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Trash or treasure? The debate rages



Naples defendant claims Robert Rauschenberg's artwork was sold legally



ROBERT RAUSCHENBERG

- Born Milton Rauschenberg Oct. 22, 1925, in Port Arthur, Texas.
- Went to the Kansas City Art Institute in 1947, studied in Paris at the Academie Julian, went to the experimental Black Mountain College in North Carolina in 1948 and studied at the Art Students League in New York City through 1951.
- Married artist Susan Weil in 1950. Their son, Christopher, was born in 1951. They divorced in 1952.
- Redefined art in 1954 by beginning to create "combines," a mixture of painting and sculpture that included everyday found objects. His most famous combine is "Monogram," using a stuffed goat.
- Started experimenting with the use of silkscreen and repetitive images in 1962, anticipating the Pop Art Movement.
- Also embraced performance art.
- Contemporary and friend of artists Jasper Johns, Cy Twombly, James Rosenquist, Joseph Albers and others, as well as dancer and choreographer Merce Cunningham, and musician and composer John Cage.
- Awarded the Grand Prize for painting at the 1964 Venice Biennale, the first American ever.
- Moved to Captiva Island in 1970.
- A Rauschenberg retrospective organized by the National Collection of Fine Arts in Washington, D.C., traveled throughout the U.S. in 1976-78.
- The Guggenheim Museum in New York put on a Rauschenberg retrospective (400 works) in 1997. The exhibit traveled to Houston and Europe in 1998.
- Continues to hold exhibits in New York City, abroad and at the Bob Rauschenberg Gallery at Edison College.

PHOTOS BY JOHN DAVID EMMETT/THE NEWS-PRESS

■ Attorney Yale T. Freeman represents Robert Fontaine in a suit filed against Fontaine by Robert Rauschenberg over artwork taken from trash in front of Rauschenberg's Captiva home.

INSIDE/A12

■ **Artists Rights** A look at how an artist's work, including paintings, drawings, prints, sculptures and photos, is protected by the Visual Artists Rights Act.

■ **A glimpse of the work** Details of the art that Fontaine took out of Rauschenberg's trash and other pieces that could be missing.

■ **The case** Legal experts weigh in on the lawsuit and how the results could affect other artists.

■ **History** Other lawsuits involving artists allegedly taking images created by others for use in their own works.

More artwork was taken, target of lawsuit alleges

BY MARY WOZNIAK
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Robert Fontaine, a Naples artist accused of taking from the garbage the work of Captiva artist Robert Rauschenberg and selling some of it fraudulently, claims at least two others helped themselves to the trashed cache.

If so, many more unauthorized Rauschenberg works could be floating around in art limbo in the public domain.

The revelation comes in a case that has attracted international attention.

Rauschenberg is considered the greatest living contemporary artist, known for an array of work including paintings, sculpture and mixed media.

The lawsuit could define for artists what rights they have to their own work, legal experts say.

The case is scheduled to go to trial in February. Court papers say both parties are unlikely to settle.

In an interview, Fontaine admitted taking two rolls of work that contain colored images that could have been used in Rauschenberg's creative process. He said the rolls were taken 10 years ago from trash placed on the road outside the artist's Captiva Island home.

Fontaine admits to have sold three pieces of the work, but he does not admit to selling them fraudulently.

■ See ART A12

news-press.com/galleries ■ Photo gallery: View art taken from Rauschenberg's trash. View other examples of his art.

“There is no more iconic artist than Rauschenberg.”

■ Robert Fontaine, Naples artist

A12 | THE NEWS-PRESS, NATION & WORLD, SUNDAY, APRIL 13, 2008 ***



JOHN DAVID EMMETT/THE NEWS-PRESS

■ Letters purported to be written by artist Robert Rauschenberg on works taken from trash in front of his Captiva home. Fellow artist Darryl Pottorf says the letters are shorthand for the word "rewrite."

ART

■ Continued from A1

Fontaine, an art student at the time, said he showed his find to two co-workers at a now-defunct Captiva Island restaurant where he was working. Both took off to get their piece of the cache, Fontaine said.

The man and woman Rauschenberg's work, Fontaine said. He doesn't know how many. He also declined to provide their names.

There were numerous other rolls of images sticking up in Rauschenberg's trash, Fontaine said. Anyone passing by could have helped themselves.

"God only knows how many slanders were out that day," he said. "That's all true, but no one is out trying to let it except him," said Lawrence H. Kolin, Rauschenberg's attorney.

And artist Darryl Pottorf, Rauschenberg's friend and neighbor, said there's no telling whose discarded material Fontaine really picked up.

Rauschenberg is generous with letting other artists use his large-format printer, so the pieces could easily be another artist's work, Pottorf said. The printer can reproduce images of up to 5 feet by 8 feet.

Pottorf called the work "left-over stuff" and also said similar work was taken from his trash outside his own studio

just down the street — he doesn't know by whom.

Details

When Rauschenberg became aware last year some pieces of Fontaine's find were in circulation, he filed a federal lawsuit under the Visual Artists Rights Act. The lawsuit claimed Fontaine violated Rauschenberg's rights as an artist and sold some of the certificates of authenticity with bogus certificates of authenticity.

The HW Gallery of Naples also is named in a state lawsuit seeking facts on whether Fontaine and the gallery sold, helped sell or offered to sell the works to unsuspecting buyers.

Rauschenberg filed the lawsuits to protect the integrity of art and protect the collector, who deserves to know what he or she is paying for, Pottorf said.

"When something happens like this, he has to take action," Fontaine said he didn't know at first what kind of artwork he had pulled from Rauschenberg's trash but knew it had to belong to the artist.

"I was curious as an art student. I saw them as materials worth looking at," he said. "I would have been stupid not to have looked at them."

Fontaine told the story of finding the work to friends and colleagues over the past 10 years. About half of what he found was given away, he said.

Fontaine admits selling three of the works in 2007, nine years after he found them. He said a person knowledgeable in art, whom he declined to name, gave him the idea.

Fontaine said the first piece was sold through Space 39 Gallery in downtown Fort Myers, and the other two were sold through the HW Gallery in Naples.

Terry Tincher, owner of Space 39, denied selling the work through his gallery. "That's absolutely not true," Tincher said. "I think when he was at Space 39 he sold one to someone in Fort Myers for cash. I didn't know that until after the fact."

The HW Gallery sold two works that were brought to the gallery by Fontaine, said Damian C. Taylor, the gallery's attorney. "They were works that Mr. Fontaine he had acquired or found among items that were discarded at the Rauschenberg studio," Taylor said.

Fontaine claims not to know how much the first work sold for. The second and third sold for at least \$2,000 each, said Yale T. Freeman, Fontaine's attorney.

Rauschenberg's federal lawsuit contends Rauschenberg has suffered damages to his image which, in turn, jeopardizes the economic value of his legitimate works.

Rauschenberg's authenticated work regularly sells for hundreds of thousands of dollars to

more than \$1 million.

Disagreement

Fontaine said he spent his childhood on Sanibel and Captiva islands and said he played with pet dogs in Rauschenberg's backyard when growing up.

"He's a pretty interesting guy and definitely someone I've looked up to my entire life, Fontaine said. "There is no more iconic artist than Rauschenberg."

Fontaine said news reports have painted him unfairly as a villain in the case and he meant no harm to the artist by taking work from the trash. "I never meant malice in using or selling them," he said.

But did he sell them with bogus certificates of authenticity?

That contention is probably the significant dispute in the case, Freeman said. There is a certificate that went with each of the pieces sold from the HW Gallery, he said. "There is a dispute as to how they were created and what they were meant to say."

The certificates were intentionally worded in a way meant to skirt the law, and Fontaine is trading on Rauschenberg's name, Kolin said.

Pottorf, meanwhile, said Rauschenberg has been stung by Freeman's depictions of the lawsuit as a David vs. Goliath case — a world-famous artist picking on a local artist.

"He does not attack artists. He tries to help them," Pottorf said. Among numerous charitable

pursuits, Rauschenberg started and directs a foundation called Change Inc., he said. The non-profit organization provides emergency funds for artists.

Rauschenberg also gives grants to artists to study and continue their work, Pottorf said. One of those grants, for \$500, went to Fontaine as an art student.

Freeman wants what he calls a creative solution to the case. He wants to arrive at language agreeable to Rauschenberg and Fontaine that will allow Fontaine to continue selling the work — perhaps as "Rauschenberg's Trash by Fontaine," Freeman said.

Fontaine also wants to keep using pieces of the materials in creating his own works. "Having found them in the same way Rauschenberg finds his materials, I'm hoping to have the privilege to use them as found objects, discarded objects," he said.

Rauschenberg's initial breakthrough as an artist came by creating what he called "combines," assemblages that included discarded objects he found on the street and in the trash.

Kolin doesn't look kindly to Freeman's "creative solution."

"Why would he be allowed to profit from something pilfered that was meant to be destroyed?" Kolin asked. Fontaine is already violating the rights of the author "by trying to make a buck in an illegitimate fashion," he said.

“Why would he be allowed to profit from something pilfered that was meant to be destroyed?”

■ Lawrence H. Kolin, Rauschenberg's attorney