



IN THE COURT CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

JOHANNES R. KRAHMER, AND	:
BETTY P. KRAHMER	:
	:
Petitioners	:
	:
vs.	:
	:
CHRISTIE'S, INCORPORATED	:
	:
Respondent	:
	:

C.A. _____

* * * *

PETITION FOR RESCISSION

1. Petitioners, Johannes R. Krahmer and Betty P. Krahmer, reside at 2201 Kentmere Parkway, Wilmington, Delaware 19806, and have at all times relevant to the matters herein disputed resided there.

2. Respondent, Christie's, Incorporated ("Christie's"), is a New York corporation, which is engaged in the business of selling fine art objects at auction, and rendering appraisal services.

3. Respondent conducts business in the State of Delaware by regularly soliciting business in Delaware and providing appraisal services in Delaware within the meaning of 10 Del. C. §3104(c)(1), (2) and (4).

4. On December 5, 1986, Petitioners purchased a painting (the "Painting") at Respondent's American Painting sale in New York City, which Respondent represented as having been painted by Frank Weston Benson

("Benson"), a renowned American painter. The hammer price for the Painting was \$35,000 and Respondent's commission was \$3,500, for a total purchase price of \$38,500. A copy of the front page of the catalogue (the "Catalogue") for this sale, which Respondent mailed to Plaintiff's at their residence in Delaware, is attached as **Exhibit A**. Copies of pages 176 and 177 of the Catalogue, where the Painting is described and pictured, are attached hereto as **Exhibit B**.

5. The Catalogue distinguishes between paintings as to which Respondent warrants authenticity, and those paintings as to which it does not. Thus, as to the first painting in the Catalogue, attached hereto as **Exhibit C**, the asterisk next to the purported artist's name denotes that Respondent does not warrant its authenticity. However, the Painting is advertised in the Catalogue without an asterisk accompanying the painter's name, which denotes that Respondent warrants the authenticity of the Painting.

6. At the time of Petitioners' purchase, the Painting was housed in an old frame and affixed to an old stretcher. The frame and stretcher contained inscriptions with Benson's name and that of the Detroit Club. When Petitioners paid for the Painting, after bidding for the Painting had closed, Jay Cantor, head of Respondent's American Paintings Department, explained to Petitioners that there was a nameplate for the Painting, and handed it to Petitioners. The nameplate stated that the Painting belonged to the Detroit Club in Detroit, Michigan. Cantor told Petitioners that the nameplate had been removed from the frame during the viewing period because Alfred Taubman, the chief shareholder of Sotheby's (the other major New York auction house) was a member of the Detroit Club, and it

would be embarrassing to him if it became known that the Detroit Club was auctioning one of its paintings at Christie's rather than at Sotheby's. Cantor also told Petitioners that Respondent would provide them with an appraisal of the Painting confirming its authenticity, a copy of which is attached hereto as **Exhibit D**.

7. In early 1990, approximately four years after the sale, Cantor, then still head of Respondent's American Paintings Department, came to Petitioners' home in Delaware and provided Petitioners an updated appraisal of their paintings, increasing the value of the Painting to \$85,000. A copy of the first page of that appraisal, valuing the Painting (the first item), at \$85,000, is attached hereto as **Exhibit E**.

8. Petitioners carried separate theft and casualty insurance coverage on the Painting in the amount of Respondent's appraisals.

9. In the 1990's, Petitioners began researching Benson's paintings, and in the Fall of 1999 Petitioners learned that there was a Catalogue Raisonné Committee for Benson's paintings headquartered at Vose Galleries in Boston, Massachusetts. Petitioners contacted Vose Galleries to request a listing of the Painting in the Benson Catalogue Raisonné, a process which can take several years.

10. Subsequently, Petitioners learned that another Benson painting of the same subject was in the collection of the New Britain, Connecticut, Art Museum, and Petitioners called this to the attention of the Benson Catalogue Raisonné Committee. The Committee took note of this and advised that there might be two finished works by Benson of the same subject matter, and that it would continue its

research. The Committee did not then suggest that the Painting might not be genuine, nor did Petitioners contemplate that possibility, because of the assurances they had received from Cantor.

11. In the Spring of 2002, Petitioners, believing that the Painting had become very valuable, determined to de-accession the Painting, and sent it to Sotheby's in New York City, with which Petitioners also had previous dealings, to be auctioned.

12. Sotheby's sent the Painting to a restorer named Simon Parke to check on its condition. On September 26, 2002, Peter Rathbone, the head of Sotheby's American Painting Department, sent Petitioners a memorandum enclosing Parke's analysis, a copy of which is attached hereto as **Exhibit F**. Parke not only expressed concerns about the condition of the Painting, but also opined that the signature on the Painting was not genuine, and that the Painting itself might be a fake. This was the first information Petitioners received that the Painting might not be a genuine work by Benson. Sotheby's declined to accept the Painting for sale.

13. Petitioners reported the foregoing events to the present head of Respondent's American Paintings Department, Eric Widing, who was not employed by Christie's in 1986. Petitioners offered Respondent the option of reauctioning the Painting as a genuine Benson or rescinding the December 1986 sale. Respondent and Petitioners subsequently agreed that the Painting and the nameplate should be sent to the Benson Catalogue Raisonné Committee to determine its authenticity.

14. After receipt of the Painting, the Benson Catalogue Raisonné Committee reopened its inquiries about the history of the Painting and issued a

report of its findings dated October 20, 2003, a copy of which is attached hereto as **Exhibit G**. The report found that the Detroit Club did not sell or consign the genuine Benson painting (the "Genuine Painting") of the same subject matter to Respondent, but that the Genuine Painting came into the hands of a dealer in Connecticut named Donald Purdy, who sold it to the New Britain Art Museum. The Committee stated its belief that the original frame and stretcher of the Genuine Painting were placed on the Painting, and that the Painting is a fake, as detailed in Exhibit G. The Committee returned the Painting and nameplate to Respondent, where, to the best of Petitioner's knowledge, they remain.

15. Petitioners subsequently learned that the Painting had been offered for sale by Respondent at its May 30, 1986 auction, as Lot 161. A copy of the catalogue description and photograph are attached as **Exhibit H**. Exhibit H describes the painting as being "the property of a mid-Western club," which statement is a "provenance," giving more information about the ownership of a painting, which helps in attracting buyers. This provenance was removed from the Catalogue (for the December 1986 auction).

16. After confronting Eric Widing with the Committee's report, and enlisting the help of New York Counsel familiar with art law matters, Respondent determined that it would rely on the limitations period in its Warranty, even though the Painting was a fake. On January 5, 2004, Widing wrote Petitioners, acknowledging that the Painting was fake, but advising that Respondent nevertheless refused to rescind the sale. As consolation, Respondent offered to send

free future American Painting catalogues to Petitioners. A copy of Widing's letter is attached as **Exhibit I**.

17. Petitioners believe that after the Painting did not sell at Respondent's May 1986 auction, Respondent reviewed its file and confirmed that the Painting had not been consigned to it for sale by the Detroit Club (the "mid-western Club"), but rather by Donald Purdy (or someone in privity with him), and became concerned that the Painting was not a genuine Benson. This explains why Respondent deleted the provenance of the Painting shown in its catalogue for the May, 1986 sale, and why the nameplate bearing the name of the Detroit Club was removed from the Painting at the time of the Respondent's December 1986 auction.

18. Respondent holds itself out as having expertise in American Paintings. Hence its experts knew, or should have known, that the Painting was not genuine, for the reasons set forth in the Catalogue Raisonné report. There can be no doubt that Respondent knew that the Detroit Club was not the consignor of the Painting.

19. Petitioners believe that Respondent concocted the story that it removed the nameplate and deleted the provenance of the Painting in order to avoid embarrassing Alfred Taubman.

20. Respondent's intentional misrepresentation of the authenticity of the Painting, and its subsequent appraisal of the Painting at more than twice the amount of Petitioner's purchase price, constituted fraud.

WHEREFORE, Petitioners pray that this Court enter its Order that the sale of the Painting to Petitioners be rescinded, that Respondent pay Petitioners the reasonable value of the painting if it were as represented; together with

Respondent's commission and prejudgment interest, all costs, including casualty insurance premiums, reasonable attorneys' fees and such other and further relief as the Court finds appropriate.

BIGGS & BATTAGLIA

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JURISDICTIONAL STATEMENT

This action is brought pursuant to 10 Del. C. §3104, by reason of the acts performed by Respondent in the State of Delaware, enumerated in 10 Del. C. § 3104(c)(1), (2) and (4), to wit:

(1) Respondent sent its catalogue which listed the Painting to Petitioners' residence in Delaware;

(2) The Head of Respondent's American Paintings Department performed his appraisal of the Painting at Plaintiff's personal residence;

(3) Respondent has maintained, and continues to maintain, a Delaware representative to solicit business from potential Delaware customers;

(4) Respondent regularly sends employees to Delaware to perform appraisal services. For example, in (*July 28 is the date of the appraisal*), 2003, two representatives of Respondent appraised the American Painting Collection of the Sewell C. Biggs Museum in Dover, Delaware, for which services Respondent was paid about \$6,000.

Thus jurisdiction in this case meets both the "transactional" and "general personal" jurisdiction standards. See *Speakman Co. v. Harper Buffing Machine. Co.*, 583 F. Supp. 273 (D. Del. 1984).