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Law

Cardsharps case shows Caravaggio's lasting talent for trouble



The disputed painting, *The Cardsharps* Leon Neal / AFP / Getty Images

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Caravaggio was a handful. The career of the Italian baroque artist included serial brawling, murder and, allegedly, consorting with the Devil. He had to flee Rome, the city where he made his name, in 1606, and died in mysterious circumstances four years later.

Centuries later, Caravaggio's talent as a painter is undoubted — and so, too, his ability to cause problems. In a recent High Court ruling Caravaggio saved Sotheby's a fortune, but not before much legal wrangling.

Sotheby's, one of the world's great auction houses, was sued by Lancelot William Thwaytes over its handling of the sale of a painting known as *The Cardsharps*. Thwaytes had inherited the painting after it was acquired by his father's cousin, surgeon captain William Thwaytes, an astute collector who bought it in 1962 for £140 at an auction of Old Masters Paintings held at Sotheby's in New Bond Street.

The painting was catalogued as “Caravaggio (After), The Cardplayers” — meaning that it was regarded as a copy of a known work of Caravaggio. The known work — the original of *The Cardsharps* — is in the Kimbell Art Museum in Fort Worth, Texas. It depicts a naive boy, the dupe, playing cards against a cardsharp. The cardsharp is also a boy but this is a scene of menace and danger: he holds a dagger at his side and, behind his back, extra cards. The odds are yet further skewed in his favour given that he has an accomplice, an older man who is peering over the dupe's shoulder and covertly indicating what cards he holds.

Thwaytes' *Cardsharps* fetched £42,000 when sold on December 5 2006 to a buyer acting on behalf of the renowned Caravaggio scholar, Sir Denis Mahon. Sir Denis undertook extensive research and then, on his 97th birthday, stunned the art world by declaring that the painting was an autograph replica of the undisputed original in the Kimbell Art Museum.

If it was by Caravaggio, Thwaytes's *Cardsharps* was worth an awful lot more than £42,000 — a very cool £10,000,000, in fact, the sum for which Sir Denis had it insured. Aggrieved, Thwaytes instructed Boodle Hatfield to sue for negligence and breach of contract. He met with a confident defence team led by Paul Lomas, a partner at Freshfields who has acted in many art disputes. “The overwhelming consensus among experts was that the painting was clearly not an original Caravaggio,” Lomas says. “Moreover, Sir Denis, while eminent, came to his conclusion at a stage in his life when his faculties were fading and his judgment questionable. At no stage did we feel this was a case that we needed to settle.”

Memorably, one witness described Sir Denis, who died aged 100 in 2011, as “like a great wine expert who still knew where every single vineyard was . . . but his ability to distinguish one glass of wine from another had been severely impaired.” Mrs Justice Rose — noting that the evidence had been assessed in an “exemplary way” by both legal teams — held that Sotheby's had been neither negligent nor acted in breach of contract. It had properly carried out its duties as an auction house. Intriguingly, Thwaytes's claim did not depend on proving that his *Cardsharps* was genuinely by Caravaggio.

Instead, explains Pierre Valentin, who heads Constantine Cannon's art and cultural property law practice, “its potential was enough. In the art world there is increasingly litigation over how paintings should be described when sold at auction, with various

gradations — a work can be attributed to, from the studio of or from the circle of an old master, down to being “after” the master, meaning that it’s a copy. A painting described in the upper gradations — for example, from the studio of — will realise a lot more than one which is ‘after’ an artist.”

But here, in what Valentin describes as “a battle of the experts” Sotheby’s was vindicated. A spokesman for Boodle Hatfield confirmed that its client is not appealing. “Our client does have concerns about the judgment, particularly over the treatment of the infrared evidence and the law on this issue. However, the case was very fact specific; indeed a battle of the experts. The court’s factual findings especially on quantum [claim value] have played a significant part in our client’s decision not to pursue an appeal.”

Caravaggio’s ghost may yet return to cause more strife but for writer and art critic Phoebe Tait, all the litigation in the world does not hide one basic truth: “The disputed *Cardsharps* is inferior and doesn’t have a shred of the seductive quality of Caravaggio’s best work. The Kimbell *Cardsharps* is a gorgeous painting in a different league. Both are of interest to the art-loving public but while the subject of *The Cardsharps* is deception and innocence, no one could possibly suggest a sleight of hand in this drama.”

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Henry Percy-Pole

February 26, 2015 10:22

One can understand Sir Denis’ sensitivity to the possibilities, because there are the two versions of *The Supper at Emmaus* by Caravaggio.

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Henry Percy-Pole

February 26, 2015 02:25

Which goes to exemplify the point that it is not the artist who may be engaged in fraudulent activity, but the people who handle the paintings.

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