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National News

Negative Reaction

An artist made work out of chromes found in Robert Rauschenberg's trash. Rauschenberg sued **BY WILLIAM D. COHAN**

Robert Rauschenberg is suing a man who saw rolls of "big color negatives" in a pile of trash in Rauschenberg's driveway and transformed them into works he sold as originals by the artist.

In a pair of lawsuits filed in Florida late last year, Rauschenberg accused Robert Francis Montgomery, 32, who also calls himself Robert Fontaine, of selling artwork that Fontaine attributed to Rauschenberg. The artist says the work was not cre-

ated by him and is "therefore not authentic." In one of the complaints, filed last year on December 31 in U.S. District Court in Fort Myers, Florida, Rauschenberg's attorney, Lawrence Kolin, claimed that Fontaine's fraudulent dealings violated the 1990 Visual Artists Rights Act, which protects the "reputations of certain visual artists as well as the works of art they create." Kolin filed a second complaint in a Lee County, Florida, district court and added HW Gallery in Naples as a codefendant with Fontaine. In the second court filing—with

Rauschenberg's Untitled Press as plaintiff—Kolin accused the gallery and Fontaine of selling "counterfeit" Rauschenbergs as a result of "possible theft or forgery" of "actual or discarded works."

Kolin has asked that Fontaine and HW Gallery return all bogus Rauschenbergs in their possession and forfeit all profits "wrongfully derived" from "the use of Robert Rauschenberg's name or marks." In addition, he wants Fontaine to "be ordered to disclaim all Certificates of Authenticity issued in connection with such sales."

Although lawsuits involving the fraudulent sale of an artist's work are rare, Kolin cited as a possible precedent the 1982 litigation brought by Frank Stella against art dealer Stephen Mazoh, who allegedly snatched two rain-soaked Stella works from the artist's garbage and displayed them in his New York gallery. Under the settlement for that case, Mazoh returned the works to the artist, who then destroyed them.

Details of the Rauschenberg case began to surface when, according to Kolin, a woman purchased one of the disputed Rauschenberg artworks through Fontaine for a price "well below market." It was accompanied by a certificate of authenticity signed by Fontaine. After the woman bought the work, she approached a member of Rauschenberg's artistic circle to inquire whether it was genuine. "What was sold in this case was not signed or titled as represented," Kolin said in an interview with *ARTnews*. "The trash issue is a red herring. Selling something as a legitimate work when it isn't gives the artist a moral right to stand up and make sure an innocent consumer

knows she bought something that the attributed author does not consider to be a Rauschenberg."

Fontaine's attorney, Yale T. Freeman, has a different take on what happened. He says that his client, who was born and raised on Captiva Island in Florida, where Rauschenberg lives, was visiting his uncle in 1998 and saw trash cans at the end of Rauschenberg's driveway waiting for collection. At the time, Fontaine, a 20-year-old art student at Florida Gulf Coast University, was on his way to the post office. On his return to his uncle's home, according to Freeman, he saw that Rauschenberg's garbage was still there, and became "intrigued" by a "series of rolls sticking up and out of the trash." He took the rolls, which Freeman described as "chromes" or "big color negatives," with about 40 individual images on each roll, or 120 images in all, half of them signed by Rauschenberg with his initials, "RR."

Freeman says Fontaine then decided to cut up a few of the color negatives and attach them to a man's suit. The suit with the negatives became an artwork that Fontaine called *Walking with Bob*, designed to be an homage to Rauschenberg, Freeman claims. (The artwork no longer exists.) One of Fontaine's teachers at the university was the wife of the head of Rauschenberg's studio in Captiva. The next year Fontaine received a Rauschenberg scholarship for promising art students from Captiva, and was awarded \$500.



Robert Fontaine tried to sell images from Robert Rauschenberg's garbage, like the one above, as authentic Rauschenbergs.

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Years later Fontaine was an employee at the Space 39 art gallery in Fort Myers, working for its owner, Terry Tischer, who was known by the nickname "Truman Capote." Freeman says "Truman Capote" heard the story of Fontaine and the chromes from Rauschenberg's trash and suggested to Fontaine that he frame them with a white backing and display them as Rauschenbergs at Space 39. A Fort Myers woman bought one in January of last year for about \$1,200. Soon thereafter, Freeman says, Rauschenberg heard that "fraudulent works are being sold" at Space 39. Rauschenberg then obtained the Space 39 framed chrome from the Fort Myers purchaser.

Fontaine, Freeman says, moved to Naples, where he began working with HW Gallery. Together they developed the idea of "promoting these works of trash," Freeman says. Two more of the signed and framed Rauschenberg chromes were sold last November at HW Gallery, one for as much as \$10,000, according to Freeman.

Freeman says he was especially struck by the "tremendous irony" of Rauschenberg suing a man who had rifled through his

trash, when Rauschenberg himself had used pieces of trash in his artworks in the 1950s and '60s.

Freeman says he is willing to consider a settlement in which Fontaine is permitted to do as "he sees fit" with the remaining 15 or so Rauschenberg chromes he still possesses, 6 of which are signed with the artist's initials. He is even willing to identify the objects as having been taken from Rauschenberg's trash. Unless the two sides reach a settlement, the case could see years of litigation. If no settlement is reached, Freeman says, he is determined to "go all the way" with the case, even though his client may not be able to pay him. He says, "The case is going to define or redefine a group of rights and responsibilities."

Kolin says, "We are confident the facts that will be revealed through the discovery process in these cases will yield the truth about these purported works." ■

William D. Cohan is the author of The Last Tycoons: The Secret History of Lazard Frères & Co., which won the FTI/Goldman Sachs Business Book of the Year Award in 2007.