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The Knoedler Gallery Litigation – Can Art Buyers Rely on Dealer Representations?

BY [MARIE C. DOOLEY](#) ON FEBRUARY 10, 2016 POSTED IN [ART AUTHENTICATION](#), [LITIGATION ISSUES](#)

The once renowned art gallery – [the Knoedler Gallery](#) – is embroiled in lengthy [litigation](#) out of the district court for the Southern District of New York involving an alleged forgery conspiracy. The Knoedler litigation places a spot light on the issue of caveat emptor/buyer beware and when there can be reasonable reliance on a dealer's purported expertise and their representations regarding the authentication of a work.

In a recent twist, [Ann Freedman](#), the gallery's former director/president and defendant in the actions, has reached a [settlement](#) agreement with two of the plaintiffs, [Domenico De Sole \(the Chairman of Sotheby's\)](#) and his wife, [Eleanore](#), who purchased a fake Mark Rothko painting from Knoedler for \$8.3 million in 2004. The De Sole action centers on, among other things, to what extent Freedman and others at Knoedler were aware of the suspicious provenance of the work. As a result of the undisclosed settlement agreement, it is expected that the De Sole action against Freedman will be dismissed. It has been reported that Freedman continues to maintain that she was fooled by the forged paintings.

The Knoedler Gallery (formerly known as Knoedler & Company), which operated in Manhattan from 1846 until its closure in 2011, was one of New York City's most venerable and respected art galleries. A family business, the gallery was purchased by Armand Hammer, the grandfather of Michael Hammer (a defendant noted below) in 1971, and was operated by the Hammer family until it closed. Although a New York institution, Knoedler Gallery LLC, the gallery's current legal entity, was formed in 2001 as a Delaware limited liability company.

Dating back to multiple complaints filed in 2012, the various actions involve a number of defendants associated with Knoedler, including:

1. Knoedler Gallery, LLC (“Knoedler”);
2. 8-31 Holdings, Inc., Knoedler’s sole member;
3. [Michael Hammer](#), Knoedler’s managing member and sole owner of 8-31 Holdings, Inc.;
4. [Ann Freedman](#), Knoedler’s former president (and director of gallery’s predecessor prior to 1994);
5. Jaime Andrade, a former Knoedler employee who introduced Rosales to Knoedler;
6. [Glafira Rosales](#), art dealer and alleged supplier of forged art (default judgment has been entered in civil action)(Rosales was charged with conspiracy to commit wire fraud, wire fraud, conspiracy to commit money laundering, money laundering, subscribing to false tax returns, and failing to file reports of foreign bank and financial accounts. United States v. Rosales, 13 Cr. 518 (KPF) (S.D.N.Y.); and
7. Jose Carlos Bergantinos Diaz, supplier of forged art (default judgment has been entered in civil action).

The various actions assert a variety of claims including, *inter alia*:

1. Racketeer Influenced and Corrupt Organizations Act (“RICO”);
2. fraud;
3. fraudulent concealment;
4. aiding and abetting fraud;
5. conspiracy to commit fraud;
6. breach of warranty;
7. unilateral and mutual mistake; and
8. alter ego.

By way of background, Knoedler acquired paintings from [Glafira Rosales](#), a Long Island art dealer who allegedly had a reputation for selling Abstract Expressionist artists including [Mark Rothko](#), [Willem de Kooning](#), and [Jackson Pollock](#). Over a fifteen year relationship, Rosales provided Knoedler with forged art under the guise that the works were previously “unknown” works by famous artists. However, the art was actually forgeries made in Queens, New York, by [Pei-Shen Qian](#), who has fled to China amidst charges of conspiracy, fraud and making false statements. Based on misstatements from Rosales, Knoedler allegedly fabricated misleading provenance information on invoices. For example it has been reported that one invoice stated as follows:

Provenance & Exhibition History

Acquired directly from the Artist in the early 1960’s.
Private Collection, Mexico and Switzerland.

Further, in court pleadings it has been noted that one of the invoices even stated that the Rothko is “[t]o be included in the forthcoming catalogue *raisonne*: Mark Rothko: Works on Paper, by David Anfam, (London: Yale University Press).” However, as it has now been revealed, none of this information was accurate.

In a 2015 memorandum opinion and order [S.D.N.Y. Case No. 1:12-cv-02313-PGG, Docket No. 262; filed 10/09/15], the district court noted that it was an undisputed fact that all of the paintings Rosales brought to Knoedler were forgeries. Specifically, in a footnote the district court noted that the undisputed facts were derived in part from the parties’ Local Rule 56.1 statements because the opposing party had either not disputed those facts or had not done so with citations

to admissible evidence. *See Giannullo v. City of New York*, 322 F.3d 139, 140 (2d Cir. 2003) (“If the opposing party . . . fails to controvert a fact so set forth in the moving party’s Rule 56.1 statement, that fact will be deemed admitted.”) (citations omitted). The court further noted that where the plaintiffs disagree with defendants’ characterizations of the cited evidence, and have presented an evidentiary basis for doing so, the court relied on the plaintiffs’ characterization of the evidence. *See Cifra v. Gen. Elec. Co.*, 252 F.3d 205, 216 (2d Cir. 2001) (court must draw all rational factual inferences in non-movant’s favor in deciding summary judgment motion). The plaintiffs maintain that the Knoedler defendants had reason to doubt the authenticity of the Rosales Paintings. Further, the plaintiffs allege that despite knowledge of the fraud, the Knoedler defendants continued to sell the Rosales Paintings to unsuspecting clients until 2008. Each defendant’s state of mind, knowledge, and intent are questions to be determined by a jury. However, after lengthy testimony on Tuesday regarding the lavish spending of Knoedler owner, Michael Hammer, the trial was paused amid speculation that a potential global settlement may have been reached. The trial has included testimony of a number of renowned art experts and has demonstrated the importance of expert witnesses in art litigation. It will be interesting to see whether the jury will make its determination or if settlement discussions will halt this process