

Park West Case

Both sides happy with art auction decision

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By: Ellen Forman, Special to the Review

A federal judge has dismissed several counts in consolidated civil litigation against Park West Galleries, a cruise-ship art auction giant that has been accused of inflating the value of its pieces and other improper practices.

At the same time, the mixed decision Tuesday clears the way for unjust enrichment claims and requests for declaratory and injunctive relief.

U.S. District Judge Robert Lasnik in Seattle rejected claims under state consumer protection laws for transactions on ships at sea, eliminating claims under the Florida Deceptive and Unfair Trade Practices Act.

Southfield, Mich.-based Park West contracts with most major cruise lines, including Miami-based Carnival Cruise Lines and Royal Caribbean International, to hold onboard art auctions.

In what has become a regular part of the cruising experience, passengers are invited to enjoy free champagne at pre-auction seminars as they learn about pieces of art and are encouraged to participate in auctions.

Typically, offerings include a mix of prints by well-known artists — Chagall, Picasso and Dali, among them — and lesser-known Park West artists appraised by the onboard art dealer.

A half-dozen suits have been filed in recent years against Park West. Some actions alleged signatures on its prints were forged, and their values were inflated.

Park West has aggressively countersued, charging both plaintiffs and Fine Art Registry, a Web site focusing on consumer complaints against the company, with defamation.

Fine Art Registry has countersued. The Fine Art Registry cases will proceed separately.

Federal judges consolidated the consumer cases against Park West and several cruise companies into a multi-district action before Lasnik last summer. One of the lawsuits was filed in Miami in 2008 by Sarasota real estate agent David Bouverat, alleging the work he bought on a Celebrity cruise ship by surrealist Joan Miro was almost worthless and that another's value was greatly exaggerated.

The latest ruling dismissed a civil RICO claim and required plaintiffs to offer "detailed allegations regarding the agreement between defendants and their use of the mails or wires in furtherance of that agreement" to proceed.

On the state law claims, Lasnik wrote, "Not even Florida's substantial and legitimate interest in protecting its citizens from unfair trade practices can justify the direct and substantial effect FDUTPA would have on international commerce if it were applied to foreign transactions whenever a Florida citizen were involved."

Paul Schwiep of Coffey Burlington in Miami, who defended Park West and Holland America Line, emphasized the importance of removing the possibility of remedies under state consumer laws, which in some cases can involve treble damages and attorneys' fees.

"We're pleased with the court's decision," he said.

"The judge has accepted that under the commerce clause," Schwiep said, "states do not have the authority to regulate consumer transactions that occur in international waters. That's significant."

The judge allowed the plaintiff claim of unjust enrichment under Washington state law to proceed.

A defense motion to deny a plaintiff request for declaratory relief as duplicative also was denied with the court's decision that the issue would be determined later.

"We're generally pleased with the court's decision," said Steven A. Schwartz of Chimicles & Tikellis of Haverford, Pa., a member of the plaintiff executive committee.

"We look forward to presenting the court with our amended complaint," the attorney said, "and we expect very substantial claims to proceed in this litigation."



Paul Schwiep

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