LILY VERA COLLAS GUTMANN,

X  
: 96 Civ.

Plaintiffs,

: **COMPLAINT**  
: (DEMAND FOR TRIAL BY JURY)

-against-

DANIEL C. SEARLE,

Defendant.

96 CIV. 5310

PRELIMINARY STATEMENT

1. This is an action to recover personal property, for declaratory relief and for damages arising from defendant Daniel C. Searle's ("Searle") unlawful detention of a unique piece of art, to wit: *Landscape with Smokestacks*, a pastel by Edgar Degas (hereinafter sometimes referred to as the "Pastel"), which was stolen from the plaintiffs' ancestors during the Second World War and was ultimately purchased by Searle in 1987. Plaintiffs Nick and Simon Goodman, brothers, joined by their aunt, plaintiff Lily Vera Collas Gutmann (collectively, the "Goodman family"), have recently located *Landscape with Smokestacks* after many years of searching begun by Nick and Simon Goodman's late father, Bernard Goodman and by plaintiff Lily Vera Collas Gutmann. Prior to the Second World War and Nazi Germany's occupation of Holland and France, *Landscape with Smokestacks* belonged to Friedrich Bernhard Gutmann and his wife, Louise Gutmann (plaintiffs Nick and Simon Goodman's grandfather and grandmother and plaintiff Lily Vera Collas Gutmann's father and mother). Friedrich and Louise Gutmann had sent the Pastel and other works of art to Paris for

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safekeeping prior to Nazi Germany's invasion and occupation of Holland. Friedrich and Louise Gutmann perished in Nazi concentration camps and their possessions, including the Pastel, were taken by Nazi agents and collaborators. After learning that defendant Searle possesses *Landscape with Smokestacks*, the Goodman family, through plaintiff Nick Goodman, demanded the return of the Pastel. Upon Searle's refusal of this demand, the Goodman family commenced this lawsuit to seek return of the Pastel.

### PARTIES

2. Plaintiff Nick Goodman is a citizen of the United Kingdom, residing at 3483 Oak Glen Drive, Hollywood, California 90068.

3. Plaintiff Simon Goodman is a citizen of the United Kingdom, residing at 215½ South Arnaz Drive, Beverly Hills, California 90211.

4. Plaintiff Lili Vera Collas Gutmann is a citizen of the Netherlands, residing in Italy at Via Gioberti 52, Florence.

5. Upon information and belief, defendant Daniel C. Searle is a citizen of the United States, and a domiciliary and a citizen of the State of Illinois, residing at 33 Woodley Road, Winnetka, Illinois 60093-3749.

### JURISDICTION

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332.

7. The amount in controversy exceeds the sum or value of \$50,000, exclusive of interest and costs.

8. Under 28 U.S.C. § 1391(a), venue lies in the Southern District of New York, the district in which a substantial part of the events or omissions giving rise to the claim occurred.

## FACTS

9. In the years prior to World War II, Friedrich and Louise Gutmann, residents of Heemstede, Holland, were the owners of an extensive estate that included a large art collection and many other valuable possessions. Beginning in the late 1920s, they purchased several pieces of what was then regarded as modern art, including *Landscape with Smokestacks*, from Paul Cassirer & Co., an art dealer with galleries or auction houses in Berlin and Amsterdam, or Helmuth Lutjens, Cassirer's Dutch agent. *Landscape with Smokestacks* (also known as *Paysage* or *Paysage avec Fumee de Cheminees*), by Edgar Degas, is a pastel over monotype, with a red signature stamp in the lower left corner.

10. *Landscape with Smokestacks* is a unique work of art.

11. *Landscape with Smokestacks* hung in the Gutmanns' drawing room in Holland from the time the Gutmanns' acquired it until about 1939.

12. In or about 1939, Friedrich and Louise Gutmann, fearing for the safety of their property upon Nazi Germany's possible invasion and occupation of Holland, sent, amongst other works of art, three impressionist paintings, comprised of *Landscape with Smokestacks*, another work by Degas entitled *Femme se Chauffant*, and a painting by Pierre Auguste Renoir known as *Apple tree in Bloom*, to Paul Graupe & Cie. ("Graupe"), an antiques dealer in Paris, France, for safekeeping.

13. Upon information and belief, Friedrich and Louise Gutmann, who were of Jewish ancestry, attempted to relocate to Italy in 1943 in order to escape Nazi persecution, but were detained *en route* to Italy by German Gestapo forces.

14. Upon information and belief, Friedrich and Louise Gutmann were both sent to the Theresienstadt camp, where Friedrich was beaten to death after he refused to sign a document

transferring certain of the family's remaining possessions to the Third Reich. Louise was then sent to Auschwitz where she died in the gas chambers.

15. The art collection of Friedrich and Louise Gutmann, including the three impressionist works sent to Paris, was spoliated by Nazi agents or collaborators, as were the rest of their possessions.

16. Friedrich and Louise Gutmann were survived by their only children and heirs, Bernard Goodman and plaintiff Lili Vera Collas Gutmann.

17. After the end of World War II and the collapse of the Third Reich, Bernard Goodman and plaintiff Lili Vera Collas Gutmann commenced efforts to locate and recover their parents' spoliated possessions, including *Landscape with Smokestacks* and the rest of their art collection.

18. Through these efforts, Bernard Goodman and plaintiff Lili Vera Collas Gutmann learned in 1945 that Graupe had deposited the Gutmann paintings, including *Landscape with Smokestacks*, in a warehouse in Paris belonging to the firm of Wacker-Bondy.

19. Bernard Goodman and plaintiff Lili Vera Collas Gutmann contacted Wacker-Bondy in 1945 regarding *Landscape with Smokestacks* and the other paintings, but were informed that the German Einsatzstab Reichsleiter Rosenberg (the "ERR" or "Rosenberg Action Team"), whose responsibilities included looting art from families who were identified as Jewish living in Nazi-occupied areas, had seized everything on deposit at Wacker-Bondy from the Gutmann collection.

20. Upon learning that the Nazis had seized their family's artwork, including *Landscape with Smokestacks*, *Apple Tree in Bloom* and *Femme se Chauffanz*, Bernard Goodman and

plaintiff Lili Vera Collas Gutmann notified Dutch, French, British and German authorities and Interpol in the years immediately following the end of World War II in an attempt to retrieve their stolen artwork, including *Landscape with Smokestacks*.

21. Investigation of the seizures in Paris by the Dutch, French and German governments determined that the Pastel and the other artwork the Gutmanns sent to Paris had been stolen by the Rosenberg Action Team.

22. Bernard Goodman died in 1994, and is survived by his only children and heirs, plaintiffs Nick and Simon Goodman.

23. Plaintiffs Nick and Simon Goodman, with plaintiff Lili Vera Collas Gutmann, diligently continued the search for the Goodman family's missing artwork, including *Landscape with Smokestacks*, after the death of Bernard Goodman.

24. The Goodman family recently learned of a catalog (the "Catalog") entitled *Degas Landscapes* by Richard Kendall, published by Yale University Press in association with the Metropolitan Museum of Art in New York and the Museum of Fine Arts in Houston in which *Landscape with Smokestacks* appears. Through the Catalog, plaintiffs identified defendant Searle as the current possessor of *Landscape with Smokestacks*.

25. Upon information and belief, as plaintiffs recently discovered from documents provided by defendant Searle, Hans Wendland, a Berlin art dealer and Nazi collaborator who operated in Paris during the German occupation, acquired possession of *Landscape with Smokestacks* after it had been stolen from Wacker-Bondy by the Rosenberg Action Team.

26. Upon information and belief, as plaintiffs recently discovered from Searle's documents, Wendland transferred possession of the painting to Hans Fankhauser in Switzerland.

27. Upon information and belief, as plaintiffs recently discovered from Searle's documents, Emile Wolf of New York acquired possession of *Landscape with Smokestacks* in 1951 from Fankhauser.

28. Upon information and belief, as plaintiffs recently discovered from Searle's documents, on July 31, 1987, defendant Searle acquired possession of *Landscape with Smokestacks* from Emile Wolf.

29. Upon information and belief, as plaintiffs recently discovered from Searle's documents, Searle purchased the Pastel in a transaction arranged by Margo Pollias Schab, Inc., a New York art dealer.

30. The Goodman family also recently learned that the Renoir *Apple tree in Bloom*, one of the paintings sent to Paris with the Pastel, has changed hands in New York since World War II.

### **CLAIMS FOR RELIEF**

#### **COUNT I (Action to Recover Personal Property)**

31. The Goodman family repeats and incorporates by reference the allegations set forth in paragraphs 1 through 30, above.

32. On December 5, 1995, the Goodman family, by counsel, sent a letter to defendant Searle demanding return of *Landscape with Smokestacks*.

33. On December 15, 1995, defendant Searle, through counsel, refused the Goodman family's demand.

34. Defendant Searle claims to be the lawful owner of the Pastel.

35. The Goodman family is, and at all times herein mentioned was, the lawful owner of *Landscape with Smokestacks* and has a superior and exclusive right to immediate possession of the Pastel.

36. Plaintiffs are not aware of the current market value of *Landscape with Smokestacks*, but, upon information and belief, as plaintiffs recently discovered from Searle's documents, defendant Searle paid Eight Hundred and Fifty Thousand Dollars (\$850,000.00) in 1987 to acquire possession of the Pastel.

37. Defendant Searle's acquisition of *Landscape with Smokestacks* was without the authority of the true owners, the Goodman family.

38. Defendant Searle's refusal to return *Landscape with Smokestacks* on demand was wrongful.

39. Defendant Searle's possession of *Landscape with Smokestacks* is wrongful.

40. Defendant Searle's acquisition of *Landscape with Smokestacks*, his possession of *Landscape with Smokestacks*, and his wrongful refusal to return *Landscape with Smokestacks* have caused damages to the Goodman family by depriving them of the use and enjoyment of the Pastel since 1987, which use and enjoyment is estimated to have a value in the amount of One Hundred Thousand Dollars (\$100,000.00).

41. At the time of his acquisition, defendant Searle took inadequate measures to ensure that his seller had good title to *Landscape with Smokestacks*.

42. Because *Landscape with Smokestacks* is a unique work of art, the harm to the Goodman family cannot be adequately remedied unless *Landscape with Smokestacks* is returned to

them, with damages for loss of use and enjoyment during the period of defendant Searle's possession.

43. Because the Goodman family is the true owner of *Landscape with Smokestacks*, and because defendant Searle has no lawful basis for a claim to ownership or right to possession, *Landscape with Smokestacks* must be returned to the Goodman family.

**COUNT II**  
**(Declaratory Judgment)**

44. The Goodman family repeats and incorporates by reference the allegations set forth in paragraphs 1 through 30 and 32 through 43, above.

45. There is an actual controversy between the parties concerning right and title to movable property, namely *Landscape with Smokestacks*.

46. The Goodman family is entitled to a declaratory judgment, pursuant to 28 U.S.C. §§ 2201 and 2202, that the Goodman family is the true owner of *Landscape with Smokestacks* and has superior and exclusive right to immediate possession of *Landscape with Smokestacks*.

47. The Goodman family is entitled to a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202, that defendant Searle never had any lawful title to, or right to possess, *Landscape with Smokestacks*.

**COUNT III**  
**(Conversion)**

48. The Goodman family repeats and incorporates by reference the allegations set forth in paragraphs 1 through 30, 32 through 43, and 45 through 47, above.

49. Defendant Searle has exercised dominion and control over *Landscape with Smokestacks* to the exclusion of and inconsistent with the Goodman family's rights in and to the Pastel.

50. Defendant Searle's exercise of dominion and control included taking possession of *Landscape with Smokestacks*, transporting it within the United States, and claiming to be the owner of the Pastel.

51. Defendant Searle's exercise of dominion and control over *Landscape with Smokestacks* was without the authority of the true owners, the Goodman family.

52. The Goodman family is entitled to damages for loss of use of *Landscape with Smokestacks* during the period after defendant Searle acquired the Pastel, which use is estimated to have a value in the amount of One Hundred Thousand Dollars (\$100,000.00).

53. In the event *Landscape with Smokestacks* has been damaged in any way since being acquired by defendant Searle, the Goodman family would also be entitled to be compensated for such damage.

**WHEREFORE**, the Goodman family prays that this Court take the following action and grant the following relief:

a. Declare that the Goodman family is the true owner of *Landscape with Smokestacks* with superior and immediate rights to exclusive possession of the Pastel;

b. Declare that defendant Searle never had any lawful title to, or the right to possess, *Landscape with Smokestacks*;

c. Award the Goodman family exclusive possession of *Landscape with Smokestacks*;

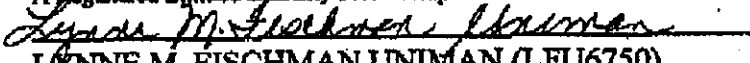
d. Award the Goodman family their actual damages from defendant Searle in an amount to be determined at trial, to compensate plaintiffs for loss of use of the Pastel and as compensation for any damage to the Pastel while it was in defendant Searle's possession;

e. Upon final judgment, award the Goodman family pre-judgment and post-judgment interest on any damages awarded from defendant Searle as allowed by law;

f. Award the Goodman family their costs of court, expenses and reasonable attorneys' fees; and

g. Award the Goodman family such other and further relief to which they may be entitled at law or in equity.

DATED: New York, New York  
July 17, 1996

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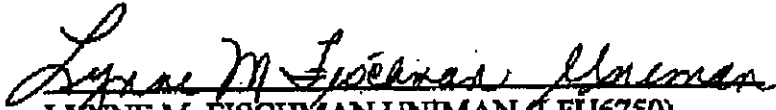
**DEMAND FOR TRIAL BY JURY**

Pursuant to the Seventh Amendment and in accordance with FED. R. CIV. P. 38(b),  
plaintiffs Nick Goodman, Simon Goodman and Lili Vera Collas Gutmann hereby demand a trial by  
jury.

DATED: New York, New York  
July 17, 1996

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