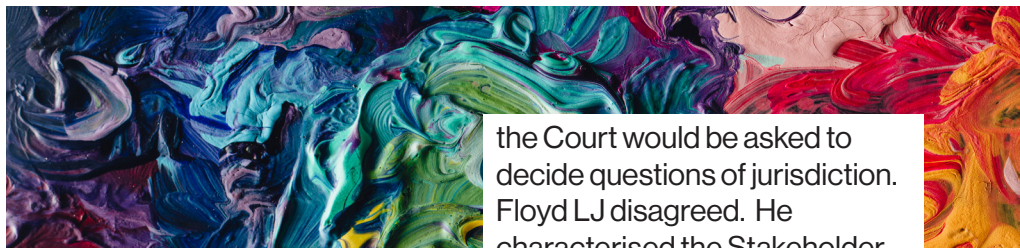




Stakeholder Claims in the Art World

It is not uncommon for title disputes to arise after an art-work has come into the hands of an auction-house. In such a situation, should the auction proceed and to whom should the auction-house account? Sometimes a dispute arises after the art-work has been sold and the auction-house is holding the proceeds of sale. To whom should the sale proceeds be paid and how can the auction-house avoid being sued by anyone? The way in which the English Courts deal with these situations is through Stakeholder Claims under Part 86 of the Civil Procedure Rules. Such Claims allow the auction-house to ask the Court to determine the rival claims and determine what should happen. If there are no pending proceedings between the rival claimants, the stakeholder auction-house is entitled to bring a new claim by issuing a Part 8 Claim Form. Having issued its claim, the auction-house normally takes a back seat during the resolution of the competing claim between the rival claimants, though it nevertheless remains a party throughout and will be the subject of the Court's binding direction at the end of the proceedings. Problems may though arise where there is an international element to the dispute. What if one of the rival claimants is outside the jurisdiction and maintains that the English Court does not have jurisdiction to determine a title issue? How and when should this jurisdictional challenge be dealt with?

In ***Stephenson Harwood LLP v. (1) Medien Patentverwaltung AG (2) Michael Kagan*** [2020] EWCA



Civ 1743 the Court of Appeal considered the process for raising a jurisdictional challenge in a Stakeholder Claim. In the case, Stephenson Harwood LLP ["SH"] held funds which both Medien Patentverwaltung AG ["MPV"] and Mr Kagan claimed. SH issued a Stakeholder Claim to which MPV responded by filing an Acknowledgment of Service in which it asserted an intention to contest the claim and made clear that it claimed that the funds should be paid over to it immediately. The Acknowledgment of Service did not indicate (by a tick in the box at Section C of the form) that MPV intended to dispute the Court's jurisdiction. MPV subsequently filed a witness statement in which it disputed Mr Kagan's claim and stated that MPV did not agree that Mr Kagan's claim was governed by English law or subject to the jurisdiction of the English courts. At first instance and on (first) appeal the Court held that it was not open to MPV to challenge the English courts' jurisdiction as it had not made a (formal) application under CPR 11(5) challenging jurisdiction within 14 days of filing its Acknowledgment of Service. In the Court of Appeal MPV argued that the Stakeholder Claim was merely an application for procedural directions such that it would only be later when the competing claims of MPV and Mr Kagan came to be resolved that

the Court would be asked to decide questions of jurisdiction. Floyd LJ disagreed. He characterised the Stakeholder Claim as akin to a claim for declaratory relief: "*The court's directions at the end of the stakeholder proceedings is comparable to a declaration of the stakeholder's non-liability to one of the rival claimants and of liability to the other in respect of the claims to the property.*". As such it was a claim seeking a binding direction as to how the funds should be disposed of, such that MPV had either to challenge jurisdiction under CPR 11 or be deemed to have accepted the Court's jurisdiction. It could not wait until Mr Kagan pleaded his claim.

The point for art lawyers to take away from the ***Stephenson Harwood*** case is that, if jurisdiction is going to be challenged in a Stakeholder Claim where the stakeholder is an auction-house, the challenge must be made at the outset of the claim. Waiting until evidence is filed or to the first directions hearing is too late. CPR 11 applies to Stakeholder Claims and a failure to make a Part 11 application within the specified period (of 14 days after filing an Acknowledgment of Service) will constitute acceptance that the English court has jurisdiction to try the claim and determine title to the goods.

Andrew Bruce
Barrister