

The Contract

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All works in the exhibition require the use of THE ARTIST'S RESERVED RIGHTS TRANSFER AND SALE AGREEMENT written in 1971 by Robert Projansky and Seth Siegelau

WHEN ARTISTS SEEK ROYALTIES ON THEIR REALES

By ROBERTA SMITH

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A LITTLE BIT OF HISTORY WAS made earlier this month - and a little bit was resurrected, too -when "On Social Grease," a 1975 work by the Conceptual artist Hans Haacke, was sold for \$90,000. It was the first time that a work by Mr. Haacke had ever come up at auction, and the transaction, part of the sale of the Gilman Paper Company collection of Minimal and Conceptual art, set a price record for the artist. Consisting of six magnesium wall panels reminiscent of corporate plaques, each quoting some prominent business or political leader on the usefulness of the arts to business, "On Social Grease" went for more than double the Christie's estimate of \$30,000 to \$40,000 or, for that matter, any previous price paid for Mr. Haacke's work.

But, even more unprecedented was the fact that "On Social Grease" was subject to a "transfer agreement and record," or, in art- world parlance, an artist's contract, a document that, like much of the work in the Gilman sale, was the product of the esthetic and political ferment of the early 1970's, and in particular of the activist atmosphere around the now-defunct Art Workers Coalition. The contract, which was primarily the work of Seth Siegelau, an art dealer who organized some of the first Conceptual art exhibitions, and Robert Projansky, a lawyer then active in the art world, attempted to place the artist's post-sale connection to his or her work on a more permanent footing.

In effect, it suggested that this connection overrode all others, proposing what Mr. Haacke calls "a partnership between the maker of the work and the person who eventually owns it." The contract stipulated a royalty fee: 15 percent of the profit from any resale of the work would go to the artist. It also stated that the artist must approve of loans to any group exhibitions and that the work could not be altered in any way. It permitted the artist to borrow the work for exhibitions of his own choosing (Mr. Haacke's contract stipulated 60 days out of every five years), and, of course, it enabled artists to keep track of a work's current location. (This last point is stickier than generally assumed, especially where it concerns secondary market dealers who often prefer to keep their clients' identities secret.) The artist's contract was always viewed as something of a double-edged sword: good for artists in principle, but bad for business in fact. Nonetheless, times have changed since the phenomenon emerged nearly 20 years ago and the sale of the Haacke work could come to represent a watershed in the document's short and spotty history. The Projansky contract, as it was sometimes called, was printed as a form with fill-in blanks so that artists could adjust it to their individual needs. Controversial from the beginning, it was viewed as unenforceable, time-consuming and detrimental to sales - all of which proved to be true to varying degrees. Says Mr. Projansky, "We never expected this to become the standard of the art world, but we wanted to raise the subject and maybe influence some legislation."

It had some influence. In the late 1970's, California passed a resale law that entitles any artist or any artist's estate to 5 percent of the total price on the resale of his work in the state. This law, a kind of added tax that doesn't broach the "partnership" Mr. Haacke has in mind, is observed only fitfully by art dealers in California, although auction houses adhere to it.

In general, the contract itself was not an idea that caught on with any universality. It has been used by only a few artists, most consistently and completely by Mr. Haacke himself. The French artist Daniel Buren also uses it, according to his dealer, John Weber (who is also Mr. Haacke's dealer) - but he uses it without the 15 percent

resale clause, primarily to control the exhibition and installation of his exceedingly site-specific work. And both Edward Kienholz and Carl Andre have been known to use similar contracts intermittently.

Like many other artists, Mel Bochner, whose work was also part of the Gilman collection and its sale, remembers being opposed to the contract - even though he "liked the idea of trying to protect artists' rights" - primarily because it seemed unenforceable. "The last thing I was interested in," said Mr. Bochner, "was the formation of more bureaucracy, of another kind of art police. Also, I didn't want to be the custodian of my own past." Mr. Bochner also voiced his suspicion of the idea that "everything was going to increase in value forever," and, giving the argument a little twist, said he felt that if artists wanted to share in the profits, they should be prepared to pay the collector a percentage of any decline in value if the work sold for less than its original price.

The artist Jackie Winsor, who produces post-Minimalist sculptures that are heavy, painstakingly made and surprisingly fragile, used the contract throughout the 1970's, for a total of 15 sales (there have been two resales), and then stopped using it once her prices began to rise. In the beginning especially, when she was selling her sculptures for almost less than it cost to make them, Ms. Winsor seems to have used the contract as a device to establish, in her words, "my sense of their own value" and as a way "to get people not to be stupid with them," and it usually worked.

"When the collectors became engaged with me on that level," she says, "by the time they signed, I had such a sense of their integrity that it almost didn't matter if they signed or not." Says Ms. Winsor of her decision to discontinue using the contract: "Once the pieces got more expensive, the value was culturally much clearer. If it costs more, it's insured; if it's insured, it's handled better; it's crated, and so forth." Ms. Winsor and her dealer, Paula Cooper, admit, as does Mr. Haacke, that some sales were lost because of their insistence on using the contract. They also recall - despite the apparent simplicity of Siegelau-Projansky form - the endless amounts of paperwork and negotiating time that went into each sale, factors that made its use impractical. Thus, by the late 1970's, the artist's contract was, with few exceptions, out of sight and out of mind in New York, until the Gilman sale inadvertently brought it back and put it to its first really public test. During the public viewing at Christie's, the entire contract was placed on a pedestal next to "On Social Grease," where it resembled nothing so much as an autonomous work of Conceptual art in its own right.

Not surprisingly, Christie's seemed a bit wary of the situation. At lot No. 60, "On Social Grease" was one of the last lots of the auction, and the allusion to the contract in the catalogue suggested that it applied only to the Gilman Paper Company, rather than to all subsequent owners of the work. This in turn made Mr. Haacke and his dealer, Mr. Weber, wary; Christie's was sent a registered letter stipulating that the auctioneer must read the main clauses of the contract out loud just prior to the sale of lot No. 60. This was done to the general amusement of the audience and one art dealer was heard to comment "pass on it." However, bidding on the work was brisk and, as the final price reflects, quite competitive.

The purchaser of the work was Gilbert B. Silverman, a Detroit collector in the real-estate business who already owns several works by Mr. Haacke as well as pieces by Mr. Buren and Mr. Kienholz, and who is thus no stranger to artists' contracts. A man who feels that collectors are "only temporary landlords of the art; they don't own it 100 percent," Mr. Silverman dropped out of the bidding for "On Social Grease" at \$50,000 and then jumped back in again, deciding that "I would hate myself if I didn't get it."

The ease with which Mr. Haacke's work, contract and all, changed hands was quite gratifying for the artist and his dealer, especially in the presence of the skeptics at Christie's. Mr. Haacke says he felt "a bit of vindication" and that he is "very glad the contract was tested and is not an impediment." He will make about \$10,000 from the resale, or two-thirds of the original \$15,000 sale price. But he also expresses anger that the Gilman collection - which is unusual in its emphasis on Conceptual and Minimal art - has been disbursed, saying that it was his understanding at the time of the sale to the Gilmans that the collection would eventually be donated, intact to a museum. Additional clauses in the contract to limit such reversals would, he admits, "be shooting too high."

Whether the test that "On Social Grease" has passed with such flying colors applies to anyone else's art is hard to tell. The sale might be seen to affirm once more the official acceptance of Conceptual art and to suggest, as well, that Mr. Haacke's work can be co-opted and commodified as thoroughly as any other successful artist's. It might also be seen to imply the reverse: that Mr. Haacke's work, which takes the exploitation of culture as one of its subjects, knits so well with the thinking behind the contract that it almost becomes part of his own esthetic. Mr. Weber maintains that the desire to own a Haacke work in the first place "tacitly implies agreement with its socio-political posture."

As for the larger picture, Mr. Haacke, like Mr. Projansky, also looks for a trickle-down effect. Of the contract he says: "The more artists who use it, the more it can become part of our culture and the more it will help those who are weaker."

Ironically, in the midst of the 1980's art boom - when more artists are more successful and wield more economic power than ever before - the time would seem to be ripe for a return of the artist's contract, or at least the ideas behind it. There seem to be some trickle-down effects of this power, and perhaps of the contract itself. One example is that certain dealers, when involved with the resale of a work by an artist whom they represent, automatically pass on a portion - which can be as much as 50 percent - of the resale profit to the artist. The dealer Mary Boone has made a practice of this in resales of works by such artists as Brice Marden, Eric Fischl and David Salle. Paula Cooper, who has done the same, says, "It's fair and, if you represent the artist, it's wise."

Still, most artists and dealers remain loathe to put anything on paper; most seek agreements with each other and with collectors built on an implicit, almost intuitive trust that they feel cannot be contractualized. Artists in demand seem able to pick and choose among galleries and even among collectors. Nonetheless, it is also clear that artists get extremely upset when their work changes hands quickly and a handsome profit is realized, without their directly benefiting from it, something that happens more and more these days. The perceived violation is complicated and conflicted, both financial and moral: It reveals the way artists can see their art as both a means of income and something akin to their own flesh and blood.

Even though artists' individual vagaries, resistance to conformity and pure self-interest have worked against its acceptance, the Projansky contract agreement - and its various permutations - accounts for the complicated connection between artist and artwork to a remarkable degree. This may be its legacy. If the artist's contract itself remains a practice whose time has not yet come, the concepts it articulates are more and more on people's minds.