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Marc Jancou, Cady Noland, and the Case of the Authorless Artwork

by [Martha Buskirk](#) on December 9, 2013



Cady Noland, "Cowboys Milking" (1990) (via [artnet.com](#))

SOMERVILLE, Mass. — Ending not with a bang but a whimper, the last bit of legal wrangling in the case that pitted collector [Marc Jancou](#) against [Cady Noland](#) and Sotheby's was quietly settled on November 11. At issue was damage to Noland's 1990 "Cowboys Milking," made with a combination of image and text screen printed onto an inherently fragile aluminum surface. Although the condition of the work was described as good overall, damage to the corners of the once pristine surface prompted Noland to renounce authorship of the work in its entirety.



Cady Noland, “This Piece Has No Title Yet” (1989), at the Rubell Family Collection (photo by the author for Hyperallergic) (click to enlarge)

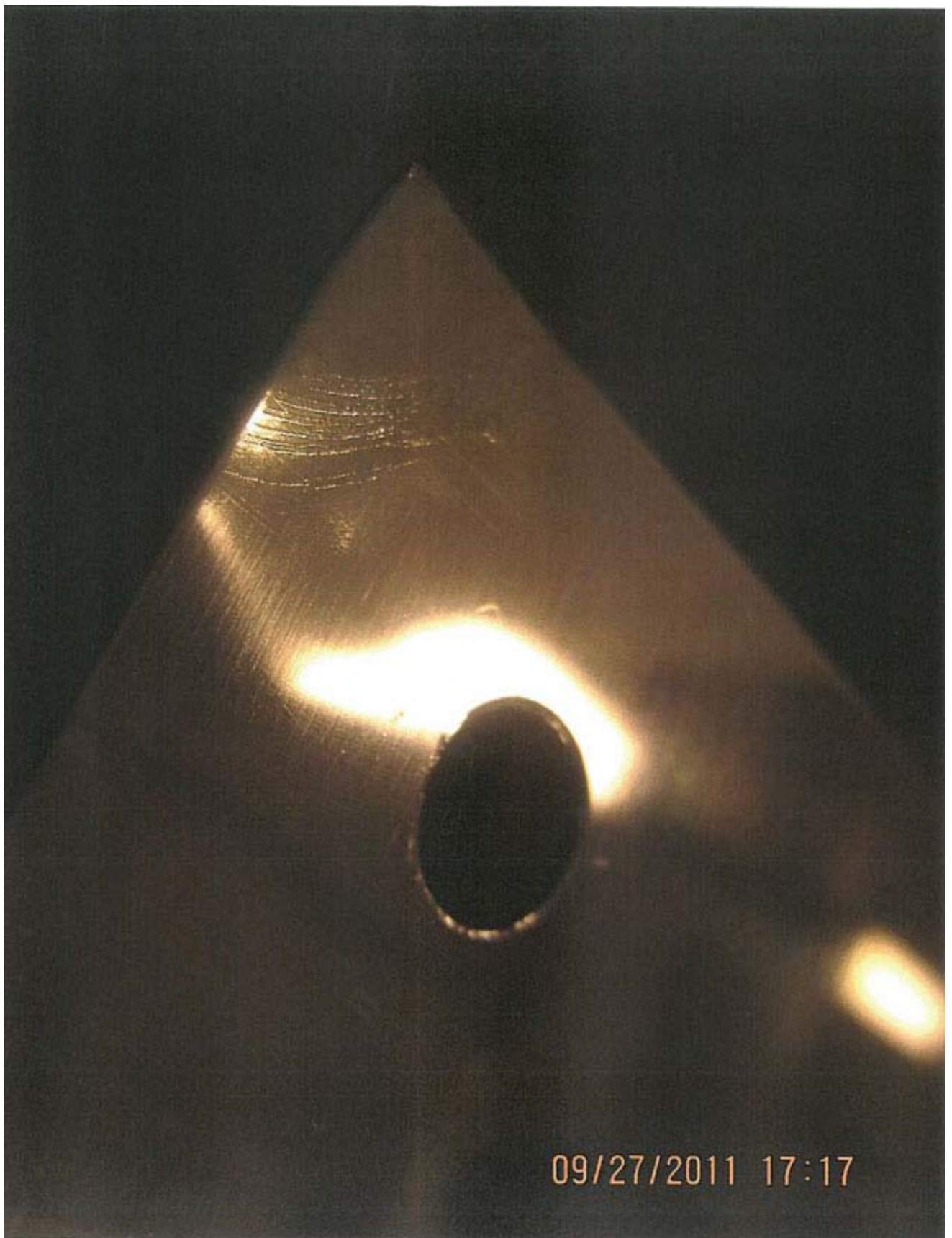
There has been a resurgence of interest in the bleak vision of American culture that Noland mounted in the 1980s and 1990s through various combinations of objects and images — despite the fact that Noland herself has largely withdrawn from the art world. Indeed, her status as a mysteriously absent presence was confirmed by a provocative 2006 exhibition at the Triple Candie gallery, [Cady Noland Approximately](#), where a group of artists assembled a version of a retrospective through unauthorized remakes of Noland’s work. And visitors to the Rubell Family Collection during last week’s Art Basel Miami Beach were reminded of the impact of her work via the reappearance of her major Budweiser installation, with its complete overload of the class- and gender-identified brew, in her 1989 “This Piece Has No Title Yet.”

Yet the court documents show that Noland hasn’t actually gone far, remaining involved in the ongoing life of work that is already out in the world. Noland’s denunciation of “Cowboys Milking” was couched in terms of VARA, the federal [Visual Artists Rights Act of 1990](#) that grants artists “moral rights” over works even after they have been sold, including the right to prevent intentional modification or destruction, and to forbid the use of their name in association with distorted or mutilated work.

Such rights are based on the premise that a work of art has cultural significance that extends beyond mere property value. But the money issue is ever-present, since Noland’s declaration abruptly propelled the object from high-value work of art to ... some sort of eternal limbo. Jancou still has the object in question (for which he paid \$106,500 in 2011), and there is nothing to prevent him from hanging it up and enjoying it in the privacy of his own home. It seems very unlikely, however, that he owns a work of art by Cady Noland that he can display or sell as such.

So what exactly happened? The catalogue for Sotheby’s November 10, 2011, afternoon sale

had already been printed, and there would have been good reasons for optimism about their \$250,000–350,000 estimate for “Cowboys Milking,” after Noland’s 1989 “Oozewald” fetched \$6.6 million in the previous evening’s sale (well above its \$2–3 million estimate, and a new record for a living female artist). But on November 7, Noland inspected all three works Sotheby’s was planning to sell, and through her lawyer she insisted that the auction house withdraw “Cowboys Milking” because its “current condition ... materially differs from that at the time of its creation,” court documents show. Sotheby’s complied, citing a provision in their consignment agreement allowing them to withdraw a work at any time if, among other things, “there is doubt as to its authenticity or attribution.”



Sotheby's photo of a corner of "Cowboys Milking," from exhibit 8 supporting Sotheby's Motion to Dismiss Plaintiff's Complaint and for Summary Judgment

Informed of Noland's objections, Jancou fired off an email to Sotheby's, protesting their proposal to withdraw the work: "this is not serious! why does an auction house ask the advise [sic] of an artist that has no gallery representation and has a biased and radical approach to the art market?" In other words, why should Noland, who has been notorious for her self-imposed exile from the art world, be able to exercise this degree of power over an object that,

until her intervention, was enmeshed in a system of exchange that seemed to point only toward higher prices? In defense of his position, Jancou forwarded Sotheby's a report prepared for him by prominent contemporary conservator [Christian Scheidemann](#), dated 6/30/2011 but not previously shared by Jancou. The conservation report described the overall condition of the work as "very good" (the part the collector chose to highlight), while also noting that all four corners were "bent and slightly deformed" and that "some deformations ... will always be noticeable."



Cady Noland, "Oozewald" (1989) (via [artnet.com](#))

Jancou's next move was a lawsuit, filed in the New York State court system on February 1, 2012 (amended April 9, 2012), against both Noland and Sotheby's, for "breach of contract and for tortious interference with contractual relations." Perhaps inspired by the "Oozewald" record, Jancou demanded \$6 million in actual damages from Sotheby's and the same plus \$20 million in punitive damages from Noland, with another \$20 million in punitive claims against Sotheby's added to the amended complaint for good measure. (In fact, one of Jancou's grievances was inconsistent treatment, since Noland was willing to work with the auction house to make a [replacement for the stand](#) that she discovered missing from "Oozewald," in contrast to her complete rejection of "Cowboys Milking.") Sotheby's and Noland each answered with motions for summary judgment dismissing Jancou's suit, as well as their own counterclaims.

Sotheby's motion was granted on November 14, 2012, dismissing Jancou's complaint — a decision that Jancou unsuccessfully appealed (with the New York State appellate division affirming the lower court ruling on June 27, 2013). On May 3, 2013, the court likewise granted Noland's motion to dismiss the claims against her (and Noland withdrew her counterclaim) — a loss Jancou's lawyer said he [also planned to appeal](#), with the goal of clarifying the scope of VARA, but which he didn't pursue further.

That left the Sotheby's counterclaim still in play, and the discovery process revealed a lot more about the work's history at Christie's — where it had already been withdrawn in April 2011 (seven months before the Sotheby's sale) because of the very same damages. In another interesting note, Jancou has actually owned the work twice, selling it at an earlier date and buying it again, five days after it was withdrawn by Christie's, from the private collector (identified in court documents as William J. Hokin) who consigned it for auction. Even though emails from Christie's indicate that they sent the work directly to Jancou after it

was withdrawn, and his own supporting exhibits showed that he was aware of the damaged corners, Jancou continued to insist that he hadn't been informed of Noland's objections (notwithstanding the fact that the one party he didn't sue was the collector who sold him the work the second time).

In her counterclaim, Noland requested "an injunction preliminarily and permanently prohibiting Jancou from using Ms. Noland's name in conjunction with marketing the Work, or from offering the Work for sale, or from selling the Work, at auction or by private sale." But that counterclaim was withdrawn, so Jancou is not expressly enjoined by a court decision. Noland's disavowal of the work still stands, however, and it is hard to believe that she wouldn't pursue a VARA claim in federal court if the object should reappear under her name (although it's also not necessarily a given that Noland would prevail in a case focused on VARA rather than contract issues, since the law provides exceptions for changes to a work that result from the passage of time or the inherent nature of materials).



Installation view, "No Longer Art" (2012) (photo by the author for Hyperallergic)

It is difficult to think of any real winners in this drawn-out process, other than the attorneys. Yet there is plenty of interest in the extensive court filings (131 documents in all, available by searching the [New York State Unified Courts System](#) as a guest, under index number 650316/2012) for anyone looking for a window into the rarified top end of the art world. Nor is "Cowboys Milking" the only work that has wound up in legal limbo. It would have been an obvious candidate for Elka Krajewska's 2012 [No Longer Art](#) exhibition, mounted under the auspices of her Salvage Art Institute, which showcased a number of art objects that had lost their official status once they were paid off as total losses by their insurance companies. There, the fact that the degree of damage to the objects on display varied from dramatic to imperceptible raised a whole host of questions about how and why their official identity had

been so completely altered even though their aesthetic power was not necessarily depleted; one might consider Noland's work in a similar light. Indeed, one could reasonably ask whether the artist's voice should automatically be privileged over others when it comes to determining the impact of an altered object.

But it would be dangerous to overlook Jancou's motivation, since this was, first and foremost, a business transaction: his resistance to Noland's assessment of the aesthetic condition of her own work was clearly motivated by the very real threat to his potential auction profits. Noland is strikingly uninterested in playing the art-world game, other than her behind-the-scenes efforts to protect the integrity of her work. Perhaps her most telling indictment of the current state of affairs, however, can be found in the fact that she has pretty much ceased communicating about her art except through her lawyers.