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Buyer beware: Avoiding pitfalls when buying fine art

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LIFE & CULTURE

Buyer beware: Avoiding pitfalls when buying fine art

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GERARD NG AND VINCENT OOI



(From left) August Hatecke, co-head Global Wealth Management Asia Pacific and country head UBS Singapore; Art SG fair director Shuyin Yang and Art SG co-founder Magnus Renfrew pose before a UBS-commissioned painting by Hilmi Johandi.

UBS

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AS THE art world returns to a new norm, so too does the art scene in Singapore with the return to our shores in November of the first international art fair, the Affordable Art Fair. Following that is the highly anticipated debut of South-east Asia's largest ever art fair, Art SG, in January next year. All this comes after a break of almost three years, brought about by the coronavirus pandemic that paralysed art markets the world over.

Buying art comes with an element of risk. Whether you are a first-time art buyer or a seasoned art collector, it is always prudent to exercise vigilance when it comes to buying art, particularly when you are planning to buy an expensive art piece. The key to protecting yourself from the pitfalls associated with buying art is to carefully conduct due diligence. This involves asking the right questions, obtaining and verifying information about the art and the seller, and applying common sense.

Provenance

As a starting point, buyers should do their due diligence by carefully tracing the provenance of the artwork which they seek to acquire. Provenance is derived from the French word *provenir*, which means “to come from”. In the vernacular of the art world, provenance refers to the history of ownership of a specific piece of artwork. Any research on provenance should ideally determine prior owners’ names, ownership dates, ownership transfers (such as through inheritance or auction sale), and locations where the artwork was kept. Information about the ownership history of artworks can come from a range of sources, including from sale invoices, auction sale catalogues and inventory numbers on the artworks themselves. As far as possible, provenance information should be supported by documentary evidence.

Establishing credible provenance is necessary to help establish the artwork’s authenticity and prove ownership if legal title to the artwork is later contested. If provenance is properly established, a buyer should be able to trace the chain of title stretching from the date the artwork was created, to the present day. Conversely, the absence or lack of credible provenance can raise “red flags” regarding the artwork’s authenticity. Such red flag situations include artworks with no or very limited documentation supporting the provenance, artworks with unexplained or extensive restorations, or where documentation for the artworks appear to be false. If there are doubts or gaps relating to the provenance, buyers should seriously reconsider acquisition as these may indicate that an artwork has been stolen or is inauthentic.

Authenticity

The soul of an artwork is its authenticity. A major risk commonly feared by art buyers is that the art purchased is not authentic – that is, the art is a fake or is forged. The notorious art forger Wolfgang Beltracchi managed to dupe the art world for 40 years, by creating forgeries of the artwork of famous artists. An

artwork with authenticity that is difficult or impossible to ascertain with precision will lose its commercial value and may represent a total loss for its buyer.

But establishing the authenticity of an artwork is a complex task, especially when art forgers can, and often, falsify provenance information. Where there is doubt of the authenticity of an artwork, it is common to seek an expert opinion or perform scientific testing to establish authenticity. If such efforts are too daunting, buyers should at the very least ask the seller or owner for a certificate of authenticity, before buying any artwork.

Ownership

Legal title refers to the actual ownership rights over property. Buyers have no legal duty to enquire into the legal title of artworks. However, it is always prudent for buyers to ensure that sellers have good title to artworks, by checking the identity of the sellers and tracing provenance. Art purchases are subject to the Sale of Goods Act 1979. Under this Act, a seller can only pass the title which he actually has to the buyer. If the seller does not have good title, for example, because the artwork is stolen property, the buyer will also not acquire good title, even if he has paid for it and is a victim of fraud. Such a buyer may unwittingly be exposed to a claim by the true owner for the return of the artwork if it is discovered to be stolen. Due diligence helps to identify such risks, enabling buyers to avoid them. In limited circumstances, the true owner may no longer be able to reclaim the artwork from the buyer if he does not bring an action within six years of the artwork being stolen.

Checking databases

As part of the due diligence process, it is advisable to check the databases for lost and stolen art, especially if you have doubts on the provenance or the piece is an Old Master painting. Good resources to consult include the Art Loss Register (for stolen art listings) and Stolen Works of Art database maintained by Interpol.

Artworks are sometimes used as collateral in financing arrangements. In a typical financing arrangement, a security interest may be granted by a debtor to the lender over the artwork, allowing the latter to seize and sell the artwork if the debtor defaults in making payment. Purchasing artwork subject to a security interest may mean that the buyer is exposed to this risk. In Singapore, security interest over artworks typically require registration, and it is prudent to check if

any security interests have been registered against the artwork, particularly if you are planning to buy it from the dealer or owner. Conducting these quick and inexpensive searches is the best way to screen for potential claims from prior owners or secured lenders.

Written contract

When it comes to art sales, it is common industry practice for parties to transact without a written contract. Buyers are often contented to rely on an invoice to evidence the art purchase, without a document clearly setting out the expectations and understandings of each party. This cavalier approach in the art market to documenting art sales can sometimes lead to unnecessary disputes.

Provenance research is often painstaking and not easy to establish. This is especially true when not every artwork has a discoverable provenance, and most artworks often have incomplete ownership history. Thus, it is good practice to have the sale documented in a written contract holding the seller fully responsible for the accuracy of the provenance (such as ownership of and title to the artwork). Such a written contract is undeniably in everyone's interest.

Tips on ART buys

Whether you are buying art for investment or as hobby, there are three tips that can guide you in ART buys:

- Visit **Art** fairs, galleries and museums – These venues expose you to different art forms, mediums, and techniques, and introduce you to artists and art from different parts of the world in one space;
- Do your **Research** – Before taking the plunge, research the art and the artists to have an idea of the style of work, or even if a specific artist's work resonates with you, speaks to your heart; and
- Don't chase **Trends** – Trends expose you to art you may not have seen. But trends arrive fast and dissipate just as quickly. The guiding principle is buying art with your heart (because you love it), not based on trends (because it is a good investment). Remember, if you buy art purely on potential investment upside, you will never know whether the value is heading north or south. You may end up with artwork that you do not enjoy looking at and living with.

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