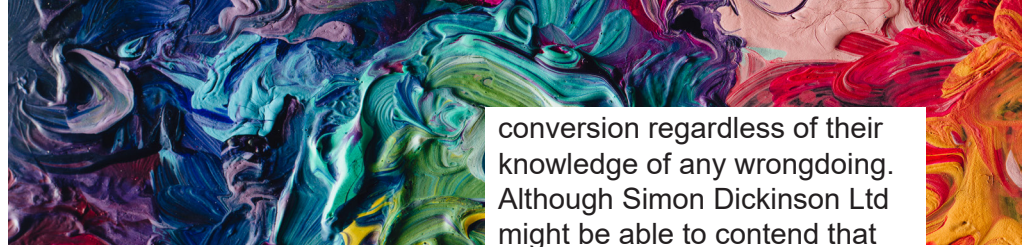




## Secrecy in the Art Market: *Hickox v. Dickinson* [2020] EWHC 2520 (Ch)

The art world values privacy and transactions in the art market are often cloaked in secrecy. This is notwithstanding that art is visual – a painting or sculpture cannot be enjoyed if it is hidden away in a dark bank vault. However, the black market in artworks means that, in order to protect their security, buyers of art like to hide their identity. Sometimes also they will not wish to reveal the degree of their wealth to the world in general as evidenced by the purchase of high-value artworks. As such, it is common practice for the identity of a private buyer or owner of a valuable artwork to be kept confidential by the dealers and auction-houses involved. This inevitably causes difficulties when the artwork being sold has been stolen. Tracing the misappropriated piece can sometimes seem a hopeless task. The recent decision of the High Court in *Hickox v. Dickinson* [2020] EWHC 2520 (Ch) shows, though, that the English Courts are willing to offer some assistance to victims of art theft or fraud.

In 2012 Ms Hickox owned an oil painting by the Nineteenth Century French Neo-Impressionist artist Paul Signac which was hung in her apartment in New York. She was interested in selling the Painting and entered into arrangements with one Timothy Sammons for him to broker a sale. Unfortunately, Mr Sammons was a con-man and is currently serving a 4-12 year prison term in New York. Having taken possession of the Painting, Mr Sammons arranged a sale of it for US\$4.85m to an unknown purchaser who was represented



by the art dealers, Simon Dickinson Ltd. Despite the purchase monies being paid to Mr Sammons, they were never passed on to Ms Hickox and she never saw the Painting again.

Ms Hickox brought an application seeking information from Simon Dickinson Ltd as to its dealings with the Painting and its knowledge of the current whereabouts of the Painting. The application was under the Court's *Norwich Pharmacal* jurisdiction which permits disclosure to be ordered from a respondent where: (i) there is a good arguable case that a legally recognised wrong has been committed; (ii) the respondent is mixed up in and has facilitated the wrongdoing; (iii) the respondent is likely to be able to provide necessary information to enable the ultimate wrongdoer to be pursued; and (iv) ordering disclosure is appropriate and proportionate.

The Court granted the application. It held that Ms Hickox had established an arguable case in conversion by a person other than Mr Sammons. It was arguable that Mr Sammons had stolen the Painting and Ms Hickox had not expressly authorised him to sell it. It was also arguable that, given Mr Sammons' lack of a good title, any purchaser would not be able to establish title and would be liable in the strict liability tort of

conversion regardless of their knowledge of any wrongdoing. Although Simon Dickinson Ltd might be able to contend that any sale by Mr Sammons was valid pursuant to the Factors Act 1889 (which validates sales by mercantile agents and provides a statutory exception to the nemo dat principle) it was questionable whether this Act applied to protect the purchaser and whether, on the facts, a mercantile agent effected the sale to bona fide purchaser.

The Court was satisfied that Ms Hickox's claim was a claim arising out of the theft of the Painting and not the theft of the proceeds of sale and it accepted that Simon Dickinson Ltd was necessarily mixed up in its client's purchase of the Painting. Although confidentiality and delay were relevant considerations they did not outweigh the fundamental fairness in allowing Ms Hickox to determine what had become of her Painting. As the Court stated: "*It is common ground that [Ms Hickox] is the victim of a convicted thief and fraudster. The evidence suggests he [Mr Sammons] exploited market customs of confidentiality to carry out serial fraud in the international art market. [Ms Hickox] assisted in bringing him to justice and it would be unfair if such market custom prevented her pursuing any further legal recourse.*"