

Long, drawn out ownership disputes

Disputes about who owns valuable *objets d'art* are common. This is not surprising, as there is much to be gained by claiming to be an owner of an object or denying somebody else's ownership in an object that one possesses. It is, unfortunately, common for the basis of a person's ownership of art and antiques to be entirely undocumented, making disputes hard to resolve conclusively without a costly and lengthy trial, in which a court has to decide who is telling the truth.

Most commonly, ownership disputes arise when a valuable work of art or antique (or other *objet d'art*, such as a classic car) is sold or advertised for sale. This is for several reasons. When an item is being sold, people who genuinely have rights in the object notice that it is being sold and realise that they need to act quickly to preserve their interests. They may also find out for the first time who now owns an object taken from them some time ago; or realise that a person to whom the object had been consigned, is selling it contrary to their agreement.

In the case of people who falsely claim a right in objects owned by others (an issue of which members of the Group have professional experience), the sale or advertisement can be an opportunity to assert a right in the object.

The recent case of *Jeddi v. Sotheby's* [2018] E. W. H. C. 1491 (Comm.) is an example of this. In that case, Mr. Pishvaie consigned a valuable antique Iranian jar for sale at

Sotheby's auction house. It was advertised for sale, but not auctioned. Sometime after its consignment, Mr. Jeddi contacted the auction house claiming to be the true owner of the jar and that Mr. Pishvaie was just Mr. Jeddi's agent, in whom he had lost confidence and, stating that he wished to obtain possession of the jar and revoke the agency agreement. Mr. Pishvaie denied that Mr. Jeddi's account was true.

Mr. Jeddi then brought a claim against Sotheby's for the return of the jar. Sotheby's, as it was entitled to do, took a neutral position so that the court had to resolve the dispute between Mr. Jeddi and Mr. Pishvaie. It held in favour of Mr. Jeddi and ordered Sotheby's to return the jar to him.

Limited or no written documentation concerning the transaction

There was limited documentation for the transaction, so the dispute could only be resolved at trial. One of the complicating factors in this case was that the parties had agreed to share the sale price (in a very short, informally drawn document) which Mr. Jeddi argued gave rise to joint ownership (a claim which the court ultimately rejected). To give an indication of how long that this took, the judgment was given in June 2018. Mr. Jeddi had first written to Sotheby's in July 2014.

A different case, this time in the New York jurisdiction, was *William Beauty v. Hogan*

and Christie's, Inc., 160370/2017 (Sup. Ct. NY Cnty. Nov. 21, 2017), in which a Warhol screen print entitled, "Electric Chair" was sold by one of two co-owners, allegedly without notifying the other, giving rise to a substantial dispute between them; in this case, the co-owner claimed to have learnt about the sale ten years after it had taken place.

Lengthy delays for dispute resolution

A common feature of these cases is that the dispute arises once a work has been consigned to an auction house or similar for sale. What will then happen is that the person claiming ownership of the work of art or other object in question will ask the auction house to return it to her or him. The auction house may then refuse to return it to either party until the court has resolved the dispute, depending on the factual circumstances of the case. This means that there may be a risk, (even if the person consigning the work to the auction house turns out to be the true owner and the claim by a third party to be false), of the true owner being kept out of possession of a work for many years whilst a dispute is resolved.

The thing which makes disputes take so long to resolve in these cases (as exemplified especially in the *Jeddi* case) is that the court has to hear live evidence from competing witnesses at a formal trial and make a decision after they have been thoroughly cross-examined, which can only happen after extensive preparation and disclosure of documents, and when the court has the time to hear a case which is likely to last for several days.

When there is clear and complete documentation as to who the true owner is, demonstrating ownership at least as far back as the limitation period (in England and Wales, 6 years) this sort of dispute is far less likely: whichever party is inclined to be untruthful is less likely to attempt to do so knowing that the documentary evidence (on which a court will inevitably place most reliance) is overwhelming, and, even if somebody does "try it on" in the face of overwhelming evidence, the case can usually

be disposed of quickly at an early stage known as "summary judgment".

Thus, whilst the law recognises, as it has always done, informal and undocumented transactions between parties as giving rise to legal rights and obligations, in the case of objects of high value, it is most unwise to rely on an informal transaction because of the scope for lengthy and costly disputes.

Making sure that there is adequate documentation to prevent later disputes arising is an important part of due diligence, and the frequency of these sorts of disputes and seriousness of the consequences for those who are party to them is why such diligence is important.

Some sensible due diligence steps

Whilst no steps can ever completely eliminate the possibility of a dispute, there are certainly steps that can greatly reduce the chances of one and make disputes that do arise less likely to be protracted. Members of the Art Due Diligence Group have particular expertise in both the steps necessary to prevent these disputes and resolving them when they do arise. Some basic sensible precautions include:

- **making sure to investigate the provenance of a valuable *objet d'art* before acquiring it to avoid costly disputes with alleged true owners later;**
- **in the case of works of art or cultural heritage, checking Artive database to see whether any claims or issues relating to the work have been logged (this is not conclusive, but should help to identify known issues);**
- **properly documenting the purchase and sale of such works so that both parties are clear on (and cannot sensibly dispute) the ownership or the terms of sale of the work; and**
- **documenting the rights and duties of co-owners of any sort with**

particular care and clarity and giving special consideration to what one co-owner may do without the other's involvement and how practically to enforce these limits.

We asked Jane Byde, Head of Fine Art Division at La Playa Insurance, for her view on the potential impact on the insurance of artworks in the event of a disputed ownership claim, and she said as follows:

“Just as you would lock your house before you leave it or check out a car dealer before you buy from them, risk management is an essential part of art ownership and in the modern world this onus begins before an artwork even becomes yours. Lack of attention to provenance in an art transaction can not only lead to lengthy legal disputes, but also increased insurance premiums or claims being declined if you are unable to demonstrate rightful ownership of a piece.

“Insurers are increasingly paying attention to the ‘moral hazard’ present in the art market as prices and the number of intermediaries in a sale have soared in the past two decades.

“Where art sales have historically been somewhat casual on the risk management front, the market is changing and insurance is at the forefront of the drive for greater transparency. Insurers are increasingly requiring clients, both private and professional, to scrutinise the source of the artwork they buy and the paper trail that supports the ownership claims of any seller bringing an item to market.

“Defective title insurance is often included under a good quality art insurance policy to a low level of £10-25,000, however serious

collectors may require limits into the hundreds of thousands or more and will need to demonstrate good record keeping and due diligence before purchasing items in order to obtain a policy at a fair price. Specialist policies purely for title cover can be arranged for specialist risks or for particularly active collectors who are adding to their collection regularly or sourcing objects from all over the globe.”

Prompt action

For those who are concerned by the prospective sale of an object that they own (whether solely or jointly), the important thing to do is to act promptly to contact the party seeking to effect the sale (especially if that is a reputable auction house as in the *Jeddi* case) and explain the position, setting out the relevant background in detail and sending copies of documents demonstrating ownership where possible.

If it is being sold without the involvement of a reputable third party, an urgent interim injunction to stop the sale might be necessary.

For those who need legal advice, even at short notice, on any of these issues, members of the Art Due Diligence Group include both solicitors and barristers who are able to advise and, if necessary, appear in court (both for urgent interim injunctions, e.g., to prevent the sale of a disputed item, and for trials to determine the parties' ultimate rights in an object) in relation to disputes concerning the ownership of works of art, among other matters. There are also members who can prepare the necessary documentation for transactions and co-ownership and investigate provenance and authenticity of works to help avoid much difficulties arising.

This article was written by James E. Petts at The 36 Group and Art Due Diligence Group.



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