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New Authentication Lawsuit Filed Against Agnes Martin Catalogue Raisonné

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For several years the topic of [litigation against appraisers and authenticators](#) has been a controversial issue, causing a number of artists' foundations and independent professionals to refrain from giving opinions for fear of litigation, even in which they eventually prevail. A new lawsuit against the Agnes Martin Authentication Committee underscores the importance of a pending bill in New York to shield such authenticators from liability, and the problems inherent in the status quo. This lawsuit appears likely headed for failure just like every other similar authentication lawsuit, but that will come as cold comfort to the defendants years hence.

[The new lawsuit](#) is brought by the Mayor Gallery Ltd in the United Kingdom. According to the Complaint, the Mayor Gallery sold certain paintings to individual collectors in the belief (and representing) that the works were by Agnes Martin. The prices for the works ranged from \$2.9 million for *Day & Night* in 2010, to \$240,000 for an *Untitled* work in 2009, to \$180,000 for *The Invisible* in 2012, among many others. These works were all at some point, according to the Complaint, submitted to the Agnes Martin Catalogue Raisonné and its Authentication Committee. A catalogue raisonné is a book intended to be the definitive word on all the works created by a particular artist. After an artist's death, foundations are often created to oversee that work and be the arbiter of what the artist did, and did not, create. As noted above, authentication lawsuits have driven the Andy Warhol Foundation, the Keith Haring Foundation, and the Calder Foundation to abandon the practice entirely. These foundations all prevailed in lawsuits, but famously at great cost that drove them to decide it was not worth the trouble. Such authentication decisions are often subjective; sometimes works can be proven inauthentic by forensic testing (as was the case in the Knoedler disputes), but as often as not it is a question of connoisseurship and scholarship, not science. People can, and do, disagree.

Here, the Complaint alleges that the various Agnes Martin works were submitted for authentication pursuant to [the Authentication Committee's Examination Agreement](#). In each work at issue, the Committee apparently rejected the idea that the works were authentic. The plaintiff argues that such

rejection was reached with an inadequate level of interest or responsiveness to the owners' inquiries. As a result of the rejections, the plaintiff gallery rescinded its sales to the individual owners and repaid the purchase price. The Complaint takes issue with the Defendants' supposed refusal to follow up and explain their conclusions.

The lawsuit seeks to blame the defendants for that financial loss under several theories, ranging from tortious interference to disparagement. The challenge there is that those claims are what are called intentional torts. They require proof that the defendants did something in an intentional state of mind, to misstate facts or for the purpose of harming the defendant. As with the unsuccessful lawsuits before, this is a tall order. First and foremost, the argument simply begs the question of why a foundation charged with an artist's legacy would care one way or another about the defendant, as opposed to reaching an inherently subjective opinion. The Andy Warhol Foundation case had tried to argue that there was some nefarious desire to limit the number of authenticated Warhol works to inflate the market value of existing works, but that did not carry the day. The Agnes Martin Complaint also includes one negligence-based theory too.

One certainly expects the outcome to be similar here. Yet it may not come for some time. [The recent Peter Doig trial](#) (which was against the artist, not an independent professional) got past summary judgment on a theory that the artist intentionally harmed the owner of the inauthentic work, which was surprising to many observers ([here included](#)).

As we have written previously, [a bill sponsored by the Art Law Committee](#) of the New York City Bar Association (of which I am a member) would address this quandary at least in part, requiring greater particularity in the pleadings and an award of attorneys' fees under certain circumstances. This lawsuit certainly drives the point that the bill's passage is sorely needed.