BLOUIN ARTINFO

Judge Rejects Art Expert's New Yorker Lawsuit

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Conde Nast — along with Gawker Media, and famed art blogger Paddy Johnson — can take a deep breath as a libel case brought by art expert Peter Paul Biro against these defendants, among others, was dismissed Thursday by a federal court in New York, which claimed that Biro failed to show that the defendants acted with actual malice. Biro, a man who is perhaps best known for having analyzed a painting bought for $5 and deeming it to be an authentic work by Jackson Pollock — made famous by the movie "Who the #S&% is Jackson Pollock?" — launched his $2-million suit two summers ago in response to an allegedly defamatory article that was published in 2010 in the New Yorker by David Grann, "The Mark of a Masterpiece: The Man Who Keeps Finding Famous Fingerprints on Uncelebrated Works of Art."

That piece, which was some 16,000 words long, raised questions about Biro's processes of authentication, which included methods such as fingerprint analysis.

In succeeding suits, Biro also named as defendants several organizations (including Louise Blouin Media, which publishes this website) and an individual (Johnson), which had published stories based on the Grann piece.

Before the court were several motions: 1) Grann and Advance Magazine Publishers (of which Conde Nast is a division) sought an order finding Biro a "public figure," 2) Grann and Advance made a motion for judgment on the pleadings, and 3) Yale University Press, Johnson, Gawker Media, and Business Insider made motions to dismiss. The court granted all of these motions.

One of the biggest issues before the court, papers indicate, was the defendants' motion to find Biro a "limited purpose public figure." Because public individuals have greater access to media and "channels of effective communication" than the average individual, they're in a better position to protect themselves from false statements. They are, consequently, held to a higher standard in court when attempting to charge others with libel, and that higher standard is "actual malice."

Biro had invited public attention by writing scholarly articles, regularly giving lectures on art authentication, and even appearing in a film. As such, he was deemed to have attempted to influence public discourse, which is one of the issues to consider when determining whether one is a public figure. He had also injected himself into the controversy surrounding the authentication of the famed $5 painting Jackson Pollock painting. It was therefore held that Biro was indeed a "limited purpose public figure."

Next, the court needed to determine whether or not the defendants had acted with “actual malice.” “Actual Malice does not simply connote ill will or spite,” judge Paul Oetken wrote on behalf of the court. “Rather it is a ‘term of art denoting deliberate or reckless falsification.’” Meaning the defendant must have had “serious doubts” as to the truth of the publication.

“Not only has Biro failed to provide factual allegations rendering it plausible that the New Yorker Defendants acted with actual malice,” wrote Justice Oetken, “but there is evidence in the record suggesting that it is implausible that they acted with the requisite intent — most notably, the Grann Article itself.” The court also noted the New Yorker’s reputation for assiduous fact-checking and that the article appeared to be “an even-handed product of an extensive degree of research.”

With regard to its act of tossing the case out in the early, pleading stage (before discovery and trial), the court noted the particular value to the early resolution. Protracted litigation, it said, might “chill the exercise of constitutionally protected freedoms.”