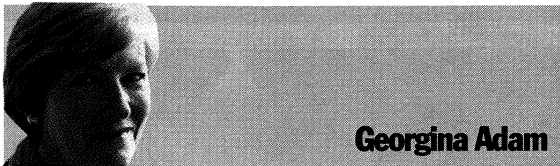


Art market analysis

Art still serves up rich pickings for legal eagles



Georgina Adam

Hardly a week goes by without news of a new lawsuit in the art market, or so it seems. A quick flip through the last year of the market newsletter *Baer Faxe* lists no less than 28 cases, ranging from disputes between galleries and collectors to issues over copyright and appropriation of images. Recent cases have revealed the inner workings of important art galleries such as Zwirner and Daniella Luxembourg; major museums such as New York's Metropolitan Museum have been targeted by restitution claims; artist Richard Prince has lost an appropriation suit; there have been attacks on authentication boards (particularly Andy Warhol's); and clients have taken Sotheby's and Christie's to court in disputes over purchases—or have been taken to court over payment.

So does this all mean that litigation in the art world is on the rise? In some areas, definitely, according to a number of specialist lawyers. Others say that the number of lawsuits has remained consistent over the past few decades.

A lot depends on the location. In the US, most lawyers report a rise in cases involving art, mainly because the US is generally more litigious. An important factor is the sheer value of art and the art market (now a \$55bn industry). "As the financial stakes get higher, so litigation increases," says New York art lawyer Thomas C. Danziger, who represents many affluent collectors. "People view art as an asset. If you've got a \$5m or \$10m work with a problem, you're not going to let it go."

"The link between art and commerce is much stronger today," says the London-based lawyer Daniel McClean, who notes that art is increasingly "commodified" with more traditional buyers treating art as an investment.

Some areas are more prone to litigation. "Disputes over title and authenticity are the two that have grown the most, in my experience," says the New York lawyer Peter Stern. He adds: "The increase in authentication litigation correlates to the ever-increasing number of boards and catalogue raisonnés." The most publicised recent case in this domain concerns Joe Simon's failed suit against the Andy Warhol Art Authentication Board, but, undaunted, art dealer and artist Addison Thompson has recently filed another complaint against the board over an \$88 "Warhol self-portrait" that it has refused to accept.

The economy plays its part in litigation as well. According to Stern, "in a booming market there tends to be more litigation from the seller reneging on a deal, whereas in a down market, the buyer might try to renege". Galleries can also be targeted: Gagosian is currently the subject of a complaint by its (presumably former) client Robert Wylde. He claims the mega-gallery pulled out of a deal to sell him a Richard Prince "Nurse" painting because it got a better offer elsewhere. The gallery said it would "vigorously defend itself".

The art market is normally an opaque and secretive world which is reluctant to wash its dirty linen in public. Two re-



cent cases have changed this. One was when the Florida developer Craig Robins tried, and failed, to prevent David Zwirner from selling three paintings Robins considered he had a right to buy, because he had been "blacklisted". The case "offers an unflattering portrait of the art world", said the judge.

The other is ongoing, and involves allegations about commissions taken by London dealers Daniella Luxembourg and Simon Dickinson. "There are more and more transactions in the art world with an increasing number of intermediaries, between dealers and others taking commissions," says Stern, "so the potential for lawsuits has risen as well."

One area that apparently has not seen an increase in litigation is that of restitution. A leading specialist in this field is the New York-based Howard Spiegler. "There are only a handful of these cases every year," he says. He explains that because museums are often state owned (outside the US), the governments in those countries can set up systems for restitution. In the US, however, where mu-

An alleged Andy Warhol self-portrait which was rejected by the Andy Warhol Art Authentication Board, and Leonardo da Vinci's *Madonna and Child, St Anne and a Lamb*, which is the subject of legal action in London



seums are private, "they make their own decisions on restitution without any standards or rules set by the government as part of an overall restitution policy. Museums are more likely to move to dismiss on technical grounds rather than have [cases] resolved on their merits. If they succeed, any chance to try to resolve meritorious claims without litigation is lost," he says.

Outside the US, lawyers say the level of art-related lawsuits has remained fairly consistent. London-based Karen Sanig says: "Certainly the way that art and business is done has changed—but not necessarily the number of lawsuits."

"The costs and determination for litigation is off-putting to most," agrees Pierre Valentin, who is also based in London, but he notes that the majority of those signing up to his recently launched trade body, the Professional Advisors to the International Art Market, are lawyers.

All the lawyers I spoke to were keen to emphasise that in art cases, as in others, settlement is the best route. "We never hope to hear the judge bang his gavel at the end of a long, costly trial," says Danziger, who calls litigation the sport of kings. "It's expensive and time-consuming and no fun for anyone except the lawyers." Pierre Valentin agrees. "Mediation is certainly the flavour of the month," he says.

The specialists all (inevitably) chorus that the best cure is prevention—by making sure that there are written contracts before any transaction. "Money spent upfront on lawyers' fees," says McClean, "can save a great deal of trouble when things go wrong." ■

Additional research by Riah Pryor