



L'Affaire Lamanna

The Fact of the Matter

Carmen Lamanna Gallery
840 Yonge St.,
Toronto, M4W 2H1
Ontario, Canada
November 11, 1977

Dear Mr. Tourbin:

I am writing to you with regard to an article you published in the June issue of *Carot* entitled, "L'affaire Lamanna". It is my personal opinion that this article was misleading to the public, therefore I believe it is my duty and your duty to insure that the public is not misled and to this end I am enclosing my response to "L'affaire Lamanna" which I expect to appear in your next issue of *Carot*.

You are obliged to give me an equal opportunity to express my view in your paper, now that you have published "L'affaire Lamanna".

I am releasing this manuscript to you and to *Carot* only on the condition that it be published in its entirety with no changes whatsoever.

I look forward to seeing the enclosed, "L'affaire Lamanna: The fact of the matter", appear in your next issue of *Carot*.

Yours sincerely,
Carmen Lamanna



CC: Mr. John Robertson, President
Professional Art Dealers

After years of prolonged dispute it is disturbing and a little demoralizing to see the simplest facts so radically distorted as to be virtually unrecognizable: I refer to the recent article by Harry Underwood, entitled "L'affaire Lamanna", in *Carot* for June 1977. This concerned certain business transactions between the Montreal artist Jean Noel and the Carmen Lamanna Gallery. It is in the interest of the art community as a whole for *Carot* to present the facts of the case in question. The implications of that disagreement go far beyond the two parties directly involved. The case also offers valuable insights into the nature of the relationship that actually exists between artists and their dealers today. What follows is not merely "the other side of the story"; the dispute has been settled and I wish to offer here a straightforward public record, one which can—and indeed should be—checked by anyone concerned.

In May 1977 the settlement confirmed by the County Court (presided over by his Honour Judge Allen) determined that:

(1) the accounting and inventory as provided by the Carmen Lamanna Gallery was accurate in every respect;

(2) the artist, Jean Noel, by way of the settlement paid the Carmen Lamanna Gallery the commission owing to it for the sale of a work of art to the National Science Library;

(3) as a result of the settlement the remaining works of art at the Carmen Lamanna Gallery would be released to the artist (The works were available as there had not been any sales since 1972 of Noel's work.);

(4) Noel's claim to \$10,000 damages was abandoned; indeed it was never seriously discussed by the solicitor for Mr. Noel at any time once negotiations for settlement commenced.

The settlement recognized that the gallery was entitled to a monetary commission and did not accept works of art as payment. This meant the accounting was reopened in order that a cash settlement could be reached rather than permitting Noel to settle with artworks. Carmen Lamanna Gallery was able to release works from gallery storage (and be relieved of the expenses entailed in insurance, rental space and care of works in storage).

In the settlement Noel's claim that two works of art on his version of the inventory were unaccounted for and in storage at the Carmen Lamanna Gallery was abandoned.

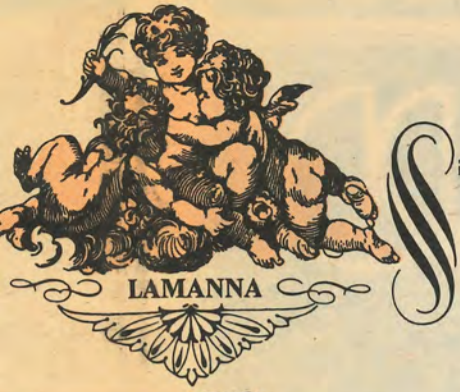
It is interesting to note that it was only at the last minute, when he felt the case might go against him, that Noel negotiated a settlement rather than risk a trial in court. And, contrary to the impression conveyed by Underwood in *Carot*, the outcome of these proceedings vindicated the gallery.

II History of the business transactions: Jean Noel and the Carmen Lamanna Gallery

For the sake of clarification I would like to outline as briefly as possible the history of Jean Noel's dealings with the gallery. In 1970 Jean Noel decided to move his studio to Paris, France. At this time he asked the Carmen Lamanna Gallery to continue represent him in Canada, at the gallery during his absence. At the same time he asked the gallery to handle all his general business affairs in Canada while he was abroad. This was agreed upon: Both parties had previously agreed that the gallery would be entitled to 20 per cent of the sale price for any works that might be fabricated on commission and 50 per cent for works already completed and sold by the gallery. It was now agreed that the same terms, in effect prior to the artist's departure to France, would continue during his absence. Noel then decided to deliver a large number of works (sculptures and photocollages) to the Carmen Lamanna Gallery so that there would be a large body of work available for exhibiting to the public. The gallery was to be responsible for these works, arranging for storage, handling, insurance, etc. Moreover during the time that the Carmen Lamanna Gallery acted as an agent for the artist Noel, it actively promoted his work as his dealer.

In 1971 after long negotiating sessions, the gallery successfully obtained a commission for the artist to do a sculpture for the National Science Library in Ottawa, a project which could





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earn the artist \$18,000. In order to secure this commission I had to attend many meetings with architects and administrators, functioning as an intermediary for the artist, representing him by proxy in his absence. I wrote to him frequently of the step-by-step progress I was making with this transaction. Of course I had to bear the burden of all of these expenses, and they far exceeded the normal expenses for such a project due to the great distance between us. In spite of the cost, I felt it my duty to keep him closely informed of happenings here. Finally the contract was approved and signed by Jean Noel and the Federal Government in August of 1972.

The normal procedure was followed and the full payment (\$18,000) was sent to Noel directly on the condition that he was obliged to pay 20 per cent of this amount (\$3600) to the gallery as its commission on the sale. But much to my surprise, instead of receiving this payment from Jean Noel, I was informed by him, that he could not pay me at the present time due to his (purportedly) tight financial situation.

This was the beginning of a long series of Noel's efforts to postpone payment of this \$3600 owing to the gallery. He seemed to deny that he owed the gallery this sum at all. Whenever the amount owing to the gallery was mentioned he put it off for some vague future date when he said he would try to pay it.

When I pressed Noel when and how he would pay the gallery commission the artist replied that I should wait and take this amount from some future sale of his work. I had little choice so I waited, hoping to recover some of this substantial loss (\$3600) from a possible future sale.

After a long wait I was fortunate to sell four of Noel's works to the Art Bank for a total price of \$4700. The artist was entitled to 50 per cent of this commission; the gallery was entitled to the balance. As 50 per cent of \$4700 is \$2350, Noel's account would then indicate that:

| | |
|-------------------------------------|--------|
| artist owes the gallery | \$3600 |
| artist's commission on ArtBank sale | -2350 |
| artist owes the gallery | \$1250 |

Even taking into account the sale of the 4 works to Art Bank the gallery was unable to collect the full commission owing it, \$3600. Then I realized how much difficulty I would have ever trying to collect this amount, so I thought the sooner he brought his account with the gallery up-to-date the better off I would be. I insisted, therefore, on seeing him pay off his debt right away and balancing the account out to zero.

Noel, reluctant to pay in cash, asked me to accept works of art instead. It was inconvenient for me to do this, but he was insistent and again I had no choice. I realized that I had recovered at least a portion of his debt through the Art Bank commission.

We finally decided on the works to be used in lieu of cash payment to settle Noel's debt on one condition: Noel proposed and I agreed that the value of the works was to be established by their sale price at the time of their exhibition at the gallery. In November 1972 Noel was presented with Transfer of Ownership papers to hand over to the gallery some of his works to bring his account up to date. It was agreed that once the works became the full property of the Carmen Lamanna Gallery that I could dispose of them in any manner I wished without affecting Noel's account with the gallery. Of course, if at any time Noel preferred to keep his own works, a cash settlement was always an option open to him. Noel waited 3 months to sign these papers. This brought the account up to date and I felt relieved that it was at last settled.

To my astonishment I received a phone call from Noel a few weeks later asking "Where is my check for the Art Bank sale?" I replied that he must have a very short memory, and reminded him that this commission from the sale of four works to Art Bank had been used to relieve his debt with the gallery. He seemed to recall having signed the Transfer of Ownership papers to give the gallery works of art towards his debt but continued to insist on the full \$2350 in cash, maintaining that any other debts to the gallery could be paid later. I explained again.

If I did not give him the money immediately he said he would sue the gallery. He warned me that this would cause bad publicity for the gallery.

I considered his reactions strange but since the previous accounting arrangement was the gallery's last resort and of no real benefit to the gallery, I offered him still other methods of paying off his debts. All previous arrangements could be retracted and the accounting reopened, if he wish to pay the full amount in cash (\$3600) he would receive immediately the 50 per cent commission from the gallery on the 4 works of art sold to Art Bank (\$2350).

I was confident knowing that my proposal was fair and flexible, allowing him to reopen the account and settle it in whatever way he wished until it was to our mutual satisfaction. In view of this it is hard to believe that he would instead choose to occupy himself for more than five years with three lawyers only to end up with the same settlement I had offered him five years before without lawyers.

I was delighted that the legal settlement allowed that the account would be reopened and the debt the artist owed to the gallery be paid in cash not in artworks, as he had intended.

Inventory

Another act in the play began when Jean Noel asked for an up-to-date inventory of his art works in storage at the Carmen Lamanna Gallery -- a curious request as he was already in possession of such an inventory. When I began to work on this I was presented with Jean Noel's version of the same inventory, counting two more works of art in storage than appeared on my inventory. I wondered about this discrepancy until I carefully examined the titles he had given the works. The titles were close in two cases. It was only after some deliberation that I discovered the problem: I remembered that he had changed the titles of a number of the works in storage. Presto: a slight change in titles produced two extra works on the inventory list. But it was an illusion: these were never fabricated, never existed.

Wary, I asked him to make sketches of certain works that he had given two titles to to protect myself. Specifically I asked him for sketches of the two extra works that had mysteriously appeared on his version of the inventory but not on mine. By this method I was able to confront him with the truth. The record was clarified; and he acknowledged that my inventory was correct.

It was clear that Noel could not, after all, make sketches for works that did not exist and that had never been fabricated by him.

It was my careful documentation of all transactions that enabled me to present a correct and full inventory to the lawyers for this case, with a complete history of each piece that ever came into the gallery -- whether lent, sold, returned, or left in storage.

The Carmen Lamanna Gallery expressed a wish to return any work belonging to the artist and to settle the accounts as long ago as 1973; unfortunately Noel succeeded in postponing this settlement until May 1977. In the interim the gallery has had to take all responsibility for these works providing full storage and insurance for the works left here: an expensive ordeal.

I feel relieve that all this is over and thankful that the case was resolved.

* * *

It should be evident that Noel is not in any position to advise artists on the relationship they should have with their dealers, or how they should handle affairs with galleries. Noel himself could not uphold a professional relationship with an art dealer. In fact, during Noel's time in Toronto for this court case he made every effort to become associated with a Toronto art dealer, but he was unsuccessful in this venture. Knowing this, it is comically ironic to hear him say, "Now, I've decided I won't have a dealer in Toronto for a while..."

Noel goes on to say, "I feel as if I can't trust anyone any more. The Dealers Association is supposed to have strict standards but in the end they protect themselves. It's the law of the jungle. Whatever way you have of protecting yourself, they find a way of getting at you."

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Con't from pg 9

I think this accusation of Noel's against the professional Art Dealers Associations demands a written apology. Noel never before has dealt with any gallery belonging to the association; this was the first time he was able to find someone to represent him in the city, so he can hardly speak out against the whole association. His claims are false and unjustified; he clearly owes the PADA an apology, especially when he was at fault.

III. Philosophy of the Carmen Lamanna Gallery

It must be said that as the Director of the Carmen Lamanna Gallery I enjoy my work. Most of all I am grateful to artists associated with the gallery whose friendship has meant so much to me; mutual understanding and trust in business relations are reassuring. Though their struggle has been a difficult one, they have given me strong support over the years. They have had to continue working in their studios without much consideration for commercial gain. On my part I have continued to give them my wholehearted support by believing in their forms of artistic expression, and by believing in them as artists. It was essential for me to give them the freedom they needed to pursue their ideas without limitations based upon financial or commercial considerations. It has been this foundation of mutual understanding, good faith, and trust that has sustained our relationship and formed the basis of the philosophy of the Carmen Lamanna Gallery. We continue to struggle with joy.

My relations with artists are based on mutual faith and trust, when we find after our first few meetings that we share a certain philosophy about the artist-dealer relationship. We agree on our responsibilities to one another in both artistic and business matters. In most cases we draw up a written contract establishing that the artist is represented by the Carmen Lamanna Gallery and the terms and conditions of this representation. But good faith must always be the basis of this contract; if either the artist or the dealer is opportunistic and expects to take advantage of the other, he can surely find loopholes in any contract and will crack the foundation of friendship and trust in his desire for financial gain. Without faith, the contract has no value.

In a good artist-dealer relationship there is no thought of one person gaining something over the other person. There is no financial speculation. This relationship is easily built when the artist is an exceptional one because his first concern will always be for this work, and not with petty business-dealing or game-playing. His seriousness of purpose is clear from the outset; artists like this will not be forgotten—they will become part of art history.

The artists whose work the dealer exhibits reflect on him as a dealer; a mistake in judgement (based on doubts he had about the artist's talents in the beginning) is a loss of time, energy, and credibility. He could have been using the time and gallery space for other artists who were serious in their intent and endowed with a real artistic gift—artists with a worthwhile and valuable contribution to make. Instead he finds himself involved in legal hassles. His whole attitude as a dealer can be changed by such an experience. It is hard for the dealer not to become cynical or to give up altogether -- not to abandon his high principles in the support of serious art. The whole experience is so disturbing he wants to clear up the issue as soon as possible, and be rid of the error.

Some may come to the dealer posing as artists, and it is essential that he be able to distinguish between a serious artist and someone who is a 'social personality' calling himself an artist. The perceptiveness he develops, and the tougher standards of aesthetic judgement he applies to the work of newer artists as a result of such encounters, will shield him against future disappointments.

In spite of a few difficult cases, it is encouraging to know that a good and solid relationship still exists between the best artists and the best dealers. Both are interested in creating art, not in petty quarrels or money-making schemes.

Twelve years of exhibitions and public service stand as proof of what can come out of this mutual faith. The art works themselves stand as evidence of this faith, as do the growing reputations of young artists now recognized by appreciative people in this country.

My artists and their work give me my strength and my faith. I have been through some disillusioning experiences, but I have not lost faith because of these. I am still looking for young Canadian artists who are exceptional and unique and who share the philosophy of the Carmen Lamanna Gallery. I hope to discover them and give them the opportunity to grow and the support they need to develop their artistic potential and make a real contribution to the Canadian culture.

Carmen Lamanna

Carmen Lamanna Gallery

August 1977



CAROT AWARD

Joyce Wieland, the internationally renowned Toronto artist and artists' rights activist has been awarded the first quarterly 1978 CAROT award for outstanding service to her profession.

The multi talented energetic Ms. Wieland has major paintings, quilted pieces and constructions in most public collections in Canada and the United States, and her experimental films have earned her critical praise around the world. Her first feature length film, *The Far Shore*, a visual feast based loosely on the myth of Tom Thomson was well received given the distribution hurdles for Canadian films in Canada, and has been an inspiration to young filmmakers in this country.

Always concerned with pressing social issues in Canada and a dedicated professional, she has for many years been involved in the struggle for Canadian cultural independence and improved working conditions for artists.



She was a leader in the "hire Canadian" and "Reed Paper" issues at the Art Gallery of Ontario. She served the apprenticeship of fire as the lone first artist on the board of the Art Gallery of Ontario. She served as an early representative for CAR Toronto and

contributed greatly to the shaping of CARO and CARO policies. She remains involved and committed to the cause of Canadian art and artists.

To Joyce Wieland, our respect, our affection and our congratulations as a CAROT award winner.

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