



AiA Art News-service



Attention all Art Buyers – Caveat Emptor and then Emptor some more!

by Hanoch Sheps, Esq.*

Caveat Emptor (Latin for “let the buyer beware”) could quite possibly be the understatement of the century, at least it appears to be one of the glaring messages delivered at the NYU Art Crime and Cultural Heritage: Fakes, Forgeries, and Looted and Stolen Art Conference (the “Conference”). Three days’ worth of panels and discussions devoted to topics ranging from art crime to cultural heritage and authenticity have proved that even the most innocuous canvas or a Faberge egg might conceal a dark truth. As the seedy underbelly of one of the most unregulated markets in the world continues to swell, at no fault of their own, nevertheless, all buyers seem to focus on are the headline-making sales of contemporary art. Although three days somehow barely scrapes the surface, the NYU Conference exposed cautionary tales and lessons learned on some of the more recurring themes and pitfalls of the art market.

—Authenticity

Our readers will know by now that forgers are becoming more brazen in both their forgeries and outright candidness about their criminal proclivities. Most notably, the infamous forger Wolfgang Beltracchi spoke openly on *60 Minutes* in February about how he can walk into

famous museums around the world and point out his own forgeries. Moreover, Beltracchi went so far as to show *60 Minutes*' Bob Simon how easily and quickly he can forge a Max Ernst, the German surrealist of the early twentieth century. Then there are “former” forgers like Ken Perenyi who recently penned a book entitled [“Caveat Emptor: The Secret Life of an American Art Forger.”](#) Pegasus, 2013. In his book, Perenyi claims that he now makes *replicas* in the style of famous artists, rather than marketing them as “originals” made by those artists. (For more on distinguishing between replicas and fakes, consider reading [A Plethora of Fakes and a Series of Thoughts: Where Has All The Real “Art” Gone?](#), December 2013). Do we take the former forger’s word that he is no longer forging? Or do buyers acknowledge that in an unregulated market saturated with forgeries, one treads into the minefield at their own risk? Issues concerning authenticity may actually speak to the larger challenge of “reputation building” where galleries, auction houses, and the artists themselves highly depend on word of mouth (and are intentionally opaque where records of transactions are concerned). One of the presenters at the NYU Conference, Scott Hodes, Senior Counsel at Bryan Cave LLP, noted that success in perpetrating a fraud is often a function of a greater reputation. One need only look at the ongoing Knoedler case to see that a gallery’s reputation makes it a target for forgers, and increases the likelihood of forgeries landing in the buyer’s hands.

Ideas for buyers to consider (see disclaimer below):*

***Know your dealer** – Find out whether the artwork on consignment or owned by the dealer. Makes sure the dealer is not making multiple consignments of the same piece. Review your consignment agreement, make efforts to remove arbitration clauses from your consignment agreement. Doing so will change how a buyer can respond if a work is revealed as a forgery.*

***Liens (s)** – See how many liens others have filed against the dealer (few can mean the dealer owns many of their works outright, many can mean most of the works are on consignment). (For more on this topic see Herrick, Feinstein LLP’s, [Time to Take the Risk Out of Consignments](#)).*

The reputation of galleries and auction houses is not the only factor that may “invite” criminal objectives, merely the name of the artist can be enough of a pull for buyers—and in some cases even world-renowned experts. There will never be a shortage of cautionary tales when exploring the niches of art markets, but some stood out in this Conference. Influence and reputation draws imitators and forgers to the fore like moths to a flame, but only few names have the clout of Faberge in the world of fine and decorative arts. Dr. Geza von Habsburg, a Faberge expert, recounted how in the span of a few years he had received numerous requests from different parties to examine what ultimately turned out to be the same collection of paltry fakes. Historians would have us believe that even renowned gallerist Armand Hammer himself increased the number of Faberge objects when he found out the whereabouts of their goldsmiths’ branding tools. If true, it only goes to show

that the opportunity to sell Faberge was too good to pass up even for people with stellar reputations. Would the lesson there be to encourage authorities to seize and destroy fakes, as some European agencies eagerly consider as a solution to the proliferation of fakes? (For more on the topic see [Burning Fake Chagall's, Market Integrity versus Ownership Rights – A Zero Sum Game](#)). Be it a dealer, or innocent buyer, it seems that if they cannot sell the fakes to a reputable purchaser, they find another upon whom to pass off the tainted goods. And thus, fakes simply continue circulating in the market. One of the reasons that the Faberge forgeries continue to circulate in the market, is that their owners are in denial of their authenticity. A more intriguing story of the pervasiveness and appeal of forgeries presented at the Conference was by Salomon Grimberg, author of *Frida Kahlo Catalogue Raisonné*. As a Kahlo aficionado, what made his story unique was that even when faced with a work he knew to be fake, he could not resist the temptation to own something that he could pretend was a half-decent Kahlo – if only for a moment. Other less knowledgeable buyers can easily fall prey if they do not seek out objectivity of an expert.

Food for thought – buyers should seek out objective opinions and in some cases second, third opinions (all the while hoping to find that rare “consensus,” if such a degree of certainty exists).

—Due Diligence—

Coming in only second to “caveat emptor” as the critical takeaway from the NYU Conference is “do your due diligence.” To some it is a hackneyed phrase, unfortunately, for others it falls on deaf ears. It truly cannot be emphasized enough that proper due diligence is the key to any successful art market transaction. Buyers simply cannot afford the risk of neglecting proper background research. In such a litigious market, the motto should be “pursue information now or pursue your money in court later.” Knowing the time consuming nature and expense of litigation makes it obvious to pursue information where possible. Whatever the issue – authenticity, provenance, looting or otherwise – a rigorous review prior to purchase will go a long way.

—Provenance—

It would be a mistake to think that the last battle of *World War II* ended with the war, because it is simply not true. A war of a different sort rages on in courts and in the homes of those from whom property was stolen. At times looted art continues to circulate because of purely falsified provenance documents prior to sale. At others circulation results from willing parties who ignore clear “gaps” around the 1930-45 period. Cases of fine and decorative art take center stage as sagas like Cornelius Gurlitt’s continue, although now even he is no longer around to fight. Chris Marinello of *Art Recovery International* spoke with Marianne Rosenberg, attorney and granddaughter of the legendary gallerist Paul Rosenberg. In their conversation, they made clear that there were quite a few battles left to fight. The recovery of the Rosenberg collection that was looted during *WWII* is just one of many collections that

sustained major losses on the part of the Nazi's and other occupying forces. As recently as a few weeks ago, the Gurlitt Task Force acknowledged that Gurlitt possessed Henri Matisse's "Seated Woman" which was looted from the Rosenberg collection. The Rosenbergs are unique and benefit from extensive and scrupulous records that Mr. Rosenberg maintained as part of his regular practice, but are also a credit to his foresight in an increasingly difficult situation for French Jewry. Even with such records, restitution can be a nigh impossible endeavor that can take decades. (See [*Gurlitt Task Force Makes First Determination that Matisse "Seated Woman" Was Stolen From Rosenbergs; Questions Remain About What Happens Next*](#), The Art Law Report, June 12, 2014). WWII is only one common source of provenance issues, but it highlights a poignant point that buyers must take particular caution when reviewing an artwork's provenance – they present issues that are here to stay, and care not for notions of sentiment and perceived fairness.

Lesson to learn – there are ample resources, like Art Recovery International, Interpol, the International Foundation for Art Research (IFAR) that buyers can use to identify or report stolen and questionable works.

—Looting—

Panels on this topic identified the reality that in times of unrest, looting becomes rampant. Only this week it was reported that fighters from the Islamic State of Iraq and Syria (ISIS) have begun collecting "taxes" from parties seeking to smuggle Syrian and Iraqi antiquities (all parts of ancient Mesopotamia) to further finance their insurgency. Not only is the region in a state of upheaval, but those causing the chaos actively encourage looting, a truly deadly combination – especially in a "pay the tax or die" situation. [[The Sunday Times](#)]. Simply put, following the unrest, damage and destruction of cultural heritage sites is not far behind. Perhaps the biggest problem beyond actual theft is the destruction of the historical context of those items. When thieves remove objects from a site and lie about their origin, humanity loses valuable ethnological and archaeological information making it impossible to recover vital information, including with whom it was buried, with what else, strata to identify age – the list only grows from there. To compound the loss of cultural heritage is the illicit importation and exportation of cultural objects through the falsification of customs forms and outright smuggling. Objects then enter the porous market where unsuspecting buyers fall prey. Fortunately for art buyers, art market professionals come together to provide programs like the NYU Conference, which feature and highlight important issues in the field. It goes without saying that the most watchful eye, the most scrupulous attorney, nor the best insurance investigator will catch everything. Nevertheless, if we can glean a parting lesson from the NYU Conference, it is that buyers worldwide may need to be as passionate about doing their background work as they are about the art itself.

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