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The rocky authority of the artist in authentication disputes: who gets the final say?

The authentication of a nude by Lucian Freud—despite his protestations—highlights how creators are not always listened to. By Riah Pryor

“Yes, I took acid—but that is NOT my painting,” said Peter Doig during a 2016 trial in which the artist tried to “prove” a painting was not by him in order to (successfully) avoid damages for interfering with its sale.

The lawsuit, brought by the work’s owner, Robert Fletcher, and the Chicago-based Bartlow Gallery, took the art world by surprise, with many considering it to be a surreal situation.

Fast forward to last November and the authentication of an unfinished oil on canvas by the late Lucian Freud—despite the artist’s previous rejection of the work—suggests that the authority of an artist in attributing their own work can be undermined.

According to a report by the *Guardian*, the Swiss art collector who bought the Freud work, which is known as *Standing Male Nude*, in 1997 was contacted by the artist, who said if he refused to sell the work back to him, he would deny painting it. Now, a team of experts—including the private investigator Thierry Navarro, the conservator Nicholas Eastaugh and the art historian Hector Obalk—have argued that sufficient evidence exists to prove the work is in fact by Freud, despite his denial. Where that leaves the work and its owner in terms of its market and art-historical value remains to be seen.

A glance at the legal situation of disputed works suggests that artists do, in fact, have a decent say when it comes to attribution. Under the moral rights system applicable in most countries,

an artist has the “right to attribution”, which is linked to the right to object to derogatory treatment of their work and the right to not have copies exhibited or broadcast without their consent.

“On the flip side, you also have the right to not have a work falsely attributed to you,” says Iain Connor of the law firm Pinsent Masons. He adds that such rights end 20 years after the artist’s death, with subsequent estates or legal representatives often left to oversee matters.

Nevertheless, even when the artist is still alive, judges are known to examine the testimony of an artist as they would any other piece of evidence. “The artist’s statement would weigh quite heavily on the judge’s mind but if they do not turn up to present and argue their account, other evidence could well become more persuasive,” Connor says.

This was seemingly the case in 1995, when a New York Supreme Court ruled in favour of the seller of a work, despite its authenticity having been disputed by the artist Balthus Klossowski de Rola (Balthus). Despite a previous ruling in the buyer’s favour and its finding that “the artist’s signature and declaration that the drawing is not authentic is the final word on the validity of the work”, the latter judge felt that testimonies by experts gave the work “a fair chance to lay a claim to full legitimacy [authenticity]”. The judge emphasised the fact that the artist’s testimony was never deposed nor cross-examined.

The motive behind an artist wanting to denounce an original work is also a consideration. In the recent dispute over

the Freud work, evidence suggested the artist could have been “embarrassed” at its being a self-portrait.

Gerhard Richter is claimed to have retrospectively rejected works from his early West German period in a bid to edit his oeuvre, while other artists are known to have experimented with attribution as part of their practice—including Picasso, who famously said “I often paint fakes”, and Salvador Dali, who would sign blank sheets of paper, leaving his market vulnerable to forgeries.

And in one particularly unusual case, the infamous 20th-century forger Han Van Meegeren ended up painting a work in court to convince the jury that he in fact did paint a fake Vermeer (rather than being a Nazi conspirator trading in original paintings).

Let the market decide

“To some extent, in such cases you are pitching the moral rights of an artist against market perception. Every case is nuanced and has to be considered on the merits of the art historical evidence,” says Philip Mould, the art dealer and TV presenter, who was involved in the successful authentication of another work denied by Freud in a 2016 episode of the BBC TV show *Fake or Fortune*. The work in question, a portrait of a man in a cravat, has since been accepted by the artist’s estate and added to his catalogue raisonné.

So, to what extent does the market listen to the artist? “The market recognises something called the ‘three-legged stool of authentication’,” says William



Lucian Freud maintained that *Standing Male Nude* was not his work and attempted to buy it back from its owner; a team of experts has now authenticated the unfinished painting

Charron of the law firm Pryor Cashman. “Connoisseurship is one leg, provenance is another and forensic science is the third. The courts generally prefer science and provenance research as evidence because they are more verifiable and concrete. Connoisseurship is more subjective and difficult for courts to weigh; but, for the market, it remains the most valuable leg.”

If the artist is still living they may appeal to the market directly, as was the case with Banksy who, in 2008, publicly refused to authenticate five works being sold in London by Lyon & Turnbull auction house, and ordered his Pest Control company to issue a statement urging buyers to boycott the sale. It worked—none of the five works sold.

Artists and the market are also experimenting with new methods and technologies to safeguard their output. “There is an increasing shift in how artists feel and act over their moral rights and legacy,” says Mark Waugh, the director of business development at DACS, who works on the “Bronzchain” project, which creates a digital ledger of works. “Artists are seeing more and more how other people can abuse their rights and how online—with assets like NFTs—the internet can facilitate mass exploitation.”

With digital registries (such as Artory) attracting attention and inventories becoming more sophisticated, technology may well help the artist’s voice become stronger in future.

Berlin dealer fights eviction by billionaire art patron’s company

Semjon H.N. Semjon is battling a property company majority-owned by Nicolas Berggruen, a champion of contemporary art

By Catherine Hickley

BERLIN. The art dealer Semjon H.N. Semjon is fighting eviction from the gallery in Berlin’s Mitte district that he has occupied for 21 years, with a petition and a legal challenge against his landlord, a property company majority-owned by the billionaire investor and art patron Nicolas Berggruen.

The building was renovated in 2019, forcing Semjon to close his gallery, although he says he continued to pay rent during the refurbishment. His request to the building’s managing agent, Czarny & Schiff, for compensation for the loss of income was rejected, he says. Instead, his rental agreement was terminated last year. His deadline to



Semjon has received support from four members of parliament, who wrote an open letter to Berggruen in December

move out was 31 December 2021.

But Semjon is staying put for now and has engaged the Berlin art lawyer Peter Raue to fight his case. “This could take a while, and that suits me, because it would be too much to move out quickly,” Semjon says. “I have to look around for a new place. But rents have exploded and I can’t afford them.”

The story of Berlin art spaces falling victim to rising rents and gentrification, and being forced to close, is not a new one. But Semjon is particularly aggrieved that Berggruen, who is known for his commitment to contemporary and Modern art, should seem indifferent to the fate of his gallery, Semjon Contemporary. Berggruen and his family agreed in September

to donate funding of €1m annually for exhibitions and events at Berlin’s Museum Berggruen, founded by their father, the collector Heinz Berggruen.

Semjon has rallied support for his gallery’s continued existence in its present location from four members of parliament, including the former Berlin mayor, Michael Müller. In an open letter addressed to Nicolas Berggruen, they appealed to his passion for the arts. “Given your engagement it is surprising that after Berggruen Holdings acquired the building, your company would terminate the rental agreement with a small gallery for contemporary art in Berlin Mitte,” they wrote in a letter dated 15 December 2021. “It is precisely



Berggruen and his family recently pledged €1m a year to support the museum founded by his father

small galleries, free spaces for artists, decentralised cultural businesses and local offerings that—alongside the big museums and collections—determine Berlin’s self-image and quality of life.”

A petition on Semjon’s website urges Berggruen to reconsider and points out that Semjon has helped to make the street and the building desirable from an investment perspective. But Samuel Czarny, the managing director of Nicolas Berggruen Holdings, says in a press statement that Berggruen himself “is not active in the operative management and not involved in these processes”.

Nicolas Berggruen Holdings owns 60% of the building; the remaining share is the personal property of Czarny and

his business partner, Ariel Schiff, who are fully responsible for managing it, Czarny says. Czarny accused Semjon of “dishonourable conduct” and waging a “defamatory campaign” to remain in the building. Czarny also argues that in violation of his contract, Semjon never sought approval for a site-specific installation that he created in the building as an artist before he became a dealer.

Semjon says moving location would require him to destroy his installation, KioskShop Berlin. Viewed by thousands of visitors between 2000 and 2010, it was hidden behind walls in his gallery for ten years. Semjon reopened it to the public in October, when he received notice of his eviction. It is a small shop, complete with “product sculptures”—Coca-Cola cans, newspapers, washing powder packages and more covered in a bleached beeswax that renders everything white but still recognisable.

“I have exposed my KioskShop again to show what will be destroyed,” Semjon says. “I am using it for communicative leverage.”