

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
FT. MEYERS DIVISION

2007 DEC 31 AM 11:55

CLERK U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT MYERS DIVISION

ROBERT RAUSCHENBERG,

Plaintiff,

v.

CASE NO. 2:07 - CIV - 846, FLM-34DNF

ROBERT FRANCIS MONTGOMERY
a/k/a ROBERT FONTAINE,

Defendant.

_____ /

COMPLAINT UNDER VISUAL ARTISTS RIGHTS ACT

COMES NOW, Plaintiff, ROBERT RAUSCHENBERG, by and through his undersigned counsel and hereby file this, his Complaint under the Visual Artists Rights Act of 1990 and would state as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, ROBERT RAUSCHENBERG, is a resident of Lee County, Florida.

2. Defendant, ROBERT FRANCIS MONTGOMERY a/k/a ROBERT FONTAINE, is a resident of Lee County, Florida.

3. This Court has jurisdiction by virtue of the fact that this is a civil action, misattribution claim, arising under the United States Code of the Visual Artists Rights Act of 1990, as part of the Copyright Act of 1976, 17 U.S.C. § 106A (hereinafter "VARA").

4. Plaintiff at all times material hereto is the sole author of works of visual art attributable to him and therefore has standing to sue for infringement under VARA.

5. Venue in this district and division is proper under 28 U.S.C. §1391(b), because a substantial part of the events or omissions that give rise to this claim have occurred in this judicial district and division.

GENERAL ALLEGATIONS

6. Upon information and belief, in or about 2007, the Defendant, ROBERT FRANCIS MONTGOMERY a/k/a ROBERT FONTAINE, sold or caused to be sold works purported to be created by Plaintiff, ROBERT RAUSCHENBERG, accompanied with Certificates of Authenticity noting same.

7. The works of visual art sold by and certified by Defendant as being works created by the Plaintiff were not created by Plaintiff.

8. Congress enacted VARA to protect both the reputations of certain visual artists as well as the works of art that they create.

9. Plaintiff, ROBERT RAUSCHENBERG, has been engaged in the business, *inter alia*, of offering his original artwork for sale throughout the world and has developed an international reputation as a visual artist, long prior to the Defendant's acts complained of herein.

10. Plaintiff's original works have become famous and extremely well known among collectors and has acquired a strong following, in addition to great value.

COUNT I - VARA CLAIM

11. Plaintiff realleges the allegations in Paragraphs 1 through 10 above as if fully set forth herein.

12. Plaintiff has discovered the Defendant has sold works attributed to Plaintiff that were not created by the Plaintiff and are therefore not authentic.

13. Defendant has been engaging in activity violative of Plaintiff's rights under VARA, including, but not limited to, the sale of items purported to have been created by the Plaintiff.

14. In accordance with the VARA provisions, Plaintiff now seeks to prevent the use of his name as being the author of any work of visual art which he did not create.

15. By the Defendant's unauthorized conduct of selling works as being attributable to the Plaintiff, the Plaintiff has suffered damages to his image which, in turn, jeopardizes the economic value of legitimate works he has authored; Additionally, the Defendant's conduct has caused to the Plaintiff's personal and professional reputation.

WHEREFORE, Plaintiff prays that:

(a) The Defendant, ROBERT FRANCIS MONTGOMERY a/k/a ROBERT FONTAINE, and his partners, agents, employees, and all others in active concert or participation with any of them, be temporarily and permanently enjoined from doing any other act or thing likely to confuse, mislead or deceive others into believing that visual works of art not attributable to Robert Rauschenberg emanated from him or are connected with, sponsored by or approved by him, or doing any other act or thing likely to dilute Robert Rauschenberg's name or body of work or anything prejudicial to his honor or reputation.


(b) Defendant be required to deliver for destruction all paintings, prints, images, plates, giclees, lithographs and other means of making same, as well as all related things in Defendants' possession, custody or control including negatives or discarded works, either bearing the name Robert Rauschenberg or claiming to be a work of Plaintiff, or any other simulation, or counterfeit of said work, or any other reproduction, counterfeit, copy or colorable imitation of Plaintiff's original work.

(c) Defendant disgorge all profits wrongfully derived by or from the use of ROBERT RAUSCHENBERG's name or marks and that

Defendant be ordered to disclaim all Certificates of Authenticity issued in connection with such sales

(d) Finally, that Plaintiff have such other and further relief from Defendant as the Court deems just and equitable, including costs and attorneys' fees, as reasonable and appropriate.

Respectfully submitted this 28th day of December, 2007.

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