Helen Conybeare Williams in STEP Journal: Know Your Risks

September 18, 2020

The impact of COVID-19 on the art market has been significant but the move to online sales has been a 'lifeline'. A recent art market survey reported that interest in collecting has significantly increased during the pandemic, notably among millennial collectors (aged between 23 and 38) who are comfortable buying art online at high prices, even art purchases of over US$1m online. Buying art online without seeing it in person can increase the risk to your investment. There is a range of due diligence that a buyer should undertake. Counsel Helen Conybeare Williams's article "Know Your Risks", STEP Journal (Vol. 28, Issue 4), pp.76-77) considers lessons learned from recent cases for those looking to invest in art and protect themselves from risk.

GOOD TITLE

Undertaking due diligence before purchase to verify that an artwork has demonstrable provenance (accompanied by reliable documentation charting previous ownership) is essential to ensure that the investor receives full and marketable title to the piece. However, tracing good title can be challenging, as the past of older artworks may have been eventful, lost or obscured by time, and such artworks may have moved across borders many times. There are different approaches as to what constitutes transfer of title, depending on the applicable jurisdiction.

There are also many infamous cases of stolen art, and even if the investor is a 'good-faith purchaser' and unaware that the artwork was stolen at the time of purchase, the common-law tradition, by way of example embodied in the law of England and Wales, is that the purchaser of goods acquires no better title than the seller, subject to some exceptions. By contrast, civil law, such as French and Italian law, tends to view a good-faith purchaser's claim more favourably over the original owner's title based on possession of the artwork, as well as other reasons.

In *Winkworth v Christie, Manson & Woods Ltd*, a decision of the English High Court, Japanese artworks were stolen from the original owner in England and taken to Italy, where they were acquired by a good-faith purchaser. The Italian purchaser subsequently brought the works back to England for sale. The judge held that the good-faith purchaser had acquired good title under Italian law, being the law in the jurisdiction where the property was located at the time the title was created, so did not have to return the stolen artworks. A different outcome would have resulted had the events occurred exclusively within the English jurisdiction, as the original owner would have been entitled to recover the stolen pieces.

Excerpted from *STEP Journal* (Vol. 28, Issue 4), pp.76-77). To read the full article, click on the PDF linked below:

Conybeare-Williams-Know-Your-Risks.PDF

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