

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TIMOTHY REIF and DAVID FRAENKEL, as
Co-Trustees of the LEON FISCHER TRUST
FOR THE LIFE AND WORK OF FRITZ
GRUNBAUM and MILOS VAVRA,

Plaintiffs,

– against –

OBERLIN COLLEGE d/b/a ALLEN
MEMORIAL ART MUSEUM,

Defendant,

An Artwork *GIRL WITH BLACK HAIR* (1911)
by the Artist Egon Schiele,

Defendant-in-rem.

NOTICE OF REMOVAL

Removed from:
New York State Supreme Court,
New York County - Index No. 654833/2022

TO: THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Pursuant to 28 U.S.C. §§ 1441 and 1446, defendant Oberlin College d/b/a Allen Memorial Art Museum (“Defendant”), by its undersigned counsel Pryor Cashman LLP, hereby removes this action from the Supreme Court of the State of New York, New York County, to the United States District Court for the Southern District of New York on the following grounds:

BACKGROUND

1. Plaintiffs Timothy Reif (“Reif”) and David Fraenkel (“Fraenkel”), as Co-Trustees of the Leon Fischer Trust for the Life and Work of Fritz Grünbaum (the “Trust”), and Milos Vavra (“Vavra”; collectively with Reif and Fraenkel, “Plaintiffs”) commenced this action in the Supreme Court of the State of New York, New York County (“State Court”), Index No. 654833/2022, by electronically filing a Summons and Verified Complaint on December 14, 2022. Defendant was served with the Summons and Verified Complaint in Oberlin, Ohio on February 25, 2023.

2. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings and orders obtained by Defendant through the State Court electronic docket are annexed as **Exhibit A**.

3. Plaintiff Reif alleges himself in the Verified Complaint to be a resident and domiciliary of the State of New York. (Verif. Compl. ¶ 10.)

4. Plaintiff Fraenkel is alleged in the Verified Complaint to be a resident and domiciliary of the State of Florida. (*Id.* ¶ 11.)

5. Plaintiff Vavra is alleged in the Verified Complaint to be a resident and domiciliary of the nation of the Czech Republic. (*Id.* ¶ 12.)

6. Defendant is alleged in the Verified Complaint to be a museum and institution located in the State of Ohio. (*Id.* ¶ 13.) Defendant is, in fact, a non-profit corporation and public charity organized under section 501(c)(3) of the Internal Revenue Code, which is organized under the laws of the State of Ohio with its principal place of business in Oberlin, Ohio.

BASIS FOR REMOVAL

1. In this action, Plaintiffs seek a declaratory judgment of ownership of a drawing by the artist Egon Schiele known as *Girl with Black Hair* (1911) (the “Artwork”), which is currently owned and possessed by Defendant, and which is identified improperly in the body of the Verified Complaint as “*Russian Prisoner of War (1916)*.” (Verif. Compl. ¶ 1.)

2. Pursuant to 28 U.S.C. § 1441, “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant ... to the district court of the United States for the district and division embracing the place where such action is pending.”

3. Pursuant to 28 U.S.C § 112, the United States District Court for the Southern District of New York is the federal judicial district embracing the Supreme Court of the State of New York for the County of New York, where this action originally was filed.

4. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) in that each Plaintiff and Defendant are citizens of different states, and the matter in controversy – *i.e.*, proper ownership of the Artwork – exceeds the sum or value of \$75,000, exclusive of interest and costs, because the value of the Artwork exceeds the sum or value of \$75,000. *E.g.*, *Am. Standard, Inc. v. Oakfabco, Inc.*, 498 F. Supp. 2d 711, 714 (S.D.N.Y. 2007) (“In actions seeking declaratory or injunctive relief, the amount in controversy is measured by the value of the object of the litigation.”).

5. The citizenship of the testamentary Trust, for which Reif and Fraenkel are alleged to be co-trustees, is based on the citizenship of Reif and Fraenkel as the co-trustees. *E.g.*, *Raymond Loubier Irrevocable Tr. v. Loubier*, 858 F.3d 719, 730 (2d Cir. 2017) (“Thus, for these traditional trusts, it is the citizenship of the trustees holding the legal right to sue on behalf of the trusts, not that of beneficiaries, that is relevant to jurisdiction.”).

6. This Court is the particularly appropriate forum to resolve this action because this same Court, by and through the late-Hon. William H. Pauley III, decided after a complete bench trial the same primary fact and legal issues against the same Plaintiffs (*i.e.*, against Vavra and the late-Leon Fischer, through whom Reif and Fraenkel now assert rights) in a case called *Bakalar v. Vavra*. *Bakalar v. Vavra*, No. 05 Civ. 3037 (WHP), 2008 WL 4067335 (S.D.N.Y. Sept. 2, 2008), *vacated and remanded by*, 619 F.3d 136 (2d Cir. 2010), *decided on remand*, 819 F. Supp. 2d 293 (S.D.N.Y. 2011), *aff'd*, 500 F. App'x. 6 (2d Cir. 2012). Additionally, two related cases are currently pending in the Southern District of New York before Judge Analisa Torres, where the same Plaintiffs have brought claims on other defendants premised on the same primary fact and legal issues: *Timothy Reif, et al. v. Republic of Austria, et al.*, No. 22 Civ. 10625 (S.D.N.Y.) (AT) and *Timothy Reif, et al. v. The Carnegie Institute, d/b/a Carnegie Museums of Pittsburgh*, No.

23 Civ. 346 (S.D.N.Y.) (AT) (the latter of which was removed by the defendant to this Court on January 13, 2023).

7. *Bakalar v. Vavra* concerned the provenance and title rights appurtenant to a collection of Egon Schiele artwork that included both the Artwork at issue in this action and another drawing that was at issue in the *Bakalar v. Vavra* action.

8. Plaintiffs now allege that *Bakalar v. Vavra* is not dispositive of the issues raised in this duplicative action. (Verif. Compl. ¶¶ 79-94.) As will be shown by Defendant in the course of this action, Plaintiffs are incorrect. The dispositive facts and legal issues raised by this action were actually, fully and fairly litigated and decided by Judge Pauley in *Bakalar v. Vavra*, and were fully affirmed in that case by the U.S. Court of Appeals for the Second Circuit.

9. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely. *See Pietrangelo v. Alvas Corp.*, 686 F.3d 62, 65 (2d Cir. 2012) (“[T]he thirty-day removal period begins upon formal service of process”) (citing *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347–48 (1999)).

10. Upon the filing of this Notice of Removal, Defendant shall provide notice of the removal to the Clerk of the Supreme Court of New York, New York County, and to Plaintiffs’ counsel, as required by 28 U.S.C. § 1446(d).

WHEREFORE, Defendant respectfully requests that this Court remove this civil action now pending in the Supreme Court of New York, New York County to the United States District Court for the Southern District of New York.

Dated: New York, New York
March 13, 2023

PRYOR CASHMAN LLP

By: /s/ William Charron

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