Is There an Expert in the House?

Thomson v. Christie’s: The Case of the Houghton Urns

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BACKGROUND

The May 2004 decision of the London High Court in the matter of Thomson v. Christie’s captured the interest of the salacious British press for its glamorous players: the Canadian heiress, the English aristocrat, and the international auction house. Taylor Thomson, the daughter of billionaire newspaper baron, Lord Thomson of Fleet, sued both the Marquess of Cholmondeley, a bachelor filmmaker with a fortune valued at over £100 million,1 and Christie’s Auction House, for misrepresenting a pair of gilt and porphyry urns she purchased from Cholmondeley at a Christie’s sale in London in 1994 for just under £2 million.2

Following the auction, Ms. Thomson placed the urns in storage with Christie’s. It was not until the fall of 1998 when Ms. Thomson became concerned about the authenticity of the vases, having heard a rumor through an art dealer that the urns were “not ‘right’”.3 Shortly thereafter, Ms. Thomson conveyed her concerns to Christie’s, precipitating an investigation and, ultimately, legal proceedings.

The case has generated wide coverage in the art world because of the possible implications of liability for auction houses and its potential effect on the art market. Christie’s and Sotheby’s, which together control approximately 95% of the world’s auction market,4 have both faced an uphill struggle in the last fifteen or so years. First the duopoly struggled to regain public confidence, and then to recover from dismal financial returns.

In the early 1990’s, Christie’s and Sotheby’s conspired to combat an art market slump through collusion, agreeing to charge identical commissions on sales.5 In the settlement of the antitrust lawsuits that followed in the United States, each auction house was fined $256 million in compensation to clients.6 While Christie’s

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escaped further fines as the whistle-blower on the price-fixing scheme, Sotheby’s was fined an additional $45 million by the U.S. Department of Justice and $20 million by the European Commission.7

By 2003, consumer confidence had fallen, and fine art sales had plummeted 40% since 1998.8 During the art market boom of the 1980’s, many old master and impressionist works were placed in museums’ permanent collections, ensuring they would not resurface on the market. At the same time, owners of private collections were simply reluctant to sell, resulting in a lack of blue-chip work available to the resale market.9 Both auction houses were forced to undergo major restructuring to reduce operating costs. Between 2001 and 2003, Christie’s and Sotheby’s both laid off 15% of their employees,10 including experts specializing in “arcane areas,” such as rare coins and porcelain.11

Despite these obstacles, the market appeared to be making a recovery in 2003, with sales at record-setting prices: for modern and contemporary works at Christie’s, and impressionist pieces at Sotheby’s.12 The trend continued in 2004, with twentieth-century works in particular achieving prices well above pre-auction estimates and even resulting in a renewed interest in investment portfolios consisting of fine art.13

And so it was in this cautiously optimistic climate that the art world waited in great anticipation for the Thomson v. Christie’s judgment and the subsequent Court of Appeal decision published one year later, in May 2005. Would the court’s ruling constitute yet another setback for the art-at-auction market?

THE HIGH COURT JUDGMENT

In the following review of the High Court’s decision, which has been variously described as “curious,” “bizarre,” “complex but decisive,”15 and “a bit of a mess,”16 I will examine Ms. Thomson’s assertions, Christie’s rejoinder, the evidence presented and the findings of Mr. Justice Ian Jack.

The Catalogue Entry

In the Christie’s catalogue for the Houghton sale, the first part of the entry for the urns describes them as follows:

A PAIR OF LOUIS XV PORPHYRY AND GILT-BRONZE TWO-HANDED VASES designed by Ennemond-Alexandre Petitot, each with moulded everted rim with gilt bronze lining, flanked by climbing lions within acanthus cast rings, their paws supporting garlanded drapery, the tapering body above a stiff-leave base and entwined serpent socle, on pounced panelled square plinth 16-1/4 in. (41.5cm.) wide; 15-1/4 in. (39cm.) high; 11 in. (28cm.) deep.
The catalogue description continues with a brief biography of Petitot, illustrating his relationship to the Duke of Parma:

ENNEMOND-ALEXANDRE PETITOT AND PHILIP, DUKE OF PARMA

These vases were designed by the architect and ornamentalist Ennemond-Alexandre Petitot (1727–1801) circa 1760, either for his patron Philip, Duke of Parma (d. 1756) or one of his leading courtiers. A pupil of Jacques-Germain Soufflot in Lyons, Petitot studied at the Academy in Paris, where he won the Grand Prix d’Architecture in 1745. From May 1746 until April 1750 he resided in Rome as a stipendiary at the French Academy, where he designed extensive architectural settings in the manner of Louis-Joseph Le Lorrain, architect of Lalive de Jully. Indeed, it was through the recommendations of Le Lorrain and Lalive de Jully’s mutual friend, the Comte de Caylus, for whose book Recueil d’Antiquités Petitot had already engraved several plates, that Petitot was appointed architetto delle fabbriche ducali to the Duke of Parma in 1753.

Petitot was responsible for introducing neo-classicism to Parma, where he remained for the rest of his life, designing the facade of S. Pietro (1761), the interior of the Biblioteca Palatina (1763) and the extensions of the Palazzo Ducale. (1767)

The last paragraphs of the catalogue essay offer a symbolic interpretation of the lions; a comparison to the Getty vases; and possible sources of inspiration for the urns.

In his Suite de Vases of 1764, Petitot published a related vase pattern surmounted by cockerels, emblematic of France and iconographically applicable to his patron, who was Louis XV’s son-in-law. The bacchic lions may, therefore, be a reference to the Netherlands an emblematic motif employed on the Boule cabinet-on-stand in the J. Paul Getty Museum, California (illustrated in C. Bremer-David et al., Decorative Arts An Illustrated Summary Catalogue of the Collections of J. Paul Getty Museum, Malibu, 1993, no. 7, pp. 14–15) The design of these vases is one of thirty plates engraved by Benigo Bossi (1727–1792) in Parma in 1764 and dedicated to Guillaume-Léon du Tillet, marquis de Felino (1711–1774), the Prime Minister of Parma. Another pair of vases of this model is in the J. Paul Getty Museum, California (ibid., no. 270, p. 159).

As G. Wilson notes (op. cit., pp. 199–201), the actual bases of the Getty vases, like the Houghton pair, are not of porphyry but of a different material, that of the Getty pair being of red marble and the Houghton ones of scagliola, which is not visible when the mounts are in place. This suggests that the porphyry on both pairs is antique. A third pair is now in a private collection in Greece.

The boldly modelled lions recall the lion grasping a horse in the celebrated Roman marble in the palazzo dei Conservatori (C. Avery.
Giambologna, Oxford, 1987, p. 60), while their positioning on the vase-rims recalls Louis XIV’s silver vases designed by Claude Ballin (d. 1678). However, the lion handles may have been inspired by an antique vase in the Vatican Museum, engraved in E. Q. Visconti’s Museo Pio Clementino, 1782, Vol. 7, pl. XLIV.

Such vases were appropriate embellishments for the fashionable French buffet, with its marble bronze ornament, such as Jacques-Francois Blondel (1705–1774) illustrated in his De la distribution des maisons de plaisances, 1737.17

The Claims

Ms. Thompson’s contention is that the vases, or the Houghton urns as they became known (coming from the Marquess’ seat, Houghton Hall),18 were a product of the nineteenth-century Second Empire revival of the Louis XV style.19 Christie’s dated the urns, designed circa 1760, in the last years of the Louis XV’s reign, between 1764 and 1774.20 If, however, the Houghton urns were reproductions dating from after 1840, as Ms. Thomson claimed, their value would be substantially diminished. Expert evidence estimates that at auction, such pieces would fetch £20,000 to £30,000,21 whereas the presale estimate at Christie’s Houghton sale, where the urns were classified as eighteenth century, was £400,000 to £600,000.22

Misrepresentation

Ms. Thomson’s first claim against Christie’s asserts that the representations in the auction catalogue she was sent, as well as those imparted by her Christie’s special client advisor, Mr. Patrick Cooney, were false. Not only were the urns nineteenth century rather than eighteenth century, but they were also not of the quality stated.23 The Misrepresentation Act allows claims for damages when one party suffers a loss because of the misrepresentation of another party. The party accused of misrepresentation is liable unless he is able to prove “that he had reasonable grounds to believe and did believe up to the time the contract was made that the facts represented were true.”24

Duty of Care

The second claim against Christie’s alleges a breach of duty of care to Ms. Thomson. A duty of care consists simply of a legal obligation to exercise caution, the scope of which is ultimately decided by public-policy considerations. Ms. Thomson asserted that Christie’s duty here was twofold: a duty of care “in describing and dating the urns” and a duty to inform Ms. Thomson “of any doubts or queries of which Christie’s were aware” regarding these representations. This duty was said to arise because Ms. Thomson had received the auction catalogue, because of her status as special client, and because of her conversations with her Christie’s advisor Mr. Cooney prior to the sale.25
The auction house maintained that its evaluation of the Houghton urns as dating from the eighteenth century was accurate and denied owing Ms. Thomson a duty either on the basis that she received a catalogue or because of her special client status. However, Christie’s conceded that, in its oral and written statements describing and dating the urns, it owed Ms. Thomson a duty “to use reasonable skill and care” consistent with the standards of an international auction house of its standing, specializing in fine arts and antiques.

The Investigation

As the dating of the urns made up a significant component of Ms. Thomson’s claim against Christie’s, the urns were studied extensively in an effort to make a positive determination. The courts look to three criteria to establish authenticity of fine art and, by extension, furniture and decorative arts. These are provenance, expert evaluation, and scientific testing.

Figure 1. Pair of porphyry and gilt-bronze two-handed vases. Photo: Christie’s Auction House.
Provenance

The Houghton urns have little in the way of provenance. Lord Cholmondeley’s grandmother, the Countess of Rocksavage, purchased the urns in France sometime before 1921, when they appeared in a photograph taken at Houghton Hall. No records of the urns exist prior to that time. An argument was made on behalf of Ms. Thomson that the absence of provenance favored a nineteenth-century date, because their grandeur as eighteenth-century decorative objects makes it likely that they would have been recorded, and that this recording would have survived. However, a Christie’s expert demonstrated that many choice eighteenth-century furnishings have no provenance either. Provenance alone is insufficient to authenticate a piece, and, conversely, a lack of records is also inconclusive, despite being qualified by the trial court judge, Mr. Justice Jack, as “a reason for care.”

Expert Evaluation

Christie’s and Ms. Thomson called eight expert witnesses between them, and the court embarked upon a detailed examination of the evidence presented. Experts spoke to the design of the urns, based on a drawing by Ennemond-Alexandre Petitot (1727–1801) engraved by Benigno Bossi (1727–1792). Though the evidence was inconclusive, Mr. Justice Jack suggested as “general experience” that the design was more likely to have been followed soon after it became available, as opposed to “many decades later.” This conclusion appears to neglect the very nature of a style revival such as the Second Empire, when pleasing eighteenth-century designs would be implemented, regardless of whether or not they had been executed before.

Experts produced contrary evidence regarding the style of gilt and the modeling of lions, leaving Mr. Justice Jack unpersuaded by either argument. The lack of a maker’s mark was noted and found to be inconclusive. The porphyry was said to indicate eighteenth-century craftsmanship by Christie’s experts, and nineteenth-century work by Ms. Thomson’s experts, while the court held that the finish was more consistent with the eighteenth century. The judgment continues to detail reports on all aspects of the urns, including their mounts, joints, gilding, and liners.

In spite of Mr. Justice Jack’s cursory study of eighteenth- and nineteenth-century French furniture, he gained sufficient confidence on the subject to make pronouncements at odds with the experts. The judge differed with Mr. Paterson, a longtime consultant and appraiser in the fine art and antiques business, on the expressions of the faces of the gilt lions. The trial judge also found, independent of expert opinion, an “appropriateness” to the “low finish” on the porphyry, because “the eye needs a rest from glitter.” These comments suggest a departure from the justice’s usual domain of fact and law.

While the ultimate finding in a case is naturally the conclusion of the presiding judge, it is nonetheless surprising that a judge may not only be unpersuaded by authoritative expert opinion but may draw his own conclusions independent of the expert. This runs contrary to the fundamental nature and purpose of expert
opinion evidence. Admissibility of expert opinion evidence is dependent on the necessity of the insight of an expert who, through formal study or practical experience, has special knowledge, without which an ordinary person would be unlikely to form a correct judgment. It is this specialized knowledge that Mr. Justice Jack is clearly lacking, yet he demonstrated little hesitation in assuming the role of the expert witness.

Scientific Testing

Scientific testing of the urns was carried out in the guise of metallurgical analysis. Scientific testing can only disprove the authenticity of a work; it cannot affirm its identity. Factoring in the great expense of scientific analysis and its portent of oft unwelcome news for collectors, museums, dealers, and auction houses alike, the technology is not employed as regularly as one might expect. Neither Christie’s nor Sotheby’s has a laboratory for scientific testing.

The potential pitfalls of relying on new science were evident in the independent specialists’ first report commissioned by Christie’s: the data analysis was flawed, and the results were subsequently discredited. Further tests were carried out and analyzed; the judgment includes pages describing methodology and minutiae on metals, but in the end, no conclusions could be reliably drawn from the testing.

When neither provenance, expert evaluation, nor scientific testing prove conclusive, the law does not hold the means to resolve the authenticity question with any greater success than the art world. When dealing with a piece without provenance in a market that includes copies and fakes, “[i]t means that almost any attribution to a recognized artist, especially . . . [when] provenance is unknown, may be arguable.” It is always possible to find a second expert prepared to refute the first.

Authentication

On the difficulties of attributing authenticity, Thomas Jayne, a decorator and specialist in American architecture and decorative arts who has worked at the J. Paul Getty Museum and provides appraisals for Christie’s, suggested that “[t]he decorative arts world is not finite, like the world of an important picture.” However, the authentication of an eighteenth-century urn in a marketplace filled with nineteenth-century revivalist copies could be considered analogous to the problem of a painting attributed to a well-known artist who is known to have spawned many forgeries. A similar problem arises when attempting to attribute authorship to a painting from a master painter’s studio such as Rembrandt’s: is the work by the master himself, or has the style been carefully copied by one of his many students, after Rembrandt or by the School of Rembrandt, or is it a combined effort of the workshop?
Inherent Uncertainty

In his closing speech, Christie’s counsel Mr. Onslow concedes that “[t]here can never be certainty in this field and at one level the art market is inherently uncertain.”48 When Mr. Justice Jack concludes that, because of the fashion for Second Empire revivals, Christie’s should have informed Ms. Thomson of the risk that the urns were not Louis XV, the judge appears to be relying on the notion that identification of the Houghton urns was particularly and “unusually” difficult.49 However, the challenge of dating the urns is no more difficult than the problem of dating many works of fine art.

Having considered provenance, expert evaluation, and scientific testing, and after reviewing the mostly conflicting expert evidence, Mr. Justice Jack finally rejected both parties conclusions on the dating of the urns and found a 70% likelihood that the urns were Louis XV.50 As such, Ms. Thomson did not succeed in her primary claim.

The Advisory Relationship

Ms. Thomson’s remaining claims against Christie’s centre around the alleged duties owed to her by Christie’s in light of their relationship. The case turned not on whether the works sold were as described and warranted by the auction house, but rather on the auction house’s duty to this particular client to disclose the risk involved when relying on their expert opinion.

By dispatching Mr. Cooney to serve as Ms. Thomson’s special client advisor, Christie’s entered into an advisory role with their client. The role of the special client advisor is to provide the client with detailed information to assist with bidding decisions.51 Mr. Cooney was aware that Ms. Thomson was not familiar with Louis XV furniture, nor was she seeking advice outside of Christie’s on this purchase.52 He had also been informed that Ms. Thomson insisted upon purchasing only work of museum quality.53 In conversation with Ms. Thomson, Mr. Cooney never suggested that the Houghton urns were anything other than authentic pieces from the eighteenth century, as was the firm and reasonable belief of Christie’s in-house experts. Nor did Mr. Cooney ever suggest that the description of the urns in the catalogue was less than certain.

Ms. Thomson was not a newcomer to bidding at auction at the time of the Houghton sale. Her most significant purchase prior to the urns was a tapestry costing $217,500.54 Ms. Thomson’s status as special client would have been a consequence of her previous purchases, combined with her purchasing power. A self-described keen private collector, Ms. Thomson was almost certainly aware of the disclaimers associated with catalogue entries, although this issue was not addressed by the court. If Ms. Thomson paused to ask how, for example, it was determined that the urns were designed for the Duke of Parma or one of his courtiers, there was no evidence presented of her inquiry. The concept of due diligence was, in fact, never raised by the court, thereby alleviating Ms. Thomson of any responsibility to be vigilant or even cautious under the doctrine of caveat emptor.
All the responsibility of adequately informing Ms. Thomson of the possible risks and pitfalls of bidding on the urns fell to Mr. Cooney. Yet it is undeniable that part of Mr. Cooney’s function as special client advisor entailed a certain degree of salesmanship. While the establishment of a comfortable business relationship with the special client is undoubtedly imperative, Christie’s ultimate goal, surely, is to sell works to the client and ensure her satisfaction with those works. Can a customer-relations expert such as Mr. Cooney reasonably be expected to inform the worldly Ms. Thomson of a risk that he himself does not believe exists?

The Catalogue Description

Christie’s dating of the urns in the catalogue heading as Louis XV was found to be reasonable, and therefore not in breach of duty to Ms. Thompson. The description that followed, however, was labeled “misleading,” instilling in the reader “a feeling of confidence and certainty about the urns, which was unjustified.” Working drafts of the catalogue description revealed that, prior to final revisions, the urns had been described as “possibly Italian.” The court could not find any justification for removing these words, besides the fact that the Christie’s cataloguer had decided that the urns were French. The trial judge did not find this reasoning sufficiently convincing and characterized the removal of the phrase as the first element of “an unjustified firming-up of the catalogue description.”

Mr. Justice Jack also took issue with Christie’s claim in the catalogue description that the urns were designed by Petitot, “either for his patron Philip, Duke of Parma (d. 1756), or one of his leading courtiers.” This assertion was apparently made without any evidence beyond the possibility of Petitot receiving such a commission. However, these florid passages that follow the catalogue heading carry an explicit disclaimer. Section 6 of Christie’s Terms and Conditions of Sale, entitled Limited Warranty, confines its warranty of authenticity to the capitalized heading of the catalogue entry, in this instance, “A PAIR OF LOUIS XV PORPHYRY AND GILT-BRONZE TWO-HANDLED VASES,” and absolves the auction house of any responsibility for errors and omissions in the description that follows the heading. The description in the catalogue is, as a matter of common practice for Christie’s and Sotheby’s, merely “opinion and not to be relied on as statements of fact.” Christie’s Terms and Conditions meet the requirements set out by English legislation on disclaimers as “properly drafted” according to “the standards of reasonableness, fairness, balance, even-handedness and coherence.”

The last element of “firming-up” found by the court was not in the catalogue description but in the condition report, which was, in fact, never seen by Ms. Thomson. This document stated that the “antique” urns had been “reworked” by Petitot, suggesting that the urns dated from classical Roman times. The trial judge suggested that, as this document was read by Mr. Cooney, it would have unjustifiably increased his confidence in the authenticity of the urns.

Christie’s responded to these contentions in their appeal, successfully convincing the court that these three elements of so-called firming-up found by Mr.
Justice Jack in the catalogue description were all minor details, none of which bolstered Christie’s confidence in dating the urns as Louis XV.\(^63\)

**Findings of the High Court**

Notwithstanding the *Limited Warranty*, and the fact that Christie’s were found to have reasonable grounds for their opinion on the authenticity of the urns, the trial court held that Christie’s did not have reasonable grounds “for expressing the unqualified opinion” on the authenticity of the urns as eighteenth-century pieces through special client advisor Mr. Cooney.\(^64\) Because of the “advisory relationship”\(^65\) between Christie’s and Ms. Thomson as a special client, the auction house owed “particular duty”\(^66\) to Ms. Thomson according to Mr. Justice Jack.

The court’s ruling stated that Christie’s special client advisor would not be held to the same standard as an independent art expert regarding the detail in which he was expected to inform his client.\(^67\) Nonetheless, Mr. Justice Jack determined that “circumstances” required that Ms. Thomson be informed about the difficulty of dating Louis XV items: the preponderance of “copies and imitations” from the nineteenth century, the fact that Christie’s were relying “upon their exercise of their judgment following visual inspection,” the misleading nature of the catalogue description, and the resulting risk “in paying a large sum for the urns.”\(^68\) Christie’s failure to qualify their opinion thus was held to be an indefensible omission and a breach of the advisory relationship duty.

Christie’s contended that as they were found to have reasonable grounds for dating the urns to Louis XV in the warranted catalogue heading without any qualification,\(^69\) there could be no breach in duty by describing them as such to Ms. Thomson.\(^70\)

It is not surprising to learn in the following paragraph of the judgment that had she been furnished with that information, Ms. Thomson would not have bought the urns.\(^71\)

While the case involved a lengthy investigation effort to date the urns, ultimately the judge’s decision turned on Christie’s duty to Ms. Thomson. Mr. Justice Raymond Jack ruled in Ms. Thomson’s favor when he concluded that although the auction house was entitled to describe the urns as Louis XV in the catalogue heading without any qualifications, Christie’s breached their duty to Ms. Thomson as a special client when they failed to inform her of the existence of the Second Empire revival and the resulting difficulties in authenticating the urns.\(^72\) Christie’s was also found liable for damages under the *Misrepresentation Act* because of their failure to qualify the catalogue description as misleading in its tone of confidence and certainty.\(^73\)

**Damages**

The judgment called for Christie’s to refund to Ms. Thomson the difference between the price she paid for the urns and their “actual worth” plus interest to
compensate for “any breach of duty which caused Ms. Thomson to purchase the urns.” Damages awarded for her successful claim for misrepresentation were to be calculated based on the buyer’s premium she paid Christie’s on the purchase. In sum, the damages were estimated to total £2 million, on top of which Ms. Thomson would be awarded legal costs. The urns were to remain in Ms. Thomson’s possession.

THE APPEAL

Naturally, Christie’s entered an appeal. For her part, Ms. Thomson entered a cross-appeal, alleging that the trial judge did not give sufficient consideration to the evidence in favor of a nineteenth-century date and claiming that her purchase was based on a misrepresentation.

The main grounds of Christie’s appeal are related to issues of duty of care. The trial judge considered the breach of duty problem as two questions. First, was Christie’s negligent in their catalogue description of the urns? Second, did Christie’s owe a particular duty to Ms. Thomson, obliging them to inform her that the catalogue description might be incorrect, or, in other words, was Christie’s justified in “expressing the unqualified opinion” that the urns were Louis XV.

Lord Justice May, the Court of Appeal judge, interprets the main thrust of the appeal as whether it was reasonable to expect Christie’s to inform Ms. Thomson of doubts surrounding the dating of the urns; this, of course, requires a determination as to whether it was reasonable to expect Christie’s to have had such doubts at all.

The Extent of Christie’s Duty of Care

Regarding any doubts Christie’s may have had about the urns’ dates and any resulting obligation to Ms. Thomson at the High Court trial, Christie’s readily accepted the responsibility to exercise reasonable skill and care in dating the urns and describing their quality to Ms. Thomson, thereby acknowledging duty towards their special client. However, Mr. Justice Jack found that the auction house was negligent for failing to expressly stipulate that its assessment of the urns was only a matter of opinion and did not preclude the possibility that an outside evaluation could date and describe the urns differently. This led Christie’s to assert on appeal that the trial judge’s decision “turned a professional obligation to exercise skill and care in stating an opinion into an insurance obligation against the possible existence of contrary opinions.”

Even if a contrary opinion as to the origins of the urns were to be offered, and even if it were backed by persuasive evidence, Christie’s could not be held negligent for their characterization of the urns, because their conduct conformed to the professional standards of their trade. As a matter of practice, it is accepted in
the art market that an evaluation inevitably entails the formation of an opinion. A professional opinion, like any opinion, is fallible. In the event that the opinion is proven wrong, there will be no finding of professional negligence unless reasonable skill and care have not been exercised. Moreover, a professional conforming to the duty of care is neither required nor expected to state the obvious nor “draw attention to risks which [in the professional’s opinion] are fanciful.”

Accordingly, in answer to the first part of Lord Justice May’s inquiry, Christie’s could not have been reasonably expected to alert Ms. Thomson to any doubts regarding the dating of the urns, in the form of others’ contrary opinions. Christie’s did not themselves have any doubts regarding the dating of the urns, and, therefore, it is tautological to suggest that they should have cautioned Ms. Thomson in this way. The Court of Appeal thereby overturned Mr. Justice Jack’s finding that Christie’s breached their advisory relationship duty to Ms. Thomson when they expressed their unqualified opinion on the urns.

Certainty of Dating

Addressing the question of whether Christie’s should reasonably have doubted the dating of the urns, the lower court determined on the balance of probabilities that the urns were Louis XV pieces, and that it was reasonable to describe them as such. Christie’s contends that this case should have never progressed any further after this determination, because Ms. Thomson’s claim was dependent on the assertion that the urns were misrepresented nineteenth-century revival copies. Ms. Thomson’s case, as portrayed by Christie’s, did not advance any allegations of breach of duty, but rested rather on the assertion that, as nineteenth-century pieces, the urns’ value was merely £25,000 or thereabouts.

Christie’s underlines the fact that instead of dismissing her claim, the trial judge, while rejecting Ms. Thomson’s pleadings, “found in her favour only by reformulating her case in a way that was not even argued at trial.” This perhaps accounts for the lack of linear narrative in the lower court’s judgment. Lord Justice May is not persuaded by this tact, however, and refuses to allow Ms. Thomson’s case to “founder on a formalistic pleading point.”

Returning to the question of whether or not it was reasonable to expect Christie’s to have had doubts surrounding the dating of the urns, Lord Justice May finds Christie’s under no obligation “to express anything other than confidence to Ms. Thomson.” The Court of Appeal judge finds that Mr. Justice Jack’s conclusion that Christie’s was entitled to call the urns Louis XV in the catalogue “sits most uncomfortably” with the holding that Christie’s was nonetheless in breach of duty to their special client.

Lord Justice May succinctly reviews and discards the trial judge’s threefold finding that the auction house breached its duty of care in spite of its confidence in the dating of the urns. First, the trial judge claimed that the existence of nineteenth-century copies meant that dating the urns was an “unusually difficult” task; this
notion is at odds with the trial judge’s own earlier finding that Christie’s was justifiably confident in their opinion of the urns as eighteenth century. The Court of Appeal concludes the earlier finding was correct and the auction house had clearly ruled out the possibility that the urns were nineteenth-century copies.  

Second, the trial judge contends that Ms. Thomson should have been informed that Christie’s evaluation was based mainly on their visual inspection. This point is obvious, raising once again the fact that a professional conforming to the duty of care does not need to state the self-evident. In fact, Mr. Justice Jack refers to the practice of dating items through visual examination as “well-established” in “auction houses and the art world generally” earlier in his own judgment!92 Lord Justice May makes the additional points that Ms. Thomson was not so naïve as to require this explanation, and that as Christie’s were found to be justifiably confident in the dating of the urns, it is unreasonable to cast doubt on their methodology.93

Third, the High Court concluded that the catalogue entry was misleading in its tone of confidence. The aforementioned firming-up of the catalogue description had no relevance to the authenticity or the value of the urns; these possible exaggerations were harmless because they did not influence Christie’s confidence in its evaluation.

Having methodically dissected and disposed of the High Court’s various findings of negligence, misrepresentation, and duty of care and having implied that, were the evidence to be reevaluated as a whole, the urns would be found to be eighteenth century with not 70% but 100% certainty, the Court of Appeal allowed Christie’s appeal and dismissed Ms. Thomson’s cross-appeal. The Court of Appeal’s discussion of the measure of damages employed by the High Court thereby became purely academic.

CONCLUSION

Christie’s victory may have, at least temporarily, alleviated the concerns of auction houses and art dealers; had Ms. Thomson succeeded in her claims, the implications for potential liability of the seller may well have paralyzed the art market. Despite the fact that the final result was not in Ms. Thomson’s favor, the issues raised by her case should give pause to art dealers and auction houses alike. Should the resale market be prepared to invest in costly and lengthy authentication exercises before offering a work for sale? In wake of Ms. Thomson’s claims, will a seller describe its wares with the same certainty and assurances as before?

Many collectors would not or could not expend the necessary resources to sue on a question of authenticity,94 and others would choose not to publicize their misfortune because of the shame of being duped. Moreover, once the authenticity of a piece has been questioned, it may lose its worth entirely on the art market, even if the question appears to have been resolved in favor of the artwork. The Houghton urns may now be “virtually unsaleable.”95
Forty years ago, auctions were almost exclusively the domain of the experienced and educated dealer, resulting in a wholesale, rather than retail marketplace. Rarely did the auction house face the added possible complication of duties towards an uninformed buyer. The lure of lower prices, however, soon drew the collectors. It has been suggested that the collector cannot enjoy the same certainty on issues such as authenticity at auction as he may in a private sale.96 Mr. Justice Jack’s ruling that Christie’s could not be to expected “to give the full and detailed advice” that would be anticipated from an independent expert supports this proposition.97 Furthermore, Christie’s catalogue description was considered misleading yet “good enough for the ordinary buyer,” but not for a special client.98 Art and antique dealers would certainly like the collector to believe that they offer a more secure environment for the buyer, and, following this cautionary tale, are primed to promote the benefits of doing business outside the auction house.99

Should auction houses be expected to remind the buyers that their in-house expert evaluation is merely their opinion, and there is always a risk that they are mistaken? If auction houses were to employ additional disclaimers and exclusion clauses will they undermine consumer confidence altogether? Where can auction houses be expected to draw the line between salesmanship and puffery and self-defeating declarations of uncertainty and risk?

When Ms. Thomson purchased the urns in 1994, by her own admission she thought she had paid “too much,” having spent three times the pre-auction estimate.100 Claiming she had “nowhere suitable to house the urns”101 (despite residences in Southern California, Toronto, London, and the English countryside),102 the heiress left her purchase in storage at Christie’s. Were Ms. Thomson’s claims merely the result of buyer’s remorse on a grand scale? The answer is unknowable. Regardless, the art world will be watching with anticipation for further interpretations of this legal precedent. Ms. Thomson is said to be considering an appeal to the House of Lords;103 certainly she has the funds with which to do so. For their part, the Houghton urns stand to become the most costly (and notorious) eighteenth-century vases ever to grace the market.

ENDNOTES

3. Thomson v. Christie’s Appeal, ¶56.
5. “Just the two of us,” Economist.
6. “Just the two of us,” Economist.
7. “Just the two of us,” Economist.
10. “Just the two of us,” Economist.
20. Thomson, ¶ 12.
21. Thomson, ¶ 204.
24. Misrepresentation Act 1967, Ch. 7, s.2(1) (Eng.)
25. Thomson, ¶ 7. The statute of limitations on this second claim is six years, but here s. 14A of the Limitation Act 1980 saves the claim from being barred.
30. Thomson, ¶ 34.
31. Thomson, ¶ 111.
33. Thomson, ¶ 20.
34. Thomson, ¶ 103.
36. Thomson, ¶ 110.
37. Thomson, ¶ 121.
39. Thomson, ¶ 118.
40. Sheppard, Evidence.
41. The most famous example of this is the result of carbon dating which revealed the Shroud of Turin to be a hoax.
42. Abela, “Christie’s Sale.”
43. Thomson, ¶ 151.
44. Thomson, ¶ 177.
Fakes abound of Van Gogh, Modigliani, Picasso, Warhol, da Vinci, and Dali, to name but a few.

Thomson, ¶ 184.

Thomson, ¶ 197.

Thomson, ¶ 182.

Thomson, ¶ 45.

Thomson, ¶ 197.

Thomson, ¶ 45.

Thomson, ¶ 44.

Thomson, ¶ 194.

Thomson, ¶ 196.

Thomson, ¶ 195(a).

Thomson, ¶ 195(b)

Merryman, Law, Ethics & Visual Arts, 1276.

Merryman, Law, Ethics & Visual Arts, 1271.

Palmer, “When Hearing is Believing.”

Thomson, ¶ 195(c)


Thomson, ¶ 199.

Thomson, ¶ 184.

Thomson, ¶ 185.

Thomson, ¶ 197.

Thomson, ¶ 197.

Thomson, ¶ 194.

Thomson, ¶ 197.

Thomson, ¶ 198.

Thomson, ¶ 7.

Thomson, ¶ 197.

Thomson, ¶ 200, 201.

Thomson, ¶ 203.


Thomson, ¶ 199.

Christie’s Appeal, ¶ 94.

Christie’s Appeal, ¶ 92.

Christie’s Appeal, ¶ 90(2).

Christie’s Appeal, ¶ 90(3).

Christie’s Appeal, ¶ 116.

Christie’s Appeal, ¶ 95.

Christie’s Appeal, ¶ 90(1).

Christie’s Appeal, ¶ 90(1).

Christie’s Appeal, ¶ 92.

Christie’s Appeal, ¶ 90(1).

Christie’s Appeal, ¶ 94.

Christie’s Appeal, ¶ 157.

Christie’s Appeal, ¶ 153.

Christie’s Appeal, ¶ 160.

Thomson, ¶ 188.

Christie’s Appeal, ¶ 161.

The expense of suing an auction house with resources such as Christie’s could be crippling. Engaging experts to testify is very costly and consumed eleven days in this case. Ms. Thomson’s legal

95. Valentin, “Taylor Thomson.” An extensive body of case law exists on libel suits against experts by collectors suing for disparagement, claiming that the expert appraisal of their artwork has devalued it, the classic case being Hahn v. Duveen 133 Misc. 871 234 N.Y.S. 185 (Sup. Ct. 1929).

97. Thomson, ¶ 197.
98. Valentin, “Taylor Thomson.”
100. Thomson, ¶ 53.
101. Thomson, ¶ 53.

BIBLIOGRAPHY


