Jar Wars: The Return to Mr. Jeddi

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The courts in busy art capitals of the world like London are often called upon to determine disputes over title, provenance, authenticity and attribution of valuable art and artefacts. These disputes catch the attention because of the artworks and artefacts themselves and their often vertiginous values but also because their past can be shrouded in mystery, not to mention infamous cases of fakery and false provenance obscuring an artwork's true origins, which new scientific techniques and expertise may assist in unravelling sometimes with startling results.

Dispute about ownership of a Medieval Islamic rock crystal jar in the London Courts

A rare carved rock crystal jar, exquisitely ornamented with motifs of birds and flowers, from the Medieval Islamic period was recently the subject of an ownership dispute in the London Commercial Court between two Iranian antiquities collectors and dealers, together with a claim for delivery up of the jar against the London auction house, Sotheby's, to which it had been consigned for sale (Jeddi v Sotheby's and others [2018] EWHC 1491 (Comm)). The case also raised issues of provenance, agency and bailment.

There was no question about the authenticity of the rock crystal jar in this case which technical analysis suggested belonged to a rare group of surviving carved rock crystals from the Medieval Abbasid dynasty (750 to 1258 AD), a time when decorative arts flourished and new techniques for carving surfaces developed. It was an important piece which reinforced the knowledge of connections between early Persian metalwork, early rock crystal production in the central Abbasid land, and the continuation of this craft in the relief-cut glass era of Fatimid Egypt in the Middle Ages. As a result, a preliminary estimate of the ancient jar was increased from £1.5 million to between £5 million and £7 million.

Irreconcilable accounts of the ownership and provenance of the jar

A notable feature of the case was that the respective accounts presented on the ownership and provenance of the jar, notably during the time prior to its deposit with the London auctioneers, were strikingly different and irreconcilable, with inconsistencies on both sides, and there was a paucity of reliable documentary evidence.

Mr. Jeddi, the claimant, claimed to have acquired the jar on the basis of an oral agreement with a Mr. Mohammadi in around March 2010 in Dubai. This was a cash sale which was only later confirmed in a bill of sale of which the original was lost but copies were available to the court. However, the court had a number of reservations about his account of the jar's provenance pre-2011, given the lack of documents or photographs during 2001 to 2010, while it was owned by Mr. Mohammadi, and the court therefore made no finding as to provenance. The court however observed that if it had been acquired by Mr. Jeddi himself in Iran and transported to Dubai he would be unlikely to admit that in case this could cause problems with the Iranian authorities' restrictions on the export of antiquities. Mr. Pishvaie, the second defendant, for his part claimed that the jar had come to him from his father's collection and had been brought to Europe in 1968/69, and variously stored in bank vaults and Christies' Fine Art Storage until sometime in 2011 when, in part exchange

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for a bronze object of great antiquity between the two dealers, the jar came to be in the possession of Mr. Jeddi in Dubai.

Subsequently Mr. Jeddi met Mr. Pishvaie in Dubai in January 2012, when it is not disputed that Mr. Jeddi was in possession of the jar, and they made and signed a document at that meeting (referred to as the "Dubai Agreement"), which in simple terms recorded that the jar was consigned by Mr. Jeddi to Mr. Pishvaie for auction at one of the London auction houses and the proceeds of sale would be shared so that Mr. Jeddi would receive 75 percent and Mr. Pishvaie 25 percent. The jar was then taken to London by Mr. Pishvaie and deposited in January 2012 with Sotheby's for sale although in the event no sale took place. In mid-2014, Mr. Jeddi contacted Sotheby's to advise that he did not want the jar sold and sought its release to his designated carrier.

Mr. Jeddi's position was that he was the owner of the jar and Mr. Pishvaie had been acting on his behalf as agent as recorded by the Dubai Agreement. Mr. Pishvaie's position was that he was a co-owner of the jar, and that this is what was recorded by the terms of Dubai Agreement.

The court concluded that Mr. Pishvaie's claim as to co-ownership of the jar was implausible, inaccurate and lacking in documentary evidence, and notably did not accept his account about the removal of the jar from Iran and its shipping to Europe around 1968/69. This was a "highly convenient" date bearing in mind that many museums, auction houses and reputable dealers use 1970 as a "cut off" date for investigation of provenance for antiquities in light of the UNESCO Convention restricting dealing in antiquities, which has been ratified by a large number of States (the 16th Conference of UNESCO adopted the Convention of the Means of Prohibiting and Preventing Illicit Import, Export and Transfer of Ownership of Cultural Property was adopted in 1970). This can mean that an object without provenance to show that it has been in Europe since before 1971 would be very difficult to sell on the London market. Moreover, a document that was purported to be a 1969 inventory was on balance held to be a forgery, and there were no other documents to support where the jar was located before 2011, such as photographs, tax records, valuations, or insurance documents or even a later inventory of Mr. Pishvaie's collection. There was also no evidence of the alleged exchange for the bronze antiquity or even mention of in transcripts of conversations between the two dealers (but the court was in any event unconvinced that an experienced collector would have exchanged a valuable antiquity, with impeccable provenance, with the bronze object, which had no provenance, and which he had only seen in a photograph).

At the time of the Dubai meeting, the court held that there was no doubt that Mr. Jeddi had at least a possessory title in the jar save against anyone claiming they were, or were claiming through, the true owner or had a prior or subsisting right to the jar. Mr. Pishvaie did not for the reasons mentioned above fall into such categories.

Agency and Bailment

While both sides disagreed as to whether Mr. Pishvaie had previously acted as an agent for Mr. Jeddi, and there was no clear evidence of that, the court nevertheless concluded that Mr. Jeddi's account of the nature of their dealings as that of agency was plausible and consistent with the terms of the Dubai Agreement, and went on to consider the issues of agency and bailment as a consequence of the Dubai Agreement and the handing over of the jar to Mr. Pishvaie to bring to London for the purposes of sale.

On the issue of agency, the court held that the effect of the Dubai Agreement was that Mr. Jeddi had authorised Mr. Pishvaie to sell the jar for him as his agent for a commission if the jar was sold, and bailed the jar to Mr. Pishvaie for the purposes of the sale. As to whether the agency was

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revocable, the general position under English law is that the authority of an agent may be revoked by the principal, even if it is agreed in their contract to be irrevocable subject to certain exceptions such as a relevant interest of the agent in the exercise of the authority but these exceptions did not apply here as the only interest of Mr. Pishvaie was a commercial interest to earn his commission. The court held that the agency created by the so-called Dubai Agreement in any event was not agreed to be irrevocable, and Mr. Pishvaie's only interest in the exercise of the authority was to earn a commission, and therefore confirmed that such authority had been revoked by Mr. Jeddi. He had in fact done so repeatedly.

On the issue of bailment, which is a legal concept common in dealings with artworks regulating the basis on which one party voluntarily and knowingly takes possession of another's movable property for an express purpose, it was clear that Mr. Pishvaie had taken possession of the jar for the purpose of enabling him to sell the jar, but once the authority had been revoked the purpose of the bailment had come to an end such that he no longer had any right to possession of the jar. Mr. Jeddi therefore had an immediate right to possession of the jar in the possession of the first defendant, Sotheby's.

Faced with the competing claims for the jar, and to avoid the risk of being in breach of its own obligations by returning the jar to the wrong person, Sotheby's had properly interpleaded, and joined Mr. Pishvaie as second defendant, placing the matter in the hands of the court if the matter was not resolved between Mr. Jeddi and Mr. Pishvaie, and thereby accepting to abide by an order of the court for release of the jar. As Mr. Jeddi and Mr. Pishvaie had effectively deferred the litigation of any claims between themselves subject to resolution of the rights and interests in the jar, and the immediate right to possession of the jar, such matters were not dealt with as part of this judgment.

A final word on provenance and due diligence

This decision is a reminder that in a market where oral agreements are common, and documentation such as is available regarding provenance is not always adequate or reliable, there is more than ever a need to properly document transactions as well as for vigilance in investigations into provenance, at a time when the market is seeing unprecedented numbers of disputes over provenance of artworks and artefacts. In dealings with antiquities, where evidential difficulties with establishing provenance are often compounded by the passage of time, and also in light of increased trafficking of antiquities from recent conflict zones, a party involved in such transactions always needs to be on the qui vive.

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