

# Exhibit B

UNITED STATES DISTRICT COURT  
FOR THE  
SOUTHERN DISTRICT OF NEW YORK

CADY NOLAND,	)	ECF CASE
	)	
PLAINTIFF	)	CIVIL ACTION NO.
	)	
v.	)	1:17-cv-05452 - JPO
	)	
GALERIE MICHAEL JANSSEN, et al.,	)	
	)	
DEFENDANTS	)	

**AFFIDAVIT OF PLAINTIFF, CADY NOLAND IN OPPOSITION TO  
DEFENDANTS' MOTION TO DISMISS**

**August 3, 2018**

**Barker, Epstein & Loscocco**

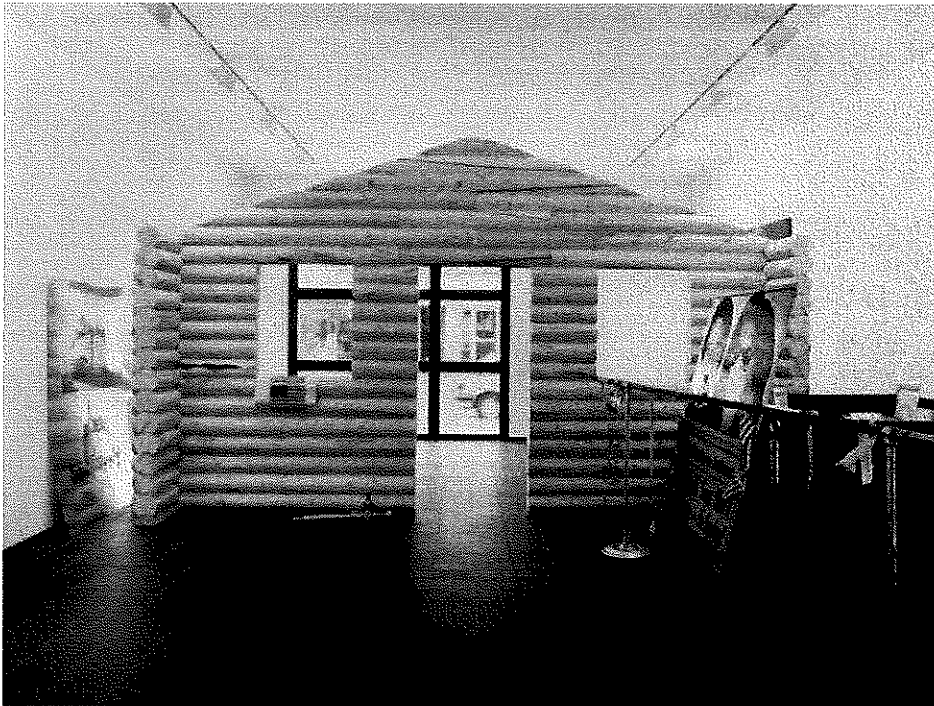
*Andrew D. Epstein*

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Counsel for Plaintiff,  
Cady Noland

I, Cady Noland, Plaintiff in the above action, on oath depose and state as follows:

1. I am an American artist and I live and work in New York City.
2. I am fortunate that many of my works of art have received critical acclaim and are included in the permanent collections of major art museums including New York's Museum of Modern Art and the Whitney Museum of American Art. Many of my works have been extensively published and critiqued in many art-related publications, news articles and through social media. Some of my works have sold for millions of dollars through both private sales and at auction.
3. In or around 1990, I created a sculpture I call "Log Cabin Façade." The Work as it was originally exhibited, is shown below.



4. Log Cabin is a solid wood object that has no function other than as a sculptural work of art. It is neither a cabin nor any other type of functional object. The Work is approximately twelve (12') feet high, eighteen (18') feet long and about five and one-half (5½')

to six (6') feet wide. The only non-wood elements of Log Cabin consisted of the internal metal rods, bolts and the American flags. These parts comprised only a tiny percentage of the mostly wooden components of Log Cabin.

5. I created Log Cabin, drafted plans for the Sculpture, and researched the availability of component parts for my Work in New York City. Also while in New York, I ordered the logs and other wooden parts of the sculpture from Master Log Homes in Darby, Montana. Master Log also prepared construction blueprints for the work according to the dimensions and sketches that I provided.

6. While in New York, I approved the construction blueprints that Master Log prepared from my dimensions and sketches, and I had the component parts shipped to a Germany art gallery, where they were assembled according to my plans.

7. After Log Cabin was assembled, I went to the German gallery in the summer of 1990, to examine and approve the Work.

8. I attended the gallery show in Germany that included Log Cabin. I was not aware of the sale to Defendant, Wilhelm Schürmann, until August 1991, when I received letter a from Max Hetzler Gallery.

9. Sometime around the mid-1990's, well after Log Cabin was sold to Defendant Schürmann, Schürmann sought permission to display Log Cabin outdoors. I agreed to let Schürmann display the work outdoors. At the same time, Schürmann agreed with me that the Work should be stained a dark color for "aesthetic reasons."

10. At my request, Schürmann had the work stained a dark shade of brown, a color I specifically selected and mandated. The stain I told Schürmann to use on Log Cabin was basically a pigment, not a wood preservative. I did not expect Schurmann to allow a wooden sculpture to be placed on unprotected ground and to let it remain there for ten (10) years without frequently monitoring the Work.

11. From the mid-1990s until July 18, 2014, I did not maintain contact with Defendant Schürmann.

12. On July 18, 2014, I received a letter from a collector, gallery owner and art advisor named Brett M. Shaheen. A copy of the letter is attached. In the letter, Mr. Shaheen claims he was working “on an advisory basis with a private Cleveland-based collector” who ultimately planned to give most, if not all of his collection to the Cleveland Museum of Art. The letter says that the unnamed collector recently acquired Log Cabin, which Shaheen described as one of my “major” works.

13. Shaheen said that Schürmann lent Log Cabin to several museum exhibitions over a five-year period and eventually placed the derivative Work on long-term loan with the Suermondt Ludwig Museum in Aachen, Germany in 1995, where it “was installed outdoors for over 10 years” on bare ground.

14. Shaheen further explained that while the Work was displayed at the museum in Aachen, the wooden logs that comprised the log cabin façade suffered significant deterioration due to the elements and a great number of the logs had rotted or begun to rot. A conservator recommended that the logs be replaced and the entire log-cabin façade component of the work re-constructed. Shaheen said that Schürmann had all of the logs replaced, but the American flag and certain metal components that were part of my Work were not damaged, repaired or conserved in any way.

15. I immediately responded to Shaheen's letter via Fax, stating that "THIS IS NOT AN ARTWORK." I was not consulted about the damage to the Work, nor did I approve of the method of conservation done by the conservator. I said that the provenance for the sculpture must now include the name of the conservator because the work was not mine alone. A copy of my letter is attached.

16. The July 18, 2014 letter from Shaheen was the first time I learned that the Work was damaged and that all wooden components of the sculpture had been replaced.

17. On July 21, 2014, I received a letter from Scott C. Mueller who identified himself as the "mystery client." Mueller said his "goal was to give the piece to the Cleveland Museum of Art." Since I disavowed the refabricated copy of Log Cabin, Mueller said he planned to return the sculpture to Galerie Michael Janssen. A copy of the Letter from Scott Mueller is attached.

18. I later learned that Mueller had in fact already purchased Log Cabin from the Michael Janssen Gallery for a total of \$1,400,000. When I renounced the Log Cabin copy, I assume Mueller asked for a refund of his purchase price. I am told he had to sue in New York to get the rest of his money back.

19. On December 2, 2014, Defendant Michael Janssen wrote to me acknowledging that Log Cabin was restored without consulting me and asked if there was a way to redeem this "oversight." Janssen said he was "very keen to restore the integrity of the work, not only for monetary reasons, but also because Janssen believed it to be an important part of my work as an artist. Janssen asked to meet with me when he was in New York later that month. A copy of the letter from Janssen to me dated December 2, 2014 is also attached.

20. I feel very strongly that the unauthorized copy of Log Cabin robs my Work of a quarter century of history and denigrates my honor and reputation. The Log Cabin that I created does not exist.

21. I strenuously believe that the Defendants did not conserve my Work but instead made an unauthorized copy of Log Cabin that not only destroyed the Work itself but also has had and will continue to have a negative impact on my honor and reputation as an artist.

22. I had an exhibition of my art in Germany a generation ago. I have not been to Germany in over 20 years and I will probably never go abroad again because I get severe motion sickness. I know that someone is planning another exhibition of my work in Germany, but I will not be able to go. I met with this person in New York. Except for one contact through my attorney with a German collector of my work who asked for my help in restoring a work that was in New York, I have had no recent contacts with Germany and I do not conduct business in Germany.

Signed under the pains and penalties of perjury this 1<sup>st</sup> day of August 2018.

*/s Cady Noland\**

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Cady Noland

\*I, Andrew D. Epstein, certify that I was authorized to affix Cady Noland's electronic signature to this affidavit on August 1, 2018.



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Andrew D Epstein

FROM :

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FAX NO. :

Jan. 26 2013 12:01AM P1

**BRETT M. SHAHEEN**  
**2620 COURTLAND OVAL**  
**SHAKER HEIGHTS, OH 44118**  
**(216) 347-0044**

18 July 2014

Dear Ms. Noland,

I am a collector and gallery owner based in Cleveland, and work on an advisory basis with a private Cleveland-based collector who recently acquired a major work of yours -- "Log Cabin" (1990) -- from a German collector, who originally acquired it from an exhibition at Galerie Max Hetzler in 1990. My client -- who is very excited to have acquired "Log Cabin" -- is a somewhat low-key, but very generous supporter of the Cleveland Museum of Art, frequently lends work to the museum, and ultimately plans to give most if not all of his collection to the museum.

It is our understanding that you intended / allowed for "Log Cabin" to be installed indoors or outdoors; and, that the wooden log cabin façade was stained at Hetzler following the 1990 exhibition there, per your instruction, so that it would have some protection from the natural elements if displayed outdoors. After lending "Log Cabin" to several museum exhibitions over a five-year period, the previous owner placed the work on long-term loan with the Suermondt Ludwig Museum, Aachen, in 1995 where it was installed outdoors for over 10 years. During that time, the wooden logs that comprised the log cabin façade suffered significant deterioration due to the elements, and a report was prepared that documented the work's overall material decline. A great number of the logs had rotted or begun to rot, and a conservator recommended that the logs be replaced in order to ensure the long-term stability and survival of the work as a whole. The previous owner subsequently had all of the logs replaced and the entire log-cabin façade component of the work re-constructed to your original specifications by the original fabricator -- Masterlog (Darby, Montana) -- who used the original blueprints for the structure, and same wood / materials. The American flag, metal rings and construction plans that are also part of the



FROM :

FAX NO. :

Jan. 26 2013 12:02AM P2


**BRETT M. SHAHEEN  
2620 COURTLAND OVAL  
SHAKER HEIGHTS, OH 44118  
(216) 347-0044**

work are original to it, and have not been damaged, repaired or conserved in any way.

At this point, entire the log cabin façade is its natural color and has not been treated with a weather resistant stain or sealant. Based on the images that I have, the overall work looks as it did when it was first exhibited at Hetzler in 1990, prior to being stained. Since my client would like to install "Log Cabin" both indoors and outdoors in the future, and is adamant about ensuring the work's continued material stability and survival, would it be amenable to you if we have the wooden logs stained and/or sealed and maintain them accordingly / appropriately -- in consult with a sculpture conservator and/or Masterlog if necessary -- to protect them from the elements? Also, if any of the individual wood logs suffer significant deterioration in the future, can we replace them as needed, per your original specifications, using Masterlog?

I would look forward to hearing back from you, and to receiving any important information or input that you could / might be willing to offer regarding the above. I would be delighted to share additional information about my client and his acquisition of "Log Cabin". The best way to reach me is on my cell-phone -- (216) 347-0044; please do not hesitate to call me anytime on that number. If you want or need to send a written response, you can email me at [shaheenmca@me.com](mailto:shaheenmca@me.com), or fax a letter to my client's direct / private fax line at work -- (216) 426-7171... even though I am sending this from my home fax machine, I rarely ever send and receive faxes, and my machine is not receiving them properly at this point.

With thanks and kindest regards,

  
Brett M. Shaheen

FROM CADY NOLAND

THIS IS NOT  
AN ARTWORK

7/18/14

TO: "MYSTERY CLIENT"  
(216) 426-7171

P.S. I SUGGEST YOU  
NOT TAKE UP ONE  
MORE MOMENT OF  
MY TIME, AND THE NEXT  
TIME AROUND, MAN-UP  
AND CALL THE ARTIST  
YOURSELF.

IF THE 'PREVIOUS OWNER' DID  
WORK WITH A SO-CALLED 'CONSERVATOR'  
I CERTAINLY WAS NOT CONSULTED, NOR  
DID I APPROVE WHATEVER WAS DONE.  
FROM NOW ON, THE PROVENANCE  
MUST INCLUDE THE FACT THAT THE  
PIECE WAS 'REPAIRED' BY A CONSERVATOR  
BUT THE ARTIST WASN'T CONSULTED. THE  
CONSERVATOR'S NAME SHOULD BE ON THE  
PROVENANCE ACCOMPANYING THAT IMPORTANT  
FACT.

AS ANY REPUTABLE VALUATION EXPERT  
WLD TELL YOU, THE WORK NEEDS TO  
BE DEPRECIATED IN VALUE BECAUSE OF  
THE 'REPAIR' THAT HADN'T BEEN OVERSEEN  
OR AGREED TO BY THE ARTIST. SO, FOR  
EXAMPLE IF YOU WERE TO GIFT THE  
WORK TO A MUSEUM THE TAX DEDUCTION  
SHOULD REFLECT THIS DEPRECIATED AMT.  
YOU MAY ~~REPRODUCE~~ NOT PRODUCE/REPRODUCE  
PHOTOS TO GO ONLINE OR TO BE PRINTED - I OWN  
THE PHOTO COPY RIGHT.

July 21, 2014

Dear Ms. Noland:

I am Scott Mueller, the "mystery client". Sorry that you were upset about the Log Cabin piece. I care about your work, and my goal was to give the piece to the Cleveland Museum of Art. As soon as I was able to acquire it I wanted to let you know to make sure it was okay with you and to make sure you knew about the piece. I'm sorry it didn't work out and plan on returning the piece.

Scott

Mrs. Cady Noland  
New York  
Fax: 001 212 7416366

Berlin, December 2 2014

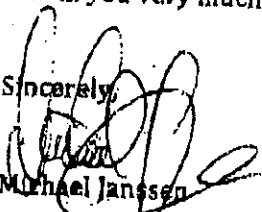
Dear Cady Noland,

I very much hope this finds you well!

I am taking the liberty to write to you today regarding your work „Log Cabin“ from 1990. As you know, the work has been restored unfortunately without consulting you. This is naturally questionable and I would like to ask you if there could be a way to redeem this oversight. I am very keen to restore the integrity of the work, not only for monetary reasons, but also because I believe it to be an important part of your work as an artist. I would very much appreciate it if we could maybe talk on the phone or meet to discuss possibilities of your involvement - if this is something you could consider. I will be travelling to the States on December 3<sup>rd</sup> and will be in New York from the 8<sup>th</sup> through the 10<sup>th</sup>, hoping you would be available for meeting sometime on those dates. Of course you would be compensated adequately for your efforts.

It would be great if we could find a good solution for the work, as I believe it belongs in a museums collection. I apologize to have intruded, but I feel very strongly about this issue for various reasons.

Thank you very much for your attention and I am looking forward to hearing from you.

Sincerely,  
  
Michael Janssen

Michael Janssen  
Potsdamerstr. 63  
D-10785 Berlin  
Germany  
T: +49 | [redacted]  
F: +49 [redacted]