Everyone can go to the Museum of Everything but not everything can go into museums' collections

by Jessica GIRAUD

The collection of this new museum makes one wonder if it is easy to collect art when the collector is an institution, such as a museum. Surely not!

Under French law, Decree n°93-124 of 29 January, 1993 relative to cultural property governed by certain circulation restrictions, a collection of art is an ensemble of objects, works, documents for which the elements cannot be dissociated without violating its coherence and for which the value of the whole is greater than the sum of its individual parts. To be so, the ensemble must also offer an interest with respect to art, history, art history, civilizations or sciences and technologies.

By nature, Private collections tend to be integrated into public museum collections. The interest being that once incorporated is that the elements of the collection become inalienable, enduring and are struck with a prohibition to leave the French territory. The interest for the private individual who gives title to the public buyer, other than the satisfaction of having given to the public interest, is either the tax benefit (considering that the acquisition precedes a simple purchase, a preemption, a dispossession for the benefit of the State, a gift, or satisfaction of payment...) or the guarantee to offer the works good conservation.

In any case, whatever the nature of the pursued goal, the integration procedure within public collections is long and fraught with obstacles. Primarily, the artwork must prove itself before the various acquisition commissions. These commissions, comprised of art market professionals under the guidance of a governmental delegation (Ministry of Culture and Budget), proceed with verifying the authenticity of the work and its origin. This does not go without generating many hours of work and concentration.

Under the law, no specific text governs the procedure relative to authenticating the origin of cultural works. On the other hand, as a matter of law, one will note the importance of the regulation governing false artistic materials dating from 1895 and complemented by the Decree of March 3, 1981 on fraud repression with respect to artwork and object collection transactions [1]. In reality, it is the conservation departments of the assembly of national museums which perform the authentication and ensure the chain of custody of the work from the beginning and during the entire chain of consulting commissions. In this regard, a doubt about the licit origin of the work or its authenticity will seriously compromise its entry into the museum. In order to counter all risks, the conservators are with each turn investigators, archivers, sometimes experts and lead detailed research as quasi-historians. Each piece of useful information must be collected in order to ensure the long-term ownership of the collection. In practice it is about information taken from the seller, acquisition circumstances, provenance of the work, the period during which it was produced, the movement to which it belongs, etc. It should be noted that a smaller price tag for the work and the transaction form puts the conservators on guard in the case that the seller has acquired the work illegally. Similarly, the complacent delivery of

authenticity certificates by unscrupulous heirs will not escape their vigilance.

Despite all these efforts, it happens nonetheless, however rarely, that the acquisition of a false work is incorporated in the public collections or that the seller's property is marked by a defect. The museum is therefore confronted with the ousted claiming ownership when the work has already entered into the public collection. What are the potential defensive strategies against the lawsuits from the dispossessed owner claiming title?

When a museum is a party to a title claim lawsuit, notably after purchasing the work at auction, for which the ownership is contested by a third party, the administration will claim the warranty of title in all sales contracts and will act under article 2276 of the Civil Code (former 2279) “in presence of movable property possession is title” in order to defend the place of the work within the public collections.

This maxim, which has delighted legal professionals since 1804, signifies that he who holds movable property (contrary to real property) between his hands is considered to be the owner, under the condition however, that said property, here the work, has been acquired in good faith. The interest of this rule is that it places the burden of proof on the claimant.

However, the presumption of good faith is for the benefit of the public acquirer and can be foiled if the claimant manages to prove that the State was informed about a claim on the origin of the work before it was integrated into the public collection. In this case, the burden of proof is put on the administration and the judges do not always show respect for this particular rule.

In any event, if the public administrator takes the risk to acquire a work for which the pedigree is not sufficiently clear, notwithstanding the protection offered by article 2276 of the Civil Code, it remains that the legitimate ousted owner may claim, even long after the sale, his work. Indeed, article 544 of the Civil Code recognizes the full perpetual rights to his property. As such the right to claim legal title to the property is not limited in time by any statute of limitations. Finally, the administration that takes the risk to acquire a work with a dated and obscure origin wins in the same instant an authentic sword of Damocles.

“A museum which does not buy is a museum which dies” said Pierre Rosenberg in 1994. We add that a museum which buys definitely has merit.

[1] Decree n°81-255 which proposes a terminology designed to most efficiently identify the authenticity and origin of artwork placed into the market.