A Case Note on *Countess of Wemyss and March v. Simon C. Dickinson Ltd* [2022] EWHC 3091 (Ch)

It is sometimes all too easy to jump to conclusions about negligence in the art market. A seller entrusts a painting to a dealer for it to be sold and the dealer sells it for £1.15m. Within a year the same painting is sold on for US$10.5m. Surely the painting was undersold and the dealer was negligent ? Such were the bald facts in *Countess of Wemyss and March v. Simon C. Dickinson Ltd* [2022] EWHC 3091 (Ch). However, the Court held the dealer was not negligent and the claim for losses (which the Judge assessed at c.£3m) failed.

The case concerned a painting by the 18th Century French artist Jean-Baptiste-Siméon Chardin (1699-1779) entitled "Le Bénédicité" ("Saying Grace") ["the Painting"]. Chardin lived and worked in Paris and his work was recognised during his lifetime as outstanding. He worked with a studio and often produced copies of his own works (sometimes with significant input from others). The Painting was one of (at least) four versions of the same subject – the first version (the "Prime Original") was exhibited at the Grand Salon of the Louvre in 1740 and presented to Louis XV. A copy (which had been retained by Chardin) was acquired by Dr De La Caze and presented to the Louvre in 1869 and a third version which had been exhibited in 1746 was acquired by Catherine II of Russia and is now in The Hermitage. The Painting was a version which was sold in London in 1751 when it was acquired by an ancestor of the Earl & Countess of Wemyss.

In 2014 the Painting was consigned to the London art dealer, Simon Dickinson, for it to be cleaned with a view to it being assessed for a possible sale. It was at this time insured for £1m. Subsequently (after a "light clean") it was sold to a Stockholm-based art dealer (Verner Amell) for £1.15m with the sales invoice describing the Painting as "Chardin and Studio". The Painting was then "deep cleaned" and in early 2015 it was marketed by Amells as a *"major rediscovery"* and that *"far from a workshop copy, the work is in fact a fully autograph masterpiece by Chardin himself"*. In January 2015 the Painting was sold for (apparently) US$7.5m in cash plus a painting by Watteau, said to be worth US$3m but in fact likely worth a fraction of this.

The Claimants alleged that Dickinsons were negligent in effecting the sale to Amells in that the Painting ought to have been marketed as a wholly autograph Chardin, alternatively that Dickinsons ought to have consulted outside experts before selling the Painting, alternatively that Dickinsons ought to have warned the vendors about the risk of a sale at an undervalue.

In determining these claims the Court accepted that the undisputed living authority on the works of Chardin is M.Pierre Rosenberg. Rosenberg is the author of the 1999 *catalogue raisonné* of Chardin and his view as to the quality and authorship of any particular Chardin painting is considered definitive within the art market. Rosenberg catalogued the Painting as by the hand of Chardin albeit that he described it as a "copie retouchée par Chardin". Although M.Rosenberg was not a witness and gave no direct evidence, it was plain that at no time had he revised his view of the Painting (despite the Painting's current owners considering it superior to all other versions apart from the Prime Original).

In the light of M.Rosenberg's views and Mr Dickinson's honestly held belief that the Painting was by "Chardin and studio", the sale at a price which reflected that it was not fully autograph was held not to be negligent. The price reflected a best guess at a complex pricing problem where there were no comparables for paintings in that: (i) a work designated "fully autograph" by M. Rosenberg could fetch £3-4m

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whereas; (ii) a work designated "wholly studio" would only be worth c.£200,000. The Painting had features and areas that were suggestive of Chardin's hand and other parts that were more mundane.

The suggestion that Dickinsons ought to have consulted external experts was also rejected. The Court stated that where an art dealer formed a considered and reasonable view as to the attributes of a work which was within their area of expertise and acted on the basis of that view, the dealer cannot be said to be negligent because the view is not universally accepted or because validation had not been sought from some other expert [para.102]. There was only one expert that the market would have listened to – M. Rosenberg – and Dickinsons legitimately believed there was a real risk that, if pressed, M. Rosenberg would have declared the Painting to have had more studio input than the other three versions.

Finally, the Court rejected the assertion that Dickinsons should have warned the vendors about the risk that the Painting could be attributed as "fully autograph" and so justify an increased sale-price. The Judge said [para.91]:

> *"In the context of a case of this kind, it seems to me that a positive obligation to raise a particular issue with a client arises only in circumstances where an advisor has taken a view on a particular point, but knows (or should have known) that that view was potentially likely to be challenged. If Mr Dickinson had taken the decision that The Painting could have been marketed as an autograph Chardin, I think he would have owed a clear duty to Lord Wemyss to warn him that this might result in controversy and allegations of misdescription. However, I do not believe that there was any factor here which should have caused Mr Dickinson to believe that his view was open to challenge – in his opinion his evaluation was entirely in line with M. Rosenberg's published treatment of The Painting, and there was no other existing authority whose view, even if different, could somehow "trump" that of Rosenberg. For this reason, he equally could not have concluded that a reasonable client would attach significance to the facts being otherwise, since in his view the possibility of that outcome was wholly fanciful."*

In summary, this case is an illustration of the potential difficulties of establishing negligence in the art world. It is not sufficient to point to subsequent sales and claim that these are probative of a negligent sale at an undervalue. What is required is clear evidence that the conduct of the Defendant on the sale fell below what was to be expected of an ordinary skilled professional and that this caused the sale at an undervalue.

"Jean-Baptiste-Simeon Chardin: "Saying Grace""

Andrew Bruce