



## Anyone happen to see this painting?



**John Kelly's Washington**

Some time around 1917, American artist **Ellsworth Woodward** put the finishing brushstrokes on his impressionist painting of a sun-dappled New Orleans fountain.

In February of last year, that oil-on-canvas was sold at an auction in Bethesda. With the commission, it went for \$21,500.

Now, no one knows where exactly the painting is. Not the person who sold it, Washington collector **Robert Fastov**. Not the person who bought it, **Amanda Winstead**, a New Orleans art broker and appraiser. Not the auction house that auctioned it, Sloans & Kenyon on Wisconsin Avenue.

You can see the problem. "Somehow it got misplaced," said **Stephanie Kenyon**, the auction house's owner. She says that after the two-day sale, the canvas was misfiled. "We have a huge facility. It hasn't turned up yet."

That does not sit too well with buyer Winstead, who in August filed a lawsuit in a Louisiana court against Kenyon and the auction house, contending that Kenyon didn't misplace or lose the painting "but rather sold the painting to a third party for a greater amount than what Plaintiffs agreed to pay."

Nonsense, said Kenyon. "I know she's trying to send around nasty information about us to try to stir up trouble," she said.

I first heard about the case when Winstead's attorney, **Lisa A. Montgomery**, sent me a news release about it. I'd written a column about the massive Fastov auction: 1,500 works, including pewter plates and Colonial portraits.

Fastov is quite a character. The retired government lawyer and

self-taught art expert is no stranger to litigation himself. In 1993, he tussled with Christie's over one of his paintings, suing it and being sued by it. (Eventually, he was ordered to pay \$630,000 to the British auction house.)

Fastov said he hadn't heard the Woodward painting had disappeared. He's still sore at Sloans & Kenyon over the auction of his collection. Although he said it earned him about \$400,000, not everything sold, and he accuses the auction house of, among other things, not advertising the sale enough. (Said Kenyon, diplomatically: "His expectations were extremely high. The market wouldn't support that in many cases.")

Despite his irritation, Fastov doesn't think Sloans & Kenyon pulled a fast one with the Woodward painting.

"I don't think even they are dumb enough to do something like that," he said.

Still, when you buy something, you do expect to actually get it. So the aggrieved buyer has a case, right? Well, it's more complicated than that.

"No money changed hands here," Kenyon said. "We didn't accept her money. We don't want to take money for something we can't deliver."

Well, if Winstead didn't fork over \$21,500, what's the big deal? No harm, no foul, right?

Not so fast said Montgomery, the plaintiff's attorney. She said the ownership of an item "transfers at the fall of the hammer. Remember, the auction house doesn't own the item. They're taking it on consignment. When the hammer falls, it goes from Fastov to my client. My client by law is the legal owner of the painting."

Said Kenyon: "That's not true." She said the transaction isn't complete until the check is received, the order processed and the artwork delivered.

This is a bigger deal than it

might be because of what happened a few months before the Fastov auction. Woodward (1861-1939) is a respected, if not especially pricy, Southern artist. The estimate on this particular work was \$15,000 to \$25,000. But in November 2012, a larger Woodward oil sold for a considerably larger sum: \$185,225, including commission.

If you could snap up a Woodward for \$20,000, you might be looking at a tidy profit.

Would-be buyer Winstead already has made some money, or will if things keep breaking her way. In October, a New Orleans court ruled in her favor and ordered Kenyon to fork over \$43,500.

Kenyon is fighting back. Her attorney in Louisiana, **Joe Myers**, said he filed what's called an action for nullity to reverse the decision. He said the bidder contract that Winstead agreed to stipulated that any disputes would be settled in a federal court in Maryland, not in Louisiana, and that any liability is limited to the price paid, not twice that amount. He's livid at the accusations of a switcheroo leveled at Kenyon — and that Montgomery issued a news release, something he considers unlawfully.

"If we get it nullified, I'm pretty sure there would be a suit against the plaintiffs for malicious prosecution and libel," Myers said. (Said Montgomery of her news release, "I see that done here, not all the time, but it's not unusual.")

Meanwhile, Montgomery says her client has listed the painting with the Art Loss Register, the service that tracks lost or stolen artwork, in case it should surface somewhere unexpected.

Said Kenyon, the auction house owner, "When it turns up, we'll certainly let everybody know."

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