

Provenance makes perfect

By Louisa Gommans



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Buying significant art in today's market is a scary business. The international art market can be murky, unregulated and littered with fakes and forgeries. Online art auctions have proliferated, which further muddies the art market waters.

Buyers are subjected to claims of *caveat emptor*, buyer beware, and less than scrupulous sellers contribute to the messy situation that comes with buying a piece of art.

The problem of provenance makes the art market a treacherous place for the unwary. "Provenance" is documentation that records an artwork's ownership history, and is used to determine its quality, authenticity and value.

With legitimate provenance, there should be no doubt that an artwork was created by the artist whose signature appears on it. It is a reasonable request for any prospective buyer to ask for and receive a good provenance from the seller, *before* bidding on the artwork.

What is provenance?

When looking to ascertain provenance, the sorts of things that a prospective buyer should satisfy themselves with can include:

- » an exhibition or gallery sticker on the artwork;
- » a signed authenticity certificate or other appraisal document from a respected expert;
- » an original sales receipt from a gallery or the artist;
- » a visual record (eg, video recording) of the artist discussing the artwork;
- » a newspaper article about the artwork; and
- » an exhibition catalogue or respected book which mentions the artwork.

This is by no means an exhaustive list of what might constitute provenance, as the individual circumstances could make other forms of authentication more or less relevant.

It has long been tradition for auction houses to assert that provenance is unnecessary where the establishment can make a statement as to the artwork's history. Auction catalogues often state "property of a Gentleman", which seems to be a way of saying that although the owner wishes to remain anonymous, the auction house would like to emphasise that the work is of good provenance.

Fakes and forgeries

Unfortunately, in some cases there may be no recorded provenance available, or what exists is less than genuine. Fakes, forgeries and stolen or misrepresented artworks are sometimes to be found for sale accompanied by questionable provenance, especially in online art auctions.

Unscrupulous sellers know how valuable good provenance is to prospective buyers, and so will go to great lengths to create a fake paper trail that "validates" the artwork.

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Tie up the loose ends

Prospective buyers should satisfy themselves that they have checked out their chosen artwork's provenance thoroughly, and are satisfied that the provenance is legitimate.

For example, it would be unwise to bid on an auction where provenance is stated as being available to the successful bidder. There is no reason that it should not be available upfront before bidding commences and, in fact, a reputable institution should want to make provenance available. Similarly, the artwork in question should be described in detail including its size, medium, title, and other relevant details.

A purchaser ought to ensure that they are looking at original documents, with legible signatures and dates.

Photocopies do not provide valid provenance. Nor does a list of previous owners or exhibition galleries, unless they can contribute proof of the artwork being created by the supposed artist. Likewise, it pays to watch out for hearsay statements such as "when I bought this, the previous owner told me ..." Good provenance provides concrete evidence, not postulation.

To avoid financial and emotional disappointment when buying art it is important to stick to reputable sellers. A good dealer, gallery or auction house's reputation will precede it.

Call in the experts

A leading resource when a seller wants to confirm provenance, especially for older works, is the *catalogue raisonné*. This describes the definitive known collection of an artist, as put together by an expert scholar, which can be used by other professionals to determine where a piece fits into its artist's legacy of work. There are, of course, limitations, such as unknown works and incomplete lists where the scholar responsible dies or ceases to maintain the catalogue.

Similarly, an *authentication committee* lends weight to provenance by expressing the consensus of a number of experts. Such committees are sometimes established by an artist's will, or can be convened by an organisation that owns the legal right to authenticate work by a particular artist. They tend to exist to authenticate works by well-known artists, whose work is often very valuable.

Consulting an authentication committee can bring its



own risks, including the possibility that if the committee rejects the work or refuses to authenticate it, this could render it of little or no value. The international art market has experienced considerable drama in this regard, with collectors suing committees for refusing to authenticate an artwork even when the owner believed they had sufficient proof to meet the committee's requirements.

Some authentication committees now require that anyone consulting them sign an indemnity agreement first. Other committees have disbanded altogether, for fear of legal action. In New York, legislation is being considered which aims to protect art authenticators from "frivolous or malicious suits brought by art owners".¹

Trustworthy sellers, especially the larger auction houses, might make use of these two provenance establishing resources, most certainly where particularly valuable pieces are concerned.

Some simply will not sell works which have not been authenticated by the appropriate committee. In the absence of authentication by a committee or if an artwork does not feature in the catalogue raisonné, other sound forms of provenance become particularly important.

International art fraud

A notorious example of the power of provenance, one that has been widely written about, is the case of John Drewe, a convicted fraudster in the United Kingdom.

For a period of about 10 years, Drewe paid his acquaintance John Myatt to paint remarkably authentic looking copies of works by famous master painters including Chagall, Matisse and Le Corbusier. Drewe then sold these copies, for far more than he was paying to Myatt, as originals.

To convince buyers of the paintings' authenticity he concocted detailed provenances and created instant histories for his copies by infiltrating art archives under the guise of being an art collector. In doing so, he changed the histories of real artists and artworks.

Such was the impact of this scheme that it is thought some library collections may never know the full extent

to which their records were compromised.

This case helps to illustrate the fallibility of provenance, and particularly the extent to which sources of provenance, which are often heavily relied upon, can be manipulated (especially given that Drewe had no art historical training or special knowledge of the industry!)²

The perils of buying with bad, or no, provenance

It is a perilous decision to buy a piece of art with no, or dodgy, provenance. Finding out you have bought a fake, a forgery or a stolen piece means a long and winding road trying to recover the money you spent.

Carrying out or being involved with a dodgy sale exposes the seller to all sorts of liability.

It could become necessary to involve the Police, as a seller who knowingly sells a fake or forged artwork might have committed an offence such as obtaining by deception and/or using a document to obtain a pecuniary advantage. If the scale of the operation is large enough, it might be a matter for the Serious Fraud Office. The purchaser may also have recourse to an action in tort for deceit, or for breach of contract.

There is a risk that the dispossessed owner of a stolen artwork will turn up brandishing the *nemo dat* rule, (short for the Latin phrase "nemo dat quod non habet"), meaning that one cannot give what they do not have. In the case of a stolen artwork, the seller has no ownership right to it, and so its purchase also denies the purchaser any ownership title. If this claim is raised within the bounds of the Limitation Act, the happy new owner could suddenly find themselves out of pocket and with an empty space on the wall.

Some auction houses do provide in their terms and conditions for the return of proven fakes or forgeries, but this will not always result in a refund (or at least not until you have expended even more money having the forgery verified by an expert).

So the best advice to anybody looking to buy art - especially where the purchase is a significant investment - is to do your due diligence and ensure the piece has a robust provenance, *before* making an offer.

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¹ New York State Assembly, Bill A09016.

² New York Times article, <http://www.nytimes.com/library/magazine/archive/19990718mag-art-forgers.html>.