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Viva L'Art!

Estates of Artists and Art Collectors Attempt to Preserve Treasures

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Paul Cézanne, The Card Players.

You are looking at the most expensive painting ever sold. Paul Cézanne's *The Card Players* (one of five in a series from the 1890s and the only one that is privately owned) was sold to Qatar's royal family in 2011 for $250 million.

One might therefore presume that the Barnes Foundation, possessing 69 Cézannes and hundreds of other masterpieces, should be in pretty good financial shape. Yet the Barnes Foundation's design flaws ultimately resulted in the intervention of courts and politicians to change the Foundation's original direction.

For artists and art collectors, the possession of fine art represents unique opportunities and challenges. Here we examine notable art sales and collections, as well as the financial planning issues faced by all art estates.

World's Greatest Painter

Alas, Cézanne's art world supremacy may be short-lived.

Not to disrespect the post-impressionist, pre-modern, transitional work by Cézanne (and kudos to him for all the great still lifes of fruit), but creating the painting/trophy sold for the most money isn't the only measure of success.

Some paintings will never be for sale. Could a price even be estimated for Michelangelo's work on the ceiling of the Sistine Chapel?

Da Vinci's *Mona Lisa* could be worth $1 billion, according to some estimates, but le Musée du Louvre would never sell it. (Note: The Louvre also has one of the versions of *The Card Players* by Cézanne.)

Girl with a Pearl Earring by Dutch painter Johannes Vermeer has been referred to as the *"Mona Lisa of the North"* and might be worth an incredible amount if it were ever sold by the Royal Picture Gallery Mauritshuis, The Hague. The only Vermeer to be sold publicly in the past 80 years went for $30 million in 2004. With few Vermeer works in private hands (and Scarlett Johansson starring in a movie by the same name), the *Mona Lisa* of the North could set a record if sold. Its worth was recently estimated at $390 million.

Arrangement in Grey and Black by James McNeill Whistler, better known as *"Whistler's Mother,"* is an American icon that is considered the world's fourth most recognizable image. It has been described as a Victorian *Mona Lisa*. Yet that painting belongs to the Musée d'Orsay in Paris and only visits America on tours every 10 years or so.

A lady who appreciated Whistler once complimented him by saying that he and Velazquez were the two greatest painters.

"Why drag in Velazquez?" responded Whistler.

L'Ennui for Old Masters

Diego Velazquez ranks in the upper echelon of all artists. Although the last privately held Velazquez work was auctioned for $5.5 million in 1971, there are estimates of $100 million for his work today—if you could buy one.

But would you buy the work of an old master if you could purchase a Monet?

The modern marketplace has a new sensibility for value that can be demonstrated by the sale of Van Gogh's *Vase with Fifteen Sunflowers* in 1987 for $81.2 million. That sale tripled the previous price for a painting and was the first modern painting to seize the record sale price. Prior to that time, the records for most expensive paintings were exclusively held by old masters. It was indisputable: They were old; they were by the masters; and they were the ultimate acquisitions. Art endures, so what could change?

Our perceptions of value change. Modern tastes have moved on. Since 1987, the top 46 sales of paintings have been dominated by impressionist and modern works, including 10 by Picasso, seven by Van Gogh, and only five by old masters. The top 10 sales are by artists such as Jackson Pollack, Willem de Kooning, Gustav Klimt, Pierre August Renoir, and Edvard Munch.

When Ronald Lauder acquired Gustav Klimt's *Portrait of Adele Bloch-Bauer* I for $135 million in 2006, it was the most expensive painting ever sold. "This is our Mona Lisa," he said, comparing the work to the ultimate masterpiece, the same standard of comparison that works by Vermeer and Whistler must meet.

Mr. Lauder, we know the *Mona Lisa*. The *Mona Lisa* is an icon. The Mona Lisa's smile is a part of our lives. Mr. Lauder, *Adele* by Gustav Klimt is no Mona Lisa.

Why then did *Adele* set the record for the most expensive painting ever sold for four months of 2006? Why is Cézanne atop the list right now? Surely those two gents playing cards are not smiling like the Mona Lisa or wearing pearl earrings.

According to *theartwolf.com*, it is the psychological intensity of the card players that makes the Cézanne painting so valuable.

The same might be said of the equally iconic image of *Dogs Playing Poker* by C.M. Coolidge, which was commissioned in 1903 to sell cigars and which was influenced, in part, by the Cézanne card players. The poker-playing dogs are more widely known than Cézanne's card players because they adorn more homes (and sometimes are depicted on velvet).

Critic Annette Ferrara described the poker-playing dogs as being "indelibly burned into…the American collective schlock subconscious."

Have we then come full circle with Cézanne's card players becoming more recognizable because of our collective subconscious appreciation of the Coolidge dogs? Life is imitating art that is a parody of other art, which is reflecting life…and Qatar ends up with a Cézanne.

An Eye for Art

C.M. Coolidge and Dr. Albert C. Barnes may have each recognized something about Cézanne during the same turn-of-the-century time frame.

Dr. Barnes had developed Argyrol, an antiseptic used to treat gonorrhea. It was an immediate financial success. In fact, Argyrol captured the world market; by 1907, Dr. Barnes was a millionaire. By 1910, he was able to concentrate on collecting art.

A series of smart business moves then helped develop a great fortune. Barnes convinced his partner not to patent the discovery so that competitors would not obtain the formula. He then bought his partner out.

In 1912, with time, money, and an eye for great art, Barnes traveled to Paris and met the likes of Picasso and Matisse. Art connoisseurs Gertrude and Leo Stein introduced Barnes to the works of Modigliani and other artists from the impressionist and modern era before they were sought by collectors and museums.

Barnes ultimately acquired 60 works by Matisse, 44 by Picasso, 181 by Renoir, and 69 by Cézanne (including one of the versions of *The Card Players*), along with 2,500 other works. Unlike Henry Clay Frick, who was known to spend $500,000 for the most valuable paintings available, Barnes studied the art market and selected works before they peaked in value. He bought paintings for a few hundred dollars or a few thousand. He spent $100,000 on only one painting.

In 1922, Barnes established a Foundation and built a mansion to house his art, but a 1923 showing of the collection demonstrated that it was too avant-garde for tastes of that time. Critics ridiculed it.

Barnes was offended and remained at odds with the art establishment and Philadelphia society during his lifetime. He was determined that his collection be presented to visitors without the negative interpretations of any curators.

The collection was opened in 1925 as an educational institute, and visitors were required to write to the Foundation to obtain permission to visit. Students were given preference over critics.

Barnes would later sell his company in 1929 for $6 million. His timing could not have been better. It was just before the market crashed and shortly before the development of antibiotics made his product irrelevant. Barnes then added to his art collection during the Great Depression by buying priceless artwork that formerly wealthy art patrons were selling due to desperate times.

Today, the Barnes collection may be worth between $20 billion and $30 billion. That value has eclipsed the foundations left by John D. Rockefeller and Andrew Carnegie, industrialists who had far more wealth than Barnes during their lifetimes. To be fair, Carnegie and Rockefeller also made significant charitable gifts, grants, and pursued many philanthropic ventures. The Rockefeller Foundation was funded with $750 million and currently has $3 to $5 billion in assets.

The astounding growth in value of a great collection of art does represent a singular accomplishment, one that the critics who pshawed at Picasso and mocked Modigliani in 1923 could not even imagine. Barnes was simply ahead of his time, and the world needed about 90 years to catch up.

Cézanne Rich, Cash Poor

Despite his business savvy and farsighted selection of art, Barnes did leave his Foundation with a blind spot, an Achilles heel. His Foundation was not permitted to sell any of the art. Nor could it be loaned out. Nor did Barnes want his art to be displayed in a museum setting with visitors paying admission fees. He wanted the educational institution created during his lifetime to remain intact after his death, in perpetuity.

In this respect, Barnes was not that unusual. Leaving a collection of art, intact, in a specific setting, is a recurring theme in a number of estates. Quite a number of the rich and famous have taken pains in their wills to protect and preserve great mansions and gardens as a way of demonstrating just what was accomplished during a great lifetime.

In 2000, the Getty Museum gave the Barnes Foundation $500,000 to buy some time to resolve its financial problems. When the Barnes Foundation's endowment ran out of funding in 2004, the Montgomery County Orphan's Court ruled that the will of Dr. Barnes could be broken and the rules of the Barnes Foundation were modified.

Judge Stanley Ott wrote a 31-page decision concluding that a plan to sell some of the Foundation's unrelated land holdings and lesser paintings, combined with increasing admission prices, would only raise $20 million, which

would not sustain the Foundation for the long run.

This begs a question or two. Would the Barnes collection be much less impressive without a Matisse or two? With 181 Renoirs, a half dozen wouldn't even be missed. The collection has more Cézannes that all the museums in Paris combined.

And the funds needed were not that incredible. The bailout of the Barnes Foundation consisted of $150 million, but $100 million was used to build a new museum and only $50 million was to provide an endowment.

The New Barnes

For many people, the new Barnes museum represents a happy ending. Land donated by the city of Philadelphia (near other art museums) and pledges of $150 million from three other private foundations (the Pew Foundation, Annenberg Foundation, and the LenFest Foundation), created a new museum for the Barnes collection on the Benjamin Franklin Parkway, not far from the Philadelphia Museum of Art with the statue of Rocky and the Rodin Museum.

Art has been made accessible to the public. The accomplishments of Barnes are celebrated. The Foundation has a secure financial future. The new museum has the exact layout as the original building, with the art displayed in the same manner. So everyone wins, more or less.

Yet the explanation of the Barnes Foundation running low on money, going to court, and then relocating its $30 billion collection to a new art museum in Philadelphia doesn't add up. It goes against the founder's goals of fostering art education. It runs contrary to his antipathy toward the Philadelphia establishment, museums in general, and the Philadelphia Museum of Art in particular.

Barnes chose a suburban setting for his art institute. He chose not to set up an art museum—he created an anti-museum—and yet here we are.

The Rest of the Story

During the groundbreaking ceremony for the new Barnes Museum in Philadelphia, Governor Ed Rendell said that it had been 14 or 15 years since the idea of relocating the Barnes to Philadelphia (when Rendell was Mayor). This time frame predated the Barnes financial problems.

Scrutiny then was belatedly directed to $107 million budgeted in the 2001-2002 state Capital Spending Bill—two years before the Barnes court decision to help the Barnes relocate to Philadelphia.

Rendell is accused of making a deal to provide $80 million of State aid to Lincoln University in return for them dropping their opposition to the Barnes move. Barnes had left stewardship of the Barnes Foundation largely in Lincoln University's control. Rendell was head of the Delaware River Port Authority when it appropriated $500,000 for the Parkway Barnes project…two years before Judge Ott's decision.

The Los Angeles Times carried a story on October 17, 2008, in which Christopher Knight wrote, "The Barnes saga is nothing if not long, tangled and rife with smoke-filled back rooms where strings were pulled and shady deals struck."

He then quoted a letter from Mark Schwartz to Governor Rendell:

"As the attorney who filed the Petition to Reopen the Barnes Proceedings in the Orphans Court of Montgomery County, Pennsylvania, I must tell you that your public remarks go the distance in validating that Petition that the Court did not want to consider. You made short shrift of the Barnes' Foundation phony argument of a sudden lack of funds and change of circumstances. You and I both know that this was a well coordinated heist.

"With the help of some significant others, your successful breaking of the terms of what Dr Barnes legally put in place is seen as a travesty in Estates and Trusts circles across the country. But then again, those folks aren't amongst your one true constituency, your fundraisers. What you orchestrated portrays Pennsylvania as a place where political machinations, interlocking relationships and the misuse of taxpayer money overcame the rule of law. The question remains whether what happened here will be seen as a horrendous aberration or precedent setting. But then again, you probably don't lose any sleep over that issue."

And if this can happen to a Foundation with 2,500 pieces of great art, could the same thing happen even more easily to someone with only $1 billion (or $1 million) of art assets?

Your Own Art Estate

Art collectors have to be aware of estate planning considerations because even nominal purchases during life may one day have great value. Here are several points to bear in mind:

• Art needs to be validated through its provenance just as real estate needs to have its title researched. Forgery and stolen art is more common than one might expect.

• An appraisal of artwork is of critical importance so that estate planning can be effective but also so that heirs don't just give out paintings like sentimental tokens to friends of the deceased. Appraisals need to be updated because collections may change in content and the art market continues to shift.

• Appraisals will also be needed for tax purposes, including charitable contributions. For charitable deductions of more than $50,000, donated artwork must be appraised by the IRS Art Advisory Panel.

• Transfers of art will trigger capital gains.

• Note the application of the "related use" doctrine. A donation of art to a public charity will qualify for a charitable deduction of the art's fair market value so long as the charity's use of the art is related to its charitable exemption. So a donation of art to a museum that is a charitable organization and which normally displays art would qualify. If the recipient sells the donated art in the same year of the transfer or if the transfer was intended for the recipient to sell the art, the donor can only deduct the cost basis of the artwork.

• With some idea of what a collection is worth, appropriate security, climate controls, and insurance should be obtained. You don't want sunlight to bleach your *Coolidge Dogs*, much less your *Mona Lisa*.

• An inventory of art, appraisals, insurance, provenance, original cost, and intended disposition should be organized. Considerable work is involved in confirming these details in the absence of the testator. This is highly valuable even for a small collection.

• An art curator or art executor could be of great value during estate administration. It can be detrimental to an estate to expect a family member or attorney to grasp the strategies of donating or selling works of art. Having an art expert in mind for the executor to work with will protect estate interests.

• An artist's estate—or a collector with a large volume of one particular artist—has special considerations. For example, flooding the market with too many pieces by the same artist may devalue the remainder of the collection.

• Collected artwork becomes very personal, and appropriate care is needed in planning for the ultimate disposition of art.

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