

3 Stone Buildings Arts Seminar

“Art Law and Ethics”

Royal Society of Arts

Presentation by Geoffrey Vos QC

“Bacon and Eggheads”

Tuesday 6th May 2008

1. Philosophically speaking, law is about discovering objective truth and justice. Art is completely the opposite – it is about representing subjective thought.
2. It is in art cases that these polar opposites join forces. That is why they can be such a challenge. In this talk objectivity and law equal “eggheads” and Bacon epitomises subjectivity and, sometimes, even irrationality.
3. The case I want to concentrate on today concerned Francis Bacon and his estate. That case, as many of you may know, was a claim by Bacon’s estate, though his executor, Brian Clarke, himself a well-known figure in the art world, against the Marlborough Gallery. What was fascinating about it was the insight it gave the participants into the artist himself.
4. The allegation was that Marlborough Gallery had established a relationship of trust and confidence with Francis Bacon, by totally organising and running his business, personal and financial affairs.
5. The suggestion was that Miss Valerie Beston and Mr Frank Lloyd had infiltrated themselves into Bacon’s life and made themselves indispensable – so that he became wholly reliant on them.
6. The Gallery had, thereby, come to owe Bacon fiduciary duties, and were in a position in which there was presumed undue influence, so that transactions between Bacon and the Gallery, entered into without independent legal advice, were voidable, and could be set aside at the behest of the Estate.

7. To argue this case on behalf of the now sadly deceased, John Edwards, Bacon's sole heir, was an honour and a privilege, not only because all the figures I have mentioned were iconic, but also because, as I have said, of the insight that the case gave the lawyers involved upon it into Bacon and his art.
8. This then was truly an 'art case'. It was about how Bacon's entire oeuvre came into being, and how his relationships grew, prospered and ended in the course what can only be described as one of the most tumultuous lives of the 20th century.
9. The privilege was not only because of the importance of the litigation and the publicity it attracted. It was not only because of the people one came to meet in the course of working on what became an all-consuming piece of litigation. It was because, in the end, we were able to have access to something that historians will very likely never see the like of again.
10. When we obtained discovery from Marlborough Galleries of their 34 year relationship with Francis Bacon (from 1958 to his death in 1992), we were able to reconstruct a complete chronological documentary record of Bacon's business, personal and financial communications through the most turbulent period of his life, in which many of his greatest paintings were created.
11. This complete chronological record could not, of course, be published, as it comprised documents emanating on discovery from the Gallery, which were covered by the normal undertaking that they must not be used for any purpose other than the litigation in hand. It is, therefore, a sad fact that no use has been made of what we discovered.
12. But, at least, we lawyers had the privilege of gaining an insight into what made Bacon tick, which I believe nobody – perhaps not even David Sylvester, Michael Peppiatt, and Daniel Farson, who have all written about Bacon extensively, have been able to reconstruct.
13. That has nothing, of course, to do with the legal issues that the case raised. Those were, of course, issues that arise in many other areas too: fiduciary duties, undue influence, limitation periods. But law is secondary in some cases, and in this case it was just that – the artist was everything.
14. I shall not, of course, be making any confidential revelations, nor shall I be reading from documents over which others have proprietary rights, but I will, just allow myself a few general observations.

15. Clarke v. Marlborough Fine Art (London) Limited [2002] 1 WLR 1731 is a reported case. The assigned Judge, Patten J, had to decide whether one of our proposed amendments was inconsistent and contradictory. We argued that the following two pleas were perfectly consonant with each other:-
 - (1) Bacon was a man inexperienced and uninterested in business matters. His overriding interest in life was his work as an artist and he had very little interest in his financial affairs beyond worry about debt or tax matters of which he wished to be relieved, and was content to put himself entirely in the hands of Miss Beston and Marlborough, relying on them to give him a fair deal.
 - (2) In 1978, Bacon approached Frank Lloyd and informed him of his intention to sever his ties with Marlborough and to be represented in the future by [another gallery]. Marlborough placed undue pressure on Bacon to remain with Marlborough by threatening that if Bacon left Marlborough: (a) Bacon would have problems obtaining access to the funds which Marlborough had paid into Bacon's bank accounts in Switzerland ... (b) Bacon would be exposed to the English tax authorities. It was to be inferred that after 1978, these threats continued to operate on Bacon, with the result that he believed that it was impossible for him to sever his connections with Marlborough.
16. Patten J decided that the former plea of presumed undue influence was inconsistent with the latter plea of actual undue influence. But he allowed us to make the amendments anyway – so as to plead actual and presumed undue influence in the alternative.
17. In other words we were allowed to say that: (a) Bacon was under the spell of Marlborough Galleries on the one hand, but (b) on the other hand, in order to keep him under that spell, Marlborough had to threaten to expose his financial indiscretions.
18. The case eventually settled on confidential terms as John Edwards sadly neared his death.
19. John's premature death (some years after Bacon's own death) was the end of a long line of tragedies that Bacon seems to have attracted amongst those that cared for him or he cared for, often obsessively – Peter Lacy, George Dyer and John Edwards.

20. But, at the end of the day, whichever way the undue influence issue was pleaded, the issue the factual issue turned out to be about whether Bacon was exploited by the Gallery. Actually, rather a mirror: Was Bacon exploited by the Gallery? Or did Bacon himself exploit the Gallery?
21. I will not give you an answer – maybe there will never be one. But in other areas of his life, it became clear to us that Bacon was more astute than artists are often thought to be.
22. Apart from the fact that he worked for only a short time each day (from about 6 a.m. to Noon at the most) – before embarking on binge drinking sessions that often lasted well into the early hours of the morning – there seems to have been method in his eccentricity. He may even have had a pretty good idea of the commercial value of destroying his own (valuable) paintings.
23. Bacon was self-indulgent and manipulative. He lived on the edge, and it was only because he did so that he was able to create the uncertainty necessary to allow the litigation we ran to happen. Undoubtedly, the succession of tragedies created unsurpassed works of art.

Geoffrey Vos QC