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IFAR Journal

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COVER: NORMAN ROCKWELL. *Russian Schoolroom*, Oil on canvas. 15 1/4" x 37". Licensed by Norman Rockwell Licensing, Niles, IL. See story on page 7.

THEY BOTH WANTED A PIECE OF THE ROCK [WELL]

BUT SPIELBERG'S DEALER PREVAILS OVER ORIGINAL OWNER IN THEFT CASE
OLD FBI DOCUMENTS PROVE CRUCIAL • APPEALS ARE PENDING

There is much still unanswered in the complicated ownership dispute over Norman Rockwell's *Russian Schoolroom* (FIG. 1), which was stolen in 1973 and made big news in 2007 when it turned up in the collection of movie producer Steven Spielberg. One of Spielberg's staff spotted the work on the FBI stolen art Website, where it had recently been posted, and notified authorities.

A battle for legal title ensued between the original owner, Jack Solomon, and the art dealer, Judy Goffman Cutler, who had acquired the work at a public auction in 1988 and sold it to Spielberg in 1989. In 2007, soon after the case went public and Solomon sued Spielberg (and the FBI), Goffman traded the work for another Rockwell in an effort to extract the filmmaker from the suits. Claims and counterclaims — for declaratory relief, conversion, quiet title, replevin, and defamation, among other charges — were filed in federal courts in New York and Nevada, involving, at times, Spielberg himself, the FBI, and the Art Loss Register (ALR), which was representing Solomon in the dispute.

It all led to a bench trial this March in the U.S. District Court



FIGURE 1. NORMAN ROCKWELL. *Russian Schoolroom*, 1967. Oil on canvas. 15 ¼" x 37". Licensed by Norman Rockwell Licensing, Niles, IL.

for the District of Nevada.¹ Judge Roger Hunt's ruling on April 8th was unequivocal: Goffman had good title to the painting, and Solomon had no right to assert conversion against her because, not only did evidence show that he *knew* that the painting had reappeared in 1988, it showed that he *consented* to its sale at auction, and, what's more, *profited* from it. Solomon's assertions that he didn't know, the judge said, were simply "not credible." And, because Solomon *knew* that *Russian Schoolroom* was being sold at auction in 1988, all of his remaining claims were barred by the statute of limitations.

But, despite the verdict, it seems that we haven't heard the end

of this case. Solomon and Goffman have filed notices of appeal, and the ALR has filed suit (in state court in New York) against

"Solomon's assertions that he didn't know [the work reappeared in 1988], the judge said, were simply 'not credible'."

Solomon for allegedly failing to disclose to them the full details of his case and for reimbursement of legal fees and costs under the terms of their engagement contract.²

Meanwhile, IFAR has confirmed that the painting is back with Goffman in Rhode Island, and will be going on view with the Rockwell collection at The National Museum of American

¹ *Solomon v. Cutler*, No. 07-CV-00645, Decision (D. Nev. Apr. 8, 2010).

² *Art Loss Register v. Solomon*, No. 600438/10 (N.Y. Sup. Ct. filed Mar. 11, 2010).

Illustration in Newport, which Goffman co-founded with her husband.

THE THEFT

The work — an oil on canvas painted by Rockwell in 1967 on a trip to the Soviet Union and included in October of that year in a *Look* magazine article about the Soviet Union's education system (FIGS. 2 & 3) — was stolen in June 1973. Thieves broke into a gallery in Clayton, Missouri, to which Solomon had consigned the painting.³ The gallery, Arts International, was a subsidiary of Circle Fine Art, a print dealership owned by Solomon, which was the exclusive publisher of Rockwell prints from 1971-76.

“Had the Art Crime Team known about this information in 2004, [Wittman] told IFAR, ‘we never would have proceeded.’”

Although the theft was reported to the local police and also to Solomon's insurer, Chubb, the painting was not found, and did not turn up again until 1988, when it was featured on the catalogue cover for the annual Louisiana Purchase Auction organized by the Morton

³ In fact, the painting had already been sold, and partial payment made at the time of the theft, but the gallery terminated the sale after the theft. The purchaser, not Solomon, was listed as the owner on the police report.

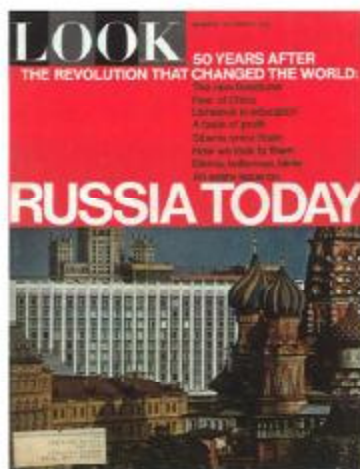


FIGURE 2. Cover of *Look*, October 3, 1967.

Goldberg Auction Gallery in New Orleans.⁴ Goffman, a major dealer in illustration art and the work of Rockwell, bought the painting at the auction for \$64,000. With commission, she paid \$70,400. Less than a year later, Goffman sold the painting to Spielberg (a Rockwell collector) for \$200,000. All was seemingly quiet for 15 years, until the FBI's newly formed Art Crime Team initiated an investigation to locate and recover the stolen Rockwell in July 2004.

What triggered the new investigation after all these years? Robert Wittman, head of the FBI's Art Crime Team at the time, and now a private consultant, told IFAR that it was a tip to the Team's St.

⁴ The two-day sale took place October 28 and 29, 1988; the Rockwell was sold on day two.



FIGURE 3. First page of a two-page *Look* magazine article with Rockwell's illustration.

Louis FBI case agent saying that the Rockwell art theft case was still open (a tip probably generated from publicity about the newly-formed Team). Information that later came out at trial (see below), including signed memos in the FBI's own files, suggest that the case should have been closed in 1988, but, mysteriously, was not. Wittman “had no knowledge of these 1988 documents.” Had the Art Crime Team known about this information in 2004, he told IFAR, “we never would have proceeded.”

THE JUDGMENT OF SOLOMON [V. CUTLER]

Solomon initially filed suit against Steven Spielberg and FBI director, Robert S. Mueller, III, in federal district court in Nevada on

May 16, 2007.⁵ Asserting causes of action for declaratory relief, replevin, quiet title, and conversion, Solomon sought damages and a return of the painting to his possession. Just one day prior, Goffman had filed suit against Solomon and the Art Loss Register in New York federal court. That case was voluntarily dismissed, and Goffman joined the Nevada litigation, taking the place of Spielberg as defendant when she retook ownership of the disputed Rockwell. Goffman counterclaimed against Solomon and the ALR for defamation and intentional tort based on Solomon's comments to the press regarding her due diligence efforts and ALR's emails and a phone call in which ALR allegedly threatened her in an effort to force return of the painting to Solomon. Her counterclaims, however, were dismissed on Summary Judgment.

Throughout the proceedings, Solomon asserted that he had no knowledge of the whereabouts of *Russian Schoolroom* after it was stolen in 1973 and before it was found in Spielberg's possession in 2007. A sealed FBI report of an investigation that occurred in 1988 when the painting resurfaced at auction, however, told a very different story. Entered into evidence over the objections of

Solomon, and found only after Goffman subpoenaed the FBI records in pre-trial discovery, the documents indicated that FBI agents actually spoke to Solomon when *Russian Schoolroom* was being advertised for auction. During that conversation with the FBI, Solomon informed the agents that he had been notified of the upcoming sale, and that he had entered into a settlement agreement with the Goldberg Auction Gallery and Chubb, which had paid \$20,000 in 1973 for the loss of the painting. Under the settlement, the parties agreed that 10 percent of the sale price (estimated in the catalogue at \$100,000) would go to the auction house, \$20,000 would be paid to Chubb, and the remainder would be split 50-50 between Solomon and the (unidentified) consignors. According to the court, these FBI memos — three in all, signed by the FBI's St. Louis agent in 1988 — “clearly demonstrate Solomon's knowledge of, consent to, and profit from the sale.”⁶

Solomon denied that the FBI contacted him in 1988 and contested the admissibility of the FBI documents — suggesting that they were “unauthenticated.” However, even without the FBI reports, the court determined

“Some mysteries remain: Why, for example, wasn't the case closed in 1988? Who consigned the painting to the Goldberg Auction Gallery? . . .”

that there was sufficient evidence to show that Solomon knew or should have known that *Russian Schoolroom* was being sold at auction in 1988. Several witnesses, for example, claimed to have called Solomon himself or the Circle Gallery, in which Solomon held an equity interest, and left messages to report that *Russian Schoolroom* was coming up at auction. In addition, advertisements for the painting's sale were placed in several prominent art magazines and featured on the cover of the auction catalogue. As a dealer in Rockwell's work, presumably Solomon would have noticed these. Finally, Chubb's insurance letter, written after Solomon filed this case, indicated that Chubb had waived its ownership interest in the painting.

Based on these findings of fact, Judge Hunt concluded that Solomon knew of or should have known about the sale of *Russian Schoolhouse* in 1988. As a result, under Nevada law, his claims against Goffman for declaratory relief, quiet title, and replevin were barred under the statute of limitations. Although Solomon argued

⁵ *Solomon v. Mueller*, No. 07-CV-00645, Complaint (D. Nev. filed May 16, 2007).

⁶ *Solomon Decision* (2010), pp. 6-7. The FBI agent who signed the documents was Wanda Faust [Denny], St. Louis agent from 1986 – 1990.

that New York law (more favorable to original owners in a theft/replevin case) should apply to his claims, Judge Hunt found that, even under New York's statute of limitations, the claims would be barred.

With respect to Solomon's claim of conversion, Louisiana law applied because if conversion occurred at all, it took place at the auction. Under Louisiana law, conversion occurs when "possession" of personal property "is acquired in an unauthorized manner."⁷ Here, too, the court ruled for Goffman, saying that her investigation into the provenance of *Russian Schoolroom* prior to purchase in 1988 met the standard of care for art dealers in the industry. It said this despite the fact that she had not searched IFAR's — or any other — stolen art database.⁸ (Ironically, even if she had searched the IFAR database in 1988, the work would not have turned up. The Rockwell was not registered on the ALR database until December 2005, when the FBI listed it as part of its reopened investigation.) Instead, Goffman's investigation included reviewing the provenance provided in the auction house catalogue,

calling the Norman Rockwell Museum to see if museum officials had any additional information about the painting, and consulting the catalogue raisonné. Even without these investigative efforts by Goffman, Solomon's claim for conversion would have been precluded by his consent to the sale of the painting in 1988.

GOFFMAN'S DEFAMATION AND INTENTIONAL TORT CLAIMS

In earlier rulings, Judge Hunt threw out Goffman's claim of intentional tort against the ALR and her claims of defamation and intentional tort against Solomon. Goffman's claim against the ALR stemmed from two emails and a telephone call to her attorney in which the ALR allegedly attempted to force her into settlement and in which she was allegedly threatened with criminal prosecution. Her defamation claim against Solomon resulted from comments he made to the press that she "should have known better" and that "she could have checked that "there's been a record of this ever since the day it was stolen."⁹ Both ALR and Solomon filed motions for summary judgment on these claims and

Judge Hunt granted those motions on August 25, 2009. However, because the judge's rulings on these motions were filed under seal and are unavailable to the public, it is unclear on what basis Goffman's claims were actually dismissed.

NEXT STEPS AND UNANSWERED QUESTIONS

Notices of appeal have been filed by both Solomon and Goffman in the U.S. Court of Appeals for the Ninth Circuit.¹⁰ Solomon is appealing Judge Hunt's April 8, 2010 decision that he knew of and consented to the auction sale of *Russian Schoolhouse*. He will presumably claim that the FBI documents from 1988 and other testimony were improperly admitted into evidence. Goffman, on the other hand, is appealing the court's rulings on her claims of defamation and intentional tort, although here, too, details will become clearer once the opening briefs are filed, assuming the parties actually go ahead with their appeals.

Some mysteries remain: Why, for example, wasn't the case closed in 1988? Who consigned the painting

⁷ *Id.* p. 9.

⁸ The ALR was not created until 1991, at which point IFAR licensed its database to it.

⁹ *Cutler v. Art Loss Register*, No. 07-CV-00645, Third Party Complaint (D. Nev. filed Sept. 17, 2007).

¹⁰ See *Solomon v. Mueller*, No. 10-15969 (9th Cir. filed Apr. 28, 2010) and *Solomon v. Cutler*, No. 10-16049 (9th Cir. filed May 6, 2010).

to the Goldberg Auction Gallery? Described only as “a couple,” there is no mention of the consignors’ names in any of the court documents. Did the auction house ever ask how they acquired the painting? Were they involved with the theft? The statute of limitations on the crime itself has long since passed, but clearly the consignors were not sure they had good title

at the time of the auction or they would not have agreed so readily to split the proceeds 50/50 with Solomon. Other questions: Why didn’t the theft get registered in IFAR’s stolen art database, either by Solomon or Chubb? Admittedly, the IFAR database wasn’t launched until 1977, four years after the theft, but thousands of items were registered retroactively. And, most

puzzling, why did Solomon pursue this claim when all evidence shows that he relinquished legal title in 1988? Was the temptation simply too great, given the prices that Rockwell now commands in the marketplace? We will probably never know.

— SHARON FLESCHER, with
SHIMA MAJIDI, ESQ.

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