

Warhol board faces threat of class action

Movie producer Joe Simon-Whelan sues, believing his work is genuine

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The Andy Warhol Art Authentication Board is the target of a multi-million-dollar lawsuit that alleges that it has been illegally controlling the Warhol market. The suit, filed on 13 July in New York, also names as co-defendants the Andy Warhol Foundation, which established the board in 1995, the Estate of Andy Warhol and Vincent Fremont, a trustee of the estate who is the exclusive agent for sale of Warhol paintings owned by the Warhol Foundation.

The plaintiff, movie producer Joe Simon-Whelan, is the owner of a 1964 canvas self-portrait of Warhol that the board has twice rejected, and as a result is nick-named “double denied”. He is seeking damages “well in excess of \$20m”. He alleges that “while the board was ostensibly created as a not-for-profit corporation that would be independent from the Warhol Foundation which funds it, in reality, the...board is completely controlled by Fremont, and the foundation, who routinely exploit the board’s purported independence...for significant personal benefit.”

Mr Simon-Whelan’s legal team includes Lee Weiss and Brian Kerr, partners in the Class Action Group of New York-based Dreier LLP. They say there are other collectors in the same position as Mr Simon-Whelan and that if they join the suit the court will certify them as a “class” collectively eligible to recoup damages. As yet, no one else has joined the suit.

Ronald Spencer, a lawyer who represents the board and the foundation, says the latter will respond by 14 September seeking a motion to dismiss.

“Mr Simon-Whelan is disappointed with the board’s opinion of his painting since it apparently keeps him from selling it for ten times what he paid for it,” says Mr Spencer. (Mr Simon-Whelan acquired the work for \$195,000 in 1989 and reportedly had a buyer for \$2m when the work was first rejected by the board in 2001.) He says the suit is “without factual support or legal merit [and] will drain resources from the charitable and educational activities of the foundation” (see p6).

Mr Simon-Whelan’s painting was produced not by Warhol himself, but by Richard Ekstract, a publisher who in 1964 bartered the loan of video equipment to Warhol in exchange for the right to produce silkscreen paintings using acetates of a Warhol self-portrait. The board rejected it based on testimony from Mr Ekstract and his printers that Warhol did not participate in or supervise the production.

However Mr Simon-Whelan says that the work was twice authenticated as a genuine Warhol (The Art Newspaper, October 2004, p8): by Mr Fremont in 1987, and by Fred Hughes in 1988. Both Mr Fremont and the late Mr Hughes were executors of the Warhol estate before the establishment of the Authentication Board.

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