

November 2007

## The Market Stays Strong but the Heat Moves East

The international art market has passed its first major test of strength since the financial instability that affected world economies following the sub-prime mortgage crisis in the United States. But while the contemporary art auctions in London in October defied the prophets of doom, some of the heat has gone out of prices for western artists and there has been a major shift in the market towards Asian art.

London's recent contemporary sales need to be put into perspective. Until four years ago October in the British capital was quiet as potential buyers awaited the big auctions in New York the following month. The advent of the contemporary art fair Frieze in Regent's Park in 2003 changed all that as international buyers took the newcomer to their hearts spawning feeder fairs such as Zoo and prompting the auction houses to hold major sales while the big spenders were in town.

This year buyers spent £174.6 million (US\$353.5 million) in four days at Sotheby's,

Christie's and Phillips, de Pury, quite apart from the unknown sums that changed hands at the fairs. The Frieze effect has been one of the most remarkable changes in the art world in recent times. Another has been the rapid development of new markets in China, India and Russia and all three auction houses benefited from the newfound wealth of collectors from those countries.

Phillips, de Pury, which failed in its bid to challenge Christie's and Sotheby's in the Impressionist and Modern Art market but has re-invented itself as a niche auction house with a strong emphasis on contemporary art, tapped into the market's eastward shift in a marathon nine hour sale which totalled £41.9 million (US\$84.8 million). This included 45 works from the collection of Chinese *avant-garde* art formed by the American businessman Howard Farber. The pre-sale estimate of

US\$25,000 in 1996.

The highest price of the week was the £8 million (US\$16.3 million) paid for Francis Bacon's *Study from the Human Body, Man Turning on the Light* which went to an anonymous bidder at Christie's. The auction house had estimated the 1973-4 painting at £7 to £9 million but Sir Christopher Frayling, rector of the Royal College of Art in London which sold the painting, had hoped for £12 million. The price for the Bacon was typical of the Christie's sale where 85 per

cent contemporary painting ever auctioned when it was bought by a private collector for £2.9 million (US\$5.9 million) while the £2.7 million (US\$5.5 million) for Raqib Shaw's 2003 work *Garden of Earthly Delights III*, was a saleroom record for any Indian work of art.

The number of visitors to Frieze increased from 63,000 last year to 68,000 this time. Dealers spoke of a more considered and reflective market than in the past although, according to Hanna Schouwink,

director of the New York-based gallery David Zwirner, most business was still conducted on the first day. "In total we've sold 80 works," she said. "For instance we sold two works by Chris Ofili to a totally new buyer." Brazilian dealer Ricardo Trevisan, a first time exhibitor, said: "We sold work by Mauro Restiffe to Tate. We also sold to American foundations and collectors we have never met before from England, America and Brazil."

The idea that a Brazilian dealer would come across collectors from home whom he had not met before, in London in October, would have seemed fanciful a few years ago but the art market is changing with astonishing speed. So far the diverse pattern of wealth creation around the world is enabling it to withstand international financial turbulence.



**RAQIB SHAW**  
*Garden of Earthly Delights III*  
2003 acrylic, glitter, enamel, rhinestones and mixed media on board, 120.1 x 60 inches  
sold for £2,708,500 (5,538,854 US\$)

£3.3 million to £4.6 million for the Farber Collection was left far behind as 88 per cent of the lots found buyers for £10.1 million (US\$20.4 million). The highest price was £2.7 million (US\$5.6 million) for Zeng Fanzhi's *Xiehe Hospital Series Triptych* while the New York dealer Larry Warsh paid £893,600 (US\$1.8 million) for Wang Guangyi's *Great Criticism: Coca Cola*, which had cost Farber

cent of the lots fetched a healthy £39.8 million (US\$80.6 million) but tended to sell within their estimates. The high flyers included the New York-based artist Richard Prince and, as at Phillips, Zeng Fanzhi.

At Sotheby's £34.8 million (US\$70.7 million) sale the big winners were also from Asia. Yue Minjun's *Execution* became the most expensive Chinese

# Change to U.S. Tax Law Limits Fractional Donations of Art

**Collectors who have donated fractional interests in works of art in the past may want to reconsider this giving technique going forward. Recent changes to U.S. tax law have had a chilling effect on fractional donations.**

## Recent Legislation Impacts Planning Technique

According to Sharon Klein, Senior Vice President and Director of Estate Advisement at Fiduciary Trust, the changes were included in an inconspicuous section of the Pension Protection Act signed by President Bush on August 17, 2006. The changes apply only to fractional gifts made after the law was enacted.

The relevant section of the new law pertains to a tax-planning technique known as fractional giving, which had become an increasingly popular way for collectors to donate works of art.

## The Technique - Donors Retained Possession While Taking Tax Deduction

Fractional giving involves a donor gifting a partial interest in a particular piece to a museum or other charity. In exchange, the donor receives a tax deduction for a proportionate amount of the artwork's market value.

The charitable entity receives the right to hold the art for an equivalent portion of the year. For example, if a collector donates 10% of a work of art to a museum, the museum is entitled to possession of the piece for 37 days a year. The donor is entitled to keep the work for the remainder of the year; in fact, museums have

often waived their right to hold artwork until it is needed for a particular exhibition. Donors can make subsequent donations of additional fractional interests in the artwork, allowing them to take deductions over a number of years before the museum eventually obtains full ownership.

Under the old law, says Klein, donors who spread out their fractional donations over an extended period could not only continue to enjoy possession of the artwork; to the extent the artwork appreciated, they would also get the benefit of a larger income tax deduction for each successive gift because the value of the artwork was determined at the time of each gift.

## Reforms Create Possible Tax Trap

The new law caps the value of the contribution at the lesser of the fair market value of the property on the date of the gift or the fair market value of the property at the time the *first* fractional gift was made. Thus, donors will not get larger income tax deductions on subsequent donations if the value of the work increases, but they will get smaller deductions if the value declines. In fact, there is a possible tax *trap* for donors. If artwork has appreciated from the time of the initial gift, the donor may end up *owing* gift tax on subsequent fractional interest gifts because the gift is valued at its *full* market value and the charitable deduction is limited to the *initial contribution* value.

Furthermore, Klein says the new law mandates that the charity must now receive full ownership of the piece within 10 years or upon the death of the donor, whichever occurs first. In addition, the charitable entity must have had "substantial possession" of

the artwork during the period – thereby depriving the owner of continued use of the piece.

Finally, the charity receiving the donation must actually use the piece in connection with its tax-exempt purpose; in other words, says Klein, the museum cannot simply place the piece in storage or auction it off.

## Failure to Comply Results in Tax and Interest Penalties

Fractional donors who fail to meet these new requirements will find themselves having to recapture the deduction for the donation. That is, they will have to recognize the previously deducted income and pay tax on that income as well as an interest charge on the tax underpayment. The recaptured amount is also subject to a 10% penalty.

## Consider Gifting Remaining Interest

Klein says that the new law creates many disincentives for utilizing the fractional gift technique and it will probably not make planning sense for those donors who were considering using it for the first time. The new law will also affect those donors who have previously given fractional interest gifts and anticipated further fractional gifting. Even if a donor had previously gifted a fractional interest in artwork, the first fractional gift after August 17, 2006 will be considered the initial gift for valuation purposes. Donors in that situation may want to consider gifting their entire remaining interest in the piece at one time, so the gift will be valued for tax purposes at its then current market value.

*If you have any questions please contact Sharon Klein at SKlein@ftci.com*

## U.K. Tax and Law – Points of interest

### 6th April 2008 – The transitional period for pre-22nd March 2006 Trusts ends and the proposal new era for Capital Gains Tax starts

Following the Finance Act 2006, the transitional period for pre-22nd March 2006 trusts comes to an end on 6th April 2008. During this period, trustees have opportunities to change certain types of these trusts so that the new tax regime will not apply until the next taxable event rather than on 6th April 2008.

To read more please visit:

<http://www.timothy-sammons.co.uk/dynamic/artnews/17#1>

A sweeping change to the nature of Capital Gains Tax was proposed in the Pre-Budget report of 9th October 2007 to take effect on 6th April 2008. The proposal would introduce an 18% flat rate of tax and abolish the indexation allowance and taper relief for individuals, personal representatives and trustees.

To read more please visit:

<http://www.timothy-sammons.co.uk/dynamic/artnews/17#2>

*If you have any questions please contact Charles Cochrane at charles@timothy-sammons.co.uk*

# News in Brief

## Strong Prices for Modern Italian Art

The annual auctions of 20th century Italian art held in London in October produced strong results with Sotheby's recording its highest total since starting the sales in 1999. Only seven of the 56 lots at Sotheby's failed to sell and by the end of the evening buyers had parted with almost £15.2 million (US\$30.9 million) including a record £2.2 million (US\$4.6 million) paid by an Italian private collector for Piero Manzoni's *Achrome*.

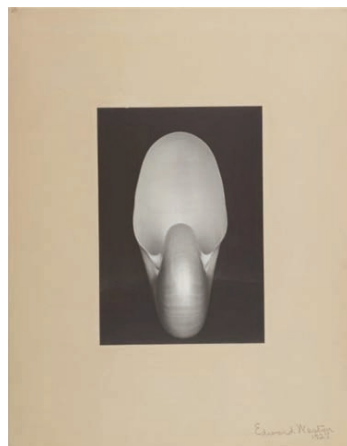
Private buyers dominated the top lots at both Sotheby's and Christie's, with the latter's total of £14.7 million (US\$30 million) being its second highest ever in this sector of the market. A private European collector paid almost £1.2 million (US \$2.4 million) for Giorgio Morandi's 1941 painting *Natura morta*. Six new artists' records were set during the Christie's sale.



**GIORGIO MORANDI**  
*Natura morta*  
1941  
oil on canvas, 16.3 x 19.4 inches  
sold for £1,196,500 (2,437,359 US\$)

## Weston Photograph Fetches \$1 million in New York

Edward Weston's seminal work *Nautilus* became one of the few photographs ever to break the US\$1 million dollar mark when it fetched a record US\$1.1 million (£543,158) at Sotheby's in New York in October. The early state of the classic image on matte-surface paper, which came from the collection of Alexandra R. Marshall, had been expected to fetch US\$600,000-900,000. It was bought by the Pace-MacGill Gallery from New York. The two day sale totalled US\$12.7 million (£6.2 million) including US\$1.7 million (£830,000) for the single owner sale of photographs from the collection of Nancy Richardson.



**EDWARD WESTON**  
*Nautilus*  
1927  
gelatin silver print, 9.4 x 6.6 inches  
sold for US\$1,105,000 (£543,158)

## Angelica Kauffmann Exhibition in London

A loan exhibition commemorating the 200th anniversary of the death of the Swiss-born painter Angelica Kauffmann is to be held by the Old Master paintings dealer Rafael Vals at his gallery at 11 Duke Street, St James's, London from 19th November to 14th December. More than 20 paintings and drawing have been lent for the exhibition entitled *Angelica Kauffmann in British Collections*.

## Floating Art Fair Sets Sail

An art fair aboard a luxury 238ft yacht has finally got under way after years of planning by the entrepreneur David Lester. *The Grand Luxe* is cruising along the eastern coast of the United States stopping at 38 selected ports where wealthy guests come aboard for invitation-only parties and view art and antiques on the stands of dealers who have rented space aboard.

## Bluhdorn Silver Collection Sale

A collection of English and continental silver and Russian works of art sold by the estate of Charles and Yvette Bluhdorn sold for more than US\$2.2 million (£1.1 million) at Sotheby's in New York on 13 October. Mr Bluhdorn was chairman of Gulf & Western, which included Paramount Pictures. Three of the four highest priced lots were bought by Rare Art Ltd of London, including the George III Fitzgibbon Neptune Centrepiece which fetched US\$869,800 (£428,980).

## Blue Diamond Fetches Sparkling Price

A rectangular-cut, intense blue diamond weighing more than five carats sold for almost US\$2.9 million (£1.4 million) at Christie's in New York thereby fetching a remarkable US\$570,000 (£280,000) per carat. The jewellery auction totalled US\$47.7 million (£23.4 million) with 89 per cent of the lots finding buyers.

