

ART OF THE DEAL

A ROLICKING MARKET IN CONTEMPORARY ART GENERATES MASSIVE SALES AND SPURS A NEW AND GROWING SERVICE IN ART INSURANCE

BY LESLEY CONN

By the final rap of the auctioneer's gavel, nine new records were set and more than US\$364 million in art changed ownership, the result of a single night's bidding one May evening in 2014 at Sotheby's New York auction house.

The artwork wasn't the moody portraiture of a Rembrandt or the vibrant anguish of van Gogh, nor even the muted domesticity of Vermeer or the pointed perfection of Seurat.

What bidders clamored for that night was postwar and contemporary art—works created after 1945 and infused with a modern vibe. Andy Warhol's "Six Self-Portraits," depicting the artist's mouth agape and white hair askew, topped the night, selling for more than US\$30 million. A sculpture of a bicep-bulging Popeye the Sailor Man by Jeff Koons followed closely at US\$28.2 million.

Sotheby's isn't alone in enjoying record-setting prices in mid-20th century art. In November 2013, a contemporary art auction at Christie's in New York City astounded with a new world record for the most expensive piece of art ever put up for bid. Francis Bacon's "Three Studies of Lucian Freud" sold for more than US\$142 million.

The life-size three-panel piece depicted Freud, twisting and frenetic as he slumped in a wooden chair. He is framed by harsh geometric shapes set against a mustard yellow background. According to Christie's, an intense bidding war by phone escalated the price and helped boost the gross for the November sale to more than US\$691 million, distinguishing the event as the most successful auction in art market history.

"In an incredibly short span of about three years, the contemporary art market has been transformed into a global market with very serious, highly competitive buyers," says Michael Macaulay, vice president and head of evening auctions for Sotheby's New York Contemporary Art Department. "The post-recession market is now higher than the peak of 2007-08. It's an extraordinary time."

NEW WEALTH AND BALLOON DOGS

Macaulay cites final figures from Sotheby's 2013 Postwar and Contemporary Art sales. The company closed with US\$1.2 billion from its New York and London auctions and worked with 1,800 bidders from 67 countries. Thirty-four percent were first-time buyers, and interest was strong in emerging markets of Asia, South America, Russia and the Persian Gulf area.

"The appeal is far-reaching. Compared with the last peak moment in 2007-08, there is an ever-increasing global consciousness and awareness of contemporary art," Macaulay says. "Now, major investors are from around the world, and they represent every demographic—male, female; black,

white, Asian, Hispanic; from their 30s to their 90s. In terms of a growth area, that's pretty concrete evidence of a market ripe for expansion."

Consider some of the statistics from Forbes' annual billionaires index. In 1987, the world had 140 billionaires from 24 countries. In 2014, there are 1,645 around the globe, with first-time billionaires in Algeria, Lithuania, Tanzania and Uganda.

That translates into plenty of art-buying potential, particularly for contemporary pieces. Also contributing to the contemporary market: 31 of the Forbes billionaires are younger than 40.

"A lot of first-time buyers are newly wealthy, and they like to invest in the art of their lifetime," Macaulay says.

Art dealers have long categorized the motivation to sell by the three Ds—death, debt and divorce—but in a bull market, they add a fourth—demand. With more money in play, sale prices climb, which helps entice owners into the sales arena, sometimes with stunning results.

In the November Christie's auction, another Koons piece, Balloon Dog (Orange) fetched US\$58.4 million, making it the most expensive piece of art ever sold by a living artist. Balloon Dog had been in private ownership since the late 1990s.

Koons' gloriously orange, stainless steel rendition of the balloon dogs twisted by carnival clowns demands attention given its height of more than 10 feet/3 meters. The sculpture was also heralded for the mastery of shaping the reflective steel and, as Christie's put it, for "its unabashed celebration of childhood, hope and innocence."

ROCKED BY SCANDAL

With all the adrenaline of record-breaking transactions, perhaps it's not surprising that sky-high prices have attracted participants wanting to scam the system, sometimes in equally breathtaking ways.

The art world is the largest unregulated, lawful business in the world, with annual sales now climbing to US\$60 billion, yet it is the third-highest arena for crime, behind drugs and guns, says Judith Pearson, president of ARIS, the only company in the world providing title insurance for artwork.

"No matter how new a work is, there's always unknowable information and a lack of transactional documentation," Pearson says. "You wouldn't even buy a used car without a Carfax report, but you'd be amazed how often someone will buy a major work of art with no transactional documentation."

One recent case, which still has pending lawsuits, serves as a cautionary tale for anyone considering a major art purchase.

In November 2011, Knoedler & Company, a venerated art gallery, abruptly closed, leaving a trail of buyers suing over US\$80

helped. Respected galleries provide reassurance, first for their expertise, but also because of an often-unspoken understanding that a gallery would buy back a doubted work, if for no other reason than to protect the gallery's reputation. In that arena, none stood taller than Knoedler & Company. Established in 1846, the New York gallery outlasted the U.S. Civil War, two World Wars, a Great Depression and a lingering global recession.

"Knoedler has really been a game changer because buying from a trusted gallery with a reputation for scholarship



Andy Warhol/"Six Self-Portraits"

ARIS began offering title insurance for fine art and collectibles during another art heyday in 2006, when the competition was so feverish investment buyers wanted to push hard to authenticate a piece, but not so hard as to jeopardize the sale. Some buyers were taking huge risks with little or no recourse if a work was deemed a fake. Pearson's company doesn't insure for authenticity. Her team investigates a piece's ownership history, known as its provenance, reviews gaps and calculates a premium based on insuring over those gaps.

Long-standing practice creates one major complication: Art transactions are often shrouded in secrecy. Some owners seek to remain anonymous to avoid implications they're hurting financially. Brokers avoid disclosing names to collectors and galleries to protect their stake in the transaction. Time is a factor, too. The older a work, the more likely there are provenance gaps. The combination creates an environment that isn't conducive to asking a lot of questions.

million in acquisitions. A London collector who had paid US\$17 million for a Jackson Pollock demanded reimbursement after forensic analysis determined yellow pigments in the paint were not part of the manufacturing process until years after Pollock's death.

The art dealer, Glafira Rosales, eventually admitted selling 63 fakes, 40 of them to Knoedler, that were not painted by modern masters such as Pollock, Mark Rothko or Robert Motherwell. They were painted by a now 73-year-old man working in his garage in Queens, New York.

AN APPRAISING EYE

When Rosales approached the gallery about a large collection assembled by an owner who wished to remain anonymous, the circumstances weren't unusual. Nor was it unlikely that some of the works would have provenance gaps.

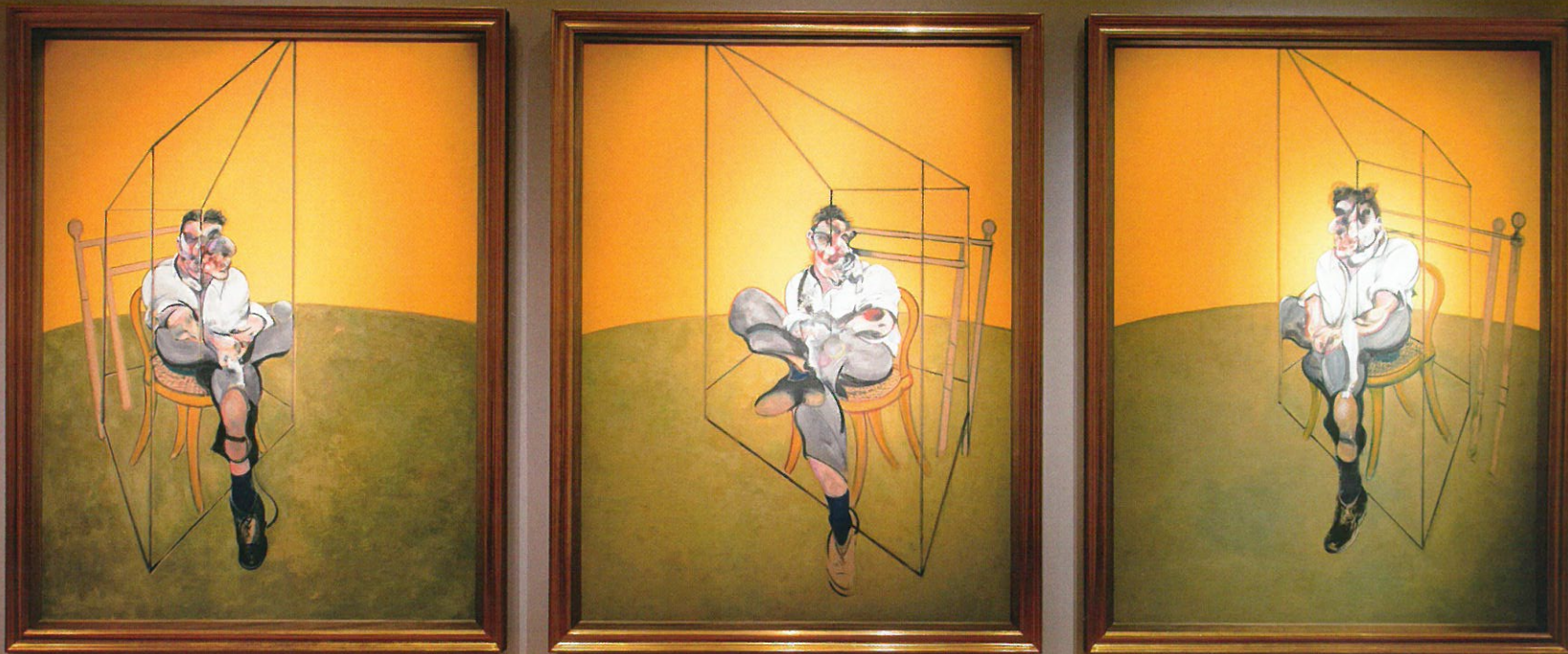
That's where Knoedler's reputation

was the accepted standard," says Cindy Charleston-Rosenberg, president and founder of the Art Appraisal Firm, a Pennsylvania-based company, and president of the International Society of Appraisers.

What was unusual in the Knoedler case is that the entire collection had an undocumented past. Rosales said she was representing a man whose father, a wealthy businessman, had died and left the collection to his son, who wanted to remain anonymous.

"In that situation, there must be more questions asked about the provenance of the collection," Charleston-Rosenberg says. "A crucial question buyers must ask is, 'Who is establishing the value or history of the artwork?' If it's someone with a vested interest in the transaction that should sound a warning bell."

The appraisal process doesn't offer a guarantee, a point Charleston-Rosenberg concedes. One industry adage is if you want



Francis Bacon/"Three Studies of Lucian Freud"

three opinions, ask two experts. Even in the Knoedler case, the gallery had submitted some of the faked canvases to leading experts, who signed off on the works.

Charleston-Rosenberg recommends buyers find qualified independent appraisers to evaluate art before the transaction is finalized; the higher the asking price, the greater the need to rely on a group of specialists. When her firm was asked to appraise four rare Gilbert Stuart portraits of George Washington, she brought in 15 experts. Some established authenticity, others assessed the condition of each piece; some researched historical significance; and others, current market conditions and likely sales prices.

The more valued a piece, the more likely that credible expert opinions will vary widely on price. An appraiser is tasked with determining why the values are dissimilar. In the Stuart appraisal, an expert in American art had a much lower price than an expert in Americana. Charleston-Rosenberg later determined Americana

auctions were a much stronger market for Washington portraits than a fine arts auction. Once that was understood, she gave more weight to the opinion of the Americana expert.

Charleston-Rosenberg remembers

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what her mentor often told her about the process of appraising a work: Make it prove itself to you.

Boston attorney Nicholas O'Donnell, a partner with Sullivan & Worcester who blogs about legal issues for artlawreport.com,

says potential owners must be extremely thorough in reviewing title history and provenance. If a work's history shows the piece was part of a private collection acquired in 1942 in Paris, O'Donnell says, "You need to think of the bigger picture in terms of what was happening then."

Establishing clear title, authenticity and then value are the major risks for buyers. Increasingly, however, buyers also need to determine whether there are any liens against the artwork. As art has been more widely viewed as an asset, valuable pieces have been used as collateral for loans.

Compared to 20 years ago, owners face a much higher expectation of researching an acquisition before purchasing.

"Insisting 'I didn't know' or 'I couldn't have known' doesn't give you any legal standing," O'Donnell says. "If you don't do the homework, you might have to return a very valuable piece of art and be left figuring out who to sue." ■