Browne Jacobson

London Market Snippets, March 2023

Fine art and specie update

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The Commercial Court has recently handed down two decisions in the Fine Art arena. Although focussing on different art forms, at the heart of both cases was the expert's evaluation of the piece[s] of art and whether they had exercised reasonable care and skill in reaching their conclusions as to attribution and authenticity.

Amanda Claire Marian Fielding or Charteris, Countess of Wemyss and March and Vilma Ramsey v Simon C. Dickinson Limited

This case involved the question of the proper valuation of a painting by Jean-Baptiste-Siméon Chardin entitled "*Le Bénédicité*" ("the Painting") and whether the agent, Simon Dickinson, was negligent in selling the painting for £1.15m when it was sold on shortly thereafter for the equivalent of £6.9m.

Chardin was an 18th century painter. He was known to have produced copies of his own work, either himself or through a studio apprentice, and was also known to have signed some copies even if they were not his own work. It is known that many copies of his work are currently in existence.

It was agreed between the parties that if the work was only a copy, then it would have been worth a fraction of the £1.15m price. Equally, if it had been an entirely autograph original (a known term of art) then it would have been worth many times that amount.

The undisputed authority on Chardin's work is M. Pierre Rosenburg who publishes a *catalogue raisonné* which expresses a view as to the provenance and authorship of Chardin's work. In his catalogue the Painting is attributed to Chardin with the qualification "*copie retouchée*" – an undefined term taken from an 18th century auction catalogue.

Mr Dickinson, an expert art dealer that had devoted his life to art, was firmly of the view that the Painting showed signs of Chardin's hand but also contained inferior work, and he was not willing to market the Painting as entirely autograph original. Instead, he described it as '*Chardin and studio*'; a description which, he accepted, was not a standard term in the art industry but one that best described his view that the piece was somewhere between a true original and a copy.

After selling the Painting to another professional art dealer, Mr Amell, a deep clean was undertaken which revealed a previously unseen autograph. This was lauded by Amell as a major discovery and the Painting was marketed as '*an autograph masterpiece by Chardin himself*' and sold for the ostensible price of US$10.5m (£6.9m).

Mr Dickinson's view was that, notwithstanding the newly revealed autograph, the question of whether the art market would consider this to be an autograph original would be the view of Mr Rosenburg. In subsequent approaches to Mr Rosenburg, he provided very brief responses to the effect that his view was as set out in his catalogue.

The Claimants submitted that in selling the Painting for £1.15m, failing to obtain Mr Rosenburg's opinion and failing to inform the Claimants that his opinion might be wrong, Mr Dickinson was negligent.

The Judge disagreed and found that Mr Dickinson was an expert who was being paid for his expertise and the actions that he took were reasonable. He did not market the Painting as an autograph original because he did not believe that it was and considered '*Chardin and studio*' to be an accurate description. He was not under a duty to consult with Mr Rosenburg and the Judge agreed with Mr Dickinson that there was a risk that Mr Rosenburg could have changed his view negatively thereby reducing the value and marketability of the painting.

Although these findings meant that damages were not awarded, in assessing what they would have been the Judge acknowledged that this was a difficult task, even more so when the actual sale price of the painting was not clear. The Judge did not consider a 'loss of chance' analysis appropriate and instead concluded that a clearly acknowledged autographed Chardin would have sold for £5m with a £1m reduction to take into consideration the licencing issues of transporting a genuine Chardin out of the country.

Qatar Investment & Projects Development Holding Co and His Highness Sheikh Hamad Bin Abdullah Al Thani v John Eskenazi Limited and John James Eskenazi

This was a high-profile case brought by Sheikh Hamad, a senior member of the Qatari Royal Family, against the well-known specialist London art and antiques dealer, John Eskenazi. The claim was in respect of seven antiquities sold for a total of US$4,990,000, each being accompanied by the description '*that to the best of my knowledge and belief the item detailed on this invoice is antique and therefore over one hundred years of age'*.

After the purchase the Claimant came to doubt the authenticity of the pieces and carried out his own investigations. After concluding that each of them was a modern forgery he demanded his money back. When Eskenazi rejected this, a claim was issued in the Commercial court for breach of contract, misrepresentation and breach of duty of care.

The question before the Commercial Court was whether Mr Eskenazi honestly believed that the objects were of ancient origin and whether he exercised reasonable care and skill in describing the age and origin of the objects.

The Judge found that Eskenazi's descriptions of the pieces were not statements of fact and there was no breach of an implied term that the pieces correspond with the description (Sale of Goods Act 1979).

However, the Judge did find that there was an implied term that Mr Eskenazi should act honestly. In considering this issue, the Judge noted that most of the authorities relied upon dealt with the issue of attribution to a particular artist (much like the case involving the artist Chardin discussed above), rather than an assessment of whether a piece was ancient, though they provided a useful framework for considering the issues in this case. The question was whether it could be said that no reasonable leading antiques dealer would have concluded these objects were ancient and expressed an unqualified opinion to that effect.

The Court was presented with a significant amount of expert evidence in respect of each of the pieces, which it considered in detail in the 159-page judgment. After hearing the evidence on art history, material science and the factual evidence, the Judge concluded that the Claimant had proved the inauthenticity of each of the pieces and found that no reasonable leading specialist antique dealer would have expressed an unqualified opinion to the contrary. In reaching this conclusion, the Judge noted that some of the pieces were in immaculate condition and the possibility of them surviving in the present condition was so remote as to be fanciful.

There was a marked difference between what the parties considered to be the reasonable steps required to be taken to authenticate the pieces. Whilst the Claimants expected there to be an arduous task of inspection, research and other work undertaken by an expert being paid considerable sums in respect of world-class pieces to satisfy himself of his conclusions, Mr Eskenazi considered his experienced eye, connoisseurship and expertise to be sufficient to form his final opinion. In this case the judge found that, unlike matters of attribution, where antiquities are concerned knowledge of the historical or religious background and the archaeological records will be more important than a visual inspection.

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Key contacts

Colin Peck

Partner

colin.peck@brownejacobson.com

+44 (0)20 7337 1016

Sam Zaozirny

Senior Associate

sam.zaozirny@brownejacobson.com

+44 (0)3300452930

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