

SUPPORTING MATERIALS

14 June 2018

Level 4

**RESOLVING A COMMERCIAL DISPUTE IN
ENGLAND AND WALES**

Subject Code L4-10



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

**UNIT 10 – RESOLVING A COMMERCIAL DISPUTE
IN ENGLAND AND WALES***

SUPPORTING MATERIALS

Information for Candidates on Using the Supporting Materials

- This document contains the supporting materials for your examination.
- You have **THIRTY** minutes' reading time to read these supporting materials and the question paper.
- It is strongly recommended that you use the reading time to read these supporting materials and the question paper fully. However, you may make notes on these supporting materials, the question paper or in your answer booklet during this time, if you wish.

Do not turn over this page until instructed by the Invigilator.

* This unit is a component of the following CILEx qualification: **LEVEL 4 DIPLOMA IN COMMERCIAL LITIGATION**

SUPPORTING MATERIALS

INSTRUCTIONS TO CANDIDATES

You are working in the Commercial Litigation Department of Kempstons LLP, The Manor House, Bedford, MK42 7AB. The Head of the Department, Rashmi Banerjee, would like your assistance on the conduct of a case involving a dispute between our client, High End Antiques Ltd, and an auction house, Medley Surtees & Johnson Auctions LLP.

Rashmi has provided you with the following documents:

- | | |
|-------------------|---|
| Document 1 | Attendance Note of meeting with High End Antiques Ltd |
| Document 2 | Extract from Medley Surtees & Johnson Auctions LLP Terms and Conditions |
| Document 3 | Email from High End Antiques Ltd to Kempstons LLP |
| Document 4 | Schedule of Documents in High End Antiques Ltd File |

DOCUMENT 1

ATTENDANCE NOTE OF MEETING WITH HIGH END ANTIQUES LTD

Attending: Judith Barnes, High End Antiques Ltd
Attended by: Rashmi Banerjee, Kempstons LLP
Date: 1 June 2018
Matter: Dispute with Medley Surtees & Johnson Auctions LLP
Time Engaged: 90 minutes

Rashmi Banerjee meeting Judith Barnes, the Managing Director of High End Antiques Ltd (the 'Company') at its offices.

The Company was formed in 2013 with the sole purpose of dealing in rare and valuable antiques, particularly paintings. Antiques are purchased from a number of sources; however, they mainly come from auctions. The Company has a small but wealthy customer base, which enables it to source and purchase antiques to meet the specific requirements of its clientele.

On 13 October 2017, Judith Barnes received the catalogue for an upcoming auction at Medley Surtees & Johnson Auctions LLP to be held on 21 November 2017. In the catalogue, Lot 39 was described as being: 'A recent discovery, *The Universe and Life* by the 16th-century Dutch master Gerardus Alberda. In the auctioneer's opinion, a work by the artist, even though the work is not signed.' The guide price was £50,000–£70,000.

One of the Company's clients, Vainius Prackaila, collected Dutch paintings from the 16th century and, upon contacting him, he confirmed that he would purchase the painting from the Company for £100,000. The sale to Vainius Prackaila was dependent, firstly, on the Company being the successful bidder and, secondly, on the Company making a minimum of £10,000 profit after costs.

Judith Barnes attended the auction and was the successful bidder, purchasing the painting for £60,000. Once the buyer's premium and VAT had been added, the total cost was £65,000. The payment for the painting was made by bank transfer. The profit on the resale to Vainius Prackaila would be £35,000.

On being notified that the purchase of the picture had been successful, Vainius Prackaila informed Judith Barnes that he wanted an expert to authenticate it, before he took delivery and paid for it. Judith Barnes agreed to an expert authenticating the work before delivery and payment, even though this had not been part of the original arrangement.

On 9 January 2018, Dr Robert Jones, an expert in 16th-century Dutch art, visited the premises of High End Antiques Ltd to carry out authentication. He stated that the painting was not by Gerardus Alberda. In the opinion of Dr Jones, the painting was by an unidentified artist working in the artist's style and during the period of the artist's life. In his expert opinion, there was no doubt that the painting was not by the master Gerardus Alberda.

Once Vainius Prackaila was informed, he was no longer interested in purchasing the painting. Dr Jones told Judith Barnes that it was still a good painting of the period and could, on a good day, fetch in the region of £25,000, substantially less than the £65,000 cost. Dr Jones confirmed that he would send Judith Barnes a letter detailing his findings.

Turn over

SUPPORTING MATERIALS

On 13 February 2018, Judith Barnes contacted Medley Surtees & Johnson Auctions LLP by email and informed them that, due to the discovery that the painting was not by Gerardus Alberda, the Company would return the painting and required the return of the £65,000 paid together with compensation for loss of profit.

On 16 February 2018, Miles Surtees, one of the partners of Medley Surtees & Johnson Auctions LLP, replied by email, stating that it was the responsibility of buyers to assure themselves that what they purchased was genuine, not the auction house. He also referred Judith Barnes to his firm's terms and conditions, in particular clauses 3–5 (**Document 2**).

Judith Barnes claims that she was unaware of the terms and conditions.

Between February and May 2018, numerous emails were sent by both parties, none of which indicated a change in stance in terms of liability. The Company is seeking £40,000, representing the difference between the value of the painting and the purchase price, and a further £35,000, representing the loss of profit on the contract with Vainius Prackaila.

The Company requires action to be taken to pursue the claim against Medley Surtees & Johnson Auctions LLP. Judith Barnes is insistent that court proceedings be issued without further delay.

DOCUMENT 2

**EXTRACT FROM MEDLEY SURTEES & JOHNSON AUCTIONS LLP
TERMS AND CONDITIONS**

...

3. The buyer specifically agrees to the following terms:
 - (a) The auctioneer does not accept responsibility for the authenticity of any lot or for any representations made by the auctioneer in any catalogue, brochure or advertisement. Any bidder should exercise and rely on his or her own judgement as to such matters and neither the auctioneer nor his employees or agents accept any responsibility for the correctness of such an opinion.
 - (b) No warranty whatsoever is given by the auctioneer or the seller in respect of any lot and any warranties or conditions whether expressed or implied by statute, common law or otherwise are hereby excluded.
4. All goods are to be inspected thoroughly upon collection or postal receipt. Items can only be returned if they significantly do not correspond to their description.
5. If you bid on an item and win the lot you, as the buyer, are deemed to agree to these terms and conditions.

...

Turn over

EMAIL FROM HIGH END ANTIQUES LTD TO KEMPSTONS LLP

To: Rashmi.Banerjee@kempstons.co.uk
From: Judith.Barnes@Highendantiques.co.uk
Subject: Dispute with Medley Surtees & Johnson Auctions

Hello Rashmi,

In relation to your recent letter as to how the case is progressing, you requested a copy of the agreement between us and Vainius Prackaila. I would rather not have the other side see it, as it contains sensitive information. Surely it will be enough for Vainius to say how much he would have paid us, if the painting had been genuine?

Regards

Judith

SCHEDULE OF DOCUMENTS IN HIGH END ANTIQUES LTD FILE

1. Email from Judith Barnes, High End Antiques Ltd, to Vainius Prackaila, dated 18 October 2017
2. Copy of letter from Judith Barnes, High End Antiques Ltd, to Vainius Prackaila, dated 20 October 2017
3. Contract between High End Antiques Ltd and Vainius Prackaila, dated 10 November 2017
4. Receipt for Lot 39, painting, dated 21 November 2017
5. Email from Vainius Prackaila to Judith Barnes, High End Antiques Ltd, dated 24 November 2017
6. Email from Judith Barnes, High End Antiques Ltd, to Vainius Prackaila, dated 25 November 2017
7. Letter from Dr Robert Jones to High End Antiques Ltd, dated 11 January 2018
8. Email from Vainius Prackaila to Judith Barnes, High End Antiques Ltd, dated 9 February 2018
9. Email from Judith Barnes, High End Antiques Ltd, to Medley Surtees & Johnson Auctions LLP, dated 13 February 2018
10. Email from Miles Surtees, Medley Surtees & Johnson Auctions LLP, to Judith Barnes, High End Antiques Ltd, dated 16 February 2018
11. Email from Judith Barnes, High End Antiques Ltd, to Miles Surtees, Medley Surtees & Johnson Auctions LLP, dated 19 February 2018
12. Email from Judith Barnes, High End Antiques Ltd, to Miles Surtees, Medley Surtees & Johnson Auctions LLP, dated 27 February 2018
13. Email from Miles Surtees, Medley Surtees & Johnson Auctions LLP, to Judith Barnes, High End Antiques Ltd, dated 23 March 2018
14. Copy of letter from High End Antiques Ltd to Medley Surtees & Johnson Auctions LLP, dated 20 April 2018
15. Letter from Medley Surtees & Johnson Auctions LLP to High End Antiques Ltd, dated 12 May 2018
16. Letter from Rashmi Banerjee, Kempstons LLP, to Judith Barnes, High End Antiques Ltd, dated 4 June 2018
17. Email from Judith Barnes, High End Antiques Ltd, to Rashmi Banerjee, Kempstons LLP, dated 13 June 2018
18. Letter from Rashmi Banerjee, Kempstons LLP, to Judith Barnes, High End Antiques Ltd, dated 29 June 2018, enclosing a copy of Kempstons letter to Medley Surtees & Johnson Auctions LLP, dated 28 June 2018
19. Letter from Penny Woodgate, Rowstraw's Solicitors, to Rashmi Banerjee, Kempstons LLP, dated 4 July 2018
20. Copy of letter from Rashmi Banerjee, Kempstons LLP, to Penny Woodgate, Rowstraw's Solicitors, dated 11 July 2018
21. Letter from Rashmi Banerjee, Kempstons LLP, to Judith Barnes, High End Antiques Ltd, dated 13 July 2018
22. Letter from Penny Woodgate, Rowstraw's Solicitors, to Rashmi Banerjee, Kempstons LLP, dated 15 August 2018
23. Letter from Rashmi Banerjee, Kempstons LLP, to Judith Barnes, High End Antiques Ltd, dated 24 August 2018, enclosing draft Claim Form and Particulars of Claim
24. Chain of emails between Judith Barnes, High End Antiques Ltd, and Rashmi Banerjee, Kempstons LLP, dated 19 September 2018 to 2 May 2019

End of Supporting Materials

© 2018 The Chartered Institute of Legal Executives

