

Client Alert

Commercial Litigation

MARCH 1, 2024

For more information,
contact:

Elysia-Elena Stellakis
+44 20 7551 2155
estellakis@kslaw.com

Billy Sin
+44 20 7551 2166
bsin@kslaw.com

King & Spalding
London
125 Old Broad Street
London, EC2N 1AR
United Kingdom
Tel. +44 20 7551 7500

Beyond the Palette: Issues in art disputes in the English Courts

Fine art is big business. The three most expensive paintings to have ever been sold – *Salvator Mundi* by Leonardo da Vinci, *Interchange* by Willem de Kooning and *The Card Players* by Paul Cézanne – have an inflation-adjusted combined sale price of more than \$1bn. In other words, three oil on canvas paintings would cost more than oil refineries.

With such hefty sums, it is little surprise that some investors and collectors have enjoyed great returns on their works but, as with other assets, art investments don't come without risks. Whether it is claims over ownership, forgery or sale prices, there are various pitfalls to be aware of that can result in court proceedings. Below is a summary of some of the critical issues in relation to art disputes that recent cases in the English courts have scrutinised.

AUTHENTICITY AND ATTRIBUTION – AN ART, NOT A SCIENCE?

At the centre of almost every fine art transaction is the issue of authenticity, and the issue of authenticity is inextricably connected to the duty of experts in attribution and/or valuation. The duties and liabilities of experts or art dealers regarding authentication were explored in *Qatar Investment & Projects Development Holding Co & Anor v. John Eskenazi Ltd & Anor* [2022] EWHC 3023 (Comm) (29 November 2022).

The case concerned the authenticity of seven Asian/Sub-Indian continental objects sold by the defendants. The claimants brought claims of breach of contract, misrepresentation and negligence with respect to each of the objects, as well as an additional fraud claim regarding one of the objects.

During evidence, it was alleged that the authentication exercise was “*not a science*”, but it does not imply that art dealers are thus absolved from making the relevant diligent, thorough and qualified assessments in arriving at any “*expert opinion*.” For instance, undertaking simple scientific origin tests, or investigating the source of long-term natural weathering (or the lack thereof) are measures that are expected.



The High Court ultimately found that the objects were inauthentic, and subsequently granted rescission in the underlying contracts, whilst dismissing the fraud claim entirely. This case confirms, amongst other things, that the issue of authenticity is entirely fact dependent. Ultimately, the judge ruled against the defendants because of “*the absence of reasonable grounds for the unqualified opinion as to [the object’s] ancient origin.*”

Another recent case, *Countess of Wemyss and March & Anor v. Simon C Dickinson Ltd [2022] EWHC 3091 (Ch) (2 December 2022)*, also involved a dispute about attribution. The artwork in question was an 18th century painting by the French artist, Chardin. The defendant art dealer, renowned for its expertise in Old Master paintings, did not believe the painting to be an autograph work by Chardin and, consequentially, valued the work at £1.15 million. A subsequent art dealer purchased this painting and arranged for a deep clean, which unexpectedly revealed Chardin’s signature, confirming its authenticity as an autograph work. The painting was then sold for US\$10 million. The claimants, the former owners of this painting, subsequently sued the defendant for negligence.

The court considered a wide-ranging scope of the art dealer’s duties and emphasised that “...this is an exercise of the most unscientific and speculative nature imaginable. However, as noted in *Drake v Thos. Agnew & Sons Ltd [2002] EWHC 294 (QB)*, I am required to engage in precisely this speculation.”

This case demonstrates the court’s reluctance to impose a pervasive, general duty on art dealers in authenticating, valuing, and/or attributing artworks. Both cases demonstrate, albeit reaching different conclusions, that all parties in an artwork transaction inherently assume some degree of risk surrounding the issue of authenticity.

RIGHT TO BUY? CAVEAT EMPTOR APPLIES TO THE PURCHASE OF ARTWORK

The familiar principle of *caveat emptor*, or buyer beware, applies to the sale and purchase of artworks and in particular, the level of due diligence that precedes it. When attributing liability onto buyers, the courts would consider factors such as: the relative experience of the parties, the reliance placed on art dealers or other experts, as well as the procedures and mechanisms used to validate the artwork.

In *Sotheby’s v. Mark Weiss Ltd and others [2020] EWCA Civ 1570 (23 November 2020)*, the auction house brokered a sale involving a painting believed to be the work of the Dutch Golden Age painter, Fran Hals, on behalf of joint sellers Mark Weiss and Fairlight Art Ventures LLP. A few years later, the painting was discovered to be more likely a forgery. As such, Sotheby’s honoured its contractual terms with the buyer, rescinded the contract, refunded the amounts, and subsequently sought to claim back from the sellers.

Weiss settled out of court, and the court ruled in favour of Sotheby’s against Fairlight due to the contractual arrangements reached between the two. The court rejected Fairlight’s argument that Sotheby’s was a mere sub-agent (through Weiss being an agent) to Fairlight, and thus privity of contract did not exist between the two. Instead, the judge found that “*detailed contractual arrangements*” had been entered into between the two, “*including as to risk, delivery, inspection and authenticity.*”

This case establishes the contractual liability owed by Fairlight to Sotheby’s, and therefore, a breach occurred when Fairlight failed to return the purchase price upon Sotheby’s discovery of the forgery. The significance of this case lies in the court’s strict reading of Sotheby’s contractual rights and obligations in determining the appropriate remedy, considering the precise circumstance of how the question of inauthenticity comes about. Notably, the court did not consider whether the painting was indeed a forgery.



ABOUT KING & SPALDING

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 1,300 lawyers in 24 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality, and dedication to understanding the business and culture of its clients.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising." View our [Privacy Notice](#).

ABU DHABI	CHARLOTTE	DUBAI	LONDON	NORTHERN VIRGINIA	SILICON VALLEY
ATLANTA	CHICAGO	FRANKFURT	LOS ANGELES	PARIS	SINGAPORE
AUSTIN	DALLAS	GENEVA	MIAMI	RIYADH	TOKYO
BRUSSELS	DENVER	HOUSTON	NEW YORK	SAN FRANCISCO	WASHINGTON, D.C.
