



DIVINING PROVENANCE

The enormous sums changing hands in the art market mean disputes can be complex and costly. *Christopher Silvester* investigates

THE ARCAINE WORLD of art disputes occasionally emerges from the shadows, burns media oxygen, then retreats back into the crepuscular gloom. Among those who operate in this world are two men – one a lawyer, the other an expert witness – who have collaborated on a couple of significant cases and are therefore able to offer insights into its workings.

Rupert Boswall, senior partner at Reynolds Porter Chamberlain (RPC), and Guy Stair Sainty, a Mayfair art dealer, first collaborated in the Onians estate case against Sotheby's in the late Nineties. The estate of Suffolk pigswill dealer Ernest Onians sued Sotheby's for selling a painting, *The Sack of Carthage*, which it had attributed to Pietro Testa but turned out to be a lost work by Poussin, *The Destruction and Sack of the Temple of Jerusalem*. Sotheby's had told the Onians estate it would fetch £15,000, but a London gallery bought it for £155,000 on the recommendation of art historian Sir Denis Mahon. It was subsequently recognised as a Poussin by the Louvre and was sold to the Rothschild Foundation for £4.5 million.

'Sotheby's fought the case very, very hard,' says Boswall. 'We acted for the estate against Sotheby's, Freshfields acted for Sotheby's, and that was when I found Guy, who was brilliant in explaining the procedures that auctioneers and dealers follow, which are essentially the same, and why he believed Sotheby's had gone wrong.'

'We had Guy speaking to how Sotheby's should have handled it; we had an expert speaking on whether it was a Poussin or a Testa; we had an expert on restoration; and we had a technical expert on the consistency of the pigment. That was an all-singing, all-dancing dispute and I'll never do a case like that again. Also, we did it on a no-win no-fee basis, because the estate didn't have any money, and we actually spent all of the estate buying a legal expenses policy to guard against losing to Sotheby's.' The case was settled shortly before trial.

Before Boswall joined RPC, the firm had handled one of the most important sleeper cases back in the late Eighties, concerning a couple of Stubbs paintings which had been misattributed, valued at £30 and subsequently resold by the buyer for £88,000. The provincial auction house was not found to be negligent because 'the court came up with this notion that everybody but Sotheby's and Christie's is a GP, but Sotheby's and Christie's are consultants.'

Even so, it remains notoriously difficult to sue the auction houses for mistaken attribution unless they overreach themselves in a positive direction. The leading art fairs have vetting committees, which consider

matters of attribution, and while it isn't a perfect system Sainty at least regards it as a serious endeavour. 'I've been on those vetting committees, and one really does take the job seriously,' he says. If someone on the committee raises a concern, it is fully discussed and the dealer might be called in to explain the reasoning behind his attribution. If the committee is not satisfied, the attribution has to be changed. 'This is not going to happen in Sotheby's and Christie's. There's no vetting committee there. You walk round a Sotheby's or Christie's sale and you often see works on the walls that you would not allow into Maastricht with those descriptions.'

A MATTER OF TIME

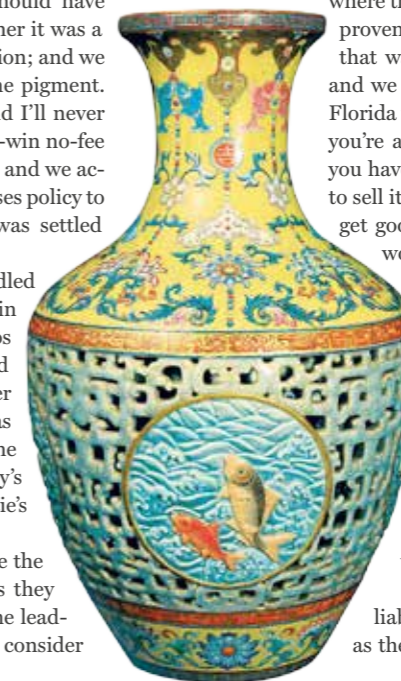
There is a statute of limitations on disputes about changing attributions arising after a sale. In the UK it's only five years, whereas in France the vendor has to give a guarantee for 20 years. Since works of art often disappear into private collections for 20 years or longer, the heir to an estate might find that the attribution has changed because the scholarship has changed and they might not be able to afford to go to court. 'Sotheby's and Christie's – I hold them primarily responsible – have enormous armies of incredibly expensive lawyers who are there to squash the little man,' says Sainty.

Then there are title disputes, although these are fewer than one might imagine, says Boswall. 'I have had title disputes where the whole chain has unravelled: I've had to follow the provenance back. I had one to do with a Corot painting that was litigated in the public domain many years ago, and we had to follow the law from France to New York to Florida to Germany to Japan. That was such a great case, if you're allowed to enjoy your cases. Under German law, if you have the right to possess the painting but not the right to sell it, and you nevertheless sell it, an ultimate buyer can get good title, because German law can see why a buyer would have legitimately believed that you could sell.'

What was crucial was where the painting had been located when the Japanese buyer acquired it. 'Initially he told me it was in America, then when I finally said, "We're about to settle this case – can you just go over the facts again?," he told me he'd had the painting shipped to Germany. I couldn't believe it, but it was the happiest day of my life, because we went from losing the case to winning the case in a moment, and we were able to prove from the shipping documentation that it was where he said it was.'

'If you sell something you don't own, then you're liable in "conversion", so the auction house is as liable as the seller for selling something that doesn't belong to

Opposite: 'The Destruction and Sack of the Temple of Jerusalem' (1625-26) was sold before being identified as a Poussin. Below: an 18th century Qing vase was sold for £43 million but the buyer refused to pay up



Mayfair art dealer Guy Stair Sainty (right) was instrumental in showing where Sotheby's had gone wrong in the dispute over the Poussin painting



the seller. Bizarrely, it doesn't owe a duty to the buyer, but it does owe a duty to the true owner if it sells something that doesn't belong to the vendor.'

The number one issue pertaining to title continues to be wartime and political upheaval. The Russian state claims sovereign immunity for confiscations arising from the 1917 revolution, but there is no such defence against ownership and resale of art appropriated by the Nazis.

A theme of our times is Chinese buyers not paying, which is a real challenge for the auction houses. Boswall did the Bainbridges buyer's case, which is the most famous example of this phenomenon. Tony Johnson and his mother Gene had sold an 18th-century Chinese vase through provincial auction house Bainbridges Auctions in 2010, but the winning bidder refused to pay the 20 per cent buyer's premium. 'Six Chinese bidders bid up to £25 million, two take it up to £43 million, but the highest bidder, to whom it was knocked down, has bid through a BVI company, which we couldn't enforce against, and therefore he was able to renege on the deal,' Boswall recalls. The vase was ultimately sold separately to another Chinese buyer for £25 million.

THE REAL DEALS

Boswall acted for Christie's for many years, but now he does more work for individuals and some dealers. 'Typically, dealers don't want to fight. These cases are fun and interesting, but actually there aren't that many. If I get one good case a year, which I typically do, I think I'm doing pretty well. Sometimes I might get two.'


The classic seller claim is obviously under sale through a variation, says Boswall, 'either a pure sleeper or incompetent recognition of where it ranks on the Old Master scale.'

But what the auction houses offer is an opinion, not a guarantee. As a buyer, how much are you relying on the provenance being accurate and how much has a dealer or an auction house really been able to do to verify the proven-

ance? How secure is the attribution? A vendor who has a suspicion that a work of art they own is possibly of greater value or importance than some experts believe, says Sainty, should approach the major auction houses in their capacity as dealers not as auctioneers, offer to split the cost of in-depth research, and give them a percentage of the upside.

Sellers ought to have better contracts written when they give works of art to auction houses on private consignment, he argues. 'I would advise somebody against giving something for a private treaty sale without a guarantee. Just as with guarantees in the saleroom, I'd say, "OK, you can have this for £40 million, you can offer it at £40 million, but I want it guaranteed for £36 million, say, or something close. Get a guarantor and you can offer it, but not otherwise."

Boswall makes money out of things going wrong, but says he prefers 'things to go right'. He is astonished at how reluctant auction houses or dealers are to give their workings for how they reach a particular conclusion about attribution, and he wonders what a customer is really getting in return for selling or buying at Christie's or Sotheby's.

'There isn't a manual for how to be an auctioneer, but there ought to be,' says Boswall. 'That's why Guy was so brilliant in the Poussin case. We wrote a manual for how to do the job of being an auction house or a dealer, we really did: it's 60 pages. I mean, it was great fun: we got paid to write it!' 

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