



AiA Art News-service



WYWH: Knoedler Trial Uncut (Week 1)

After the “public closing” (words used by Melissa De Medeiros, a former Knoedler employee in her testimony on January 27) of the venerable Knoedler Gallery (the “Gallery”) in November 2011, rumors spread that the Gallery was implicated in selling forgeries of the top Abstract Expressionist masters – Mark Rothko (1903-1970), Jackson Pollock (1912-1956), Richard Diebenkorn (1922-1993), Clyfford Still (1904-1980), Willem de Kooning (1904-1997) and other important post-War American artists.

As the tale of how the Gallery accepted on consignment and purchased some of the fake artworks, signed and dated as if they were created in the late 1940s – late 1950s unfurled close to a dozen lawsuits alleging fraud and other causes of action were brought against the Gallery, its penultimate director and its owners. The art market and professionals in related fields prepared to witness a public trial and a look into the Knoedler dealings with its clients, advisors and colleagues. In 2012, the [Getty Research Institute](#), which collects for preservation and study archives of art dealers and galleries, among other materials, acquired a pre-1971 portion of the Knoedler archive. The rest of the documents were retained by the parent company. The magical cut off date has nothing to do with the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Apparently, it was selected due to the fact that it was in 1971 that the Gallery, in existence for

more than 100 years, was acquired by the legendary entrepreneur Armand Hammer (his grandson was the owner of the gallery in 2011).

By the end of 2015, less than a handful of the claims and complaints brought against Knoedler et al. were settled for undisclosed sums of money and under confidential terms. However, two cases *De Sole v. Knoedler Gallery* and *Howard v. Freedman, et al.*, were scheduled for trial in January 2016. The latter case, involving a fake Willem de Kooning, was filed by collector John Howard in 2012 and settled on December 2, 2015.

On January 25, 2015, the trial in the case brought by Dominico and Eleanor De Sole began. The spectators following the De Sole trial as it has proceeded during the first week could witness first hand the jury selection process (which took about 5 hours), the heavy volumes of exhibits and testimonies prepared for both sides, the fake Rothko that seduced the De Soles in 2004, the demeanor of hostile and friendly witnesses, including the aforementioned Ms. De Medeiros, Dr. Thaw, Dana Cramer and Jim Kelly, Judge Gardephe's style in instructing the jury, the legal teams and the mannerisms of the parties in the courtroom: Mr. and Mrs. De Sole (as the plaintiffs) and Ann Freedman (as the only defendant in attendance).

Summary of the Facts: The De Soles purchased a work attributed to Mark Rothko from Knoedler in 2004. It was their second Rothko acquisition, but their first Rothko painting on canvas, the other work in their collection was a Rothko on paper. During a visit to the Knoedler gallery, when the De Soles wished to see works by Shawn Scully, they were shown a different work attributed to Rothko which was presented by Knoedler through its employees as a recently rediscovered masterwork. While the De Soles initially only planned on spending one million dollars they ended up purchasing the alleged Rothko for a "discounted price" of \$8.4 million. The De Soles ultimately purchased the work for \$8.4 million with the assistance of their art advisors and another dealer James Kelly (who testified in the case on January 28).

Soon after the work was purchased, it was exhibited in Switzerland, and later shipped to the De Soles home in Hilton Head, South Carolina where it hung for seven years until 2011. Knoedler and Kelly both supplied the De Soles with a letter indicating that the work was authentic. As Kelly later explained in testimony, he was not in the habit of checking the provenance of the works sold by reputable dealers. Instead, his role in advising De Sole's on the Knoedler purchase was to establish the fair market value of the piece.

In 2008, the De Soles asked Knoedler to provide an updated appraisal for the work, which the Gallery promptly did. In 2009, Knoedler notified all of its clients, including the De Soles that Ann Freedman resigned and a new director was appointed to head the Gallery. In 2011, Mrs. De Sole learned of another collector's concerns regarding a Pollock purchased from Knoedler by a hedge fund manager Pierre Lagrange. Lagrange's lawsuit was settled on October 4, 2012. Within the statutory period of two (2) years after discovery of fraud, the De Soles brought their case. Among the allegations, the De Soles accused defendants of fraud, fraudulent concealment, wire

and mail fraud, racketeering, aiding and abetting fraud, conspiracy to commit fraud, breach of warranty, and unilateral and mutual mistake. In their complaint, the De Soles sought a judgment of \$25 million dollars which includes treble damages under the Racketeering Influenced and Corrupt Organizations Act (“RICO”).

The De Soles alleged each instance of fraud between 1994 through October of 2009 was not an isolated event but rather an interconnected scheme because there was a common goal, similar methods used, similar participants and similar victims. By doing so, the De Soles availed themselves of RICO causes of action and the statutory benefits that are associated with RICO such as treble damages and attorney’s fees. Specifically the De Soles alleged in their complaint that Knoedler was involved in a scheme to use its “name reputation, and access to collectors to sell forged works into the marketplace.” The complaint goes on to note that the works were being purchased for “suspiciously low” prices.

On January 23, a Friday afternoon before the trial was scheduled to begin, Judge Gardephe conducted a hearing *in limine* to review and rule on the admissibility of certain witnesses and types of evidence as potentially unduly prejudicial to the parties. Court’s rulings included.

Attorneys representing the Plaintiffs are partners with Clarick Gueron Reisbaum LLP.

Knoedler’s legal team comes from Fulbright & Jaworski L.L.P. Ann Freedman’s council is with Boies, Schiller & Flexner, LLP.

Select highlights from Week 1 of the *De Sole v. Knoedler, et al.*

Day 1 — Jury selection and opening statement for the De Soles. The voir dire was an example of human spectacle where people from disparate walks of life were all gathered in the same place at random to perform their civic duty. They included parents with holiday reservations, medical employees, blue collar workers, high school teachers and college professors, students and retirees, people of different faiths and ranging interest in the matter at hand — rich people fighting over money and discussing abstract expressionism. Desire of those to get out of the jury duty would later be experienced by those with the transparent desire to be absolved of responsibility as demonstrated by some expert witnesses and parties to the case.

Day 2 — Opening Statements for Ann Freedman and Knoedler Gallery/8-31 Holdings. Both defendants’ opening statements emphasized the idea that the entire art world was tricked. Freedman’s opening painted abstract expressionists as disorganized heavy drinkers, who were “messy, unpredictable,” and dysfunctional. The idea that Pollock traded some of his works for groceries was repeated on a number of occasions. Attorneys also emphasized the difficult burden for Plaintiffs to prove fraud, analogized to mountaineering. Knoedler’s attorney addressed the jury in a way that suggested that the trial was frivolous and that he would not waste the jury’s time any more than he had to.

Attorney for Freedman suggested that Knoedler and Freedman were victims of Glafira Rosales, just as much as the collectors who bought the forgeries and suggested that Rosales should be among the defendants in the case, and Freedman should not be held liable for Rosales's crime.

Duped Art Collector Testifies in Knoedler Forgery Trial

Domenico De Sole says he trusted that \$8.3 million painting he bought was a genuine Rothko



Domenico De Sole, on the witness stand Wednesday, pointed to the fake Rothko painting he purchased from Knoedler & Co. gallery. PHOTO: ELIZABETH WILLIAMS

By **THOMAS MACMILLAN**
Jan. 27, 2016 8:49 p.m. ET

WSJ journal coverage by Thomas MacMillan and Elizabeth Williams. [WSJ.com](http://www.wsj.com)

Day 3 — Witness testimonies from Jaime Andrade, Melissa De Medeiros, and Dominico De Sole. Much coverage in the news already characterized the at times entertaining and at times frustrated testimony and the cross examination of Mr. De Sole. See for example: [The Art Newspaper](#) coverage in Laura Gilbert's "Top US collector takes the stand in Knoedler trial" (Jan. 28, 2016) and [Artnet news](#) coverage in Eileen Kinsella's "Sparks Fly at Knoedler Trial as Defrauded Buyer of Fake Rothko Painting Takes Stand" (Jan. 27, 2016).

The testimonies given by Mr. Andrade and Ms. De Medeiros have received less attention so far. Unlike Mr. Andrade, a non-native English speaker who introduced Rosales to Freedman, Ms. De Medeiros spent a considerable time on the stand, carefully and almost begrudgingly responding to the questions posed by the Plaintiff's attorney. The reticence was understandable, in light of the fact that Ms. De Medeiros has a long history working for the Gallery, where she held different research and exhibition positions between 1984 and 2014.

Day 4 — Witness testimonies from Eugene Victor Thaw, James Kelly, Sharon Flescher. Parade of witnesses for Plaintiffs continued with the testimony from Eugene Victor Thaw, author of the catalogue raisonné of Jackson Pollock; James Kelly, art dealer and advisor to the De Soles; and Dr. Sharon Flescher, the executive director and Editor in Chief at the International Foundation for Art Research (IFAR).

Among other questions posed, witness were asked to explain art history and art market terms such as “catalogue raisonné”, ‘provenance,’ ‘connoisseurship,” “warranty of authenticity”, “secondary market,” as well as comment on the Knoedler’s reputation before the Rosales scandal. Most art historians and critics who took the stand emphatically and categorically indicated that they did not give opinions about authenticity because “it was not their job.” Even those who have spent much time reviewing body of works by Pollock and Rothko indicated that it was not their position to give opinions on authenticity

Some of the entertaining and memorable Q/A included:

Q: “You wrote this document?” A: “I typed it.”

Q: “You now understand this painting is a fake?: A: “No, I do not.”

Q: “You are a lawyer?” A. “No. I sell handbags for the last 25 years. Successfully I might add and [they are] real.”

A: “He knew he was wrong from my letter. [it was] implicit. I was not willing to publish it myself. ... If you want my *true testimony*, by not publishing I gave a negative opinion.”

A: “CB ... who “blessed it” !!!! (as if)...[JC] apparently saw it “Inspected it” and gave his ok (as if he would do so).

Q: “Do you typically describe 2 paintings as a ‘collection’?: A: *I would not...*”

A: [Having listened to a deposition being read to refresh recollection one witnesses stated that it “Sounds alright ... does not say anything”. [Followed by laughter in the courtroom]

Day 5 — Witness testimonies from Earl A. Powell, Bonnie Clearwater, Irving Sandler, Dana Cramer and Eleanor De Sole. Two of these witnesses, Earl A. Powell, director of the National Gallery, and Bonnie Clearwater, former head of the Mark Rothko Foundation, were not present and their pre-trial depositions were read into the court record. Witnesses who did take the stand on the last day of the first week included Professor Irving Sandler, one of the foremost authorities on abstract expressionism; Dana Cranmer, a conservator and Mrs. De Sole. Professor Sandler, an art historian and formerly a member of the Rothko Foundation Board who indicated that he was not “one of the foremost” but “THE foremost authority on Abstract Expressionism would frequent galleries for a number of reasons including gossip. He mentioned that at one point Knoedler was on his gallery track because it was one of the most important galleries in New York, for two reasons: 1. its history and 2. the caliber of art it sold. When at Knoedler, Prof. Sandler testified that he had no reasons to doubt authenticity of art shown because of the Gallery and Ann Freedman context.

Looking forward: As the second week is already on its way, how important is this Knoedler trial? Only the time will tell but the case has attracted a considerable amount of attention in the news and lively attendance in the courtroom. Those observing the first week, not including the

jury members, were art dealers, court illustrators, journalists (many journalists), art attorneys, including some working on other Knoedler cases, law students and friends of the parties to the case. Given that this Knoedler trial may become the playbook for other pending Knoedler cases as well as a seminal case for art and wire fraud precedent the upcoming week promises to be just as entertaining.

Select Sources:

- Grace Glueck, “Selling the First Nuggets Of a Nation’s Collection,” NYT (Dec. 13, 1996), available at <http://www.nytimes.com/1996/12/13/arts/selling-the-first-nuggets-of-a-nation-s-collection.html>
- Henri Neuendorf, “Knoedler Gallery Reaches Out-Of-Court Settlement Over \$4 Million Fake de Kooning,” Artnet News (Dec. 4, 2015), available at <https://news.artnet.com/art-world/knoedler-gallery-settlement-385256>
- Lagrange v. Knoedler, 11-8757, (U.S. District Court, S.D.N.Y Manhattan) (Oct. 2012).

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