

Lassos and Lawsuits: Who Really Painted A Cowboy Tableau?

Art Collector Fought Finding That He Bought a Forgery; Role of a Giant Law Firm

By PAUL DAVIES
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Every week or so, somebody asks Ginger K. Renner to verify that a painting is an original by C.M. Russell, an artist known for his early 20th-century depictions of cowboys and Indians.

More often than not, Mrs. Renner declares the artwork a fake, and most people accept that as the last word since she is a leading authority on the famed artist. But in 2003, a collector named Steve Morton sued her and another Western art expert, insisting they were wrong about a painting he had purchased that has "C.M. Russell 1913" scrawled on the lower left corner, along with a sketch of a steer's skull, the artist's trademark.



Although C.M. Russell's name and trademark appear on 'Lassoing a Longhorn,' art experts are fighting over who actually painted it.

The suit backfired. The unusual result: a multimillion-dollar judgment against Mr. Morton and one of the nation's top law firms.

Charles M. Russell (1864-1926) lived most of his life in Montana, after moving to the state as a teenager to become a cowboy. He turned out 4,000 oils, watercolors, sketches and sculptures. His 12-by-25-foot "Lewis and Clark Meeting Indians at Ross' Hole" hangs in Montana's Capitol. Mr. Russell's work can fetch more than \$1 million. At the Coeur d'Alene Art Auction in Reno, Nev., last year, LaJolla, Calif., collector William Foxley sold "Pieigans," a 1918 oil of

Indians on horseback, to an anonymous buyer for \$5.6 million.

Unlike his contemporary Frederic Remington, who strove to please art critics, Mr. Russell had mass appeal that spurred an industry of imitators.

"I don't think there has been an American artist who has been faked as often as Charlie Russell," says the 84-year-old Mrs. Renner. "In the three weeks before Christmas, I had seven fakes come through the door."

The C.M. Russell Museum in the painter's hometown of Great Falls, Mont., hears regularly from people who wrongly think they own a Russell, says its director, Anne Morand. (The 38th-annual C.M. Russell Art Auction, a five-day event that benefits the museum, began yesterday in Great Falls.)

Mrs. Renner became a Russell expert through her late husband, Fred, who grew up near Mr. Russell in Great Falls and later amassed more than 100 works by the artist. In 1966, Mr. Renner published a catalog of Russells housed in the Amon Carter Museum in Fort Worth, Texas. The book's first edition included "Lassoing a Longhorn," a watercolor depicting a cowboy on horseback roping a steer.

In 1972, the museum sold "Lassoing a Longhorn" to the Kennedy Galleries in New York. Mr. Morton, a retired art collector who served as president of the Bob Hope Chrysler Classic golf tournament, bought it three months later for \$38,000.

Mr. Morton, who declined to be interviewed, arranged in 2001 to sell the painting at the annual Coeur d'Alene Art Auction, known for sales of 20th-century Western art. Stuart Johnson, a partner in the auction house, was suspicious.

"Geez," Mr. Johnson recalls saying, "this doesn't look like a Russell; it looks like a Seltzer." He said the two painters have distinct styles that make it easy to tell the difference.

Olaf C. Seltzer (1877-1957) was a native of Denmark who moved to Montana to work on the Great Northern Railroad and became a friend of Mr. Russell's. The two often painted together, and Mr. Seltzer's work was influenced by Mr. Russell's.

To authenticate the painting, the auction house contacted Mrs. Renner and Steve Seltzer, Olaf's grandson, who is an expert in his grandfather's work. Both knew of the painting and declared it to be a Seltzer. Mrs. Renner says her husband's inclusion of the painting in his book about the Amon Carter collection was a mistake. She says he must have been "working from a bad transparency."

Unsatisfied, Mr. Morton, now 66, drove the original from his home in Rancho Mirage, Calif., to Mrs. Renner's house near Scottsdale, Ariz. Her home is a shrine to Mr. Russell, displaying dozens of his works and a pair of the artist's boots. Several times a month, groups traipse through the house on tours that include drinks and hors d'oeuvres. In return for her hospitality, Mrs. Renner requests dinner at a local restaurant. She charges \$250 to authenticate a Russell. She used to let disappointed owners of fakes off at no charge but now asks them for \$50.

"It's a helluva a good painting," Mrs. Renner recalls telling Mr. Morton. "But it's not a Charlie Russell -- it's an O.C. Seltzer."

Mr. Morton also phoned Steve Seltzer, 61, who lives in Great Falls and is also a painter. Mr. Seltzer told him that he had seen a photo of "Lassoing a Longhorn" in Horizon magazine in 1979 and determined then that it was his grandfather's.

"O.C. Seltzer's style is characterized by a 'tight' detailed rendering of the figures," Mr. Seltzer said in court papers. "C.M. Russell's work is much looser -- he would 'suggest' rather than 'describe.' "

Coeur d'Alene declined to auction the painting. So Mr. Morton had his attorney send Mr. Seltzer and Mrs. Renner threatening letters.

"We expect immediate cooperation on drafting your 'withdrawal of opinion,' or litigation will be filed without any further discussion," the letters said. They were signed by Dennis Gladwell, a friend of Mr. Morton and a retired partner at Gibson, Dunn & Crutcher LLP, an 800-attorney Los Angeles firm with offices around the world. (The firm does legal work for Dow Jones & Co., which owns The Wall Street Journal.)

After they refused to recant, Mr. Morton in July 2002 sued them in federal court, Mr. Seltzer in Montana, Mrs. Renner in Arizona. He alleged that they had wrongly declared his Russell to be a Seltzer, thus decreasing its estimated value to less than \$50,000, from as much as \$800,000. The suits accused both of fraud, malice and bad faith.

Mr. Seltzer then produced affidavits from nine experts who agreed that the painting wasn't a Russell and that its signature was a forgery. Mr. Morton withdrew both suits in February 2003.

Mrs. Renner let the matter drop, but five days later, Mr. Seltzer sued Messrs. Morton and Gladwell, his attorney, and the Gibson, Dunn law firm in Montana state court, accusing them of causing emotional distress and damaging his reputation via "malicious prosecution" and "abuse of process."

One document produced at the February 2005 trial showed that before suing the authenticators, Mr. Morton had another lawyer write a letter to the Kennedy Galleries saying Mr. Morton had "been shocked to learn that the painting is not a work by Russell." The gallery and the Amon Carter Museum told Mr. Morton that nothing in their files suggested that the painting wasn't an authentic Russell.

The jury ruled for Mr. Seltzer, ordering Mr. Morton, Mr. Gladwell and Gibson, Dunn & Crutcher to pay him a combined \$21.4 million in actual and punitive damages -- among the biggest judgments nationwide last year. The judge later reduced the damages to \$11 million, citing a U.S. Supreme Court ruling that limits how much punitive damages can exceed compensatory damages. Mr. Gladwell, now a nurse in Utah, didn't return calls for comment.

Messrs. Gladwell and Morton and the firm are appealing, contending that the damages were excessive and that the trial judge improperly instructed jurors, excluded key defense testimony and allowed prejudicial plaintiff evidence. Most of the damages were levied against the firm, which argues that it had little involvement.

"This was not a case of a big, huge law firm going to Montana and litigating against one individual," says Theodore J. Boutrous Jr., the Gibson Dunn lawyer handling the appeal. "This involved one retired partner."

Mr. Seltzer also is appealing to have the \$21.4 million verdict reinstated. Both appeals are before the state Supreme Court. Mr. Morton still owns the painting.

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