



## Broad Joins Christie's in Dispute, Wins First Round (Update1)

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By Philip Boroff

June 5 (Bloomberg) -- Billionaire **Eli Broad** joined **Christie's International** in a dispute with shipping magnate Gregory Callimanopulos over the \$3.7 million sale of a painting by American artist Sam Francis.

Broad, one of the biggest U.S. art collectors, filed court papers on June 3 claiming he's entitled to the work because he submitted the highest bid. Callimanopulos sued the auction house on May 15, saying it improperly sold the 1954 painting to Broad for \$3.2 million, plus commission, on May 13. Callimanopulos says the auctioneer had already sold the work to him by bringing down the hammer on his \$3 million bid.

The suit reflects the competition among collectors for the best works of art even during an economic slump, said art adviser Stefano Basilico. Broad declined to comment, said **Karen Denne**, a spokeswoman for Broad's foundations.

"For the right piece, people will go to any length," said New York-based Basilico. "We're talking about one-of-a-kind objects."

On June 2, U.S. District Judge **William Pauley III** denied a request by Callimanopulos to stop the transfer of the painting, "Grey," to Broad. Callimanopulos requested Pauley issue another order restraining Broad from taking the painting pending an appeal.

### Art Enjoyment

Pauley rejected the new motion yesterday, saying "an injunction will injure Broad to some degree because he will be denied his enjoyment of the work for an indefinite period," according to the written decision. Broad joined the case as a so-called defendant-intervenor because of his interest in the outcome.

The auctioneer, **Christopher Burge**, said in an affidavit that he resumed bidding because he didn't initially notice Broad's bid in the Rockefeller Center saleroom. Christie's staffers pointed out the oversight as Burge was gaveling the hammer.

Callimanopulos's lawyers argued that when the hammer fell, that created a contract for Christie's to sell their client the artwork. The judge ruled on June 2 that Burge "exercised his discretion" in resuming bidding. Pauley said he reviewed a videotape of the sale and Joanne Heyler, director and chief curator of the Broad Art Foundation, "raised her paddle as Burge said 'fair warning' and then raised it even higher as he brought down the hammer."

### Right of Refusal

Christie's catalog said the auction house has the right to "refuse any bid" and to "determine the successful bidder," according to Burge's sworn statement.

Broad, founder of homebuilder KB Home and former chief executive of insurer SunAmerica Inc., said Heyler's bid "was in time and the auctioneer was well within his statutory and contractual discretion to resume the bidding and assure the seller of the highest price," according to court papers.

The seller was the estate of Beverly Hills philanthropist Betty Freeman.

Christie's was "very pleased" with the court's denial of the preliminary injunction, it said. While disappointed, Callimanopulos was "relieved to understand that Mr. Broad in any case does not plan to dispose of the painting to third parties," so if Callimanopulos wins the case Broad will return the piece, he said in a statement.

#### Collection of Amoebas

Francis died in 1994 and painted the abstract "Grey," which resembles a collection of amoebas, in Paris. It was influenced by Monet and Matisse and exhibited first at New York's **Museum of Modern Art**, according to Christie's.

The lot was part of Christie's smallest New York contemporary art auction since November 2004. The sale totaled \$93.7 million including commissions, less than a third of the tally a year earlier.

April Jacobs, co-head of the sale for Christie's and Callimanopulos's telephone contact, wrote in an e-mail to the collector the following day that, in her opinion, "we were the final bidder, and the piece sold to us for \$3 million," according to Callimanopulos's suit.

She said later in an affidavit that she didn't have a clear view of the first row of bidders, where Heyler was.

Jacobs has resigned from the auction house for personal reasons unrelated to the suit and relocated to Texas with her family, said Erin McAndrew, a Christie's spokeswoman. A call to Jacobs's office phone on June 3 was diverted to Christie's public relations department.

#### Phone Transcript

On the night of the sale, Callimanopulos immediately objected to the resumption of bidding, according to a transcript of his call with Jacobs introduced as evidence in the suit.

"Tell him it's me and I'm not accepting it," he said.

"There's nothing I can do," Jacobs replied. "Do you want to do 3.2 (million)? They're all looking at me."

"Tell him, Gregory Callimanopulos does not accept that."

Callimanopulos then bid \$3.15 million and Heyler topped it with \$3.2 million.

"Against us at 3.2," Jacobs said, according to the transcript.

"F\*\*\* him," Callimanopulos said.

**Kim Landsman**, a lawyer for Broad, told Pauley at a May 28 hearing that the case is an "imposition of a bruised ego" and called Callimanopulos "the quintessential sore loser," according to a transcript.

"And unlike other sore losers, he actually has the wealth to impose upon your time and our resources to do that," Broad's lawyer said.

The case is Callimanopulos vs. Christie's, 09-cv-0463, U.S. District Court, Southern District of New York.

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