

Appendices

1 Case Study:

*Robert Cavendish & Co
Limited v Downham
Gallery Limited*

¹ This case study, including the people and events, is a work of fiction. For educational purposes, the mistakes are deliberate.

On behalf of: Claimant
 Name: R F Cavendish
 Statement: First
 Exhibits: 'RFC1'
 Date: 14 May

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

Claim No: HC186752

B E T W E E N:

ROBERT CAVENDISH & CO LIMITED

Claimant

- and -

DOWNHAM GALLERY LIMITED

Defendant

**WITNESS STATEMENT OF
 ROBERT FENWICK CAVENDISH**

I, Robert Fenwick Cavendish of 8 Ingleby Lane, Parson's Green, London, say as follows:

- 1 I am the sole director and shareholder of Robert Cavendish & Co Limited, the claimant in this action. The company trades under the name of Lindum Ancient and Islamic Art in Pottergate, Maida Vale. The business has an established reputation for handling early Middle Eastern antiquities. I have been running it for 20 years and it is regarded by my peers as very successful.
- 2 On the morning of the last Tuesday in November, I received a call from Mrs Chantelle Downham. She is the owner of the defendant company and she has a dubious reputation in the industry. She said an art world contact had advised her of my reputation as a dealer in Mesopotamian artwork. She said she had just come by an excellent bas-relief. She said 'It's from the lost palace of Sennacherib'. I knew the palace was at Nineveh in northern Iraq. She said 'It's of a soldier

and two horses, circa 681-669' or words to that effect. I only wrote down the words 'bas-relief 681-669' but I have lost the note.

- 3 I had heard of Sennacherib, which was rediscovered in the mid-19th century. It is famous for its enormous bas-reliefs and clay tablets. I had not however previously handled any specimens from the site. My main interest lies in the Babylonian cities of Nippur, Larsa and Ur, in southern modern-day Iraq. However, I was interested in the relief because I knew of a wealthy American buyer who collects Assyrian works of art.
- 4 Assyrian antiquities are becoming increasingly sought after, partly due to their rarity but also because the recent conflicts in Iraq and the Middle East have re-ignited awareness in the West of the region's importance to art history and the wider development of human culture. Ironically, the wars that have brought these artefacts to greater prominence have also been responsible for destroying many fine and irreplaceable ancient works. People have a particular interest in Assyrian tableaux of this type because they demonstrate the development of the written form, from early pictorial representations to more simplified and abstract script. There is also excitement that many more sites remain to be discovered.
- 5 Mrs Downham told me I was welcome to see the carving at any time. It just so happened that I had a meeting of the Classical Art Dealers' Association the next day so I asked her if I could call by and see the relief before lunch. She said, 'Someone will be here'.
- 6 I think I arrived at Downham Gallery at about 10:30am. Mrs Downham was there with a young woman who appeared to be her assistant. I must emphasise that Mrs Downham is not a particularly likeable woman. She is slim and tall and tries to sound well-bred, but when she becomes excited she lapses into a broad South London accent.
- 7 She welcomed me and said 'Wait till you see the sculpture'. She led me straight to the bas-relief which was lying down on a layer of bubble wrap on the counter. She lifted it carefully and leant it up against the wall next to the counter. Just then a man came into the shop. He was attended to by Mrs Downham's assistant. The shop telephone was ringing constantly and was answered by the assistant.
- 8 On first impressions the relief appeared to be damaged and I was not impressed. The stone also seemed a little too yellow. I was unenthusiastic but Downham worked hard to convince me. She spoke of the archaeological sites at Nineveh and the great excavations of the 19th century by Layard and Smith. She pointed to the late Assyrian

cuneiform script, one of the earliest known forms of written expression. She pointed to the quality of the carving and the attention to detail in the harnesses worn by the horses. I remember Mrs Downham commenting on the artistic plasticity and freedom of hand of the sculptor. She also drew attention to the soft limestone from which the relief had been carved, which she said was typical of the stone quarried from the mountains on the borders of the Assyrian Empire.

- 9 She said she had done a lot of research into Assyrian sculpture, and had concluded there was less variety of style in Assyrian than in Babylonian sculpture. She said there seems to have been only one school, one technique, one style, but that it was possible to distinguish at least two periods of production; one from the beginning up to the reign of Sargon, the other from Sennacherib to the fall of Nineveh. She said a similar bas-relief had sold in Paris recently for €890,000. It was quite clear to me that Mrs Downham knew a lot about her subject. She showed me a copy of the auction catalogue, a copy of which is exhibited at 'RFC1'.
- 10 She told me the asking price was £850,000 but that I could have it for £820,000. I thought it was a reasonable price in the circumstances so made her an offer. She accepted, saying that she would arrange to have the tablet delivered when the money was in Downham's account.
- 11 At no time did I say I was an expert on the late Assyrian period or the excavated sites at Nineveh. In fact during the whole episode she appeared to be at pains to show just how much she knew about cuneiform script and the style of carving from the period.
- 12 The relief was delivered to my gallery about three days later. As I anticipated, a regular American customer of mine, Mr John Arnoldson Jnr, expressed some interest in buying the piece. However, he said that first he wanted it to be checked out by a Mr Worthington who is a trade specialist and expert in the field. As far as I am concerned he is just a gun for hire.
- 13 Mr Worthington came to my gallery and spent three hours examining the relief. He had magnifying glasses and chemicals. He said it hadn't come from Nineveh at all. He said it was most likely a 19th-century copy. I rang Mrs Downham and demanded my money back but she said it had been a fair deal and I had been given ample opportunity to have the carving checked out. According to Mr Worthington, the relief sold to me by Downham cannot be worth more than £3,000, although I think I could sell it for a bit more.

- 14 About six weeks after Mr Worthington visited, a cleaner accidentally dropped the bas-relief and it smashed into little pieces. It was not insured because the insurance company and I were arguing over its value.

Dated: 14 May

I believe that the facts stated in this witness statement are true.

Robert Cavendish

.....
Robert Cavendish

**EXHIBIT 'RFC1'
EXTRACT FROM CATALOGUE**

Clifton Barrett
Auctioneers since 1876

LOT NUMBER 263

ASSYRIAN BAS-RELIEF

*Late Assyrian, 681-669 BC.
95 x 81 cm
Soldier and two horses
Neo-Assyrian cuneiform lettering
Model for larger relief at Palace of Sennacherib, Nineveh
Excavated by the renowned British archaeologist
A H Layard circa 1846*

On behalf of: Claimant
Name: E R Worthington
Statement: First
Exhibits: 'ERW1'
Date: 20 May

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

Claim No: HC186752

B E T W E E N:

ROBERT CAVENDISH & CO LIMITED

Claimant

- and -

DOWNHAM GALLERY LIMITED

Defendant

**EXPERT WITNESS REPORT OF
EDWIN RICHARD WORTHINGTON**

To the Court

I, Edwin Richard Worthington BA, MA of 12 McLeod Place, Highbury, London say as follows:

Qualifications and experience

1 For 30 years I have been a trade specialist in works of art from the Assyrian and Babylonian empires of Mesopotamia. As well as running my own successful dealership in Middle Eastern artefacts, for the last 10 years I have been a sometime consultant to the antiquities department at Harling's Auctioneers. I am also a correspondent for the *Antique Merchants' Journal*.

- 2 Before setting up my own dealership business I was for 10 years the Assistant Keeper of the Late Mesopotamian Collections in the Department of the Middle East at the National Museum.
- 3 Being a trade specialist, I have a much wider experience than most museum curators because I deal with a far wider range of objects and fresh items pass through my hands all the time.
- 4 I have given evidence in two High Court trials. In one of them, the judge described my evidence as 'worthy' and in the other the judge thanked me for my assistance.

Synopsis of instructions

- 5 I have been asked to provide an opinion on whether a bas-relief sculpture, described as 'Soldier and Two Horses', is a genuine Assyrian artefact dating from the seventh century BC.

Background: the development of Assyrian sculpture

- 6 In order to understand the nature of the reliefs uncovered at the palace of Sennacherib, I think it would assist the court if I were to give a brief outline of the origins and characteristics of Assyrian sculpture.
- 7 The country of Assyria was established during the second millennium BC. The country began as a narrow strip of land between the Tigris River and the mountains. From the 12th century BC the rulers of Assyria embarked on a sustained period of conquest, such that by the early ninth century BC the Assyrian Empire stretched from the Persian Gulf to Asia Minor. I attach a map to this report to explain the geography of the region.
- 8 The Assyrian capital of Nineveh became renowned as a centre of art, industry, and commerce. Works of art were brought from surrounding countries and colonies of foreign artists settled and worked there. Assyrian art, with its clearly defined and impressive individuality, exercised an influence that would be spread over the entire East and be carried by the Phoenicians as far as the Greek islands.
- 9 The Assyrian royal palace was the shrine of art. Every king wished to build at least one palace that should be a memorial of his reign and perpetuate his name forever. The state apartments were more or less thoroughly decorated with sculptures in relief throughout the main halls and corridors.
- 10 The Assyrians excelled at bas-relief; that is, sculpture which is not free-standing or in the round, but has a background from which the main

elements of the composition project. The sculptors used this method of carving to tell stories. Their work was naturalistic and somewhat narrow in its scope, but it was greatly varied in its detail.

- 11 They made excellent use of the alabaster and soft limestone quarried from the mountains on the fringes of the Assyrian kingdom. The Assyrian sculptor seemed to revel in the facility with which he could fashion the stone, indulging in the minutest detail work and exaggerating lines, muscular development, and expression. The human figure was represented quite perfectly in profile, but we find no examples of the use of the full face.
- 12 By the time of the rule of Sennacherib (pronounced Sin-ahhe-criba), towards the end of Assyrian dominance (705–681 BC), the figures had become more epic, perhaps less lifelike, and the relief much higher. In the art of this time we begin to find scenery and accessories, a multitude of small figures, and detailed representation of the incidents depicted.

Cuneiform script

- 13 I should also comment on the development of written forms during the Assyrian Empire. The period saw the emergence of the cuneiform script (meaning 'wedge shaped'). This began as a series of pictographs. The symbols were drawn with a blunt reed for a stylus. The cuneiform script underwent considerable changes over a period of more than two millennia, with a gradual move toward spelling out words laboriously rather than relying on signs with a phonetic complement.

The bas-relief: opinion

- 14 I have examined in detail the relief which is the subject matter of these proceedings. My examination took two hours and 47 minutes. The stone appears to be of a limestone composition, but the lines of the sculptor's tool show that the stone is significantly harder than that found close to the Tigris River in northern Iraq.
- 15 The sculpture itself is rudimentary. The lines lack refinement and definition. There is no suggestion of muscular exaggeration either in the human figure or the horses. The design of the harnesses appears to date from a later period. The design was not in use during the reign of Sennacherib.

- 16 The cuneiform script is also problematic. By the seventh century BC, Neo-Assyrian cuneiform had been further simplified and reached close to a 'pure' form, having almost dispensed with phonetic symbols.
- 17 Lastly, I note that the dates for the work in the auction catalogue are 681–669 BC. As I have stated above, Sennacherib's reign ended in 681 BC. It is highly unlikely that the relief could be dated as late as 669. The dates given are in fact those of the reign of King Esarhaddon. I acknowledge however that this may simply be a mistake in the catalogue.
- 18 For the reasons given above, in my opinion the carving is not from the palace of Sennacherib. The stone used and the mistakes in the harness design and written forms suggest it is a reproduction from the 19th century AD, when many similar imitations were made with varying degrees of accuracy.

Statement of truth

- 19 I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.
- 20 I understand my duty to the court and I have complied with that duty. I am also aware of the requirements of CPR Part 35 and its Practice Direction, the Protocol for Instruction of Experts to give Evidence in Civil Claims and the Practice Direction on Pre-Action Conduct.

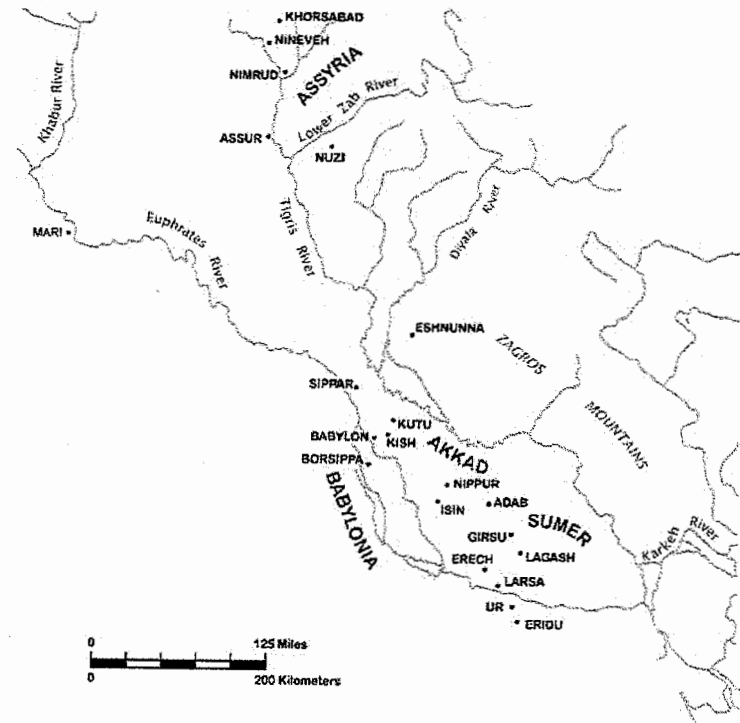
Dated: 20 May

Edwin Worthington

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E. R. Worthington

EXHIBIT 'ERWI'
MAP OF ANCIENT MESOPOTAMIA



On behalf of: Defendant
Name: C Downham
Statement: First
Exhibits: None
Date: 12 May

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

Claim No: HC186752

B E T W E E N:

ROBERT CAVENDISH & CO LIMITED

Claimant

- and -

DOWNHAM GALLERY LIMITED

Defendant

**WITNESS STATEMENT OF
CHANTELLE DOWNHAM**

- 1 I am Chantelle Downham of 26 Pleasance Lane, Putney and I am the owner of Downham Gallery, the defendant in this action.
- 2 Late last year I bought a bas-relief stone carving which had been described in an auction catalogue as being late Assyrian (681–669 BC), depicting a soldier and two horses. It had apparently been used as a model for much larger reliefs at a palace in Nineveh in modern day Iraq.
- 3 I specialise in the works of contemporary British artists such as Hepworth, Caro and Moore. However, I had been to the galleries containing Middle Eastern sculpture at the National Museum and had recently been to the exhibition there on Babylon, where I had been taken by the quality of the carving and the beautiful stories they portrayed. Ancient sculpture is becoming more and more desirable amongst collectors, and is seen as something of a status symbol. It can really set off a room decorated in a minimalist style, with the correct

lighting. I believe that a very good piece can fetch several hundred thousand pounds these days. This one caught my eye.

- 4 Clifton Barrett, the auction house from whom I bought the carving, were reputable and reliable. On 14 November, I took my friend Jonathan Hardwick with me when I viewed the sculpture.
- 5 We looked at the carving for about half an hour. Jonathan is an expert on Middle Eastern architecture. He had heard of the palace of Sennacherib at Nineveh and told me that there was a dealer in Maida Vale called Robert Cavendish who specialised in artefacts from Mesopotamia.
- 6 Jonathan said that the palace of Sennacherib was well known but that no artefacts from the site had come up on the open market for a long time. Most of the known pieces had found their way into museums and galleries. He said the Athénée Museum had a particularly fine collection.
- 7 On the strength of what Jonathan had said and on the reputation of the auction house I offered £790,000 for the bas-relief. It was delivered to my rooms in Brook Street about a week later and displayed in the gallery. I had it insured for the same amount. The insurance company told me to take good digital photos of the sculpture. My assistant Jane Lovering did that for me.
- 8 In late November I telephoned Mr Cavendish. I did not give any details. I just said I had a Mesopotamian sculpture for sale. He was quite excited and said, 'I'd like to see it tomorrow'. I did not describe it to him. I did not need to. He almost bit my hand off.
- 9 He was there at 9:30 am apologising because he had misjudged the time. Jane Lovering was with me. Jane has been my assistant for a number of years. We had taken the carving down and it was leaning against the wall on the counter. I remember Mr Cavendish as a slightly older man with a posh voice.
- 10 When he saw the stone relief he said, 'Do you like it, Mrs Downham?' I replied 'Yes', and he quickly said, 'It has all the features Mrs Downham. Symmetry of composition, precise rendering of detail and profiling of the figures, while lacking any backgrounds of scenery'. I said, 'You're rather taken with it, aren't you? Would you like to get it checked out?' I always try to be fair with my customers. I said it was £850,000 but that two other people were extremely interested. That was not true but I had stuck my cheque book out to get the sculpture. He sniffed and said 'I'll give you £820,000 here and now'. I waited a few moments, had a private chat with Jane (about her aunt's birthday) and then said, 'Okay'.

- 11 He said he would pay within 24 hours by BACS transfer and I said he could have the carving as soon as I was paid. It would be sent by special delivery. We shook hands. He looked pleased with himself.
- 12 The money arrived in my account as promised and I sent the relief to Maida Vale the following day. I did not hear from Mr Cavendish for over a week.
- 13 He called me at the gallery and said he wanted his money back. I was stunned. I told him he had been satisfied that it was okay and he knew more about these artefacts than I did. I told him that I did not like his manner and that it was a fair sale between two specialist businesses or words to that effect. He said he was going to see his lawyer and I replied, 'It's your problem now'. He hung up.
- 14 I know what the cleaner, Emily Steadman, said about my brother, Terry. I called him at his home in Durban, South Africa. He said he had called into the gallery and spoken to the cleaner. I was in Prague at the time. He said that all he told the cleaner was to leave me a message that he had called in.
- 15 I have since had photographs of the relief examined by an expert in Paris and he has declared it to be genuine. I still believe it was genuine.

Dated: 12 May

I believe that the facts stated in this witness statement are true.

C Downham

.....
Chantelle Downham

On behalf of: Defendant
Name: C Fournier
Statement: First
Exhibits: 'CF1'
Date: 21 May

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

Claim No: HC186752

B E T W E E N:

ROBERT CAVENDISH & CO LIMITED

Claimant

- and -

DOWNHAM GALLERY LIMITED

Defendant

**DEFENDANT'S EXPERT WITNESS REPORT
BY CHRISTOPHE FOURNIER**

To the Court

I, Christophe Fournier, BA PhD, Professor of Middle Eastern Antiquities, University of Montmartre, Paris, say as follows:

Qualifications and experience

- 1 I am a senior curator in the department of Near Eastern Antiquities at the Athénée Museum in Paris. I have been the Professor of Middle Eastern Antiquities at the University of Montmartre for 20 years. After graduating I took a PhD. The title of my thesis was 'Austen Henry Layard and the great mound of Kuyunjik'. Whilst in my current role, I have given evidence in 27 trials concerning art fraud, in the USA, France, Germany, Austria, Italy and the UK.

Material instructions

- 2 I have been asked for my opinion as to the provenance of an Assyrian bas-relief referred to as 'Soldier and Two Horses', and whether it is genuine. I should say that I do not have the slightest doubt that the carving originates from the palace of Sennacherib at Nineveh.

Context

- 3 The Athénée Museum is very fortunate to hold many of the original drawings prepared by Austen Henry Layard, one of the principal excavators of Nineveh and the discoverer of Sennacherib's palace in 1849.
- 4 Nineveh is situated on the eastern bank of the Tigris in ancient Assyria, near the modern-day city of Mosul, Iraq, which lies across the river. Nineveh's mound-ruins, Kuyunjik and Nabi Yunus, are located on a level part of the plain near the junction of the Tigris and the Khosr Rivers. This extensive space is now one immense area of ruins overlaid in parts by new suburbs of the city of Mosul.
- 5 In 1847 the young British adventurer Sir Austen Henry Layard explored the ruins. In the Kuyunjik mound Layard rediscovered in 1849 the lost palace of Sennacherib with its 71 rooms and colossal bas-reliefs. He also unearthed the palace and famous library of Ashurbanipal with 22,000 cuneiform clay tablets.
- 6 Layard illustrated many of the antiquities he uncovered, and subsequently published them in various works, including *Illustrations of the Monuments of Nineveh* (1849). Drawings of many of the tablets and bas-reliefs prepared by Layard are within the collections under my curatorship, and formed the basis of my PhD thesis.

Materials reviewed

- 7 I have read the expert report of Edwin Worthington and I have seen 10 digital photographs of the carving in question. Prints of two of those photographs are attached at 'CF1'. I understand that the carving has been stolen and is no longer in the custody of the claimant. However, for reasons which I hope will become clear, I had no need to examine the carving itself. In any event, I now know it has been destroyed. In all, I spent four hours examining the photographs. I used the zoom facility on my computer to see the bas-relief in detail.

Opinion

- 8 I have compared the digital photographs of the bas-relief (which were sent to me by Mrs Downham) with the drawings made by AH Layard, now held at the Athénée Museum. I believe I have matched the carving in question to an illustration of the carved stone tablets in the state rooms of the palace of Sennacherib.
- 9 The similarities are striking. The sculpture does indeed lack some refinement and definition, but this was typical of the later Assyrian period when character and sharpness were lost instead of gained by a softer gradation of the surfaces. It is also correct to state that this was a model. The master sculptors appear to have executed models on a small scale both in terracotta and in stone, which were used by the workmen to whom the bulk of the execution was delegated. The production of bas-reliefs was so immense, at the time of the construction of any royal palace, that some such method as this was required in order to ensure uniformity of style and type in the different parts.
- 10 The cuneiform script appears to match that recorded by Layard, although the sketch is insufficiently detailed to be certain. Contrary to what Mr Worthington says, the mixed method of writing, that is a combination of ideographic and phonetic writing, continued through to the end of the Babylonian and Assyrian empires. The last known cuneiform inscription was written in 75 AD.
- 11 It is correct that the dates recorded in the auction catalogue are those of the subsequent king, Esarhaddon. However, we believe that work on Sennacherib's palace continued after his death. It is not known who dated the work for the auction catalogue and I agree that little weight should be attributed to it.
- 12 With due deference to young Mr Worthington, to my knowledge he has never set foot in Iraq. He is a successful and respected dealer in Middle Eastern antiquities but as a result of the very broad range of objects he handles he cannot be considered as an expert in the excavation of the Kuyunjik mound at Nineveh.
- 13 I am satisfied that the digital photographs of the carving I have studied are those of the genuine bas-relief from the palace of Sennacherib at Nineveh as described and illustrated by AH Layard, and I do not need to see the carving to assure the court that my opinion is sound.

Statement of truth

14 I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

15 I understand my duty to the court and I have complied with that duty. I am also aware of the requirements of CPR Part 35 and its Practice Direction, the Protocol for Instruction of Experts to give Evidence in Civil Claims and the Practice Direction on Pre-Action Conduct.

Dated: 21 May

Christophe Fournier

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Christophe Fournier

**EXHIBIT 'CF1'
PHOTOGRAPH 1**



**EXHIBIT 'CF1'
PHOTOGRAPH 2**



IN THE HIGH COURT OF JUSTICE Claim No: HC186752

QUEEN'S BENCH DIVISION

B E T W E E N:

ROBERT CAVENDISH & CO LIMITED

Claimant

- and -

DOWNHAM GALLERY LIMITED

Defendant

PARTICULARS OF CLAIM

- 1 At all material times:
 - a The Claimant company is and was in the business of dealing in art from premises in Pottergate, Maida Vale; and
 - b The Defendant company is and was in the business of dealing in art from premises in Brook Street, London.
- 2 On 28 November Chantelle Downham, acting on behalf of the Defendant, telephoned Robert Cavendish of the Claimant and orally represented that a certain stone carving described as an Assyrian bas-relief ("the Carving") was from the lost palace of Sennacherib in Nineveh in northern modern Iraq, showed a soldier and two horses and dated from the period 681-669 BC ("the Representation").
- 3 The Representation was made with the intention of inducing the Claimant to enter into a contract with the Defendant to buy the Carving.
- 4 In reliance upon and induced by the Representation the Claimant entered into an oral contract on 29 November at the Defendant's premises with the Defendant by which the Claimant, acting through Robert Cavendish, agreed to buy and the Defendant, acting through Chantelle Downham, agreed to sell the Carving for the sum of £820,000 ("the Contract"). The Defendant was acting in the course of its business.

- 5 The Representation set out in paragraph 2 above was an express term of the Contract.
- 6 Further or in the alternative, it was an implied term of the Contract, pursuant to section 13(1) of the Sale of Goods Act 1979 (as amended), that the Carving would correspond with the description in the Representation.
- 7 The Claimant paid the purchase price of £820,000 on 4 December and the Carving was delivered to the Claimant on 5 December.
- 8 In fact the Representation was false and the Defendant was in breach of the Contract in that the Carving was not late Assyrian but a 19th-century reproduction.
- 9 As soon as Mr Cavendish of the Claimant discovered the true facts he demanded the return of the purchase price of £820,000 and rescinded the Contract in a telephone call to Mrs Downham of the Defendant on 10 December.
- 10 As a result of the matters set out above, the Claimant has suffered loss and damage.

PARTICULARS OF LOSS AND DAMAGE

The difference in value between the Carving as represented (£820,000) and its actual value (£3,000): £817,000.

- 11 Further, the Claimant claims interest pursuant to section 35A of the Senior Courts Act 1981 on the amount found to be due to the Claimant at such rate and for such period as the Court thinks fit.

AND THE CLAIMANT CLAIMS:

- 1 Rescission of the Contract; and
 - 2 Return of the sum of £820,000
- Alternatively:
- 3 Damages in lieu of rescission; or
 - 4 Damages for misrepresentation; or
 - 5 Damages for breach of contract; and
 - 6 Interest on 2, 3, 4 or 5 above pursuant to section 35A of the Senior Courts Act 1981 to be assessed

STATEMENT OF TRUTH

I, Robert Cavendish, believe that the facts stated in these Particulars of Claim are true.

Signed : *Robert Cavendish*

Dated: 24 January

Served this 30 January by Sewell Barber LLP, Solicitors for the Claimant, of 14 Park Row, London SE3 7HN.

IN THE HIGH COURT OF JUSTICE Claim No: HC186752

QUEEN'S BENCH DIVISION

B E T W E E N:

ROBERT CAVENDISH & CO LIMITED

Claimant

- and -

DOWNHAM GALLERY LIMITED

Defendant

DEFENCE

- 1 The Defendant admits paragraph 1.
- 2 The Defendant denies paragraph 2. The Defendant, by and through its agent, Mrs Chantelle Downham, telephoned Robert Cavendish of Claimant before his visit to the gallery to tell him that the Defendant was offering the carving referred to in paragraph 2 of the Claimant's Particulars of Claim ('the Carving') for sale. Mrs Downham referred to the Carving only as a 'Mesopotamian sculpture'. She did not describe the Carving to Mr Cavendish or give any other details.
- 3 The Defendant denies paragraph 3. No such representation was made, either during the telephone call or when Mr Cavendish visited the premises.
- 4 The Defendant denies that part of paragraph 4 which states that any representations were made which the Claimant was entitled to rely on or which induced the Claimant to purchase the Carving. The Defendant admits the balance of paragraph 4.
- 5 The Defendant denies paragraph 5 for the reasons set out above in paragraphs 2 and 4 of this Defence. Mr Cavendish of the Claimant was more expert than the Defendant or its agent Mrs Downham. The authenticity of the Carving was not a term of the contract.
- 6 The Defendant denies paragraph 6. Mr Cavendish of the Claimant was more expert than the Defendant on the authenticity of the

Carving, and therefore could not have relied on statements or representations made by the Defendant. The provision referred to does not apply.

- 7 The Defendant admits paragraph 7.
- 8 The Defendant denies paragraph 8. An expert, Christophe Fournier, has considered the authenticity of the Carving. The expert's opinion is that the Carving is from the palace of Sennacherib in Nineveh, modern day Iraq.
- 9 The Defendant admits that Mr Cavendish of the Claimant asked for the purchase price of the Carving to be returned in a telephone call with Chantelle Downham, the Defendant's agent, on 10 December. The balance of paragraph 9 is denied. The Carving is late Assyrian and from Nineveh. Alternatively, the Claimant was not entitled to rely upon, nor did the Defendant cause to be made, any statements or representations about the authenticity of the Carving.
- 10 The Defendant denies paragraph 10. The Carving was late Assyrian and from Nineveh, or alternatively the Claimant should not have relied on any statements or representations made by the Defendant by and through its agent, Chantelle Downham, regarding the authenticity of the Carving. No actions or conduct of the Defendant caused loss or damage to the Claimant.
- 11 The Defendant denies the Claimant's Particulars of Special Loss.

STATEMENT OF TRUTH

I, Chantelle Downham, believe that the facts stated in this Defence are true.

Signed: *C Downham*

Dated: 28 February

Served this 28 February by Hartwell Roberts Crisp, Solicitors for the Defendant, of 67 Foster Road, London EC4M 8BZ.