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Hughes Hubbard Delivers Finishing Touch for Phillips Auctioneers

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July 26, 2021 – In a decisive victory for longtime client Phillips Auctioneers, Hughes Hubbard defeated a lawsuit brought by a China-based art collector alleging that the eminent auction house breached the parties’ settlement agreement.

On July 12, New York State Supreme Court Justice Jennifer G. Schecter granted Phillips’ motion to dismiss all of Zhang Chang’s claims with prejudice, ending a heavily litigated dispute that began five years ago.

In October 2016, Phillips and Zhang entered into a guarantee agreement for Zhang to bid \$24 million on Gerhard Richter’s masterwork “Düsenjäger” at a November 2016 auction in exchange for a financing fee, regardless of the outcome.

Zhang’s bid succeeded, but he failed to pay Phillips, which was forced to pay the consignor of the work the full \$24 million and seek restitution from Zhang. Zhang, a Chinese national and resident, taunted Phillips that it could not require him to pay for the Richter work because he was beyond the reach of New York’s courts.

In May 2017, however, Phillips discovered that Zhang had consigned another valuable artwork for sale in New York at the Gagosian Gallery – a 1967 painting by Francis Bacon entitled “Study for Head of Isabel Rawsthorne and George Dyer.” Phillips estimated its value at about \$20 million.

On May 30, 2017, HHR secured an ex parte temporary restraining order that forbade Gagosian from selling or transferring the Bacon painting. But another lawsuit blocked the path to settlement: In August 2017, Lin San, a friend of Zhang’s family, filed a special proceeding in New York Supreme Court alleging that he (not Zhang) owned the Bacon painting. Lin argued that the Court should dissolve the TRO and allow Gagosian to return the painting to him.

Before a hearing could be held, Zhang and Lin settled both the lawsuit and the special proceeding on terms favorable to Phillips. Zhang agreed to pay Phillips \$26 million in return for the Richter work. Moreover, Zhang and Lin agreed to consign the Bacon work to Phillips to secure the settlement payment. Phillips retained possession of both works with the power to sell them if Zhang again defaulted.

The settlement agreement gave Zhang six months to pay Phillips; after paying an initial \$3 million, he again defaulted. After several months of further negotiation, Phillips decided to auction off the Richter work in March 2019 to pay Zhang's remaining debt.

Zhang asked Phillips if he could participate in that auction and bid on the Richter work again. Phillips consented only after he agreed to deposit \$15 million in his Phillips account and to pay the buyers' premium on the sale should he succeed, as all other bidders were required to do. Zhang outbid all others at the March 2019 auction and signed an acknowledgement of the remaining amount he owed to Phillips, including the \$2.6 million buyer's premium.

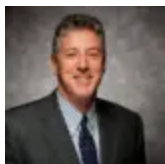
In July 2019, Zhang fully repaid his debt, and Phillips delivered the Richter work to him in China.

In December 2020, Zhang filed suit in New York County Supreme Court seeking to recover the buyer's premium. He claimed that Phillips breached the settlement agreement by charging him more than the agreed-on \$26 million. Zhang asked the court to declare the acknowledgement void because he allegedly signed it under duress.

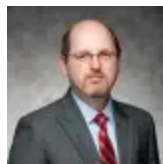
HHR moved to dismiss Zhang's complaint in its entirety on multiple grounds, including that the documentary evidence provided a complete defense to Zhang's claims. The court agreed and dismissed Zhang's lawsuit with prejudice.

Dan Weiner and Eric Blumenfeld represented Phillips in the lawsuit.

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