
Hughes Hubbard & Reed

Firm Wins Yet Another Victory for Phillips Auctioneers

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March 11, 2022 - In a further victory for longstanding client Phillips Auctioneers, the First Department of New York's Appellate Division affirmed the trial court's order dismissing all claims against Phillips.

K&L Gates filed the lawsuit against Phillips in New York County Supreme Court on behalf of their client Zhang Chang, who alleged that Phillips breached a settlement agreement between the parties. In July 2021, the Commercial Division granted Phillips' pre-answer motion to dismiss all of Zhang's claims with prejudice. On March 3, the First Department agreed. This affirmance ended a heavily litigated dispute between the parties that began in 2016.

In Oct. 2016, Zhang guaranteed a \$24 million bid on Gerhard Richter's iconic painting "Düsenjäger," ("Jet Fighter"). When that proved to be the winning bid on the work, Zhang refused to pay. Zhang, a Chinese national, had no assets in the U.S. or Europe. But in May 2017 Phillips discovered that Zhang had consigned another valuable painting, Francis Bacon's "Study for Head of Isabel Rawsthorne and George Dyer," for sale in Manhattan's Gagosian Gallery. The Bacon work had an estimated value of \$20 million.

Hughes Hubbard obtained an ex parte restraining order on behalf of Phillips, which kept the Bacon work in New York while Phillips prosecuted its breach-of-contract claim against Zhang. Zhang subsequently agreed to settle the lawsuit by paying Phillips \$26 million within six months. Zhang also agreed to consign the Bacon work to Phillips to defray some of the \$26 million settlement amount. If Zhang paid the full settlement amount on time, Phillips would transfer possession and ownership of "Düsenjäger" to Zhang. But if Zhang again defaulted on his obligation to pay, Phillips had the power to sell both paintings to cover the settlement amount.

After paying an initial \$3 million, Zhang defaulted on his obligation. In March 2019, Phillips auctioned off

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acknowledgement of the buyer's premium – which Zhang signed after the March 2019 auction – was enforceable, and that Phillips' auctioning of "Düsenjäger" could not represent duress because Phillips had that right under the parties' settlement agreement. On July 12, 2021, the Commercial Division agreed and dismissed all of Zhang's claims with prejudice.

Zhang appealed to the First Department, arguing that the settlement agreement was ambiguous on Phillips' right to sell the Richter Work and that the trial court failed to accept as true all of the facts alleged in Zhang's complaint. Zhang also asserted that the trial court should not have dismissed his unjust enrichment claim because the second auction was a "sham."

Phillips responded that the settlement agreement was unambiguous in giving the auction house ownership of the Richter Work unless Zhang paid the settlement amount in full within six months. What's more, Phillips argued that Zhang had waived any right to claim economic duress when he received "Düsenjäger."

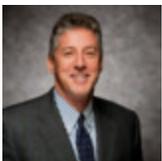
On Feb. 9, [Dan Weiner argued the appeal for Phillips](#). Three weeks later, the First Department entered a written decision and order affirming a total victory for Phillips.

Founded in 1796, Phillips is the world's third-largest auctioneer of international contemporary works. The company has auction rooms in New York and London, plus offices in eight other cities.

This case was recently covered by [The Art Newspaper](#).

Dan Weiner and Eric Blumenfeld represented Phillips in the lawsuit and the appeal.

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