

Yeshiva University, Cardozo School of Law

LARC @ Cardozo Law

AEJ Blog

Journal Blogs

10-4-2016

Recent Developments in Art Law

Madeline Kessler

Cardozo Arts & Entertainment Law Journal

Follow this and additional works at: <https://larc.cardozo.yu.edu/aelj-blog>



Part of the [Law Commons](#)

Recommended Citation

Kessler, Madeline, "Recent Developments in Art Law" (2016). *AEJ Blog*. 123.

<https://larc.cardozo.yu.edu/aelj-blog/123>

This Article is brought to you for free and open access by the Journal Blogs at LARC @ Cardozo Law. It has been accepted for inclusion in AELJ Blog by an authorized administrator of LARC @ Cardozo Law. For more information, please contact christine.george@yu.edu, ingrid.mattson@yu.edu.

Recent Developments in Art Law

BY [MADELINE KESSLER](#) / ON OCTOBER 4, 2016

From suits brought by celebrities and prison guards to successes by the government, there have been many high-profile developments in art law over the past few months. Below are short summaries of some of the most intriguing cases.

Primarily known for his performances in film and television shows, Alec Baldwin is also an avid art collector. Recently he has been particularly interested in the work of Ross Bleckner, so much so that it is the basis of his lawsuit against Mary Boone Gallery, a prominent New York City gallery that specializes in contemporary art. Baldwin has been obsessed with Bleckner's "Sea and Mirror" since seeing it on an invitation to an exhibition in 2010, carrying a picture of it next to photos of his father and one of his daughters at all times.^[i] Baldwin asked Mary Boone to buy it from the collector who had acquired the painting in 2007. After finally purchasing it from the collector in 2012, for \$190,000, Baldwin noticed that the colors were off and it had a peculiar smell. He alleges that Boone had Bleckner take an unfinished painting from the same 1996 series and turn it into a copy of "Sea and Mirror" to sell to Baldwin. He contends that Boone told him it was a fake, which she now denies, instead insisting that Baldwin knew that it was not the original. Bolstering his suit, Baldwin also has possible proof of fraud from Mary Boone's gallery cataloguing system. He has evidence that she stamped the painting that she sold him with the same number as "Sea and Mirror." Unable to bring criminal charges after meeting with the Manhattan District Attorney, Baldwin has sued Mary Boone for fraud in New York State Supreme Court.

For more information on Alec Baldwin's law suit visit this link:

Proceeding through the looking glass, one of the most popular painters in the world, Peter Doig, found himself in a spot of legal trouble over the summer when a retired Canadian correctional officer said that he owned an early painting of the artist's and wanted to sell it for millions of dollars. Doig denied that it was his, leading to a unique legal issue: What does one do when one wants to sell an artwork for a large sum of money but the artist in question denies ever having made it? For Robert Fletcher, the Canadian correctional officer, the answer to that question was to sue Doig in the United States District Court for Northern Illinois, alleging that Doig was denying authorship because of a "personal vendetta" against Fletcher.^[ii] Fletcher says that he bought the painting when Doig was an inmate at a correction facility near Thunder Bay Ontario, Canada in the 1970s. Through testimony, Doig proved that he had never visited nor been incarcerated at the Thunder Bay correctional facility. Further, the landscape was signed "Peter Doige," a misspelling of his last name. Interestingly, "Peter Doige" was incarcerated at the correctional facility during that time and liked to paint, according to his sister, testifying in Doige's stead as he died in 2012. Fletcher's Achilles heel was his expert, one of the plaintiffs in the case set to receive 25% in proceeds if Fletcher won.

This severely weakened Fletcher's case. The court ruled that Doig did not create Fletcher's landscape, a fitting conclusion to one of the strangest cases of art authentication ever.

After this past July's stringent decision, collectors and gallerists in New York will have to pay more than just the sticker price when they decide to buy or sell art. Larry Gagosian got a major slap on the wrist when he was ordered to pay over four million dollars in back taxes, interest, and penalties from his gallery's transactions over the past decade. Investigators discovered that from 2005 to 2015, Gagosian's California outpost, Pre-War Art Inc., sold and shipped millions of dollars of art to customers in New York without paying a sales tax. The apple doesn't fall far from the tree, as the New York branch failed to do the same from 2012 to 2015. In order to prevent this problem in the future, Gagosian Gallery will be setting up its own shipping company and sending its sales information to authorities for the next six years.^[iii]

Further instances of the rich avoiding taxes have masterpieces languishing in the dark, behind bars at the Geneva Freeport. A hotbed of tax evasion and money laundering, the Geneva Freeport has been facing increasing scrutiny for its lack of transparency. Over four thousand paintings, antiquities, and sculptures are stored in this free port, eliciting uproar. From angry art lovers who think that art should not be kept locked away and so uncouthly commoditized, to officials who are fed up with the illegality, there is widespread disapproval of the Geneva Freeport. Some of this disapprobation is because collectors keep their art stored in free ports around the world in order to avoid paying costly luxury taxes.^[iv] However, there has been more troubling press about works at the Geneva Freeport that have caused collectors to put their art in other locations; the most heinous of which is the discovery of a work by Amadeo Modigliani valued at twenty million dollars which is suspected to be Nazi looted art.^[v] As collectors flee, the Geneva Freeport is using counsel to try and clean up its act. However, there remains the one issue to consider: whether free ports in general are ethical at all.

Lastly, a 2012 initiative of the Association of Art Museum Directors ("AAMD") to pass a bill to shield international loans of art will finally be taken up by the full Senate. This bill, the Foreign Cultural Exchange Jurisdictional Immunity Clarification Act, would protect works on loan from foreign countries against potential seizure while being displayed in American museums. The AAMD has been pushing this legislation as a means to convince reluctant countries, such as Russia, to loan works without fear that it would open them up to litigation on claims of ownership. Nazi looted art would be exempt from this protection, allaying fears that have stalled further discussion of the bill. However, not all worries have been quashed and there are many opponents to the legislation.^[vi]

Madeline Kessler is second-year law student at Benjamin N. Cardozo School of Law and a Staff Editor of the Cardozo Arts & Entertainment Journal. She is an active member of the Art Law Society and pays all her taxes.

[i] Bowley, Graham, Paint and Switch? Did Alec Baldwin Pay \$190,000 For the Wrong Picture?, The New York Times (Sept. 21, 2016 9:10pm), <http://www.nytimes.com/2016/08/14/arts/paint-and-switch-did-alec-baldwin-pay-190000-for-the-wrong-picture.html>

[ii] Bowley Graham, Rotenberg, Lori, The Artist Peter Doig Wins a Case Involving a Painting's Attribution, The New York Times (Sept. 21, 2016 9:11pm), <http://www.nytimes.com/2016/08/24/us/the-artist-peter-doig-wins-case-involving-a-paintings-attribution.html>

[iii] Bowley, Graham, Carvajal, Doreen, One of the World's Greatest Art Collections Hides Behind This Fence, The New York Times (Sept. 21, 2016 9:12pm), <http://www.nytimes.com/2016/05/29/arts/design/one-of-the-worlds-greatest-art-collections-hides-behind-this-fence.html>

[iv] Kennedy, Randy, Gagosian Gallery to Pay New York State 4.3 Million, The New York Times (Sept. 21, 2016 9:13pm), <http://www.nytimes.com/2016/07/20/arts/design/gagosian-gallery-to-pay-new-york-state-4-3-million.html>

[v] Miller, Hugo, Art Collectors Quit Scandal-Hit Geneva, Bloomberg News (Sept. 21, 2016 9:14pm), <http://www.bloomberg.com/news/articles/2016-04-29/art-collectors-start-to-quit-geneva-as-scandals-dent-reputation>

[vi] Carvajal, Doreen, Bill to Shield International Art Loans Gains in Senate, The New York Times (Sept. 21, 2016 9:15pm), <http://www.nytimes.com/2016/09/17/arts/design/bill-to-shield-international-art-loans-gains-in-senate.html?rref=collection%2Fsectioncollection%2Fdesign>

[art law](#)[Art Lawsuits](#)[Association of Art Museum Directors](#)[Free Ports](#)[Gallery Geneva](#)[Freeport](#)[Paintings](#)[Peter Doig](#)