

AUTHENTICATION IN ART

AiA Art News-service

THE NATIONAL LAW REVIEW

Part II: Object Lessons: De Sole v. Knoedler & Company

Monday, March 7, 2016

The Forger's Art

In a case involving the sale of a fake or forged work of art, typically the first order of business is for the plaintiff to establish that the work is, in fact, not authentic, with each side marshaling its experts. In the case of the De Sole Rothko, this step was unnecessary. Before the trial commenced, Rosales entered a plea, admitting guilt, in a criminal action brought by the U.S. government. In a statement read into the record at the time of her plea, Rosales admitted that “I agreed with others to sell works of art claimed to be created by various expressionist artists, including Mark Rothko, Jackson Pollock, and Robert Motherwell, and to make false representations as to the authenticity and provenance of those works...All of the works I sold to [Knoedler Gallery] ...were, in fact, fakes.”^[1] Rosales’s accomplices – her boyfriend, art dealer Jose Carlos Bergantiños Diaz, his brother, Jesus Angel Bergantiños Diaz, and the actual forger, Pei Shen Qian^[2] – were also indicted.^[3] All three men fled the United States – the Diaz brothers to Spain and Qian to China.^[4]

There are two distinct roles in every forgery scheme – the artist and the con man. Some forgers, like Han Van Meegeren,^[5] Elmyr de Hory,^[6] Eric Hebborn,^[7] Ken Perenyi,^[8] and Wolfgang Beltracchi,^[9] combine both in a single person. They are impresarios of fraud. But this is not always the case. John Myatt was a successful forger, but his role in the scheme was chiefly artistic. It was his accomplice, John Drewe, who conceived the con and was its principal author.^[10] Drewe commissioned paintings from Myatt, but it was Drewe who forged the elaborate provenance documents for the works and orchestrated their sales. Similarly, Ely Sakhai, a New York dealer, orchestrated the scam. He purchased original (albeit second-tier) works that had genuine certificates of authenticity. Sakhai then hired artists to copy them in a workshop above his gallery. Like Drewe, Sakhai handled the provenance (switching the genuine certificates of authenticity to the forgeries) and made the sales.^[11] Drewe and Myatt’s scheme collapsed when Drewe’s

estranged girlfriend turned him in. Sakhai, on the other hand, was caught when both Christie's and Sotheby's happened to offer exactly the same Gauguin still life for sale (one the original, the other a Sakhai forgery).

Money is usually a compelling motive for forgers. An outlier in this was Mark Landis,^[12] who instead donated his fakes to museums and universities across the country. But an important motivation for most forgers is also the dual satisfaction of (1) seeing their work acknowledged as equal to that of renowned artists and (2) revealing art world experts as dupes and frauds. Many forgers begin as technically accomplished artists who, like many artists, find success elusive. They wish to prove themselves superior to the experts.

The artist who actually produced the Knoedler/Rosales fakes is Pei Shen Qian, who made a name for himself as an abstract artist in China but then struggled for any recognition after he immigrated to New York. Jose Carlos Bergantiños Diaz, no stranger to fraudulent art dealing, discovered Qian selling his paintings on the street, and commissioned him to produce paintings in the style of other artists.^[13] Although in interviews Qian has claimed that he did not know his paintings were being represented as originals, the facts laid out in the indictment suggest otherwise. Qian was initially paid a few hundred dollars per painting, but after he spotted one of his paintings offered at an art show for a substantially higher price, he demanded more money, and Bergantiños Diaz and Rosales thereafter paid Qian several thousand dollars per painting. Bergantiños Diaz, like Drewe and Sakhai, conceived and organized the scheme. Qian used materials that were meant to give his paintings the appearance of age, employing old canvases, old paint, and Masonite panels taken from antique furniture that Bergantiños Diaz provided to him. In Qian's studio, the FBI discovered books on Abstract Expressionist artists and their techniques, auction catalogues, art materials, and even "an envelope of old nails marked 'Mark Rothko.'"^[14]

Object Lessons

There are many victims in the fall of Knoedler & Company, and many victimizers. Yet reading through the voluminous testimony the De Sole case produced with the clarity that only hindsight can provide, some lessons can be taken. The lessons are not new, but it is helpful to be reminded of them.

- Although some forgers replicate existing works, the more common practice is to create new works in the style of an artist and to present it as a new discovery. Previously unknown works by marketable artists are the forger's stock in trade.
- Provenance matters. Provenance can be faked, it can be misrepresented and over-represented, but a lack of provenance documented from multiple sources is the reddest of red flags. Provisional research or unverified provenance claims should be presented with qualifiers, not as established facts.
- The authentication of a work by style or manner alone is vulnerable to error.
- Experts frequently disagree. This is because determining the authenticity of any object is a highly contextual, highly contingent process, drawing on a broad host of facts and educated guesses.
- While scientific analysis of the materials and techniques of an object must be interpreted like other forms of expert opinion, the presence of materials or techniques that would not have been available or employed by the artist or at a particular period is compelling evidence that must be considered and evaluated.
- The *catalogue raisonné* of an artist's work is an important tool. However, while the *catalogue raisonné* is being researched and written, its findings are provisional. A statement that a work is being considered for inclusion in a *catalogue raisonné* (or a supplement) should not be understood to be a statement concerning that work's authenticity.

Even after a *catalogue raisonné*'s publication, if information emerges calling a work into question, the work may be designated as problematic.^[15]

- While personal relationships and reputations are paramount in the art world, reliance on reputation alone is never wise. A healthy self-protective skepticism is no less necessary in art transactions than in any other type of business transaction.

[1] Plea, Sept. 16, 2013, *U.S. v. Rosales*, 13-CR-518(KPF).

[2] "Accused Master Forger Tracked Down in Shanghai," *ABC News Nightline*, July 15, 2014, available [here](#)

[3] *U.S. v. Jose Carlos Bergantinos Diaz, Jesus Angel Bergantinos Diaz, and Pei Shen Qian*, Sealed Indictment, 14 Crim 217, Mar. 31, 2014, available [here](#)

[4] Javier Pes, "Brother of Spanish Dealer in Alleged Forgery Ring Could Be Extradicted to US," *The Art Newspaper*, Feb. 16, 2016, available [here](#)

[5] Van Meegeren was a Dutch forger of the works of Johannes Vermeer, who gained notoriety in the aftermath of WWII when he was accused of selling national patrimony (a painting by Vermeer) to Nazi official Hermann Goring. Van Meegeren's defense was that the painting was a forgery that he had himself produced, and that Goring had been duped. To prove his claim, officials required Van Meegeren to paint a Vermeer on the spot, which he did. Ironically, the forger was acclaimed a national hero in the press. For more information, see Peter Schjeldahl, "Dutch Master," *The New Yorker*, Oct. 27, 2008, available at <http://www.newyorker.com/magazine/2008/10/27/dutch-master>; Jonathan Lopez, *The Man Who Made Vermeers: Unvarnishing the Legend of Master Forger Han Van Meegeren* (2009); and Edward Dolnick, *The Forger's Spell: A True Story of Vermeer, Nazis, and the Greatest Art Hoax of the Twentieth Century* (2009).

[6] De Hory was an extravagant personality best known for his forgeries of Picasso and Matisse. He was the subject of a biography *Fake! The Story of Elmyr de Hory, The Greatest Art Forger of Our Time* (1969) by Clifford Irving (who was himself later revealed as a literary forger for producing a fraudulent Howard Hughes biography) and of the Orson Welles documentary "F for Fake" (1973)(see Roger Ebert review of the film, Oct. 13, 1977, available at <http://www.rogerebert.com/reviews/f-for-fake>). See also Mark Forgy, *The Forger's Apprentice: Life with the World's Most Notorious Artist* (2012).

[7] Hebborn was an accomplished artist and graduate of the Royal Academy. His specialization was producing works in the style of Old Masters. He produced several best-selling memoirs, including *Drawn to Trouble: Confessions of a Master Forger* (1993) and *The Art Forger's Handbook* (1996). See also the documentary: "Eric Hebborn: Portrait of a Master Forger," available at <https://www.youtube.com/watch?v=8jKbbajb5pE>.

[8] Perenyi produced numerous forgeries in the style of 19th century American painters Martin Jonson Heade, J.E. Buttersworth, and Charles Bird King. He produced a memoir, *Caveat Emptor: The Secret Life of an American Art Forger* (2013).

- See more at: <http://www.natlawreview.com/article/part-ii-object-lessons-de-sole-v-knoedler-company#sthash.RxvRCOLm.dpuf>

