

EXHIBIT 35

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X

4 DONALD GRAHAM,

5 Plaintiff,

6 V. Case No.

7 1:15-cv-10160-SHS

8 RICHARD PRINCE, GAGOSIAN GALLERY
9 INC. and LAWRENCE GAGOSIAN,
Defendants.

10 -----X
11 ERIC McNATT

12 Plaintiff

13 V. Case No.

14 1:15-cv-28896-SHS

15 RICHARD PRINCE, GAGOSIAN GALLERY
16 INC. and LAWRENCE GAGOSIAN
Defendants.

17 -----X

18 10:30 a.m.
19 July 12, 2018
200 Park Avenue
New York, New York

21 * CONFIDENTIAL *

22 VIDEOTAPED DEPOSITION of ALLAN D.
23 COLEMAN, an Expert Witness in the above
entitled matter, pursuant to Notice,
24 before Stephen J. Moore, a Registered
Professional Reporter, Certified Realtime
Reporter and Notary Public of the State of
25 New York.

1 ALLAN COLEMAN

2 term nature, what does that refer to, for the

11:06:58

3 fair use exception?

11:07:01

4 A I assume --

11:07:03

5 MS. PELES: Objection to form.

11:07:04

6 A I assume it refers to the

11:07:05

7 content and purpose of that work.

11:07:07

8 Q And then you also say you were

11:07:14

9 asked to opine on the effect of the

11:07:16

10 Prince-Graham work on the market for or value

11:07:19

11 of the Graham work.

11:07:23

12 What's your understanding of the

11:07:24

13 effect of the work on the market for or value

11:07:28

14 of another work?

11:07:32

15 MS. PELES: Objection.

11:07:37

16 Q What's your understanding of

11:07:37

17 what that element refers to?

11:07:38

18 MS. PELES: Objection to form.

11:07:40

19 A It's my understanding that that

11:07:42

20 refers to how much that -- how likely it would

11:07:43

21 be that the -- that the work that the

11:07:47

22 borrowed -- that the Prince work that borrowed

11:07:55

23 this material would have an impact on the

11:07:56

24 marketability of the original works.

11:08:01

25 Q I see. And what's your

11:08:04

1 ALLAN COLEMAN

2 qualifications -- what do you believe your 11:08:06

3 qualifications are to opine on that particular 11:08:08

4 element of the fair use test? 11:08:10

5 A I followed the photography 11:08:12

6 market for half a century. 11:08:13

7 Q And when you say you followed 11:08:15

8 the photography market, what do you mean 11:08:16

9 exactly? 11:08:19

10 A Well, I speak to dealers, I 11:08:20

11 speak to collectors, I speak to institutional 11:08:21

12 collectors, private collectors, I go to gallery 11:08:24

13 expositions, both solo gallery expositions and 11:08:29

14 cumulative gallery fairs, art fairs, 11:08:34

15 specialized in photography. 11:08:38

16 I read publications like The 11:08:40

17 Photograph Collector, and other publications 11:08:41

18 that are involved in the market for -- that 11:08:46

19 cover the market for photography. 11:08:49

20 And I speak with photographers 11:08:50

21 about their work and the market for their 11:08:51

22 works. 11:08:55

23 Q Is it your view that if a 11:08:56

24 photograph is used without permission in a work 11:08:58

25 and then is subject to a lawsuit, that that can 11:09:03

1 ALLAN COLEMAN

2 adversely affect the market for the 11:09:07

3 photographer's -- excuse me, for that 11:09:10

4 photograph? 11:09:12

5 A Potentially. 11:09:13

6 Q Potentially. Could it also 11:09:14

7 potentially enhance the market by providing 11:09:15

8 publicity? 11:09:19

9 A I know of no instance when 11:09:20

10 that's happened. 11:09:22

11 Q Okay. But you are aware that 11:09:23

12 lawsuits generate publicity, potentially, 11:09:25

13 correct? 11:09:27

14 A Yes. 11:09:28

15 Q And you are a Plaintiff in a 11:09:28

16 lawsuit has generated a great deal of 11:09:29

17 publicity, correct? 11:09:31

18 A Correct. 11:09:33

19 Q And from your personal 11:09:33

20 experience as a Plaintiff in the Tasini 11:09:36

21 lawsuit, did you find that publicity about that 11:09:38

22 lawsuit got -- brought you personal attention? 11:09:41

23 A Absolutely not; none at all. 11:09:44

24 Q No one contacted you, you never 11:09:46

25 had reporters contact you about the lawsuit? 11:09:48

1 ALLAN COLEMAN

2 A No, no. 11:09:49

3 Q None of the speaking engagements 11:09:51

4 you got were as a result of the prominence of 11:09:53

5 that lawsuit? 11:09:58

6 A No. 11:09:58

7 Q But you do accept that it would 11:10:01

8 be possible that publicity from a lawsuit could 11:10:03

9 make a photographer more famous, or the 11:10:06

10 photographer's work more famous? 11:10:09

11 A If you say so. 11:10:12

12 Q Prior to this lawsuit, had you 11:10:18

13 ever heard of Mr. McNatt? 11:10:19

14 A No. 11:10:22

15 Q Did you talk to Mr. McNatt in 11:10:30

16 connection with your opinion in this case? 11:10:31

17 A No. 11:10:33

18 Q Prior to this lawsuit had you 11:10:35

19 ever heard of Mr. Graham? 11:10:36

20 A I had. 11:10:38

21 Q You had. 11:10:38

22 Did you talk to Mr. Graham in 11:10:39

23 connection with preparing your report in this 11:10:40

24 case? 11:10:42

25 A No. 11:10:42

1 ALLAN COLEMAN

2 substantial portion of Plaintiffs' works, and 11:17:31

3 the Prince works are not transformative of 11:17:33

4 Plaintiffs' works. 11:17:36

5 "And 3, the Prince works are 11:17:38

6 likely to have a substantially negative impact 11:17:39

7 upon the potential market for or value of 11:17:42

8 Plaintiffs' works. 11:17:46

9 "My opinions are based on my 11:17:47

10 review of the materials in this case and my 11:17:49

11 experience and specialized knowledge as a 11:17:52

12 photography critic, historian, theorist and 11:17:54

13 curator." 11:17:57

14 Q So let's start with that third 11:18:00

15 opinion, "The Prince works are likely to have a 11:18:01

16 substantial negative impact upon the market for 11:18:03

17 or value of the Plaintiffs' works." 11:18:05

18 Now, we have already talked 11:18:07

19 about how this lawsuit has generated publicity 11:18:08

20 about both of those two images. 11:18:11

21 Could you tell me the basis for 11:18:14

22 your opinion that the use of the Prince works 11:18:15

23 was likely to have a substantially negative 11:18:18

24 impact upon the potential market for or value 11:18:21

25 of the works? 11:18:26

1 ALLAN COLEMAN

2 MS. PELES: Objection to form.

11:18:27

3 A Yes, all publicity is not

11:18:29

4 necessarily beneficial publicity. Some

11:18:36

5 publicity is negative publicity.

11:18:39

6 So there are several issues I

11:18:42

7 think here that redound not to the benefit of

11:18:46

8 the Plaintiffs.

11:18:52

9 First of all, the usage of --

11:18:55

10 the unauthorized usage of their work and the

11:18:59

11 Defendant's insistence on his right to do that

11:19:06

12 could very easily persuade others that the

11:19:11

13 works of these two photographers are available

11:19:13

14 for their reuse as well.

11:19:17

15 Q Anything else?

11:19:20

16 A Yes.

11:19:20

17 There is implicitly an imbalance

11:19:23

18 of power in the relationship between the

11:19:26

19 Plaintiffs and the Defendant.

11:19:31

20 Mr. Prince is a very high

11:19:34

21 profile artist, the Defendants are lower down

11:19:36

22 on the scale, and the implicit disrespect for

11:19:43

23 their authorship of their work that is implicit

11:19:50

24 in his unauthorized usage of their work

11:19:54

25 diminishes them, in my opinion, in the public

11:19:59

1 ALLAN COLEMAN

2 eye.

11:20:03

3 Q Anything else?

11:20:04

4 A That will do for now.

11:20:06

5 Q Okay. So when you said Prince's

11:20:08

6 insistence of his right to do this, what's the

11:20:13

7 basis for your opinion that Mr. Prince has

11:20:17

8 insisted he has a right to do this?

11:20:20

9 MS. PELES: Objection to form.

11:20:23

10 A His usage of the works and his

11:20:24

11 non-acknowledgment of the Defendants' -- of the

11:20:28

12 Plaintiffs' authorship of these works within

11:20:32

13 his own work as presented, that is, his

11:20:37

14 rendering them anonymous in his works, and the

11:20:41

15 very fact of this lawsuit itself, and his

11:20:46

16 defense of himself in this lawsuit.

11:20:50

17 Q Did you read the deposition of

11:20:52

18 Richard Prince that was given in this case?

11:20:54

19 A Yes, I did.

11:20:56

20 Q You did.

11:20:57

21 Now, in his deposition

11:20:57

22 Mr. Prince doesn't insist that he had the right

11:20:59

23 to take these works, does he?

11:21:03

24 MS. PELES: Objection to form.

11:21:05

25 A I think he does, yes.

11:21:11

1 ALLAN COLEMAN

2 Q You think he does, okay, we will 11:21:13

3 get back to that. 11:21:15

4 Did you read -- how many volumes 11:21:17

5 of a transcript did you read? 11:21:21

6 A Volumes? 11:21:25

7 Q Yes, how many pages was 11:21:26

8 Mr. Prince's deposition transcript? 11:21:27

9 A What I received is listed in 11:21:31

10 the -- in my deposition. 11:21:33

11 Q Right, but Mr. Prince was 11:21:36

12 deposed in this case. 11:21:38

13 A Yes. 11:21:40

14 Q Just as I am deposing you today. 11:21:40

15 A Yes. 11:21:42

16 Q And there was a court reporter 11:21:42

17 present who transcribed the deposition. 11:21:43

18 A Right. 11:21:46

19 Q And in that deposition, 11:21:47

20 Mr. Prince was asked about his knowledge of 11:21:47

21 these works, whether he knew who the authors 11:21:52

22 were, why he used them. 11:21:54

23 Do you recall reading a 11:21:57

24 transcript where he was asked those questions 11:21:58

25 and talked about that? 11:22:01

1 ALLAN COLEMAN

2 particulars of this case without first setting 12:26:59
3 forth and analyzing this theory itself (as I 12:27:02
4 understand it), as well as the ways in which 12:27:06
5 Prince and his advocates and supporters use the 12:27:08
6 theory to justify his actions." 12:27:11

7 Q Now, sir, what is your 12:27:15
8 background and experience that makes you an 12:27:17
9 expert on postmodern theory? 12:27:22

10 A Well, postmodern theory is one 12:27:24
11 of a number of theories in action in the field 12:27:27
12 of art criticism, literary criticism, photo 12:27:36
13 criticism, of course, and other areas. 12:27:40

14 I have taught this theory in 12:27:45
15 courses at New York University, I have read a 12:27:46
16 great deal, of course, since it began to emerge 12:27:50
17 in the 1970s, because it impinged on my and 12:27:53
18 entered my own field. 12:27:56

19 I have been on panels about it, 12:27:59
20 I have published articles in relation to it, I 12:28:02
21 have written about various postmodern works of 12:28:05
22 art by various postmodern artists. 12:28:08

23 I have read a great deal of it, 12:28:12
24 and I have discussed it with my colleagues in 12:28:14
25 the field who do or don't or have various 12:28:16

1 ALLAN COLEMAN

2 relationships to postmodern theory.

12:28:20

3 Q What is the basis for your

12:28:24

4 assertion that Prince and his advocates and

12:28:25

5 supporters use postmodern theory to justify

12:28:29

6 their actions?

12:28:32

7 MS. PELES: Objection to form.

12:28:34

8 MR. BALLON: Sorry, I couldn't

12:28:36

9 hear. You what's the objection?

12:28:36

10 MS. PELES: I objected to form.

12:28:38

11 I think he uses defenders, and you said

12:28:38

12 advocates and supporters.

12:28:40

13 MR. BALLON: I am actually

12:28:42

14 reading it word for word, verbatim, from

12:28:43

15 his report.

12:28:45

16 So I don't -- I just ask you to

12:28:46

17 refrain from objections, if you don't

12:28:48

18 mind, when it comes literally from his

12:28:50

19 report.

12:28:53

20 To avoid the confusion here, this

12:28:54

21 is just discussion between lawyers.

12:28:56

22 I will ask the court reporter to

12:28:57

23 kindly please read back the question.

12:28:58

24 (The question requested was read

12:29:00

25 back by the reporter.)

12:29:00

1 ALLAN COLEMAN

2 A Because they use the language of 12:29:21
3 postmodern discourse, the theory of post -- the 12:29:24
4 language of postmodern discourse and theory 12:29:28
5 frequently in their defense of Prince, and 12:29:31
6 Prince himself does that. 12:29:35

7 Q And who are these people, these 12:29:37
8 advocates and supporters, who are you referring 12:29:38
9 to? 12:29:40

10 A Lisa Philips, Allan Schwartzman, 12:29:42
11 Brian Wallace, Prince himself; I can't remember 12:29:45
12 the whole list. 12:29:50

13 But the documents that I was 12:29:52
14 provided as Defendants' reports on Defendants' 12:29:54
15 case for Prince. 12:30:01

16 Q What did these experts actually 12:30:02
17 say about postmodern theory? 12:30:04

18 A Well, they basically justify 12:30:05
19 Prince's use of the Plaintiffs' work on the 12:30:08
20 grounds that appropriation, which is a 12:30:14
21 postmodern theory term, is basically a 12:30:17
22 justification for Prince's actions in this case 12:30:23
23 in regard to Plaintiffs' works. 12:30:28

24 Q Now, did you actually read the 12:30:32
25 reports of the experts that you are referring 12:30:34

1	ALLAN COLEMAN	
2	to?	12:30:36
3	A Yes, I did.	12:30:36
4	Q And you are sure they refer to	12:30:39
5	postmodern theory?	12:30:40
6	A I'm sure they use the language	12:30:43
7	of postmodern theory, which suggests that yes,	12:30:44
8	they are referring to postmodern theory.	12:30:48
9	Q The language, and by the	12:30:50
10	language of postmodern theory, what do you	12:30:51
11	mean, exactly?	12:30:53
12	A Issues of concerns with or use	12:30:56
13	of terms like appropriation, for example, which	12:30:59
14	is a very specific postmodern theory term.	12:31:02
15	Q I see. Anything else, or just	12:31:08
16	appropriation?	12:31:11
17	A The basic assumptions stated and	12:31:12
18	implicit in reports that it is permissible to	12:31:17
19	take the work of other artists and use it for	12:31:22
20	your own purposes.	12:31:24
21	Q Okay. And Prince himself hasn't	12:31:27
22	said that, has he?	12:31:30
23	MS. PELES: Objection to form.	12:31:33
24	A I don't know.	12:31:34
25	Q But you say "Prince and his	12:31:36

1 ALLAN COLEMAN

2 advocates and supporters." 12:31:37

3 So that's sort of one person and 12:31:39

4 two different groups, advocates, supporters, 12:31:42

5 Prince. 12:31:45

6 Is there anything specifically 12:31:45

7 that Mr. Prince has said that leads you to 12:31:48

8 believe that his artistic practice is 12:31:51

9 underpinned by postmodern theory? 12:31:54

10 A He has aligned himself regularly 12:32:00

11 with postmodern artists in his exhibition 12:32:01

12 practice, in various interviews, in the 12:32:05

13 galleries in which he shows, and the 12:32:12

14 exhibitions, group exhibitions in which he 12:32:13

15 shows, and the people who he has selected to 12:32:16

16 provide introductions to his exhibition 12:32:21

17 catalogues, et cetera. 12:32:24

18 All of them are, in fact, very 12:32:26

19 committed to postmodern theory. 12:32:28

20 Q So this is your interpretation, 12:32:30

21 it's not something specific that Mr. Prince has 12:32:32

22 said that you can point to? 12:32:35

23 A It may well be. I can't -- I 12:32:36

24 can't put -- I can't quote something 12:32:38

25 specifically at this point. I would have to 12:32:40