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New Lawsuit Over Norman Rockwell Authenticity Spotlights Timely Issues

By Nicholas O'Donnell on January 7th, 2015 Posted
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A lawsuit has been filed in New Jersey about the authenticity of a painting sold more than 20 years ago that the gallery allegedly represented was a Norman Rockwell (himself a client of my firm long before my time), but which the plaintiff now alleges was not by the American legend. The case underscores the precarious position of authenticators, and the upside of the bill that has been pending in New York for almost a year now.

According to the lawsuit, Barry and Isabel Knispel are art collectors and residents of New Jersey. They allege that Gallery 63 Antiques in New York “offered to sell” to them one or more works of art in 1994. On October 8, 1994, the Knispels say that they entered into an agreement to buy an original Norman Rockwell Painting, “Mending his Ways,” for \$347,437.

In connection with the sale, the Knispels allege that Laurence Casper (since deceased, but his firm is also a defendant) issued a written appraisal, that stated “In my opinion, [the Painting] is an original by Norman Rockwell with all the humor and artistic quality that Rockwell created in all his works.”

As part of an insurance valuation, the lawsuit alleges that the Knispels had the painting appraised again in early 2013, but the newer appraisal determined that the

work was not by Rockwell, but a Mobil Oil advertisement by Harold Anderson, entitled "Patching Pants." As a result, allege the Knispels, the painting that they had been insuring for an expected value of \$1,750,000 is worth approximately only \$20,000.

The most obvious challenge to this case is the passage of time. Whether under the U.C.C. or the bill of sale itself, covenants of authenticity are not forward-looking. If the painting is not a Rockwell, then a threshold question will be *when* the plaintiffs could have determined that, and whether it was within the statute of limitations. The 2013 appraisal quoted by the Complaint could cut both ways; if the Rockwell signature was as obviously a forgery as that appraisal believes, then the question will be why the plaintiff did not discover it sooner. The other issue this lawsuit reiterates is the position of authenticators. Casper clearly gave an opinion about the work, and short of fraud, the plaintiffs will have to prove that Casper has some duty to the buyers that he breached (since he was not a party to the contract).

This case is precisely the sort that the pending bill in New York was intended to address. Although the lawsuit was filed in New Jersey and seeks the protection of the New Jersey consumer protection act, I think it more likely that New York law will ultimately apply to a transaction that was consummated in Manhattan. It raises the question of when, if ever, there will be movement on the bill.