

SPEAR'S



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Auctioneers beware: misdescribing lots can cost you lots

Richard Manyon says there is more pressure on auction houses to be experts at describing items



Auctioneers occupy an unusual legal position in that they can act on behalf of both a buyer and a seller at the same time. This exposes them to a range of potential claims, and is the reason why the best auction houses have long and detailed standard contracts with all parties.

There are many ways in which a buyer might be dissatisfied with the performance of an auctioneer. They might have apparently bought a lot, only later to discover that the sale was impossible because the reserve was not met.

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They might have rights under the particular contract with the auctioneer, such as a right to sell back a proven forgery at the sale price as was previously provided for in some standard conditions. More prosaically, claims can be possible if a lot is damaged after sale but while still in the auctioneer's possession.

But what if the description of a lot is wrong? Increasingly, high net worth collectors may be specifically targeted by auction houses and may come to rely on the relevant house as their adviser. In this situation, the auction house could become liable to the buyer in negligence if the advice they give in this context falls below the required standard.

As auction houses become more and more data-driven and focussed, they should ensure that the advice given to targeted clients in particular is correct, that they warn the client that any advice could be wrong and that they avoid conflicts when concurrently advising the seller and the purchaser.

It is not only specifically targeted clients who might seek to claim against an auction house if an error is made in relation to a lot. The descriptions which appear in auction catalogues might also give rise to claims.

Leaving aside the remote possibility that an auction house would fraudulently misdescribe a lot for profit, the question of whether a careless or negligent misdescription could entitle a party to claim against an auction house is a live one.

The point has not been finally decided, but the possibility of liability in this area was accepted by the English court in relation to a sale of vintage cars in 2001 in Monaco. The 1959 Ferrari 410 Superamerica in question was advertised as follows: 'Use has always been sparing, and total mileage covered from new by this ultra-rare, virtually one-owner Ferrari is a mere 16,626km.'

A record price was paid, including a substantial buyer's premium. After the sale the purchaser discovered that the Ferrari had in fact covered around 200,000km.

Legal action followed and the matter was considered at a preliminary hearing. The court expressed the view that a special relationship might exist between the auctioneer and the purchaser, allowing the latter to claim because of the misstatement, and also that any denial of responsibility by the auction house under its standard terms might not bind the purchaser because this might be struck down unfair.

There was no final trial, but auction houses need to be careful in this area. Description and provenance are not an exact science, and vendors may try to persuade the auctioneer to go a little further in a description than is entirely comfortable. At the same time, there is pressure on auction houses to be fuller and more expert in their lot descriptions than ever before.

The more they do this, the more they confirm the possibility of a special relationship with the buyer of a lot, and the more they open themselves to potential claims. When it comes to auctions, not only the buyer need beware.

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