

# Mistaken authentication of a forgery

## Case against Max Ernst expert overturned at appeal

By **Louisa Gommans**

The Versailles Court of Appeal in France has overturned a 2013 ruling against Werner Spies, a German art historian, for mistakenly authenticating an artwork which subsequently sold at auction for US\$1.1 million.

Art experts have breathed a collective sigh of relief at the ruling, but this case and others like it have left many wondering how expert authenticators can continue to give their opinions.

Spies is an art historian, the former director of the Centre Georges Pompidou in Paris, and an expert in the work of the German surrealist Max Ernst, who had been a personal friend of Spies.

In 2002, Spies included *Tremblement de terre (Earthquake)*, 1925, in the catalogue raisonné of Ernst. As previously written in *LawTalk* issue 866, a catalogue raisonné is a scholarly text that describes the definitive known collection of an artist. Such a text is often used and relied upon by other art professionals to determine where a piece fits into its artist's legacy of work.

*Tremblement de terre (Earthquake)* was then displayed as part of an exhibition of Ernst's work in 2004. In 2009, it sold at Sotheby's New York for US\$1.1 million.

### Forgery discovered

When it was later discovered that the painting was the work of a notorious forger Wolfgang Beltracchi, the new owner sued Spies (along with the painting's previous owner).

The French *Tribunal de grande instance de Nanterre* held that Spies' inclusion of the painting in the catalogue raisonné had effectively given it a certificate of authenticity and therefore the new owner had purchased the painting in reliance on the opinion of an expert. Spies was ordered to pay damages of approximately EU650,000 to the new owner.

On 3 December 2015, the Versailles Court of Appeal overturned the order to



Louisa Gommans

pay damages. The court held that:

"...the author of a catalogue raisonné who expresses an opinion outside of a determined transaction cannot be charged with a responsibility equivalent to that of an expert consulted in the context of a sale".

The court also said that it:

"...cannot be required of the author of a catalogue raisonné to subject each work in a catalogue published under his responsibility to the execution of a scientific expert assessment, which requires the removal of fragments of the work and represents a significant cost".<sup>1</sup>

This means that a clear distinction has now been drawn between an opinion expressed within a scholarly text and an opinion about a specific artwork obtained in connection with its sale.

It is little wonder then that art experts, including authentication committees dedicated to verifying the work of particular artists, are increasingly wary of providing authentication opinions for fear of litigation.

Hopefully the art world will continue to seek expert opinions to inform the authenticity and provenance of artworks.

It may be that more measurable forms of authentication, such as scientific and technological analysis, will begin to take precedence over the traditional notion of connoisseurship. This is a topic of ongoing debate, so it will be interesting to watch how it progresses.

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1 *Judgment against Max Ernst expert Werner Spies overturned in appeal*, The Art Newspaper, 9 December 2015, <http://theartnewspaper.com/news/news/max-ernst-mistaken-authentication-ruling-overturned/>, accessed 20 February 2016.



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