

SIGNED, SEALED, AND DELIVERED?

Given the large amounts of money involved in buying and selling stringed instruments, a written contract between a customer and a luthier or dealer would seem a prerequisite – and yet many still dispense with them. **DAVID KETTLE** asks how those in the trade view contractual agreements



LET'S FACE IT: THE VIOLIN BUSINESS CAN FEEL like a dodgy world. Not the large number of reputable dealers and makers, of course, whose expertise and care players and collectors alike rely on when searching for the right instrument. But the small number of shady figures who are clearly out to defraud – by lying about an instrument's identity, for example, by refusing to pay what they owe, or by wilfully misusing an instrument entrusted to them by an unsuspecting seller. Such cases may be rare but unfortunately they tend to make the headlines. By the same token, insufficient background checks on a potential buyer can lead to unforeseen calamities if they turn out not to have the funds after all.

Of course, even between perfectly honest parties problems can arise as a result of a misunderstanding or misinterpretation of an agreement, or through less tangible notions such as trust or even friendship. Given the complexity of the

negotiations involved between buyers, dealers and makers, this is understandable: dealers have all manner of options when it comes to selling instruments on behalf of others; luthiers can be required to agree to hard-to-quantify attributes (sound, for example) on a commissioned instrument; and lengthy approval periods and payment schedules can further complicate things.

Boston-based instrument dealer and expert Christopher Reuning says his business takes a bespoke approach, employing different contracts depending on the circumstances. 'For a consignment agreement, generally speaking you can have a contract with either a net amount due to the seller, or with the seller on a percentage, or you can do some sort of sliding-scale percentage,' he says. 'My most complicated contract was in 2012 when we sold the 1707 "Countess of Stanlein" Stradivari cello through a sealed-bid process, which involved pages and pages of contracts.'

'Some people protect themselves with a strong contract, but I often just have a verbal agreement'

NICOLAS GILLES

No contract will stop someone who is out to break the law and defraud you, but it can potentially help if a case goes to court. But does a more detailed contract automatically guarantee greater protection for all parties? And what impact do contracts and the processes of negotiation have on notions of trust, reputation and friendship, on which so much of the violin trade depends? Carla Shapreau has experience in both the lutherie and legal worlds as a violin maker and expert in art and cultural property law, and says: 'The instrument trade has historically operated on trust, and violin and bow makers and others are often uncomfortable with introducing detailed legal documentation into the sales transaction. But avoiding ambiguity by agreeing to clearly written terms and conditions can eliminate unforeseen future disputes.'

It is a view shared by the London-based maker and dealer Florian Leonhard. 'When I was young an architect friend 40 years my senior told me: whatever you do always make a contract, even with your best friend, because that way you'll never have a misunderstanding.' As well as clarifying agreements with clients, he sees clearly defined contracts as a way of protecting himself. 'With a couple of hundred violins in my office I can never remember the details for all of them, and I might easily mix up two situations. You establish the principle that you want to be clear, you don't need to hide things, and people can't accuse you of lying. It's a much simpler life – and you can sleep at night.'

Nicolas Gilles, a luthier based in Montpellier in southern France, takes a more traditional approach. 'Some people protect themselves with a strong contract, but I have a more informal way of doing things,' he says. 'I often just have a verbal agreement.'



French luthier Nicolas Gilles: 'It's more important to have a good relationship with the customer'

EMILIE BILLOTTO

Email is good, because then things are written down – I can look back on what we agreed and when we agreed the instrument would be ready. But most of the time people ask me to make an instrument because they know and like my work already.'

REUNING POINTS TO THE FINE LINE between ensuring paperwork is watertight and maintaining good relations with buyers. 'We've seen problems in the violin business in the past when contracts were not done properly, so it's common sense >



London-based maker and dealer Florian Leonhard warns against too much small print

MAXIM REIDER

that when you're engaged in financial transactions you should do things thoroughly. But the amount of detail contracts go into depends on the circumstances. In most cases you're dealing with people in good faith, and you want to cover the main points of the agreement. Things can get ridiculous – going into all the tiny details can be profitable for lawyers but not get you anywhere.'

Leonhard, too, warns of the dangers of getting bogged down with the small print. 'Some contracts are 50 pages long, but I never wanted that. My approach is clarity and simplicity – after all, musicians, collectors and luthiers are not business lawyers who can cope with hundreds of pages of small print.' He adds that using a contract as part of an agreement should not be seen as an indication of mistrust. 'All humans make errors and we might recall something in a different way from someone else. In order to avoid that, the more you trust someone the more you should write things down because you don't want to destroy that trust with a misunderstanding.'

Many transactions in the string world take place between people who know one another. The majority of Gilles's customers are people he knows or to whom he has been recommended by previous clients. 'Most of the time you have a connection with them so it's sometimes like dealing with your family,' he says. Rarely has he made an instrument for a complete stranger, but when he does he is not afraid to carry out background checks. 'I have to be a bit of a detective, but with Facebook or Google you can find out a lot straight away. It's a good way to see if someone is serious, where they play and whether they know someone I already know.'

Carrying out due diligence on potential buyers is an essential part of a maker's or dealer's responsibilities, agrees Leonhard: 'No fund manager would be so foolish as to deal with just anyone who comes to them. It's the same if I'm thinking of selling someone an instrument – I have to do some background

research on them. That helps me to stay away from disastrous scandals. We all hear stories of somebody going to a big sale and supposedly buying an important violin, but then it all goes wrong because nobody has bothered to look into who the buyer is. Everybody hears about it and it reflects badly on the company involved.'

Indeed, a dealer's hard-earned reputation can be damaged if a potential buyer turns out not to have sufficient funds for their purchase after all, or if they capriciously change their mind or make unreasonable demands. Carrying out background checks on a potential customer before a sale can help sellers avoid these and any number of other hazards and complications.

Background checks are also essential when selling an instrument on behalf of a client. 'If we're going to sell a Stradivari, for example,' explains Reuning, 'we'll never offer it without having assurance that the seller has got clear title. If an unknown person walks into the office

with a fine violin, of course we'd have to do some due diligence to ensure it wasn't stolen.'

MANY VIOLIN DEALERS have established relationships with law firms to help with the finer details of their contract work. For Reuning, handling agreements through legal experts is simply a part of the process: 'For whatever issues come up, we have the ability to have someone look at the right contracts for us. And if we're dealing overseas, for example, we have several lawyers in Europe that we would use.' Leonhard says his firm regularly deals with lawyers: 'The more specialised your field, the higher up you have to consult with law firms,' he says, but adds that lawyers are not always necessary to the contractual process. 'The best advice I'd give is to avoid lawyers,' he says. 'Prepare with a good contract and due diligence, and then we don't need the law.'

But it's not just the makers and dealers who have to protect themselves from suspect buyers; due diligence works the other way round too, as Shapreau explains: 'From the buyer's perspective, beyond sound and price there are three principal areas that may give cause for concern in a sales transaction involving instruments: authenticity, provenance and condition. The due diligence of the buyer regarding these issues will vary depending on the value of the instrument and the expense of the investigation.' Of course, it may cost a significant sum to get an instrument's identity and background checked out, but if a violin is worth millions, that's an essential investment.

'Authenticity is most often established by expert opinion,' Shapreau continues. 'An instrument's documentary history may also provide useful evidence of authenticity, such as previous certificates of authenticity or bills of sale. If the value



Boston-based dealer and expert Christopher Reuning: 'The best advice I'd give is to avoid lawyers'

of the instrument warrants it, scientific analysis may also be useful, such as dendrochronology or CT scan.' She also suggests getting a second opinion on an instrument's authenticity. Provenance – an instrument's historical chain of ownership and possession – can often be neglected in agreements between buyers and sellers, says Shapreau, but checking certificates, appraisals, letters, bills of sale and other records connected with a violin can uncover problems that may come back to haunt the purchaser. 'Buyers are often expected to pay significant sums for instruments without knowing anything about the instrument's past. Buying a violin with a theft or other ownership defect in its history can subject the buyer to liability.'

Reputation is a concept that is difficult to define and even harder to control, yet is immensely important to an instrument dealer's success. For Reuning, maintaining good records is as important as his expertise and judgement of the instruments he handles. 'If you don't provide proper contracts to your clients it reflects badly on you,' he says. 'You have to have your paperwork in order. There are a lot of people in our business who will try to sell instruments without having proper contracts and that can lead to disaster, damaging their reputation and that of the business.'

Gilles, who does not use detailed written contracts, believes his reputation is built on both his work and the relationships he establishes with the players who buy his instruments: 'Some people need contracts to feel safer because they feel more things

'Going into the tiny details can be profitable for lawyers, but not get you anywhere'

CHRISTOPHER REUNING

are covered by them. I think it's more important to have a good relationship with someone and develop trust. I prefer it if I can be confident with customers, and if they can be confident with me.'

THERE'S NOTHING WRONG with being flexible within the strictures of a contract, of course, and changes may be necessary even at a late stage. Stringed instruments are emotional assets as much as they are financial investments. 'If someone is very much in love with an instrument, we want to be flexible to give them the opportunity to acquire it,' says Leonhard. Likewise, if things don't work out there's nothing to stop you breaking the rules of a contract if doing so is mutually beneficial to all parties and if everyone agrees. 'We normally have a four-week break clause that gives a seller time to retract an instrument if they change their mind about selling it,' says Leonhard. 'But if someone changes their mind and asks for their instrument back immediately, I would return it right away. If people feel you're not taking advantage of them, you win more of their trust.'

There are no fail-safe guidelines when it comes to introducing contractual agreements to the process of buying and selling stringed instruments, nor any firm rules. Just lots of options, differing circumstances and questions of trust and reputation. Understanding the complexities of the issues involved in buying and selling, and the myriad options available to all parties involved, is a valuable step towards avoiding misunderstandings – and staying away from the crooks. ■