



Knoedler forgery cases foretell new battleground over art dealer diligence

By Sullivan & Worcester LLP
Nicholas M. O'Donnell
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For more than two years now, the collapse of the M. Knoedler & Co. Gallery in New York amidst allegations of forged paintings by well-known 20th Century artists has sent ripples in all directions: legal, art historical, legislative, and connoisseurship. Several recent developments have drawn focus to the likely litigation fallout among those affected by the scandal.

In November, 2011, the art world was shocked when M. Knoedler & Co.—an old line dealer that opened in 1846—suddenly announced its immediate, permanent closure. Only days later, litigations were initiated in New York alleging that Knoedler had sold buyers forged paintings by Jackson Pollock and Robert Motherwell, among others. Knoedler's then-director Ann Freedman was also named as a defendant, but she vehemently denied any responsibility. Then, in December, 2011, federal authorities revealed their related investigation targeting a woman named Glafira Rosales, whom the authorities alleged was responsible for supplying dealers in New York with forged paintings. According to the New York Times, that investigation had begun as long ago as 2009. Many other people were pulled in directly or indirectly with reference to the forgeries. Amidst the contemporaneous and infamous Wolfgang Beltracchi forgery ring in Germany, and litigations involving authentications by the Daedalus Foundation and the Andy Warhol Foundation, the Knoedler scandal was unfortunately timely.

Rosales was charged in May, 2013 with a number of crimes related to the forgery scandal. According to the United States Attorney's press release, "Glafira Rosales gave new meaning to the phrase 'artful dodger' by avoiding taxes on millions of dollars in income from dealing in fake artworks for fake clients." Still unknown to the public at the time was the identity of the actual alleged forger. When charged, Rosales initially declared her intention to defend herself and clear her name.

The plot thickened this summer with a tremendous scoop by the Times: on August 15, 2013 Patricia Cohen and William K. Rashbaum reported that the federal authorities believed that the forgeries, now more than sixty in number, were all the work of one man in Queens, an "unusually talented but unknown artist who was paid only a few thousand dollars apiece for his handiworks."

The other shoe finally dropped this month, when Rosales pleaded guilty to what was described as an "\$80 million art forgery scheme." In connection with the plea, the U.S. Attorney again released a statement, claiming that Rosales had made more than \$30 million in the process. Her plea was occasion for the Times and others to identify the man whom they believed was the sole painter involved. Freedman's lawyer said at the time that he had been assured that she was not going to be charged, and indeed no one in the federal government has even hinted she ever would be.

All that provides, perhaps, an end to the criminal proceedings, but the scandal has taken wing in other areas, primarily civil litigation. To date, numerous lawsuits have alleged some form of negligence; that is, buyers arguing that Knoedler (or its employees and officers) failed to vet the artwork diligently. The individuals have denied any failure in that respect. As the Rosales bid was coming to a head, Freedman herself went on the offensive, suing dealer Marco Grassi in early September for defamation. Freedman took issue with an article in New York magazine in August, in which Grassi was quoted as



saying of Ms. Freedman: “A gallery person has an absolute responsibility to do due diligence, and I don’t think she did it. The story of the paintings is so totally kooky. I mean, really. It was a great story and she just said, ‘this is great.’”

In a similar vein, New York art critic Jerry Saltz said during an interview on National Public Radio, “Look, if you are an art dealer at Knoedler, you have an ethical failure of will, intentional or sociopathically unintentional, to research those paintings before you dare try to pass them off as real, let alone start selling and profiting from them.”

These recent developments, and the ongoing civil suits, raise two key legal questions. First, are the criticisms of Knoedler and Freedman actionable as defamation? Second, and if so, what are the proper standards of diligence for a dealer? Both will cast a long shadow over public discussion and commercial practice for years.

The first question is one of basic reputational tort law. A false statement of fact that injures someone else is defamatory. Statements that injure another in her profession are defamatory per se, that is they are actionable even in the absence of proof of injury. An opinion, by contrast, is a constitutionally-protected expression. In either event, if the plaintiff is a “public figure,” then the Supreme Court has held that he or she must prove that the defendant had actual malice, that is, a subjective intent, to injure the plaintiff.

Not surprisingly, what is fact and what is opinion is often the turning point of defamation litigation. In a pair of decisions in another recent litigation (about a New Yorker profile), the U.S. District Court for the Southern District of New York addressed the differences at length. At least at the threshold stage, Grassi’s statements seem more like statements of fact (and therefore actionable if untrue) than opinion; that is, assumed as true, a jury could infer that he is claiming that Freedman failed to do certain things, and even that she said or thought certain things. Saltz’s comments, by contrast, sound more opinionated than accusatory.

If a court agrees, that only means that the defamation claims survive dismissal. The question then will be what actually happened, and what was reasonable and prudent under the circumstances. The answer to that latter question will be closely watched as these cases unfold. And a pending defamation case always raises questions about the effect it will have on people’s willingness to express themselves. It’s unlikely any one case will resolve those questions.