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(In)security - Secured Transaction in Art and Cultural Property

Kevin Ray

(IN)SECURITY

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Kevin Ray*

MR. AHASAY: Our final speaker today is Kevin Ray. Kevin is Of Counsel at Greenberg Traurig. He focuses his practice in the areas of art and cultural heritage law, historic preservation law, and financial services, which include lending transactions and restructuring insolvency matters.

Mr. Ray represents and advises artists, art galleries, art collectors, museums, and cultural institutions in a variety of transactions, including consignments, questions of title, provenance, and compliance with national and international law. He advises lenders and debtors on issues unique to art, antiquities, and other cultural property in a variety of lending and commercial transactions.

Prior to practicing law, Mr. Ray was director of rare books, manuscripts, and art collections at Washington University in St. Louis and taught at the Washington University School of Art.

Kevin got his B.A., M.A. and M.L.S. degrees from the University of Pittsburgh, achieved his Ph.D., from Washington University, and his J.D., from Washington University St. Louis School of Law, and received his LL.M. in international art, cultural heritage law, from right here at DePaul.

So I'm going to turn it over to Kevin Ray.

MR. RAY: Thank you. I'm going to talk about a different type of art loan. Not the loan of artworks between museums for exhibition. Instead, I am going to speak about loans that are secured by artworks. That is, the artworks are being used as collateral in a variety of financial transactions. This slide show's a quotation from Suzanne Gyorgy, the Head of Citi Private Bank Art

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Advisory & Finance, concerning art-based lending. She says: "Art-based lending can currently be broken down into two main categories: Loans to galleries and loans to individuals. Within these two categories are a myriad of loan structures and business models. Loans structured within banking institutions house the majority of art financing by value at present and are the main focus of this discussion; however, these are also a number of boutique lenders and auction houses that carry out art financing activities." What she is doing is distinguishing between two different types of loans.

I discuss two types of art loans in an article in the current issue of *The Secured Lender,* which is included in your program materials.[1] The first type of art-secured loan is a "collector" loan, and the second is a "gallery" loan. In a secured transactions context, that distinction is important, and it makes a tremendous difference which type of loan is involved.

The collector loan is made to a collector or investor. The investor may be a single individual, a number of individuals, or an entity (typically a special-purpose entity), and the purpose of the collector loan is to enable the collector to acquire new or additional art or to leverage currently-owned art. Increasingly, collectors are using their art collections as collateral for loans whose proceeds are used for other purposes.

The terms of the collector loan will vary depending on a variety of factors, chief among them being the net worth of the borrower. The terms will also vary depending on the type of lending institution. And the number and types of lending institutions that are active in this field is expanding, largely because of the dramatic escalation of art prices, but also because art (and other collectibles) are increasingly being regarded as alternative forms of investment.

Many art-secured loans are made by private banks or private client divisions of large banks. These loans are typically what are referred to as balance-sheet loans. Although the lender takes a security interest in the art as collateral for the loan, the lender's

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[1] Kevin Ray, *Art and Cultural Property: What Secured Lenders Need to Know*, THE SECURED LENDER (Apr. 2015).

underwriting of the loan, and indeed its willingness to make the loan, derives more from the borrower's net worth than it does on the appraised value of the art collateral itself. In such art-secured balance sheet loans, the lender is not relying on the art solely, or even chiefly, in their underwriting of the loan. They're not expecting to foreclose on the art in the event of a default. And, in fact, these loans have a very low default rate. A lot of the larger banks - Bank of America, Citi, JPMorgan Chase, Northern Trust - do quite a bit of lending in the art-secured lending space.

The second category of art-secured lender is the boutique art lender. There are a number of such boutique lenders, and they vary in their market segment and lending approach. Some, like Emigrant Bank Fine Art Finance, are traditional lenders, who lend for a finite term at a set interest rate, with the art serving as collateral. The term for many such loans is often five to ten years. In this more traditional type of art-secured loan, the lender's security interest is perfected by filing a financing statement (which I will describe in greater detail shortly). This allows the borrower to retain possession, use, and enjoyment of the art. Other boutique lenders take different approaches and serve different needs within the art market. Borro, for instance, is a relatively new art-secured lender with a significant online interface, which usually offers shorter-term loans. Unlike Emigrant, Borro perfects its security interest in the art collateral by taking possession of the art. Still other boutique art lenders have a more active involvement in the management or licensing of a collection, working from a model that is closer to the managerial involvement of private equity investors.

Finally, there are also commercial asset-based lenders that make loans in this space. More often than not, however, these commercial lenders are not making loans expressly for the acquisition or leveraging of art. Rather, when commercial lenders encounter art collateral it is typically when art is pledged as part of a broad collateral pool (goods, inventory, accounts, etc.). Commercial lenders may not have extensive experience in this area and may not be very comfortable in the art-secured loan space.

By contrast, in a gallery loan, the lender makes a loan to a gallery or other art merchant. The loan is secured by a security interest in the art merchant's inventory - which is art - as well as by the art merchant's deposit accounts, accounts receivable, and other assets. Sometimes the art collateral will include consigned works, usually it will not.

The law applicable to art and other cultural property has been incredibly fluid over the last 40 years. A landmark in this change is the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, which built on earlier international conventions that were promulgated to protect art and cultural property during times of war. By requiring states parties to protect and safeguard art and cultural property during peacetime, and by placing restrictions on the illicit exportation and importation of art and cultural property, the UNESCO Convention initiated what has become a sea-change in both museum and trade practice. This has operated hand-in-hand with a significant change in public perception of theft, plunder, and looting, and in the legal rules that apply to stolen cultural property. These changes have tremendous importance for both lenders and borrowers in art-secured transactions. Due diligence has become more critical than ever. As I go along, I will explain how this change has occurred and how it affects art-secured loans.

First, a little secured transactions background. A "security interest," as many of you may know, is an interest in personal property or fixtures, which secures payment or performance of an obligation. This also includes any interest of a consigner. In the U.S., secured transactions are governed by the Uniform Commercial Code, which is a model law that has been enacted individually by states, with some (mostly minor) state-by-state variations. A "secured transaction" is a business arrangement by which a buyer or borrower gives collateral to the seller or lender to guarantee payment of an obligation. "Collateral" is anything that the borrower gives an interest in to the lender to serve as security for the benefit that the borrower is receiving (the loan).

The parties to a secured transaction are, first of all, the "secured party," which is the party to whom the obligation that is secured by the collateral is owed. In an art-secured transaction, this can be a consigner (who is a person who owns art consigns it for sale with an art merchant), a seller on credit, or a lender. The "debtor," on the other hand, is the party who is obligated to the secured party and who gives the collateral as security. In a consignment transaction, this is the consignee.

The debtor may also be a buyer on credit, a borrower, or a guarantor of another's debt. It is important to understand that a security interest has several different aspects to it. When a borrower gives, and a lender takes, a security interest, the key element is that the security interest has to attach to that particular collateral. In an art-secured environment, attachment becomes particularly tricky. The secured party must give value to the debtor in exchange for a security interest. And this is where the trickiness comes in. The debtor must have rights in the collateral or power to transfer rights.

For art-secured loans, that fluid legal environment with respect to ownership and transferability of art and cultural property is where art-secured loans can become incredibly complicated. For lenders experienced with art and cultural property regulation, it can tricky enough. Lenders with a lessor level of familiarity with the art and cultural property area, however, can suddenly find that what they thought their collateral pool was, and what they thought the value was, is no longer true. These things can change quickly, as facts emerge. For art-secured loans, we can break these issues down into three different categories: (1) issues of title, (2) issues of materials regulation, and (3) issues of import and export regulation.

Issues of title can be extremely complex, and are always highly fact-sensitive. With art that has changed hands over many years, with varying levels of documentation, due diligence can be tricky, and a lender can suddenly find that the borrower lacks clear title to the pledged artwork. The image here, which you may recognize, is Gustav Klimt's *Portrait of Adele Bauer I*, which is the subject one of the most important Nazi-confiscated art restitution cases. Here, I am using it as an example of a legal principle that is different in different legal systems, and which has important ramifications for a party claiming title to a work of art. Common law jurisdictions and civil law jurisdictions have vastly different rules when it comes to the current possessor of stolen art acquiring good title to the artwork. In common law jurisdictions - chiefly the U.S. and the U.K. - the legal principle of *nemo dat quod non habet* applies, which simply means that you can never transfer -- an owner can never transfer more than what he actually has.

In stolen and looted art cases, this has real teeth, because what it means is that while a statute of limitations may prevent or stop the ability of the original owner from bringing a claim against a work that has been stolen at any point in its past, nevertheless, the taint of the theft remains with the work. If an object has been stolen at any point in its chain of title, it remains a stolen object. The expiration of a statute of limitations only means that the original owner's ability to bring suit for the object's return is barred. It does not actually vest title to the stolen object in the current possessor. As a practical matter, in many instances this may be a similar result. However, as I will describe a little later, in some circumstances the fact that the artwork was stolen may mean that if it is sold or transferred to another person, the statute of limitations begins to run anew against that subsequent transferee.

The *nemo dat* principle is why in the case of the Klimt was viable under U.S. law, but would not have been so under Austrian law, and the result in the U.S. was substantially different than it would have been had it been prosecuted under Austrian law.

Another Nazi-confiscated art restitution case that is both fascinating and legally significant (and which has been going up and down the California Court system for the last eight years) is *Von Saher v. The Norton Simon Museum of Pasadena*. In *Von Saher*, the heir of the original owners of two Cranach panels, Adam and Eve, which were looted by the Nazis during a second world war, have sued the Norton Simon Museum for return of those paintings.

The history of the paintings and the various attempts at restitution have been very complicated over the last 70 years. The paintings were recovered by the U.S. government (the Monuments Men) at the end of the war and were returned to the Netherlands to be returned by the Dutch government to their original owners. The original owners had been the family of Jacques Goudstikker, who had been a prominent pre-war Jewish art dealer in Amsterdam. Unfortunately, the Dutch government returned the panels to the wrong claimant by mistake. That claimant then sold the paintings in 1970 to the Norton Simon Museum.

In 2006, the heir of the Goudstikker family brought a claim in the Netherlands, not only for the Cranachs, but more globally for roughly 400 paintings that had been taken from the gallery.

The Dutch government ultimately reviewed their restitution efforts, acknowledged the mistake, and revised some of what they did. The problem was that, at that point, the Dutch government could only return those paintings that were still held by museums in the Netherlands. The Cranach panels that had been sold to the Norton Simon, of course, the Dutch government had no power over. So the family sued the Norton Simon Museum.

The museum raised a statute of limitations defense. While California's statute of limitations for the return of stolen art (which had been 3 years from the time of discovery) normally would have cut off the right to bring the action, California had revised its statute of limitations specifically for Holocaust-looted art. The Holocaust-looted art amendment was struck down as unconstitutional, but the California legislature enacted a replacement statute that is still in effect.

New York has what is widely regarded as the most original-owner-favorable approach to statutes of limitations for the recovery of stolen art. In New York, the statute of limitations doesn't begin to run until the claimant knows where the stolen artwork currently is, knows the identity of the current possessor, makes demand upon the current possessor for the object's return, and that demand is rebuffed. As you can see, this moves the point at which the limitations period begins to run forward by quite a bit. New York's approach is called the "demand and refusal rule."

California does not have the demand and refusal rule. Instead, it requires the first two elements – knowledge of the location of the stolen artwork and knowledge of the identity of the current possessor. This is known as the "discovery rule," and is applied with some variations in most states in the U.S. Under California law, the statute of limitations does not begin to run until the original owner actually discovers these two facts. Mere constructive knowledge (meaning that the original owner could or should have discovered the facts upon exercise of due diligence) is not enough to set the limitations period running.

Just last Thursday, the U.S. District Court for the Central District of California clarified how exactly the California statute of limitations applies For any transaction involving the transfer of art or an interest in art - not only art-secured loans - it has important ramifications. Because what the District Court said is that the California statute of limitations for the return of stolen art begins to run anew with each transfer of the object. The court pointed out that California law has long held that a stolen object remains stolen, even after a statute of limitations has run, and that each transfer of a stolen object constitutes a new conversion of it. The court concluded that this means that even if the statute of limitations has run against a current possessor of stolen art, if that current possessor sells or transfers it, the statute of limitations beings to run anew against the new possessor, and the original owner can then come forward against the new possessor.

From a lender's perspective, when you're looking at your underwriting and your collateral pool, that makes you very nervous. Suddenly, if your borrower happens to have purchased something that is part of your collateral pool and is still within that period, you're looking at the potential for claims that you would not necessarily have expected unless, you were aware of this, to be the case.

The second area is regulatory impairment with respect to materials. The image is Robert Rauschenberg's *Canyon,* which incorporates a stuffed golden eagle and so cannot legally be sold in the U.S. under the Bald and Golden Eagle Protection Act. Similarly important restrictions on the ownership and transfer of materials arise out of recent modifications to the U.S. Fish and Wildlife Service's regulation on the importation and sale of African elephant ivory, but regulatory impairment can also apply to a whole variety of other types of materials under a number of different statutes and rules.

The set of considerations, the necessity for documentation that wasn't previously required is - or at least wasn't previously commonplace, becomes a real issue. I was talking with folks from an auction house recently and they were very concerned because one of their clients has quite a valuable piano they would like to be able to include in one of their upcoming sales. The problem is that, of course, the piano keys are ivory. That, in itself, is not a problem. They can probably document the provenance of the piano back far enough that that is not an issue and would fall within the antiques exception to the ivory regulation. But there's an additional element that comes into play. You not only have to be able to show that the object's ivory predates the cutoff period for the regulation, but you also have to be able to show that the ivory has not been repaired or replaced since the applicable date. And they weren't sure at all that they would be able to document that. There are a couple of options. One, of course, is that you can do testing of the ivory. It's difficult to establish the age of the ivory, although that can be done. But it's also important to establish what type of ivory it is, because the strictest set of regulations relate to African elephant ivory. Asian elephant ivory is also regulated, but to a lower threshold. Ivory also comes from whales, walruses, a variety of animals, each of which is regulated differently.

The final image relates to something that lenders are also generally not aware of as being something that can impact their collateral, and that is that the U.S. is nearly unique in the world in having a very limited number of restrictions on the import and export, particularly the export, of artworks. Instead, many nations restrict – have various schemes to limit the export of art objects and cultural property from the country. And they have to go through a panel that evaluates to what extent that object is of importance to the nation. This tends to be referred to as national treasure. What can happen, as happened with the portrait aren't of Suleiman on the far right, is that under the U.K. export licensing system, the painting came up for sale at auction, was purchased by the Qatar Museum Authority, which had every intention of exporting it to Qatar, displaying it in one of the museums.

Since it was a painting by a British artist and an image of one of the first prominent Muslims in the U.K., it had significance as national treasure. And so the U.K. Waverly Criteria require that there's a period of stasis where U.K. museums are given an opportunity to meet the sale price. In many instances, that simply doesn't happen, and then the sale goes through, the export license is granted, the object leaves. In this case, the funds actually were raised, the offer was made, and the Qatar Museum Authority declined it.

Under the U.K. rules, if an offer matching the sale price has been made and declined, the export license may not be issued. So the U.K. and the Qatar Museum Authority negotiated an arrangement for a limited export of the painting to Qatar to be displayed for a few years. It was then brought back to the U.K. and is now at the National Portrait Gallery.

To step back from the art side of things back to just straight out secured transactions, in a secured transaction two absolutely key elements are perfection and priority. Perfection puts the world on notice of your claim. In most instances, a secured party perfects a security interest by filing a UCC-1 financing statement. It's typically a one-page form. Depending on how extensive your collateral description is, you may attach another page or two. But it's a very simple, very simple form, very easily completed, very easily filed. They are generally filed in the office of the Secretary of State of the jurisdiction where the borrower either resides or is – if an entity was organized.

Perfection, by putting the world on notice, then also plays into the next aspect of this, which is priority, because that notice establishes your ranking in the order of parties who may have an interest or claim to have an interest in that particular object. And from a filing perspective, it's first to file has first priority. So there's very little inclination to delay filing a financing statement. As I mentioned on the previous slide, there are a couple of other ways to perfect a security interest. And these, particularly for art-secured transactions, can be extremely important. Possession is usually, from a borrower's perspective, an undesirable means of perfection. What that means is that the lender actually has to take physical possession of the object. In the case of an art-secured transaction, what typically happens is that the lender would move the objects to an art storage facility. Some lenders may actually have exhibition space where some of the objects that are subject to their security interests would be shown.

Perfection by possession trumps perfection by filing. It doesn't matter where it falls in timing. So the risk that you run as a lender in perfecting by filing is that your borrower may make a junior loan, even though your loan agreements - your loan documents, of course, would prevent that. It happens all the time. It's just a default. And if that junior lender perfects by possession, you're out of luck. If, ultimately, the object is sold and proceeds are distributed, maybe you'll get something, you know, assuming that the sales proceeds exceed the amount owed to the lender who perfected by possession. Chances are, probably not. So that's why both perfection and priority are sort of top-of-the-mind issues for any secured -- any art-secured lender. And as I mentioned earlier, in the case of an art-secured transaction, your secured party - this is the list of who typically in the transaction that would likely be. It can be a commercial bank, a private bank, boutique lender, hedge fund, private equity lender. It can be an auction house. Auction houses sometimes make loans to some of their clients, which are then secured by a security interest in the client's art. Generally, it's whatever art happens to be consigned to the auction house by that customer. It doesn't have to be limited to that, though.

As we'll see with the Salander-O'Reilly case, a number of artists, or more to the point, heirs of artists, consigned work to the gallery. When it was then put into bankruptcy, those heirs suffered tremendously.

I suspect you have some familiarity with consignment. A consignment is when the owner of the work, or one with some claim to the work, places it with an art merchant with the intention for that merchant to sell it on the owner's behalf. The consignor (or secured party) can be an artist, an artist's heirs, or an owner. The consignee can be a gallery taking art on consignment from artists and their representatives or a gallery taking art on consignment from collectors or others.

Different rules, however, apply to artist consignors and non-artist consignors. Currently, thirty-one states have art consignment statutes. Such statutes are intended to protect the artist consignor as a party with lesser bargaining power, perhaps less business sophistication or experience, and a lesser ability to extract from the consignee a better arrangement. What art consignment statutes typically require is that the consignor hold the consigned art and its proceeds in trust for the artist and the consignee is required (generally within thirty days of sale) to not only give the artist and accounting of the sale, but also to pay over the proceeds. Not all state consignment statutes are this strict, that is the broad tenor. However, for non-artist owners, these rules don't necessarily apply. A non-artist consignor doesn't necessarily have a trust relationship with the consignee, and doesn't necessarily get the 30-day requirement accounting and payment.

The bankruptcy of Salander-O'Reilly Galleries was a watershed in this area, and the law, at least in New York, was changed as a result of the problems that surfaced so prominently in that case. Larry Salander was something of an impresario gallerist and has, since things imploded, been referred to by some journalists as the Bernie Madoff of the art trade. The gallery was a prominent New York gallery for decades. Prior to 2000, a number of complaints were made and suits filed against Larry Salander personally and the gallery as well, alleging improprieties in the consignment of art -- that objects were double sold, payments were not made. In 2007, the gallery was the subject initially of an involuntary bankruptcy filing. Several of the gallery's creditors filed an involuntary petition against it, putting the gallery into bankruptcy. That involuntary case was then converted by the gallery to a voluntary case under Chapter 11.

At the time of the filing, Salander-O'Reilly had in its possession roughly 4,000 objects. Some few of these were owned in whole or in part by the gallery, by no means a majority. Most were, in fact, consigned. Salander-O'Reilly isn't the only gallery that has been subject to bankruptcy proceedings. Berry-Hill Galleries, which is next-door to the Frick Collection in New York, had a dispute with a secured lender and had a brief foray into bankruptcy court. Unlike Salander O'Reilly, though, Berry-Hill survived. The American Folk Art Museum didn't have such a favorable result. The American Folk Art Museum, as you're probably aware, had a dramatic expansion of its facilities a number of years ago; constructed a new building immediately next-door to MoMA. The museum got into tremendous financial difficulty, had to vacate that space, and is in a smaller space now. It's former building has been demolished to make way for MoMA's expansion. However, the American Folk Art Museum's trustee, Ralph Esmerian, who was a folk art collector and prominent jeweler in New York, himself got into quite a bit of trouble, again, double pledging works to a variety of lenders. He had made a promise gift to the museum of, say, 200 or so pieces from his collection. In his personal bankruptcy case, that became the subject of a fight between the museum as potential donee and Esmerian's secured lender, who claimed a security interest in everything that he had. They ultimately struck a deal. The museum didn't get everything; it got some. The rest was sold off and paid out to creditors.

The Fresno Museum suffered a much worse fate. They got into great financial difficulty. They ended up liquidating. They didn't go through the bankruptcy courts. That was a different state law process and assignment for the benefit of creditors.

In this context, of course, you will also have heard - you will be very familiar with the situation that played out very publicly last year with the Detroit Institute of Arts in the Detroit bankruptcy case. That was actually a really fascinating situation from a variety of perspectives.

Unlike most U.S. museums, the DIA's collection was actually owned by the city, not a not-for-profit corporation. That's no longer true. When the city got into financial trouble, some of its creditors made quite a fuss in the bankruptcy court when the city proposed to preserve the collection, not liquidate it, not use those proceeds to pay out to creditors.

And so what the city put together was with a consortium of national and regional foundations. They put together what was referred to as the "grand bargain," that provided for a payment into the bankruptcy estate of a certain amount, which would then allow the city to move the collection and the building, actually, for that matter, into a new not-for-profit entity - remove it from further risk of the city's financial problems, assuming that the restructuring that they did in its bankruptcy case were to fail.

What was particularly interesting in that case was that one of the creditors came forward with a proposal from one of the more private equity side boutique lenders to make a $4 billion loan to the city that would then be secured by the DIA's collection. The judge was not particularly fond of that deal, especially since from a secured-lending perspective, that took an asset of the city that was not subject to an immediate risk of foreclosure by a secured lender, and then moved it into the category of one that if the city's restructuring were to fail, would be subject to exactly that kind of forfeiture. The grand bargain was approved. The city struck a deal with the complaining creditors, basically swapping out real estate for the grand bargain.

One of the most prominent issues to arise in the Salander-O'Reilly case has had repercussions through the art-secured lending area. Kraken Investments, in 2006, consigned a Madonna and Child by Botticelli to Salander-O'Reilly for sale. The sale price was supposed to be $9.5 million. And it was consigned for a period of a year. That consignment period expired, and was extended for a brief further limited period of time. When that extension expired, Kraken asked for the work back. Salander didn't return it. And what then intervened was the Salander-O'Reilly's bankruptcy case. What became very complicated is that just a little while ago when I was talking about the UCC-1 financing statement, when you consign a work - and Rebecca touched on this earlier - when you consign a work of art, in order to perfect that consignment interest, you're supposed to file a UCC-1 financing statement.

Particularly in bankruptcy, an unperfected interest can be undone by the bankruptcy trustee. Section 544 of the Bankruptcy Code empowers the trustee to - the term of art is "avoid" - unperfected liens. That's only one problem that Kraken encountered and, ultimately, wasn't even the point on which they were losing. Not only can the trustee avoid the unperfected lien, but an unperfected lien can be trumped by a perfected lien that would otherwise have been junior. So Salander-O'Reilly's secured lender came into court and said, "Well, they didn't file their financing statement. I have a perfected security interest in, essentially, all of Salander's assets. Therefore, I have the right to the proceeds of this painting."

That went up and down the courts for a while, and it very much looked like Kraken was going lose. In fact, they did lose at a couple levels. Until last November, the bankruptcy court had held that the secured lender who had assigned its security interest to the bankruptcy trustee, in fact, trumped – in fact, did trump Kraken's interest. They did have a security interest in all of Salander's inventory, which the bankruptcy court said included consigned works. Kraken appealed. And in November, the district court disagreed, but not on the legal principle. Of course, when earlier the bankruptcy court held that Kraken as owner/consignor suddenly had, at best, an unsecured claim for $9.5 million in Salander's case, everybody was shocked and horrified and thought, "Oh, my God, this is a horrible, horrible result."

The district court, instead, looked at the loan documents. And the only reason that ultimately the painting went back to Kraken eight and a half years after it originally consigned it to Salander-O'Reilly was because reading through the description of what the secured lender's collateral was, the court found that it did not, in fact, include everything. It did not include consigned works.

Therefore, Kraken got the painting back. And that's the only reason that Kraken got the painting back.

I mentioned earlier that artists' heirs had consigned works to the gallery and suffered as a result of that. Earl Davis, for instance, who is the son of artist Stuart Davis, a mid-century American painter, consigned about 90 of his father's paintings to the gallery. Some of those have been found; many have not. Not surpris-surprisingly, when a gallery is double, triple dipping in a variety of ways, its records may not be the soundest. Some of the paintings have been located and retrieved for Davis, many of them have not. The most that he ends up with then is, as Kraken nearly did, simply an unsecured claim against the bankruptcy estate, which only gets paid out to the extent that at the end of the day there are assets or monies available to pay out.

Robert De Niro, the actor, consigned 12 of his father's paintings to Salander O'Reilly. Those he ultimately did get back, but only after a very great amount of angst and some pretty dramatic court hearings.

Not an heir, but a co-buyer of works, tennis star John McEnroe entered into an agreement prior to the bankruptcy case to co-buy with Larry Salander two Arshile Gorky paintings. One of them McEnroe held onto, the other Salander held onto. Well, without telling McEnroe and without getting his consent, Salander exchanged that painting for another that turned out to have very little value. McEnroe and the purchaser or trader of that painting ultimately reached an agreement, and they share ownership of it.

After the Salander-O'Reilly case, New York amended its art consignment statute. And what it did was provide that dealers and galleries are required to maintain artist sale proceeds in separate accounts. Artist consigned works are insulated from attachment by dealer and gallery creditors. And what really puts teeth in it is there are now actually criminal penalties for a violation of this and also a fee shifting provision. Many other states have looked at it, but haven't yet followed suit.

So this is just a couple of suggestions for lenders when they're looking at things. Due diligence in this area is absolutely crucial, and expert advice tends to be - of course, it's also what lawyers also say, get expert advice. But for lenders who are not familiar with this area, they need to become familiar with this area.

If they're going to be involved in the art lending space at all, you need to be sure that you understand what you're getting into.

MS. HARRMANN: Thank you. And that will wrap up our symposium. Thank you all for coming and listening to all of our great speakers.