

1018--A

2015-2016 Regular Sessions

I N A S S E M B L Y

January 8, 2015

Introduced by M. of A. ROSENTHAL, OTIS -- read once and referred to the Committee on Tourism, Parks, Arts and Sports Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the arts and cultural affairs law, in relation to opinions concerning authenticity, attribution and authorship of works of fine art

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 11.01 of the arts and cultural affairs law is
2 amended by adding a new subdivision 23 to read as follows:
3 23. "AUTHENTICATOR" AS USED IN SECTION 15.11, 15.12 AND 15.15 OF THIS
4 CHAPTER SHALL MEAN, SUBJECT TO THE LIMITATIONS IN THIS SUBDIVISION, A
5 PERSON OR ENTITY RECOGNIZED IN THE VISUAL ARTS COMMUNITY AS HAVING
6 EXPERTISE REGARDING THE ARTIST, WORK OF FINE ART, OR VISUAL ART MULTIPLE
7 WITH RESPECT TO WHOM SUCH PERSON OR ENTITY RENDERS AN OPINION AS TO THE
8 AUTHENTICITY, ATTRIBUTION OR AUTHORSHIP OF A WORK OF FINE ART OR VISUAL
9 ART MULTIPLE, OR A PERSON OR ENTITY RECOGNIZED IN THE VISUAL ARTS OR
10 SCIENTIFIC COMMUNITY AS HAVING EXPERTISE IN UNCOVERING FACTS THAT SERVE
11 AS A DIRECT BASIS, IN WHOLE OR IN PART, FOR AN OPINION AS TO THE AUTHEN-
12 TICITY, ATTRIBUTION OR AUTHORSHIP OF A WORK OF FINE ART OR VISUAL ART
13 MULTIPLE. "AUTHENTICATOR" SHALL INCLUDE, BUT NOT BE LIMITED TO, AUTHORS
14 OF CATALOGUES RAISONNE OR OTHER SCHOLARLY TEXTS IN WHICH AN OPINION AS
15 TO THE AUTHENTICITY, ATTRIBUTION OR AUTHORSHIP OF A WORK OF FINE ART OR
16 VISUAL ART MULTIPLE IS EXPRESSED OR IMPLIED. "AUTHENTICATOR" SHALL NOT
17 INCLUDE A PERSON OR ENTITY THAT HAS A FINANCIAL INTEREST IN THE WORK OF
18 FINE ART OR VISUAL ART MULTIPLE FOR WHICH SUCH OPINION IS RENDERED OR IN
19 ANY TRANSACTION CONCERNING SUCH WORK OF FINE ART OR VISUAL ART MULTIPLE
20 FOR WHICH THE OPINION IS RENDERED, OTHER THAN TO BE COMPENSATED FOR
21 SERVICES SUCH PERSON OR ENTITY ENGAGED IN TO PROVIDE AN OPINION AS TO
22 THE AUTHENTICITY, ATTRIBUTION OR AUTHORSHIP OF SUCH WORK OF FINE ART OR

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

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1 VISUAL ART MULTIPLE OR TO PROVIDE INFORMATION ON WHICH SUCH AN OPINION
2 IS BASED IN WHOLE OR IN PART.

3 S 2. Section 15.11 of the arts and cultural affairs law, as added by
4 chapter 849 of the laws of 1984, is amended to read as follows:

5 S 15.11. Express warranties. Information provided pursuant to the
6 provisions of this article shall create an express warranty pursuant to
7 section 13.05 of this title. When such information is not supplied
8 because not applicable, this shall constitute an express warranty that
9 such required information is not applicable. THIS SECTION SHALL NOT
10 APPLY TO AN AUTHENTICATOR'S OPINION OR INFORMATION CONCERNING A VISUAL
11 ART MULTIPLE OR WORK OF FINE ART, AS SET FORTH IN SUBDIVISION 23 OF
12 SECTION 11.01 OF THIS CHAPTER, SECTION 15.12 OF THIS ARTICLE, AND SUBDI-
13 VISION 4 OF SECTION 15.15 OF THIS ARTICLE.

14 S 3. The arts and cultural affairs law is amended by adding a new
15 section 15.12 to read as follows:

16 S 15.12. AUTHENTICATION OF WORKS OF FINE ART AND VISUAL ART MULTIPLES.
17 IN ANY CIVIL ACTION BROUGHT AGAINST AN AUTHENTICATOR, AS DEFINED IN
18 SUBDIVISION 23 OF SECTION 11.01 OF THIS CHAPTER, THAT ARISES FROM OR
19 RELATES TO THE AUTHENTICATOR'S OPINION OR INFORMATION CONCERNING A VISUAL
20 ART MULTIPLE OR WORK OF FINE ART, THE CLAIMANT SHALL SPECIFY WITH PARTI-
21 CULARITY IN THE COMPLAINT FACTS SUFFICIENT TO SUPPORT EACH ELEMENT OF
22 THE CLAIM OR CLAIMS ASSERTED.

23 S 4. Subdivision 4 of section 15.15 of the arts and cultural affairs
24 law, as added by chapter 849 of the laws of 1984, is amended to read as
25 follows:

26 4. (A) In any action to enforce any provision of this article, OTHER
27 THAN A CIVIL ACTION BROUGHT AGAINST AN AUTHENTICATOR, AS DEFINED IN
28 SUBDIVISION 23 OF SECTION 11.01 OF THIS CHAPTER, THAT ARISES FROM OR
29 RELATES TO THE AUTHENTICATOR'S OPINION OR INFORMATION CONCERNING A VISU-
30 AL ART MULTIPLE OR WORK OF FINE ART, the court may allow the prevailing
31 purchaser the costs of the action together with reasonable attorneys'
32 and expert witnesses' fees.

33 (B) IN ANY CIVIL ACTION BROUGHT AGAINST AN AUTHENTICATOR, AS DEFINED
34 IN SUBDIVISION 23 OF SECTION 11.01 OF THIS CHAPTER, THAT ARISES FROM OR
35 RELATES TO THE AUTHENTICATOR'S OPINION OR INFORMATION CONCERNING A VISU-
36 AL ART MULTIPLE OR WORK OF FINE ART, THE COURT MAY ALLOW THE PREVAILING
37 AUTHENTICATOR THE COSTS OF THE ACTION TOGETHER WITH REASONABLE ATTOR-
38 NEYS' AND EXPERT WITNESSES' FEES, PROVIDED, HOWEVER, THAT NO SUCH COSTS
39 OR FEES SHALL BE MADE PURSUANT TO THIS SECTION EXCEPT UPON A WRITTEN
40 FINDING OF GOOD AND JUST CAUSE, WHICH SHALL SPECIFY THE GROUNDS THEREOF.

41 (C) In the event, however, the court determines that an action to
42 enforce ANY PROVISION OF THIS ARTICLE was brought in bad faith it may
43 allow such expenses to the art merchant as it deems appropriate;
44 PROVIDED, HOWEVER, THAT IN ANY CIVIL ACTION BROUGHT AGAINST AN AUTHENTI-
45 CATOR, AS DEFINED IN SUBDIVISION 23 OF SECTION 11.01 OF THIS CHAPTER,
46 THAT ARISES FROM OR RELATES TO THE AUTHENTICATOR'S OPINION OR INFORMA-
47 TION CONCERNING A VISUAL ART MULTIPLE OR WORK OF FINE ART, NO SUCH
48 EXPENSES SHALL BE ASSESSED OR ALLOWED AGAINST THE AUTHENTICATOR.

49 S 5. Subdivision 5 of section 15.15 of the arts and cultural affairs
50 law, as added by chapter 849 of the laws of 1984, is amended to read as
51 follows:

52 5. An action to enforce any liability under this article, BUT NOT
53 INCLUDING CIVIL ACTIONS AGAINST AUTHENTICATORS, shall be brought within
54 the period prescribed for such actions by article two of the uniform
55 commercial code.

1 S 6. This act shall take effect on the sixtieth day after it shall
2 have become a law and shall apply to all opinions as to the authenticiti-
3 ty, attribution or authorship of a work of fine art or visual art multi-
4 ple provided to someone other than the authenticator after such effec-
5 tive date.