

Knoedler Obituary (1857 – 2011): Select Legal History of the Oldest American Art Gallery

By Irina Tarsis, Center for Art Law (2014)¹

What we call the beginning is often the end. And to make an end is to make a beginning. The end is where we start from. ~ T. S. Eliot

Every important art museum and private collection in the United States likely owns works of art that at one point or another, or more than once, sold through one of the oldest and finest American art galleries, Knoedler & Co (the Gallery). A tour through the annals of case law also uncovers many a Knoedler references, from matters under review by the United States Tax Court to illegal wire-tapping hearings, from the United States Customs Court citations to nineteenth century unfair competition conflicts, from World War II looted art to Soviet nationalization title disputes, from warranty breaches to racketeering, and fraud.

The rise and demise of the Gallery span three centuries. It was established by Michael Knoedler and members of a French firm Goupil, Vibert & Cie (later Boussod, Valadon & Cie) in 1848, well before the founding of the major museums in the United States. In 1857, Michael Knoedler bought out the Gallery from his French partners and shifted from selling French Salon paintings to providing old master paintings to the American art market. In 1971, the Gallery was acquired by Armand Hammer, a clever businessman and the founder of The Armand Hammer Museum of Art and Culture Center in California, who decades earlier brought valuables nationalized by the Soviets into the United States and sold books, paintings, jewels and much more in American department stores as well as antique shops.

On November 11, 2011, the Gallery suddenly announced that it was shutting down and going out of business. The apparent reason for closing this venerable institution was the sale of dozens of works falsely attributed to the high-ticket twentieth century artists such as Jackson Pollock, Mark Rothko, and Robert Motherwell. The Gallery and its principles and agents were subsequently sued for fraud, racketeering, breach of contract, breach of the covenant of good faith and fair dealing, unjust enrichment and more.

Recognized for its significance in the field, parts of the Gallery's archives were purchased by the Getty Institute in 2012. The archive contained letters written by the preeminent nineteenth and twentieth century collectors and artists, including Léon Bakst, Alexander Calder, Edgar Degas, Greta Garbo, Paul Gauguin, Sarah Bernhardt, Childe Hassam, Winslow Homer, Rockwell Kent, Henri Matisse, Irving Penn, Mark Rothko, John Singer Sargent, and Edward Steichen.

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The Gallery had been in existence for more than 160 years and its demise was a sad chapter in the American art and business history. This article will explore select cases that map a footprint the Gallery left on the American legal history.

Intervivos

The first legal action on record involving the Gallery, in a role of a plaintiff, dates back to 1891. Michael Knoedler tried to stop successor in interest to the French gallery from operating under the name he was using for his business. In 1887, three decades after he bought out the the New York concern, new owners of the French gallery owners opened another storefront in New York City, operating under the name of “Goupil & Co., of Paris; Boussod, Valadon & Co., successors.” The name was confusingly similar to that used by Knoedler, who has been doing business under the name of “Goupil & Co., M. Knoedler & Co., successors” since the 1850s. Nevertheless, the court held that the acts of the defendants did not “depreciate the value of the good-will of the concern bought by M. Knoedler in 1857,” and that Knoedler did not acquire “the exclusive right to use the name of Goupil & Co. as a trade designation in [the United States]”. In 1893, the Second Circuit Court of Appeals affirmed the ruling denying Knoedler’s request to enjoin the French art gallery from using the Goupil & Co business name in New York and the United States.

Next, in 1919, the Gallery protested assessment of import duties by the collector of customs at the Port of New York. In the case of *M. Knoedler & Co. v. United States*, 36 Treas. Dec. 63, T. D. 37898, G. A. 8229 (1919), the court considered proper classification of a bronze statue produced by Auguste Rodin. There, a board of three assessors agreed that Rodin was a professional sculptor of high order and his sculpture, imported by Knoedler, was produced (carved, remodeled and improved) by the artist. Thus the court held that the bronze statue was an ‘original’ and not subject to an ad valorem 15% fee as initially estimated. At the time the sculpture was valued at 12,000 francs.

Some of the Gallery-affiliated sales from the 1930s and 1950s would instigate legal action decades later. For example, between 1997 and in 2000, the Gallery found itself a third party defendant to the dispute between the Seattle Art Museum (the Museum) and Elaine Rosenberg, heir of Paul Rosenberg, an important Jewish art dealer in Paris, whose collection was confiscated by the Nazis during World War II. The facts of the dispute revealed that in 1954, the Gallery sold a 1928 Matisse painting, *Odalisque*, to Virginia and Prentice Bloedel, who bequeathed it to the Museum. The Museum took possession of the painting in 1991 and full ownership in 1996. Elaine Rosenberg sued the Museum to recover the painting, and the Museum impleaded the Gallery, alleging fraud and/or negligent misrepresentation at the time of the 1954 sale. The Gallery was able to get out of the dispute, with its costs reimbursed, by demonstrating that it was not a party to the Bloedel’s bequest to the Museum.

Ultimately, the Museum Board of Trustees decided to return *Odalisque* to the Rosenberg heirs in 1999, and following the return, the Museum and the Gallery reached an out-of-court agreement,

whereby the Museum was able to chose “at least one painting from the inventory of the Knoedler gallery” and the Gallery waived its right to collect awarded attorney’s fees. The Director of the Gallery at the time, Ann Freedman, was quoted as saying “If there’s anything I would choose to emphasize, it’s that this settlement is larger than our specific case... Being in the world of art, this case has the potential to be part of a universal understanding and healing.”

Four years later, in 2004, the Gallery was defending itself for a sale of another painting stolen during World War II. In 1955, the Gallery sold a painting Spring Sowing by the Italian artist Jacopo da Ponte to the Springfield Library and Museum Association (the Association) for \$5,000. The bill of sale stated that the defendant “covenants with the grantee that it [is] the lawful owner of the said goods and chattels; that they are free from all encumbrances; that it have [sic] good right to sell same as aforesaid; and that it will warrant and defend the same against lawful claims and demands of all persons.” However, in 1966, the Director General of the Arts for the Italian Government wrote to the Association’s director, claiming that Spring Sowing belonged to the Uffizi, a museum in Florence, Italy. Apparently the painting was on loan to the Italian Embassy in Poland before World War II, and it went missing during the War. The Association exchanged letters with the Gallery staff and Italian officials, and while the Gallery staff acknowledged that probably this painting was the one stolen from the embassy, little action was taken until the early 2000s, when the Italian government reached out again to the Association. Following the 2001 return of the painting, the Association sued the Gallery alleging breach of contract, breach of implied warranty, fraud and deceit, negligence and misrepresentations, among other counts. The ultimate decision or the terms of a settlement between the Association and the Gallery are not public; however, the court refused to dismiss this case even though the Gallery argued that the plaintiff’s actions were time barred. In fact, the court refused to decide the case at the pleading stage, and found that the Museum may be able to argue equitable estoppel to overcome the Gallery’s time limitations argument, ruling that the statute of limitation was tolling since the 1960s.

Posthumously

Ann Freedman turned out to be the last of the Gallery directors. Now a principle of another art gallery at 25 East 73rd Street in New York City, called FreedmanArt, Freedman worked at the Knoedler Gallery from 1977 through 2009.

When venerable establishments like the Gallery crumble, the aftershocks tend to reverberate far and wide. The circumstances of its demise in particular, sale of numerous forgeries at high market value prices, triggered many legal proceedings. The fakes came from a single source, an art dealer named Glafira Rosales, who offered the Gallery dozens of “previously unknown works painted by important Abstract Artists.” Rosales provided only basic background about the original collector of these works, but the art world was eager to embrace a crop of fresh Pollocks, Rothkos, Klines and other prized artists. Many art experts, including curators with the leading galleries and authors of catalogue raisonnés, seasoned collectors and gallerists, such as Ann Freedman, viewed the works offered by Rosales and believed them to be authentic. As more

heretofore unseen works were entering the market, Rosales fabricated provenance information, even allegedly naming Alfonso Ossorio, an artist and a collector, as a conduit from the famed artists to the anonymous collector as an explanation of their long lost status.

The too good to be true discovery of the Abstract Expressionist treasure trove was simply just that. On September 16, 2013, Rosales plead guilty to all counts brought against her, including charges of wire fraud, tax evasion, failure to file financial statements, money laundering, and more. She is facing a prison sentence of almost 100 years, revocation of her U.S. citizenship, as well as monetary penalties in excess of \$80 million. Rosales is reportedly cooperating with the government, but that does nothing for the defunct Gallery.

Between 2011 and 2013, there were half a dozen legal actions started against the Gallery in the Southern District of New York, and complaints continue to materialize. First, on December 1, 2011, Pierre Lagrange, a businessman from London, filed a complaint against Knoedler Gallery LLC and Ann Freedman, having received a forensic report that showed that the work attributed to Pollock that he purchased from the Gallery for \$17 million was a forgery. In 2012, John D. Howard sued Freedman, Rosales and the Gallery, accusing them of common-law fraud, breach of warranty, mistake and RICO violations, for selling him a fake Rothko for \$8.4 million.

Next, in rapid succession, the Martin Hilti Family Trust, Domenico and Eleanore De Sole, Frances Hamilton White, David Mirvish Gallery Limited, and The Arthur Taubman Trust all sued to recover their losses on forgeries the Gallery sold to them from the Rosales Collection. For example, Frances Hamilton White brought action seeking compensatory and punitive damages for the sale of a fake Pollock. Together with her ex-husband, she purchased a purported Jackson Pollock painting for \$3.1 million, which has since been determined to be a forgery. In the complaint, the plaintiff submitted that she “chose to acquire art through Knoedler because of its reputation as New York City’s oldest art gallery.” She purchased multiple works for about \$5 million because she and her former husband relied on the “knowledge, experience and sterling reputation” of the Gallery and its staff. The collectors tried to unwind the sale when the work was declined on consignment by an auction house because it did not appear in a Pollock catalogue raisonne. White alleged that the defendants “profited greatly from the fraudulent sale(s),” namely Rosales received about \$670,000 for her “Pollock”, a price well below market value, while the Gallery and its agents kept more than \$2.4 million.

The most recent complaint to name the Gallery as defendant was filed on August 30, 2013. Michelle Rosenfeld Galleries sued two collectors, Martin and Sharleen Cohen, and Knoedler Gallery LLC, because Rosenfeld felt threatened that its art sales from 1997 and 1998 were under suspicion by the Cohens. These clients allegedly requested a refund for a Pollock and a de Kooning Rosenfeld sold to the Cohens (having first purchased them from the Gallery). Rosenfeld is seeking declaratory judgment that any claim by the Cohens is barred as a matter of controlling law, that any continued pursuit of refund would be frivolous and merit compensation of Rosenfeld’s legal expenses. Lastly, Rosenfeld requests an indemnification by the Gallery against any purported liability in case the claim by the collectors proceeds.

According to Freedman, Knoedler sold about 40 paintings from the Rosales Collection. In a conservative prognosis, more suits against Knoedler are coming down the legal conveyer belt. The aftershocks of the Gallery's demise are also leaving marks in the courts. Most recently, Ann Freedman, named defendant in some of the lawsuits, brought a legal action of her own. In *Freedman v. Grassi*, she alleges that another art dealer, Marco Grassi owner of Grassi Studios gallery, defamed her when his opinion of Freedman's due diligence in investigating the Rosales Collection appeared in the *New York Magazine*. Grassi was quoted as saying, "It seems to me Ms. Freedman was totally irresponsible, and it went on for years... Imagine people coming to someone and saying every painting you sold me is a fake. It is an unthinkable situation. It is completely insane. A gallery person has an absolute responsibility to do due diligence, and I don't think she did it. The story of the paintings is so totally kooky. I mean, really. It was a great story and she just said, 'this is great.' by stating that she did not do her due diligence."

Freedman alleges that she was acting in good faith and with due diligence conducted research into the provenance of the Rosales Collection. She alleges that Grassi deliberately published a false defamatory statement about her to harm her reputation, and thus she seeks compensatory damages, nominal damages and punitive damages, as well as judgment interest allowable by law, attorney fees, legal costs and any other appropriate relief. Whether Freedman's case survives pretrial motions or not remains to be seen. However, the Gallery is now figuring in association with a First Amendment and freedom of speech dispute.

Even posthumously the Gallery finds itself in a rare situation having shaped the habits of generations of collectors, going out of business with a bang and not a whisper, and having been sued multiple times. The way things are developing, it may merit the prize for the most sued art galleries of the modern times, second perhaps only to Salander-O'Reilly. However, as the Rosales conspiracy fades away, and the complete history of the Knoedler Gallery waits to be written, what is worth emphasizing is that this venerable Gallery will more likely be remembered for its avant-garde aesthetic and the authentic gems it dealt in rather than the fakes and legal disputes that marred its last chapter. Having left an indelible mark on the world of art in the United States, the Gallery's legacy is larger than the series of recent and pending cases.

On September 30, 2013, U.S. District Judge Paul G. Gardephe ruled in *de Sole and Howard* actions against Knoedler Gallery, Ann Freedman, Glafira Rosales and other Defendants. The Judge dismissed all claims of wrongdoing against the gallery owner, Michael Hammer; but he denied most motions to dismiss charges against Freedman and Rosales, such as the charges of fraud, unilateral and mutual mistake, fraudulent concealment, and aiding and abetting fraud. Naturally, the court granted Plaintiffs leave to amend their complaints.

Postscript

Since the scandal broke in the press, at least 10 cases have been brought against the gallery and its affiliates. The artist who is believed to have created all of the Rosales forgeries, Pei-Shen

Qian, fled to China from where he had been quoted as saying that “he was duped too”. Before the Knoedler legal saga ends, collectors should heed the warning of John Cahill, a New York-based art attorney wrote “[if] impact of the Knoedler scandal will likely have repercussions on the New York art market for years to come, it highlights one of the risks that art purchasers should now be aware of. While maintaining the confidentiality of sellers is an accepted part of the art world, the Knoedler case highlights the importance of actually knowing the identity of the consignor.”

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