

Spring 2001

2000 Survey of Rhode Island Law: Legislation: Contract Law: An Act Relating to Works of Art- Artists' Rights

Vicki J. Bejma

Roger Williams University School of Law

Follow this and additional works at: http://docs.rwu.edu/rwu_LR

Recommended Citation

Bejma, Vicki J. (2001) "2000 Survey of Rhode Island Law: Legislation: Contract Law: An Act Relating to Works of Art-Artists' Rights," *Roger Williams University Law Review*: Vol. 6: Iss. 2, Article 23.

Available at: http://docs.rwu.edu/rwu_LR/vol6/iss2/23

This Survey of Rhode Island Law is brought to you for free and open access by the Journals at DOCS@RWU. It has been accepted for inclusion in Roger Williams University Law Review by an authorized administrator of DOCS@RWU. For more information, please contact mwu@rwu.edu.

Contract Law. *An Act Relating to Works of Art—Artists' Rights.* Provides that an artist's works cannot be seized when delivered to an organization exhibiting the works for non-profit purposes. The Act further provides that a cosignor/cosignee relationship is established when an artist delivers a work to an art merchant for sale. The cosignor/cosignee relationship imposes a fiduciary duty on said art merchant for the benefit of the artist regarding the work and the proceeds from any sale of the work. Additionally, this act establishes the express warranties created when an art merchant issues a certificate of authenticity. Effective July 20, 2000. 2000 R.I. Pub. Laws ch. 429.

This legislation expands the protection given to artists under chapter 5-62 of the Rhode Island General Laws.¹ Formerly, this chapter only protected artists' authorship rights against alterations of their works by others.² However, many new protections have been added. The 2000 amendments expand the class of persons entitled to protection. An "artist," under the old statute, was defined as the creator of a "work of fine art."³ "Work of fine art," was defined as the original work of visual or graphic art of any medium, except motion pictures or other sequential imagery, of limited edition of no more than three hundred copies.⁴ While the definition of "work of fine art" has been retained, the definition of "artist" now includes those who create the original image or master from which "multiples" of a print are made.⁵

The new legislation also protects works on exhibition. Under the new legislation, artists' works cannot be seized when they are at an exhibition held by organizations such as museums, universities, or non-profit galleries, when such organizations are holding the exhibit for a non-profit purpose.⁶ When such work is en route to or from, on exhibition or deposited by a nonresident exhibitor at such an exhibition, no process of attachment, execution, sequestration, replevin, distress or any kind of seizure may be served or levied upon the work.⁷ Furthermore, the work cannot be subject to

-
1. See R.I. Gen. Laws § 5-62-1 *et seq.* (1956) (2000 Reenactment).
 2. See *id.* § 5-62-2(1).
 3. See *id.*
 4. See *id.*
 5. See *id.*
 6. See *id.*
 7. See *id.*

attachment, seizure, levy or sale while in the possession of exhibit authorities.⁸

The amendments also assist artists by imposing fiduciary responsibilities upon art merchants receiving artists' works. The definition of "art merchant" for purposes of this section is broadly defined. It includes those who engage in the business of dealing in works of fine art or multiples, as well as those who by occupation hold themselves out as having "knowledge or skill peculiar to such works."⁹ The definition also includes those persons whom others may regard as having such knowledge and skill because he or she has employed an "agent or other intermediary" who by occupation holds himself out as having such knowledge or skill.¹⁰ The definition also applies to auctioneers selling fine art works at public auction.¹¹ The cosignors or principals of such auctioneers are also treated as art merchants, except in the case of the sale of multiples.¹²

When an artist delivers his work to an art merchant for "exhibition and/or sale on commission, fee or other basis of compensation" pursuant to an agreement entered into after September 1, 2000, a cosignor/consignee relationship is created.¹³ The cosignor becomes the agent of the artist and the work and the proceeds from the sale are trust property held for the benefit of the artist.¹⁴ The trust property cannot be subject to any claims, liens or security interest of any kind.¹⁵ If the merchant chooses to purchase the work for his or her own account, the work remains trust property until the merchant pays the purchase price in full.¹⁶ If the merchant who buys the work for his or her own account and resells it to a third party before the artist has been paid in full, those resale proceeds are also trust funds to the extent that a balance is still due the artist.¹⁷ This cosignor/consignee relationship, and the trust obligations thereunder, apply regardless of any agreement,

8. *See id.*

9. *See id.* § 5-62-2(6).

10. *See id.*

11. *See id.*

12. *See id.*

13. *Id.* § 5-62-7.

14. *See id.* § 5-62-7(1)(a).

15. *See id.* § 5-62-7(1)(a)(v).

16. *See id.* § 5-62-7(1)(a)(iv).

17. *See id.*

custom, practice, trade usage or law, including the Uniform Commercial Code.¹⁸

The art merchant cannot obtain a waiver of obligations of this cosignor/cosignee agreement except for those placing sale proceeds in trust.¹⁹ In that case, the waiver is still invalid as applied to the first \$2,500.00 of the gross proceeds received in any twelve month period after the execution of the waiver.²⁰ Additionally, no waiver will operate when a work is initially received on consignment, but purchased by the cosignee for his or her own account.²¹ The waiver also cannot operate to the benefit of the merchant's creditors in a manner inconsistent with the artist's rights.²² The waiver is void unless it is written clear and conspicuously and is subscribed by the artist.²³

Additionally, the amendments provide protections for the purchasers of works of fine art. Section 5-62-9 establishes the express warranties that are created when an art merchant issues a certificate of authenticity for a work of fine art.²⁴ A "certificate of authenticity" is defined as a written statement by the art merchant regarding the authorship of a work of fine art or a multiple, where such certificate may be used to the advantage or disadvantage of some person.²⁵ When an art merchant issues such a certificate, or other similar written instrument, that certificate is presumed to be part of the basis of the bargain, and creates an express warranty for material facts stated.²⁶ Negations or limitations of said warranties are unreasonable if not conspicuous and written apart from the warranty.²⁷ Furthermore, the negation or limitation must be clearly and specifically expressed.²⁸ Negations or limitations of express warranties will also be deemed unreasonable if the work proves to be counterfeit as defined by statute, and the description of the work does not clearly indicate this.²⁹ Similarly, negations or

18. *See id.* § 5-62-7(1)(a).

19. *See id.* § 5-62-7(1)(b).

20. *See id.* § 5-62-7(1)(b)(i).

21. *See id.* § 5-62-7(1)(b)(ii).

22. *See id.* § 5-62-7(1)(b)(iii).

23. *See id.* § 5-62-7(1)(b).

24. *See id.* § 5-62-9.

25. *See id.* § 5-69-2(10).

26. *See id.* § 5-62-9(1).

27. *See id.* § 5-62-9(4).

28. *See id.* § 5-62-9(4)(a).

29. *See id.*

limitations are unreasonable if the information given is mistaken or erroneous as of the date of the sale.³⁰ Express warranties and disclaimers will be construed as consistent with each other whenever reasonable.³¹ If such a construction is not reasonable, the negation or limitation is inoperative, subject to the provisions of section 2-202 of the Uniform Commercial Code on parole or extrinsic evidence.³²

Special provisions are made with respect to express warranties for multiples. The express warranties of section 5-62-9 apply when the art merchant supplies the name of the artist of a multiple, or otherwise gives information required by chapter 5-62.³³ A reasonable basis in fact for the information supplied will not constitute a defense in an action to enforce a warranty, unless the work in question is a photograph produced before 1950, or a multiple produced before 1900.³⁴ Furthermore, the express warranty provisions of section 5-62-9 also apply where the art merchant disclaims any knowledge about a multiple, when the information is required by chapter 5-62.³⁵ The disclaimers must be clearly stated as to each separate item of information about the multiple, and contained in the physical context of other language setting forth the required information.³⁶

The act also provides that falsifying a certificate of authenticity or other similar written instrument is a misdemeanor.³⁷ This crime is defined as making, uttering, or issuing a certificate of authenticity or any other similar written instrument attesting to material facts that the work does not actually have with the intent to defraud, deceive or injure another.³⁸ The penalty for such falsification is not specified.³⁹

The amendments also provide that the rights and liabilities created by the entire Artists' Rights chapter shall be construed to supplement, rather than replace, any other rights and liabilities at

30. See *id.* § 5-62-9(4)(a)(iii).

31. See *id.* § 5-62-9(4)(a).

32. See *id.*

33. See *id.* § 5-62-11.

34. See *id.* § 5-62-9(11)(i).

35. See *id.* § 5-62-9(11)(2).

36. See *id.*

37. See *id.* § 5-62-10.

38. See *id.*

39. See *id.*

law, including those of principal and agent, except where such construction would be unreasonable as a matter of law.⁴⁰ The express warranty protections do not apply to art merchants as buyers,⁴¹ except where the art merchant is purchasing a multiple.⁴² However, the amendments preserve the art merchants' other remedies at law.⁴³

Vicki J. Bejma

40. *See id.* § 5-62-12.

41. *See id.* § 5-62-9.

42. *See id.* § 5-62-12.

43. *See id.*