

Standing Up for Artists' Rights

Carol Steinberg has represented clients in the city and on the East End for the past 23 years

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Carol Steinberg in her Springs office

Carol Steinberg was speaking before an audience of creative types at the New York Foundation for the Arts in Manhattan, where she teaches courses on artists' rights, when a choreographer came up to ask her about a problem.

The choreographer had engaged a filmmaker to film her dance routine, planning to use the film as part of her next performance. "At the last minute," Ms. Steinberg recalled, "the filmmaker asked her to sign an agreement. Typical of many artists, she was so involved in what she was doing that she didn't think much about it."

As opening night approached, the filmmaker called the choreographer and said, " 'You can't use this [film] in your performance.' "

"A very unfortunate situation," said Ms. Steinberg, an arts lawyer who has represented clients in the city and on the East End for the past 23 years. In the end, the choreographer settled it out of court, by giving the filmmaker a sum she "would never have agreed to in the first place, but it took a long time and was very stressful."

The lesson is clear, she said, for any creative artist: "When you're collaborating, it's really a good idea to have an agreement before you begin," and to have a lawyer check it out.

Ms. Steinberg, who spends summers and long weekends in a part of Springs discovered by the masters of the 20th-century art universe 70 years ago, often gets questions like that one; contracts are one of her specialties.

“People say, ‘I work in a gallery, I’m not getting paid, what should I do?’ ‘My work was in a museum and it was damaged, what should I do?’ ‘How do I get out of a contract, what should I do?’ ”

There was the artist who called her complaining that “I can’t get my work back from the gallery,” which, she said, had sold only \$700 or \$800 worth of her paintings. She was sure she could do better somewhere else.

Her contract, however, wasn’t as clear as it should have been, Ms. Steinberg said. For one thing, “the commission was lower than normal, 30 percent of the net proceeds. It should be 50 percent of the sales price.” For another, “the gallery had the right to terminate the agreement, but she did not.” The gallery could have argued that it could represent the woman forever, the lawyer said.

The gallerist was “stubborn and difficult,” and absolutely refused to hand over the paintings. When the artist ignored him and went with a van to pick them up, “he actually threatened to call the police.”

“I wrote a letter to the dealer pointing out that the consignment statute says he holds the work in trust.” (He had the paintings on his website as well, without crediting the artist — a violation, she said, of “moral authority.”)

The artist is now suing the gallery for copyright infringement. Ms. Steinberg referred the matter to a litigator — she does not try cases herself — and barring settlement, it is to be tried in a federal court, under the 1990 Visual Artists Rights Act.

In New York State, she said, a dealer can be found guilty of criminal acts more quickly today than in years past. “After Salander, so much art was lost that they got the law strengthened.”

That was the infamous case involving the Salander-O’Reilly Gallery in New York City, which was sued for fraud by numerous business partners and celebrity customers in 2007. Among them was Earl Davis, the son of the artist Stuart Davis, who claimed that his friend Larry Salander had sold 90 of his father’s paintings, entrusted to him on consignment, without his knowledge. Mr. Salander, who was sentenced in 2010 for running a Ponzi scheme that cost his clients some \$120 million, is now serving a 6-to-18-year sentence in an upstate prison (he is eligible for “merit release” next month).

After that scandal, the New York State Legislature strengthened the state’s Arts and Cultural Affairs Law, among other things establishing criminal penalties for dealers and giving artists who sue the right to seek attorneys’ fees from the defendant.

“Artists don’t understand that they have a bundle of rights that give them control,” said Ms. Steinberg. “They can be taken advantage of so easily. Say a restaurateur likes an image he saw at Ashawagh Hall and decides to put it on his menu. The artist may say, ‘I’m so flattered,’ — but she may not. Then what?”

"No one can show someone else's work, or adapt it, without their consent." But there's a catch. "Artists have to register their work if they want to sue for copyright infringement, within three months of the infringement" — a process that Ms. Steinberg readily acknowledged is "problematic." She estimated that only 5 to 10 percent of all artists register.

One who did was a Haitian photographer named Daniel Morel, who was in Haiti at the time of the earthquake. He sent out his images over social media, where another man found them, copied them, put them on his website, and claimed them as his own work. The photographs were picked up and distributed by Getty Images and Agence France-Presse and used by The Washington Post, ABC, CBS, and many other agencies, which paid the usurper about \$45 per print. Mr. Morel sued for copyright infringement, and after four years a Manhattan jury awarded him \$1.2 million.

"He registered his copyrights and sued and won," said Ms. Steinberg. "The point is, he was able to enforce his rights."

That has become more and more complicated for photographers and artists in the digital age. "One question I get asked the most," said the lawyer, "is, 'what can I use of other people's work?' " (in collages, for example, or other mixed media).

She cited the recent case of Patrick Cariou, a photographer, who sued Richard Prince, the well-known "appropriation artist" — he had an exhibition called "Covering Pollock" at Guild Hall four years ago — for copying a number of his photographs and using them in a series called "Canal Zone," shown in 2008 at the Gagosian Gallery. The photos had been published by Mr. Cariou years earlier in "Yes, Rasta," a book about the Rastafarian community in Jamaica.

"Canal Zone" sold millions of dollars worth of art, said Ms. Steinberg, and in 2009 the photographer sued the artist for copyright infringement, along with the gallery; its owner, Larry Gagosian, and Rizzoli, which published the show's catalog.

The defense turned on whether the copyrighted material had been used for a "transformative" purpose — commenting on, criticizing, or parodying it. In large part because Mr. Prince did not claim to be "commenting upon" Mr. Cariou's photos, the court concluded that "Canal Zone" was not "transformative," and ordered that the unsold works from the show be destroyed, along with any remaining catalogs.

The New York Times wrote that the lawsuit was "of high interest to the art world, which largely favored Prince's position, and to the photographic community, which largely favored Cariou's."

Mr. Prince appealed the decision, and this time he won. Most of the art at issue (though not all) was indeed "transformative," said the court, in that it presented, "to a reasonable observer," a new and different aesthetic.

The two men settled the suit for an undisclosed sum last year before it could go back before the lower court, but, as often happens, the case left many unanswered

questions and a lot of angry people in the art world. Ms. Steinberg said her students “are outraged when they hear of that case, especially the photographers.”

“Some people say artists have to be able to use anything when they're making work. But photographers would say, 'That's my work.' ”

The problem was compounded a thousandfold by the coming of the digital age. In this case, for example, Mr. Prince's works involved all sorts of “transformations” — copying the original photographs, printing them, making them bigger or smaller, blurrier or clearer, adding content, putting several photos together to make one, and on and on. There is a show going on right now in East Hampton in which, according to the gallery, the artist uses “images of people, including herself, from Internet platforms such as Facebook and Tumblr.”

Ms. Steinberg, who teaches legal sessions and classes for artists in conjunction with the East End Arts Council's JumpStart program as well as the ones in the city, once offered a class at the School of Visual Arts called the Visual Artist and the Law, and was puzzled when not many people signed up to attend. The next semester she offered it under a new name: Legal Concerns for Artists in a Digital Age.

This time the room was almost full.

Born in Danville, Ill., Ms. Steinberg went to Indiana University (“My father wouldn't let me come east”) and married too young. The marriage lasted seven years, during which she taught English literature in high school before doing what she'd always known she would, leaving the Midwest behind for the East Village.

“I am very happy to be living in the East,” she said. “It's much more interesting.”

At some point, she decided to become a lawyer. “I thought law school would be like teaching English. You read, you write, you speak!”

It wasn't, much, at least not until she discovered art law. “Working in the arts is really satisfying,” she said. “Artists really need help. Law can be a foreign language.”