

STATE OF NEW YORK

1760

2023-2024 Regular Sessions

IN ASSEMBLY

January 20, 2023

Introduced by M. of A. L. ROSENTHAL -- read once and referred to the Committee on Tourism, Parks, Arts and Sports Development

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
23 visual art multiple or to provide information on which such an opinion
24 is based in whole or in part.

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

LBD04797-01-3

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

3 § 15.11. Express warranties. Information provided pursuant to the
4 provisions of this article shall create an express warranty pursuant to
5 section 13.05 of this title. When such information is not supplied
6 because not applicable, this shall constitute an express warranty that
7 such required information is not applicable. This section shall not
8 apply to an authenticator's opinion or information concerning a visual
9 art multiple or work of fine art, as set forth in subdivision twenty-
10 three of section 11.01 of this title, section 15.12 of this article, and
11 subdivision four of section 15.15 of this article.

12 § 3. The arts and cultural affairs law is amended by adding a new
13 section 15.12 to read as follows:

14 § 15.12. Authentication of works of fine art and visual art multiples.
15 In any civil action brought against an authenticator that arises from or
16 relates to the authenticator's opinion or information concerning a visu-
17 al art multiple or work of fine art, the claimant shall specify with
18 particularity in the complaint facts sufficient to support each element
19 of the claim or claims asserted.

20 § 4. Subdivisions 4 and 5 of section 15.15 of the arts and cultural
21 affairs law, as added by chapter 849 of the laws of 1984, are amended to
22 read as follows:

23 4. (a) In any action to enforce any provision of this article, other
24 than a civil action brought against an authenticator that arises from or
25 relates to the authenticator's opinion or information concerning a visu-
26 al art multiple or work of fine art, the court may allow the prevailing
27 purchaser the costs of the action together with reasonable attorneys'
28 and expert witnesses' fees.

29 (b) In any civil action brought against an authenticator that arises
30 from or relates to the authenticator's opinion or information concerning
31 a visual art multiple or work of fine art, the court may allow the
32 prevailing authenticator the costs of the action together with reason-
33 able attorneys' and expert witnesses' fees, provided, however, that no
34 such costs or fees shall be granted pursuant to this section except upon
35 a written finding of good and just cause, which shall specify the
36 grounds thereof.

37 (c) In the event, however, the court determines that an action to
38 enforce any provision of this article was brought in bad faith it may
39 allow such expenses to the art merchant as it deems appropriate;
40 provided, however, that in any civil action brought against an authenti-
41 cator that arises from or relates to the authenticator's opinion or
42 information concerning a visual art multiple or work of fine art, no
43 such expenses shall be assessed or allowed against the authenticator.

44 5. An action to enforce any liability under this article, but not
45 including civil actions against authenticators, shall be brought within
46 the period prescribed for such actions by article two of the uniform
47 commercial code.

48 § 5. This act shall take effect on the sixtieth day after it shall
49 have become a law and shall apply to all opinions as to the authentici-
50 ty, attribution or authorship of a work of fine art or visual art multi-
51 ple provided to someone other than the authenticator after such effec-
52 tive date.