# The art of the real deal: China's auction market

China's auction market has outpaced regulation and legitimate artists and collectors are paying the price

Vivienne Chow, SCMP Friday 24 April 2015


A murmur of admiration arose around the room when Beijing-based Yu Kin-po won bids for three artworks at Sotheby's autumn auctions in Hong Kong last October.

The bill for the pieces, including Wu Guanzhong's 1983 painting Climbing Vines On Wall, came to HK$9.1 million.

Six months later, the artworks remain with Sotheby's. On April 13, Yu's name appeared in a High Court writ. The auction house is accusing Yu of failing to pay the total purchase price within five days and collecting the works 30 days after the sales, as contractually required, and is seeking payment plus interest.

It's the first time in nearly three years that Sotheby's has taken someone to court in Hong Kong. Industry insiders say auction-related lawsuits on the mainland and in the city have become more frequent in the past decade as China's art market grows more active – it's now the world's second-largest according to a report by the European Fine Art Foundation. But regulation has yet to catch up with the expansion, and the industry is calling for a revamp of auction laws.

"China needs to tighten regulations to improve the situation," says Hu Yanyan, president of China Guardian Auctions and its Hong Kong arm. On the mainland, cheats block those who play by the rules and damage the industry's development in the long run, she says.

“We have established a good reputation by staying transparent and fair over the past 20 years. But there are hundreds of auction houses and there are bound to be bad ones,” Hu says. “As China moves towards a rule of law society, we must turn things around … Only the law can stop people from doing this. We need the government’s help.”

Meg Maggio, founder of Beijing-based gallery and art consultancy Pekin Fine Arts, predicts an increase in auction-related disputes as the houses expand rapidly. “The market is moving faster in China than the legal system. That has been the case since the 1980s and it is true in any developing country. Laws don’t make a market. Laws follow the market,” Maggio says.

Artists themselves have suffered too, says Wang Shouzhi, dean of the Cheung Kong School of Art & Design at Shantou University in the southern province of Guangdong. Since art and antiques became a new investment opportunity around 2000, genuine collectors have been driven away by speculators. “The art market has become more and more abnormal. It is saturated with business tricks, fake works and fake prices,” says Wang, adding that some artists also took part in some of the schemes. “China’s art market is off track from the global market. It has become a tool for corruption and money laundering. Real artists are being pushed to the fringe.”

The mainland has 6,400 auction companies registered under the Ministry of Commerce, with 400 that specialise in art. But shady houses are selling counterfeit works and issuing fake bids to push up prices, Hu says. Non-payment has become common, Hu says.

Last year, 35 per cent of works sold saw non-payment extend for more than six months, according to Dr Clare McAndrew of Arts Economics, author of the European Fine Art Foundation reports.

Wan Jie, chairman of Shenzhen-based Artron Group, a media organisation that tracks the Chinese art market, last month submitted a motion at the annual sessions of the mainland’s legislature and political advisory committee to revise the existing auction law, which was introduced in 1997. One key area it fails to address is online auctions. Wan has said the loophole resulted in illegal practices.

Ou Shuying, deputy secretary general of China Association for Auctioneers, agrees. She says online bidding platforms have mushroomed but operate without supervision. Some violate the Cultural Relics Protection Law by putting restricted items on sale, she says.

Imposters are another problem. Some companies label themselves as “cultural organisations” and “exhibition companies” and offer to make bids on behalf of clients, for a fee. In the end, these auctions never take place, and the clients lose their money.

“Some non-auction companies often mislead consumers with their online activities, making consumers believe that their online trading is protected by law when in fact it isn’t,” Ou says. “These companies are not auction houses. They are beyond what the auction law can cover … smaller collectors who genuinely love art but are not familiar with today’s market become victims of such scheming.”

Ou hopes the auction law can be expanded to address such practices. “The mainstream art auction market is healthy, but it is harmed by these bad players. In the end, the bad money drives out good,” Ou said.

Hu says China Guardian tries to tackle non-payment by continuously increasing the guarantee payment.

“But [non-payment] still happens,” she says. “Many people have said that non-payment [on the mainland] is like a virus. It can spread to Hong Kong and then New York and European sales. But auction houses can’t stop these people.”

International players hope greater regulations will bring the mainland market in line with global standards.

Sotheby’s held its first mainland commercial auction in 2013 and last month became the first foreign-invested company certified by the China Auctioneers Association and the Ministry of Commerce’s Department of Circulation Industry Development. The company says it will be “more than happy to see a more open, transparent, regulated and diverse auction market in China where all the players compete fairly under equal rules and regulations”.

The non-payment issue for Sotheby’s is less worrying than what its rivals face. Sotheby’s launched the first non-payment lawsuit against a mainland buyer in 2006 but says the average default rate over the past two years has been less than 1 per cent.

It is more troubled by trademark infringement and imposters, which it battles with legal action. “It is important that intellectual properties including trademarks receive the protection and respect they deserve in the rest of the world,” a Sotheby’s spokesman says.

Hong Kong-based Tiancheng International Auctioneer, which appointed a new Beijing representative on Tuesday to tap the mainland market, also hopes for a healthy business environment.

“The entire art scene in Asia, particularly in China, has become more dynamic … A more transparent market, sophisticated and excellent infrastructure are keys to success,” says Tiancheng’s managing director Wang Jie.

About two weeks after Wan submitted his motion, the Ministry of Commerce announced it would begin to study how the law could be improved this year. But the art market is facing challenges on other fronts – cooling economic growth and the intensifying anti-corruption drive. China’s share of the world’s art market sales expanded from 5 per cent in 2006 to 30 per cent by 2011 – the largest slice held by any country – according to the European Fine Art Foundation.

After the anti-graft drive campaign kicked off, the share shrank to 25 per cent in 2012, and slipped to 22 per cent last year, leaving it in second place after the United States and ahead of Britain by just half a percentage point.

Although world leaders Christie’s and Sotheby’s saw record turnover last year, China’s Poly Auction and China Guardian saw a 6 per cent and 20 per cent decline respectively, according to the report.

The total Chinese auction market was stagnant and down by 1 per cent in yuan terms, the report says. McAndrew, of Arts Economics, says 57 per cent of artworks offered at auctions on the [mainland] last year went unsold – an exceptionally high figure.

But it is not all doom and gloom. Many say the slowdown is actually a good time to clean up the industry as market speculators and those who buy artworks as “gifts” to bribe others leave the scene. Those who remain are the real art collectors.

“When the market is booming, there’s a lack of incentive to structurally tackle the market,” McAndrew says. “But when the market is sluggish, the speculators leave the market. People are more cautious with purchases that could be of dubious provenance.”

She predicts that the decline won’t worsen. “There are still plenty of good things in the market. It is still high-end spending and it encourages the development of a healthy middle market,” she says, referring to works that sell for between US$5,000 and US$200,000.

Hu adds: “The GDP [gross domestic product] slowdown and anti-corruption campaign affect the country’s economy as a whole, and that includes the art market,” she adds. “But in the long run, this is a positive thing. We want a healthy market, not a ‘gift’ market.”