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601 Art Law/Exam No. \_\_\_\_\_

*letter head*

November 28, 2010

Mrs. Karen Porsche  
1234 Mansion Drive  
Santa Fe, NM 87501

Dear Mrs. Porsche:

Thank you very much for visiting our firm yesterday, and for making an appointment to continue our discussion of several pressing matters concerning your art collection. I have reflected on the issues that you brought up during our initial meeting, and offer the following potential solutions and concerns:

*Excellent opening paragraph*

***I. Issue 1: Porsche Picasso, "End Table with Guitar" & Guggenheim Museum Title Claim***

As I understand, you purchased "End Table with Guitar" by Pablo Picasso from the Don Slease Gallery, a reputable modern art gallery in Santa Fe, New Mexico, in 2003 for \$1,000,000. The Guggenheim Museum, New York, claims that "End Table with Guitar" was part of its collection, and was stolen by a former employee the same year that you purchased it from Don Slease Gallery. The Guggenheim discovered its loss this year, when it conducted its once-a-decade collection inventory.

The strength of the Guggenheim's claim to "End Table with Guitar" depends on several important factors. First, can the Guggenheim document its ownership of "End Table with Guitar" prior to 2003? What is the complete provenance of the painting, and how did it enter the Guggenheim's collection, if in fact it was accessioned? Is "End Table with Guitar" documented in the Picasso painting catalogue raisonné, with the Guggenheim listed in its chain of ownership? Was the catalogue published prior to 2003, and available at the time of your purchase of the piece from Don Slease? Answers to these questions may support or weaken the Guggenheim's claim. For example, if the Picasso painting catalogue raisonné was published prior to 2003, as lists the Guggenheim as the current owner, the Don Slease Gallery should have checked this standard reference and questioned the title of the piece when it was offered "End Table with Guitar" to sell in 2003. If "End Table with Guitar" is not listed in the catalogue raisonné, or if it is listed, but the Guggenheim Museum is not mentioned in the chain of ownership, then the Slease Gallery would not be on notice as to potential problems with its title. ✓

*good questions*

*good point*

The second important factor related to the Guggenheim's claim is the Statute of Limitations for recovery of chattel (or moveable property) in New York. New York case law, which would govern the Guggenheim's claim if they bring suit, protects the right of the owner of stolen property to recover, even if the property is in the possession of a good faith purchaser for value. The Statute of Limitations, which is three years, begins once demand is made for the return of the property and refused (*Guggenheim v. Lubell*). Thus,

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based on the Statute of Limitations, the Guggenheim's claim is not barred by the purported date of theft seven years ago.

The third factor related to the Guggenheim's claim to "End Table with Guitar" is whether or not the Museum exercised reasonable diligence in its effort to locate their lost piece. This factor assumes that the Guggenheim was in fact the painting's lawful owner prior to 2003. Is it reasonable for a major U.S. museum to inventory its holdings just one every decade? If the Guggenheim exercised greater care in its collection management, would it have discovered its loss sooner and prevented the sale of "End Table with Guitar" by the Sleese Gallery? However, that the Guggenheim failed to exercise reasonable diligence would be a difficult argument to make in New York courts. As a policy, New York places a greater burden on the potential buyer of an artwork to research provenance, than on the true owner to locate stolen artwork.

Therefore, depending on the facts surrounding the provenance of "End Table with Guitar", the Guggenheim Museum may or may not have a valid claim. It is also worth exploring the warranty, if any, that the Don Sleese Gallery made to you at the time of your purchase, in regard to a potential action against the Gallery.

**II. Issue 2: Proposed Loan, Porsche Picasso, "End Table with Guitar", to Museum of Furniture Art, NYC**

I advise you not to loan "End Table with Guitar" to the Museum of Furniture Art in New York for its 50<sup>th</sup> Anniversary Exhibition next November, or to loan it to any institution for that matter, until the Guggenheim's claim is resolved. If "End Table with Guitar" were shipped to New York for the Museum of Furniture Art exhibition before its title is clear, the Guggenheim may attempt possession.

Good Points

**III. Issue 3: 'Kanakaria' chair and Kanakaria Church Claim, Cyprus**

The 'Kanakaria' chair is currently on loan to the Metropolitan Museum of Art, New York. The Kanakaria Church in Cyprus claims that the 'Kanakaria' chair was stolen from its church in Cyprus during a period of political upheaval in 1976. As I understand, you purchased the chair in 2006 from Sotheby's Auction. The strength of the Kanakaria Church's claim depends on the facts available to support it. Lacking specific facts, I will outline the relevant issues regarding the Church's claim.

✓

First, the main treaty governing international art theft during times of war is the Hague Convention. Article 46 of the Convention prohibits the confiscation of private property during times of conflict, and Article 56 defines property belonging to religious institutions as private property for the purposes of the Convention. Thus, if Cyprus is a signatory to the Hague Convention, and the 'Kanakaria' chair was indeed looted during the course of an armed conflict, it must be returned to the Church. If Cyprus is not a signatory, the Convention might still require the chair's return if it passed in commerce through signatory countries, such as the U.S. and Germany. This is an area I will research further.

✓  
Museum Building  
archive



A second relevant issue is whether or not the 'Kanakaria' chair was exported with a valid export permit issued by the Government of the Republic of Cyprus. In 2002 the U.S. and Cyprus signed a "Memorandum of understanding concerning the imposition of import restrictions on Pre-Classical and Classical archaeological objects". The Memorandum restricts importing ecclesiastic objects into the U.S. from Cyprus unless the objects were accompanied by a government-issued export permit. If the chair meets the Memorandum's definition of an ecclesiastic object, and if the chair lacks an export permit, the Church may be able to compel its return. I need more information from you in order to research this fully. If the 2006 Sotheby's sale occurred in New York, or in another U.S. city, then the chair should have been accompanied by Republic of Cyprus export permit. It would also be very helpful to learn as much as possible regarding the chair's chain of ownership prior to the 2006 Sotheby's sale. Once we better understand the chair's history, I can help you answer the Kanakaria Church's claim.

A third relevant issue regarding the Church's claim is Sotheby's "Limited Warranty" that is included in "The Terms of Guarantee". The warranty appears to absolve Sotheby's of any responsibility regarding the state of title to artworks that it offers for sale. This Guarantee would not be legally binding if there is an issue of stolen property that Sotheby's should know is stolen. Such a Limited Warranty would not be binding if Sotheby's breaks a U.S. law in the process of making a sale. For example, if Sotheby's sells a Cypriot ecclesiastic object without a valid export permit, in conflict with the U.S./Cyprus Memorandum, the Memorandum would invalidate the sale. If this is the case, then you may have a claim against Sotheby's for conversion.

gone past

#### IV. Issue 4: Proposed Loan, 'Kanakaria' chair to Museum of Furniture Art, NYC

I advise you not to loan the 'Kanakaria' chair to the Museum of Furniture Art in New York, or to any other institution, until the title is resolved.

gone

#### V. Issue 5: Potential Copyright Infringement Regarding Public Photography, "Gyre Lounge Chair" by Zaha Hadid

The "Gyre Lounge Chair" is currently on loan to the Metropolitan Museum of Art, New York, which allows public photography of works on display. To claim copyright infringement, Ms. Hadid must first establish copyright ownership of "Gyre Lounge Chair", and then show that an unauthorized copying or taking has occurred. Ms. Hadid's infringement claim is based on the reasonable assumption that "Gyre Lounge Chair" is copyrightable, and the assumption that she owns the copyright. As an original work of art, currently on exhibition in a major art museum, the chair is certainly copyrightable. Unless Ms. Hadid sold the copyright separately to you with the work, she retains it.

Need to analyze does it fully affect copyright

After establishing ownership of the copyright, Ms. Hadid must then show that a taking has occurred. It is my understanding that Ms. Hadid has not made a specific complaint, only a general claim against the Museum's policy of allowing public photography, and your consent to this policy. Normal public photography alone does not violate an artist's

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copyright in their artwork. If a specific infringement has occurred, then the defendant has the burden of showing that the taking was of a non-copyrightable object, or that the use was fair. Fair use is determined by a balancing test, which weighs four factors: (1.) Purpose/Character of Use; (2.) Nature of Work; (3.) Amount & Substantiality Taken; and (4.) Market Harm. The first factor, purpose and character of use, allows a museum visitor to take a picture of an artwork for personal or educational use, but not for commercial profit. Therefore, a photograph taken of "Gyre Lounge Chair" by an enthusiastic museum-goer for his or her family vacation album is permitted, while a photograph taken by a furniture maker in order to create knock-off lounge chairs is not. The second factor relates to the nature of the work. Creative works possess a stronger copyright than do non-fiction or strictly informative works. For example, Ms. Hadid's copyright to her unique chair is stronger than the copyright to a telephone directory, which is simply a organized compilation of names and numbers. The third factor, amount and substantiality taken, relates to how much of the copyrighted work is taken. Ms. Hadid is most likely concerned with photographs depicting any recognizable portion of her unique chair. The fourth factor is market harm. Based on this factor, the commercial taking of copyrighted work is unfair, while a non-profit taking may be fair.

Again, in order to make a copyright infringement claim, Ms. Hadid must first show that a taking has occurred. Next, the defendant of a claim has the burden to prove that the use was fair, according to the four factors described above. Ms. Hadid's general allegation of infringement without citing a specific taking lacks merit. Thus a general museum policy allowing public photography, and your de-facto approval of this policy, do not violate Ms. Hadid's copyright in her artwork.

**VI. Issue 6: Proposed Loans, "Gyre Lounge Chair" by Zaha Hadid, 'Kennedy Half-Dollar' chair by Bill Moneywise & 'Curler' chair by Inna Salon to Museum of Furniture Art, NYC**

As I understand, the 'Gyre Lounge Chair' by Zaha Hadid and the 'Curler' chair by Inna Salon are both currently on loan to the Metropolitan Museum of Art, New York, and scheduled to be returned to you in June 2011. The 'Kennedy Half-Dollar' chair is currently at your Santa Fe residence. I see no issues preventing you from loaning these three artworks to the Museum of Furniture Art, New York, for its 50<sup>th</sup> Anniversary Celebration exhibition opening November 1, 2011. Per your review, I have written and attached a sample loan agreement.

Based on the issues I have outlined regarding the outstanding title claims by the Guggenheim Museum to "End Table with Guitar" by Pablo Picasso, and by the Cypriot Kanakaria Church to the 'Kanakaria' chair, I strongly advise you not to loan these two artworks. I look forward to discussing the details of the loan, as well as the title issues related to the Picasso and to the 'Kanakaria' chair with you at our appointment Monday.

Sincerely yours,

/X/

*Substant*

*Good  
any  
reason*

*4*

**DRAFT LOAN TRANSACTION AGREEMENT**

Mrs. Karen Porsche/1234 Mansion Dr./Santa Fe, NM 87501  
November 28, 2010

	<b>Object 1</b>	<b>Object 2</b>	<b>Object 3</b>
<b>Artist</b>	Zaha Hadid	Bill Moneywise	Inna Salon
<b>Title</b>	“Gyre Lounge Chair”	‘Kennedy Half-Dollar’ chair	‘Curler’ chair
<b>Medium</b>	Fabricated, polished aluminum	Fabricated half-dollar coins; mixed metals	Fiberglass and upholstery construction
<b>Overall Size</b>	30 x 68 x 36 inches	35 x 40 x 35 inches	28 x 55 x 27 inches
<b>Condition</b>	Reportedly very good	Very good	Reportedly very good
<b>Provenance</b>	Studio of the artist, Albuquerque, NM; by artist to present owner, 2000	Museum of American Finance, NY; by museum to present owner, 2010	Studio of the artist, Santa Fe, NM; by artist to present owner, 2000
<b>Insurance Value</b>	\$20,000.00	\$54,000.00	\$8,000.00
<b>Current Location</b>	On loan to Metropolitan Museum of Art, NY, until 6/2011, then Porsche residence, Santa Fe, NM	Porsche residence, Santa Fe, NM	On loan to Metropolitan Museum of Art, NY, until 6/2011, then Porsche residence, Santa Fe, NM

Recipient of Loan: Museum of Furniture Art/11 W. 53<sup>rd</sup> St./NY, NY 10019  
C/o Mr. Martin Lucero, Jr./Director

Duration/Purpose of Loan: Oct. 20, 2011 – Jan. 31, 2012; for the exhibition, “50<sup>th</sup> Anniversary Celebration of Furniture Art”

Credit Line for Exhibition: “The Porsche Art Collection, Stuttgart, Germany/Santa Fe, New Mexico”

Shipping & Insurance: Costs of shipping artwork and insurance while in transit to be covered by owner. Artwork to be insured at values listed above by Museum of Furniture Art while in its possession.

*I hereby acknowledge the loan of the three subject artworks listed above:*

\_\_\_\_\_  
Mrs. Karen Porsche (Owner) Date

\_\_\_\_\_  
Martin Lucero, Jr./Director of the Museum of Furniture Art (Recipient) Date

*you need to state about museum towards the items.*

*5*