SALES OF FINE ART

Act 121 of 1970

AN ACT to provide for the creation and negation of express warranties in the sales of works of fine art.

History: 1970, Act 121, Eff. Jan. 1, 1971

The People of the State of Michigan enact:

442.321 Art sales warranties; definitions.

Sec. 1.

As used in this act:

(a) "Art merchant" means a person who deals in works of fine art or by his occupation holds himself out as having knowledge or skill peculiar to works of fine art or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill. It includes an auctioneer who sells works of fine art at public auction as well as the auctioneer's consignor or principal.

(b) "Author" or "authorship" refers to the creator of a work of fine art or to the period, culture, source or origin with which the creation of the work is identified in the description of the work.

(c) "Counterfeit" means a work of fine art made or altered, with intent to deceive, in a manner that it appears to have an authorship which it does not in fact possess. It includes any work of fine art made, altered or copied in a manner that it appears to have an authorship which it does not in fact possess even though the work may not have been made with intent to deceive.

(d) "Fine art" means a painting, sculpture, drawing or work of graphic art.

(e) "Person" means an individual, partnership, corporation, association or other group however organized.

(f) "Written instrument" means a written or printed agreement, bill of sale, or any other written or printed note or memorandum of the sale or exchange of a work of fine art by an art merchant and includes a written or printed catalog or other prospectus of a forthcoming sale as well as any written or printed corrections or amendments thereof.

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History: 1970, Act 121, Eff. Jan. 1, 1971

442.322 Warranties by art merchant; written instrument; effect of furnishing name of artist; negation or limitation of warranty; construing degree of authenticity of authorship.

Sec. 2.

Any provision in any other law to the contrary notwithstanding:

(a) If an art merchant, in selling or exchanging a work of fine art, furnishes to a buyer of the work who is not an art merchant, a written instrument which, in describing the work, identifies it with an author or authorship, the description is presumed to be part of the basis of the bargain and creates an express warranty of the authenticity of the authorship as of the date of the sale or exchange. However, if an art merchant furnishes the name of an artist pursuant to section 7 or 8 of the art multiples sales act, the art merchant for purposes of that information is bound by this section, whether or not the purchaser is an art merchant. The warranty is not negated or limited because the art merchant in the written instrument did not use formal words such as "warrant" or "guarantee", because he or she did not have a specific intention or authorization to make a warranty, or because any statement relevant to authorship is, or purports to be, or is capable of being merely the art merchant's opinion.

(b) In construing the degree of authenticity of authorship warranted, due regard shall be given to the terminology used in describing the authorship and the meaning accorded to the terminology by the customs and usage of the trade at the time and in the locality where the sale or exchange took place. A written instrument delivered pursuant

to a sale which took place in this state which, in describing the work, states, for example:

(i) That the work is by a named author or has a named authorship, without any other limiting words, means, unequivocally, that the work is by the named author or has the named authorship.

(ii) That the work is attributed to a named author means a work of the period of the author, attributed to the author, but not with certainty by the named author.

(iii) That the work is of the school of a named author means a work of the period of the author, by a pupil or close follower of the author but not by the author.

History: 1970, Act 121, Eff. Jan. 1, 1971 ;-- Am. 1987, Act 54, Eff. Dec. 9, 1987

442.323 Language; construction.

Sec. 3.

Words relevant to the creation of an express warranty of authenticity of authorship of a work of fine art and words tending to negate or limit warranty shall be construed where reasonable as consistent with each other; but subject to the provisions of section 2202 of Act No. 174 of the Public Acts of 1962, being section 440.2202 of the Compiled Laws of 1948, on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable. Subject to the limitations hereinafter set forth, the construction shall be deemed unreasonable in any of the following cases:

(a) The language tending to negate or limit the warranty is not conspicuous, written and contained in a provision, separate and apart from any language relevant to the creation of the warranty, in words which would clearly and specifically apprise the buyer that the seller assumes no risk, liability or responsibility for the authenticity of the authorship of a work of fine art. Words of general disclaimer like "all warranties, express or implied, are excluded" are not sufficient to negate or limit an express warranty of authenticity of the authorship of a work of fine art, created under section 2 or otherwise.

(b) The work of fine art is proved to be a counterfeit, and this was not clearly indicated in the description of the work.

(c) The work of fine art is unqualifiedly stated to be the work of a named author or authorship and it is proved that, as of the date of sale or exchange, the statement was false, mistaken or erroneous.

History: 1970, Act 121, Eff. Jan. 1, 1971

442.324 Additional rights and liabilities created; rights of art merchant as buyer; liability of art merchant making good faith warranty; applicability of art multiples sales act.

Sec. 4.

(1) The rights and liabilities created by this act are in addition to and not in substitution, exclusion, or displacement of other rights and liabilities provided by law, including the law of principal and agent, except where the construction would, as a matter of law, be unreasonable.

(2) An art merchant who, as buyer, is excluded from obtaining the benefits of an express warranty under this act shall not be deprived of the benefits of any other provision of law.

(3) An art merchant whose warranty of authenticity of authorship was made in good faith shall not be liable for damages beyond the return of the purchase price which the art merchant received.

(4) This act shall not apply, and the art multiples sales act shall apply, to a right, liability, or obligation prescribed by the art multiples sales act, except as provided by that act.

History: 1970, Act 121, Eff. Jan. 1, 1971 ;-- Am. 1987, Act 54, Eff. Dec. 9, 1987

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442.325 Effective date.

Sec. 5.

This act shall take effect on January 1, 1971.

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