

Museums Beat 'Art Bastard's \$100M Antitrust Suit, For Now

By **Dave Simpson**

Law360 (December 19, 2018, 11:08 PM EST) -- A New York federal judge Wednesday tossed a proposed class action from the so-called "Art Bastard," who claims New York museums conspire with art galleries to keep artists such as himself out, finding he failed to show that his work belongs in the museums but still allowing him another chance.

Robert Cenedella — described by art critics as a "gadfly," "enfant terrible" and "troublemaker," and who's dubbed "Art Bastard" in a documentary film about him — sued the Metropolitan Museum of Art and four other prominent museums in February, saying the "corporate museum cartel" keeps the high-end art market small so that the value of their own collections remains high. He said five top galleries serve as gatekeepers for those museums.

But U.S. District Judge John Koeltl found that Cenedella failed to plead facts showing that a favorable outcome would likely remedy his alleged injury, failed to allege he'd be an efficient enforcer of the antitrust laws, failed to adequately allege an antitrust agreement between the museums, and did not allege a per se violation of the Sherman Act.

"Although the plaintiff assures the court that his artwork is of quality that would be shown in the defendants' museums if not for the alleged conspiracy, this subjective boast alone cannot substantiate the plaintiff's claim that enjoining the alleged conspiracy would lead the defendants to begin purchasing his work," the judge said.

Judge Koeltl noted that Cenedella hasn't put forward any claims that other museums have shown his work.

The suit called for at least \$100 million in damages on behalf of Cenedella and dozens of other contemporary artists who have created artwork eligible for exhibition but have been blackballed from the market. He alleges the museums violated federal and state antitrust laws by accepting financial and logistical support from the galleries whose artists the museums showcase.

But the judge reiterated his comments made during a hearing earlier this week when he said that the suit seems to turn a lot on artistic taste, and noted the Supreme Court's 2007 decision in *Bell Atlantic Corp. v. Twombly* made clear that Cenedella's allegations would not be enough.

"Under *Twombly*, there have to be factual allegations that support a plausible claim," Judge Koeltl said

at the hearing. "It's hard to think of a case that is more similar to Twombly than this case."

Cenedella has not laid out adequate allegations as to the specifics of the conspiracy, the judge said.

"To put it kindly, the defendants might not find the plaintiff's works worthy of collecting and showing," the judge said in the decision.

Finding that it is not plain that an amendment to the complaint would be futile, Judge Koeltl agreed to allow Cenedella to file another one.

The satirical painter came to fame with a provocative 1965 "Yes Art" exhibit that poked fun at the moment's Pop Art craze and commercialization.

As recently as last December, Cenedella was making headlines showing his painting of a crucified Santa Claus surrounded by Christmas presents outside of St. Patrick's Cathedral on Fifth Avenue in Manhattan.

Cenedella is represented by Nicholas Fortuna and Megan Muoio of Allyn & Fortuna LLP.

The museums are represented by William Cavanaugh, George LoBiondo and Jeffrey Hughes of Patterson Belknap Webb & Tyler LLP.

The case is Cenedella v. Metropolitan Museum of Art et al., case number 1:18-cv-01029, in U.S. District Court for the Southern District of New York.

--Additional reporting by Jack Newsham. Editing by Jay Jackson Jr.