

NEW YORK

# She Can't Be Bought

**You want a Mehretu? A Hirst? A Koons? Fat chance. A much-watched lawsuit is exposing the painful truth of this overheated market: It takes more than money to buy a hot piece of art.**

By [Christopher Mason](#) Published May 21, 2005



**The Artist:** Julie Mehretu in front of a work-in-progress. She makes her large paintings by projecting one of her drawings onto a canvas, then tracing the lines.  
(Photo: Joseph Maida)

In January, one of the art world's brightest young stars, Julie Mehretu, was put on display in a highly unusual way—on the stand in a Manhattan courtroom, where she'd been called to testify by her dealer, who's feuding with a collector over her work. Born in Addis Ababa to an Ethiopian father and a white mother from Florida, Mehretu currently lives in Harlem with her girlfriend, fellow artist Jessica Rankin, who accompanied her to court, visibly pregnant with the couple's first child.

The two women, in their scuffed construction boots and jeans, seemed out of place and a little bewildered. But in a way, everyone was. The suit was brought by Jean-Pierre Lehmann, a leading collector of cutting-edge contemporary art who was there to assert his right to buy Mehretu's paintings. Yet she testified that before this case, she'd been completely unaware of Lehmann's existence, even though he was one of her most passionate fans.

During a courtroom break, Lehmann looked hurt: "She's never heard of me. I can't understand why."

*Lehmann v. The Project Worldwide* is the first lawsuit ever to come to court over a collector's thwarted access to contemporary art. The case hinges on an unusual agreement: In February 2001, art dealer Christian Hays, who wore an electric-blue suit and cowboy boots to the trial, approached Lehmann, a 66-year-old French-Swiss collector who spends more than \$1 million a year on contemporary art for his homes in New York, East Hampton, and Gstaad. Out of the blue, Hays asked him to invest \$75,000 in his Harlem gallery, the Project, now at 37 West 57th Street and known as the Project Worldwide. In exchange, Lehmann would receive a 30 percent discount on his purchases from the Project until he had racked up an aggregate of \$100,000 in discounts.

To sweeten the deal, Hays also offered Lehmann a right of first refusal on any work by any artist sold by the gallery. The arrangement went awry, according to Lehmann, when Hays declined to give his investor the one thing he kept asking for—and that other buyers seemed to be getting: large paintings by Mehretu, 34, whose exuberant abstract works map real and imaginary cities in layered flickers of ink and broad strokes of color. Her first big break came with *P.S. 1's* first "Greater New York" show, in 2000, a launch pad for young talent (the second edition opens March 13). Then *Empirical Construction*, one of her largest works, was included in last year's Whitney Biennial and snapped up by the [Museum of Modern Art](#), where it is prominently displayed right around the corner from Barnett Newman's obelisk. Now her art is very much in demand.

The courtroom battle has become an object of fascination in the art world. That may be because it reflects an increasingly common collector's predicament—at its heart, it's about someone's being denied the opportunity to obtain what he can patently afford. The contemporary-art market hasn't been this overheated since Soho circa 1989. Nowadays, hedge-fund billionaires who stroll into Chelsea galleries seeking work by Damien Hirst, Jeff Koons, or Cecily Brown quickly discover that money alone won't help them get it. There is, more than ever, a waiting list, and more to the point, a pecking order within the list, which vaults some collectors above others.

Jean-Pierre Lehmann, of course, is no hedge-fund upstart; a discreet private investor, he's been collecting art for three decades, and his wife co-owns a leading Chelsea gallery, [Lehmann Maupin](#). But in this instance, he might as well have been one. Unlike other stymied collectors, however, he decided he had grounds to sue.

"This case shows the length a collector would go to secure themselves choice material," says Sandy Heller, an art consultant to some of New York's top hedge-fund managers. "Julie Mehretu's work looked amazing at MoMA. If I were told I was going to get something by her and didn't, I'd get pretty pissed, too."

**When** did collecting art become such a maddening exercise for wealthy collectors, akin to having to go before picky co-op boards only to be rejected over and over again? Even Rembrandt and Dürer had waiting lists. But "lists for younger artists are a much more recent phenomenon," says Chelsea dealer [Barbara Gladstone](#). "It's a function of this excitable market." People on Wall Street are seeking contemporary-art trophies—and waiting lists make works even more enticing to obtain. It sounds familiar, and naturally everyone wonders when this bubble will burst. Right now "feels like the last days of the Roman Empire," says private-art curator Todd Levin. "Compared to the eighties, it's a much broader group with much more money"—though some of the people are the same ones who bought art the last time around.

During her brash ascendancy as the queen of Soho in the eighties, art dealer [Mary Boone](#) succeeded in manipulating market demand by setting up waiting lists for such neo-Expressionist painters as Jean-Michel Basquiat, Julian Schnabel, Ross Bleckner, and Eric Fischl. (It was a far cry from the dark ages of the sixties, when dealer Irving Blum struggled to find buyers for Warhol soup cans, which now fetch millions at auction.) Operating out of a former garage on West Broadway, Boone was the first gallerist to require aspiring collectors to purchase work by artists before it was even created—a move that exposed her to criticism that she sometimes persuaded artists to part with substandard work to meet the frenzied demand she'd helped stoke.



Boone's system finally came undone with the collapse of the art market in 1990. A Fischl she had sold for \$1.4 million at the peak of the eighties was resold in the early nineties for \$167,500. (Fischl's market has since rebounded; he's now represented by Larry Gagosian.) "Waiting lists disappeared during the early nineties, when the market was soft," says Lorinda Ash, an art consultant. "They're back with a vengeance."

Today, demand far exceeds supply for such works as the slyly satirical paintings of John Currin; Lisa Yuskavage's pictures of enormous-breasted femmes fatales; Kai Althoff's multimedia

**The Collector:** Jean-Pierre Lehmann at home in front of a Lisa Yuskavage painting.  
(Photo: Joseph Maida)

evocations of the mysterious and macabre; the strangely beautiful retro-futuristic paintings of Neo Rauch; and Luc Tuymans's paintings of child abuse, Nazism, guilt, and scrofulous pigeons.

"Lisa is the ultimate of wait lists, because she's not at all prolific," explains her New York dealer, [Marianne Boesky](#). "She makes five big paintings every two years, maybe." (Jean-Pierre Lehmann, as it happens, has a large number of works by Yuskavage.)

Over at Gladstone's gallery on West 24th Street, Sarah Lucas's *God Is Dad*, a sculpture composed of a pair of nylon tights, a wire hanger, and a lightbulb, may not be everyone's idea of fine art. But it's priced at £65,000 (in deference to the artist's London bank account). And "I have a long wait list because it's Sarah's first New York exhibition in eight years," Gladstone says. She declines to say how long. "It's not a bakery. She's popular, let's just say that."

At the January 22 Cecily Brown opening at [Gagosian's](#) stadium-size gallery, there was a lot of conflicting chatter about the list for the British abstract artist's paintings, priced between \$70,000 and \$130,000. "I've heard there are 200 on Cecily's list," an art adviser said in shock. "I've been having a running joke with my husband," a dealer replied. "Last week we heard that there was a list of 137 for Cecily, and he said, 'Today I met Mr. 132.' It's absurd. There's no way to validate those numbers."

Most dealers will discuss which artists have waiting lists, but usually not who's on them, or even how many people are in line. Consequently, many in the art world dismiss the lists as so much hype; they certainly exist, but they're grossly inflated. Nonetheless, this is a market in which collectors are even queuing up for works by kids who are still in art school—like Alison Fox, a painter in Hunter's grad program whose current one-woman show at the East Village's ATM gallery sold out before opening night, according to gallery owner Bill Brady. He's quick to add that the British collector Charles Saatchi and the [Guggenheim](#) were among early buyers for the paintings (priced at \$1,400 to \$5,000), and that Fox already has a twenty-person waiting list for new work. "My list isn't full of speculators," he insists.

"I was flabbergasted," Lehmann told the court. "I'd asked for a year and a half for a work by Julie Mehretu. and I saw that people I'd never heard of owned them."

Saatchi is among those collectors who can jump to the top of a list, no matter who the artist is. Joining him there is anyone with a well-regarded private (but open to the public) museum, like Eli Broad in California, or the Rubell family, whose recently expanded space is in a former drug-seizure warehouse in Miami, or Marieluise Hessel, who is building an impressive contemporary collection for Bard College. They're followed by those who've built private collections, like Dakis Joannou in Athens, who owns "probably more Jeff Koons than anyone else in the world," says art consultant Mark Fletcher. Si Newhouse, Michael Ovitz, Peter Norton, and Agnes Gund are similarly privileged buyers. "If a collector with a fine reputation—say, Si Newhouse—is interested," says Boesky, "then I'll have to prioritize that client over a wonderful person who might have been waiting longer. And that causes tremendous angst."

What that means is that an ordinary rich person can get left in the lurch. The system is openly discriminatory, but not without its logic. In gallery parlance, a work of art is not so much sold as "placed" in a museum or collection that is likely to enhance the career of the artist. For dealers, it's a way of controlling what happens to art after they've parted with it—hence, of manipulating its value. Dealers often rejoice, and

collectors despair, that the art world is the last big unregulated business in America. Prices can be altered by steering works to the right people in the right places. And what dealers really don't want to see is a work get flipped at auction.

Yet it's precisely those auctions that have caused such a spike in the value of contemporary art. The frenzy's being fueled by the discrepancy between the primary market price for works of art sold in galleries and the dizzying prices they're likely to reach in the secondary market, particularly at auction. Take Kai Althoff, whose paintings are sold by Anton Kern, his New York dealer, for \$10,000. "They're literally worth ten times that on the secondary market," a European dealer observes.

So why aren't dealers charging more themselves? "If we started jumping our prices to match the auction market, we'd be faced with a limited group of collectors who'd be willing to buy," says Boesky. "You never want to [then have to] *lower* your prices. So it's better to have work that's in consistent demand." Dealers say they like to raise prices according to "fundamentals"—for instance, if an artist has a museum show. Still, Boesky admits, auction prices do play a role in setting dealer prices. When Takashi Murakami paintings that Boesky sold for \$60,000 started fetching \$600,000 at auction, she conferred with his other galleries around the world and agreed to raise prices to \$250,000.

Galleries often make clients promise not to resell work at auction, arguing that it can put an artist's career (and the gallery's investment in that career) at risk if the piece fails to sell. Conversely, if it sells for too much, other collectors may be inspired to dump work by the same artist at auction, with similarly unpredictable results. Dealers prefer that owners come back to them with works to resell, privately.

"I remember when we bought an [Andreas] Gursky from [Matthew Marks](#), and they were so anxious that the piece would end up at auction," says Abigail Asher, a partner in leading art advisory Guggenheim Asher, referring to the German photographer. "We assured them this was one of our best clients, and they would never do that in a million years."

"The beauty of the art world is that it's the last handshake business," says dealer [David Zwirner](#). "You have to trust the other guy." Such trust, though, can be misplaced. Two years ago, when a collector purchased a Murakami mushroom sculpture from Boesky, the dealer warned her it would take time for the piece to be fabricated in France. It wasn't long, however, before the collector began calling the gallery every week, yelling, "Where's my mushroom?"

"She tortured me for two years," Boesky says. But when the piece was finally shipped to New York, Boesky discovered that the collector had arranged for it to be sent directly to Christie's without even an overnight stay in her apartment. "It was a gross thing to do," she says. "I certainly won't work with her again."



**John Currin**  
Waiting list at Gagosian  
Gallery: "People love to speculate, but we don't

One of the more contentious dealer-collector disputes of recent years involves Barbara Gladstone and Daniel S. Loeb, a 42-year-old hedge-fund manager who owns an impressive contemporary-art collection. Loeb likes to relax via ashtanga yoga (he recently married a yoga instructor). But he's also famously outspoken and accustomed to getting what he wants.

In March 2003, Loeb was walking through the Armory art show at Pier 92 with his art adviser at the time, Jeanne Greenberg Rohatyn, a respected private collector in her own right; aspiring collectors hire her in order to gain access to desirable work. They wandered into Barbara Gladstone's booth, where Loeb fell for a Matthew Barney

usually comment.”

**Current gallery prices:**

A date hasn't been set yet for Currin's much-anticipated first show with his new gallery, Gagosian, so new prices haven't been set, either. But Currin's are currently said to be selling on the primary market for around \$300,000.

(Photo: *Standing Nude* (1993) by John Currin, Courtesy of Phillips de Pury & Company)

photograph from his art-house cult film series, “The Cremaster Cycle.” It was just the sort of fortuitous find collectors hope to come across at one of the five major annual art fairs around the world. (Galleries hold back important work to show at the Armory or Basel.)

Loeb was ecstatic when a director of the gallery agreed to sell it to him. But the following week, Rohatyn phoned with bad news. The director had neglected to check with Gladstone before reserving the work for Loeb, and he couldn't have it after all. Gladstone's motivation for canceling the sale remains unclear—part of the opaque machinations of dealers that can drive aspiring collectors crazy. Had she already promised the photograph to someone else? Did a more important collector come along? Gladstone declines to go into the specifics: “It was a misunderstanding,

period.” Whatever the reason, Loeb was furious with the gallery. “I had to remove myself from the situation,” Rohatyn recalls. “Dan's anger took over and he was pretty upset.”

Loeb declines to comment on the dispute. Since then, however, he appears to have grasped that feuding with Gladstone isn't necessarily the greatest idea. “It's certainly not the way to ingratiate yourself with someone who has what you want,” one art-world observer notes.

“Dan's off Barbara's play list, maybe in perpetuity,” a rival dealer says with glee. “You have to be extremely well mannered if you want to get ahead.”



**Neo Rauch**  
**Waiting list at David Zwirner Gallery:** 40.  
**Current gallery prices:** \$200,000 to \$250,000.  
(Photo: *Schmerz* (2004), by Neo Rauch, Courtesy of David Zwirner, New York, and Galerie Eigen + Art, Berlin)

However, Rohatyn claims that Loeb and Gladstone have resolved their differences. “I tried to mediate it, to get them back together to where Barbara will feel comfortable selling him something again.

“Dan respects Barbara,” she insists. “These things do happen. It's unfortunate, but you just wait till the next thing comes along. I grew up in the art world, so my attitude is a little bit different. I try to be casual. If you don't get one picture, there's always another picture. I'll wait for a picture five years if I have to.”

Rohatyn also plays an important role in the Haye-Lehmann dispute, as the owner of several Mehretu paintings Lehmann thought should rightly have been his.

After Lehmann struck his right-of-first-refusal deal with Haye, the Project mounted Mehretu's first one-woman show in New York in November 2001. All parties in the subsequent legal fracas agree that Lehmann was invited to preview the exhibition, but he was traveling in Europe at the time. Upon his return, he expressed interest in two

large paintings, which had already been sold. Thereafter, he says, he persistently reminded the gallery of his desire to buy Mehretus—and at the 2003 Armory show angrily complained to Haye that he had not been offered the chance to do so. Lehmann did buy other discounted work from the gallery, and Haye attempted to placate him by selling him a small Mehretu, *Excerpt Regiment*, for \$17,500. In court Lehmann explained that because of its size he didn't really want the painting. “But he bought it, and he's stuck with it,” the judge joked. “I thought it was pretty good myself.”

Lehmann testified that he was furious when he received a catalogue of paintings from a one-woman show by Mehretu at the Walker Art Center in Minneapolis. “I was flabbergasted,” he said in court, “because I'd asked for a year and a half for a work by Julie Mehretu. And I saw that the Greenberg Rohatyns owned five, and people I'd never heard of owned them.”



"There were obvious reasons to think that we've been very badly treated," he said later.

Rohatyn and her husband, Nick, own a large, art-filled house on East 94th with a ground-floor gallery called Salon 94, open to the public three days a week and also to collectors by appointment. In court, Haye described Rohatyn as an early investor in the Project, a description that his friend politely rejects. "I was an early supporter of Julie's work at the Project," she says, "but I was not an investor in the gallery itself."

Rohatyn sees no reason to apologize for her Mehretus. "I showed Julie before she showed with Christian," she says, referring to a group exhibition she helped organize in 2000. "I won't sell pictures that I own personally. And I'm a happy lender to exhibitions. To me it makes perfect sense that I have them."

After seeing the Walker catalogue, Lehmann immediately wrote to Haye: "The catalogue . . . indicates that you sold at least 5 major paintings of Julie's to a local dealer [Jeanne Greenberg Rohatyn]. This is totally unacceptable, and you have not fulfilled your end of the contract. We have to demand from you the prompt payment of our remaining credit: \$17,500."

According to Lehmann, he was never interested in the money, only in applying pressure on Haye to sell him Mehretu's work. "I know a lot of bad people in the art world," he says. "I'm not a bad person. In 35 years I've never had a problem with any gallery." He received a check soon after, without a word of apology. When no conciliatory offer of a Mehretu followed, Lehmann went on to file suit.

In their quest to acquire work by artists who are deemed fashionable, collectors will do all sorts of curious things. "I've seen tough business people grovel in a way they would never do in their business lives," says Amy Cappellazzo, a former art adviser who is now head of Christie's contemporary department. Others simply take a tough approach. "A client of mine was so desperate to buy a painting last week, he told me to tell the gallery he was starting a family foundation to build a private museum," an uptown art adviser says. "I asked him if it was true and he said, 'Of course not. Just tell them that so I can get the goddamned painting.' " The adviser declined.

But dealers have also devised their own idiosyncratic ways to control the distribution of art. Zach Feuer, who just had a sold-out show for Dana Schutz, another rising art star, now offers collectors a novel two-for-one deal for select works: "We ask people to buy two pieces, with the condition that one gets donated to a public institution." Not everyone has warmed to the approach. "The deal he offered was, give a large painting to a museum, and get a little one to take home," an art adviser says. "I said, 'Get lost.' "



**Luc Tuymans**  
**Waiting list at David Zwirner gallery:** As with Rauch, "50 serious collectors," says Zwirner. **Current gallery prices:** \$200,000 to \$400,000.

According to Feuer, three collectors agreed to his terms. One, Susan D. Goodman, a strategic-marketing consultant whose clients include AOL, donated one of her Schutz paintings to the Corcoran in Washington. "I'm very philanthropic," she says, "and I loved the idea of being able to do something for the museum and helping Dana's career. It also had some tax advantages."

The artwork Goodman is donating is a 78-by-72 oil-on-canvas painting called *Twin Parts*. "Isn't it wild?" she says. "The subject is plastic surgery." The picture she gets to take home is the 25-by-22-inch *Head Eater*. "It's an image of a person eating their face. It's really gross but kind of cool."

Some dealers scoff at Feuer's arrangement. But he can't get his head around Christian

(Photo: *Frozen* (2003),  
by Luc Tuymans,  
Courtesy of David  
Zwirner, New York)

Haye's practice of promising investors access to works of art. "This paying-for-access thing is insane," he says. "It seems like it's going to end in a lawsuit no matter how you do it."

What many in the art world don't understand is why Haye allowed the case to go to court, rather than simply giving Lehmann the opportunity to plunk down \$200,000 or so on a large painting by Julie Mehretu. For one thing, Lehmann is precisely not the kind of collector who would flip the work at auction. "Frankly, I can't imagine what was going through Christian's mind," says Boesky.

Haye, 35, who was a poet and an art critic before becoming a dealer, says he did fulfill his agreement with Lehmann by selling him works by a video artist he was also keenly interested in, Paul Pfeiffer. (Lehmann purchased six works by Pfeiffer for a total of \$250,000.) "It's not like I told him he'd never get a Julie Mehretu painting," Haye says. "I just said, 'Wait.' The people who wonder why I didn't sell him a painting to avoid trouble are the galleries he spends a million a year at. Basically, if he had not sued me, he'd have one already."

But did Haye really have a Mehretu to offer? By his own admission, it normally takes Mehretu five months to produce a large painting like the one at MoMA. She is currently said to have a commission to produce paintings for Michael Ovitz, the former Hollywood power broker who is a longtime member of MoMA's board (a commission that was neither confirmed nor denied by Haye or Mehretu).



**Lisa Yuskavage**  
**Waiting list at Marianne Boesky gallery: 40.**  
**Current gallery prices:**  
\$12,000 (for a six-by-four-inch painting) to \$175,000.  
(Photo: *Still Life* (2003), by Lisa Yuskavage, Courtesy of Marianne Boesky Gallery, NY, and Green-Grassi, London)

It's also possible there were other people Haye wanted to reward for their support. In court, he identified Dennis Scholl, a Miami businessman, as an investor in the gallery. Scholl denies investing but acknowledges making a "friendly loan" in 2003. That same year, Haye sold him an ink-and-acrylic Mehretu for \$80,000.

Ruling in Lehmann's favor, Judge Ira Gamerman said Haye was in "a clear breach" of contract, and warned that "unless the parties reach an agreement, there's going to be an award of substantial damages for the plaintiff."

The two sides are scheduled to appear before Gamerman on March 2 to learn just how substantial. Haye's attorney, Alan Effron, assesses the damages at \$120,000, while Lehmann's lawyer, Peter R. Stern of McLaughlin & Stern, puts the number in excess of \$1.9 million.

Haye says he's not worried about the damages, though the courtroom experience has left him dispirited. "This is hopefully my first and last lawsuit," he says. "*Law & Order* and *The Practice* are fun to watch, but not much fun to be in."

But, he adds, "once Jean-Pierre started the legal process, I had to figure that with an endless amount of museums and private collectors that want [a painting by Mehretu], is it in Julie's best interest to give the fruits of her labor to someone who is going to sue me?"

Julie Mehretu doesn't seem to have much interest in discussing the subject of what's in her best interest. "It's an issue between the gallery and the parties involved," she says. "I'm not a party of those contracts. That's why I've tried to steer clear of the whole situation."

A testament to her covetability, the case is hardly an embarrassment—even if her dealer's lawyer put her on the stand to back up his contention that the Project should owe Lehmann less in damages than he's seeking because her works haven't increased that much in value since their original sale. ("I couldn't believe a

gallery would call their artist to testify about how little her work is worth,” says Stern.) “I would go with whatever the square foot is,” Mehretu says, estimating the worth of her paintings by their size. She later estimated that the one sold to Scholl had gone up in value only two and a half times—and was worth only \$200,000—rather than the almost fourfold increase estimated by the plaintiff’s expert witness.

Despite such a blunt assessment, Mehretu must be aware that what gives her paintings such value in the wild, unregulated art market is precisely what can be least regulated about them: herself. Collecting the work of living artists excites, and frustrates, collectors because it is so unpredictable. Will an artist’s output dry up? Will her style change? Will a painting soon be worth four times what was paid for it?

And although many artists attempt to sway their own markets, dining with collectors if not (like Rembrandt) bidding up their own works at auction, Mehretu seems a bit more removed from the fray. After all, she didn’t even know Lehmann’s name.

“I make paintings, and when they’re finished, the gallery decides who has been interested in the work and they discuss with me who they’re planning to sell it to,” she says, while adding that right now she has no intention of leaving Christian Haye. “And they usually make very good decisions.”