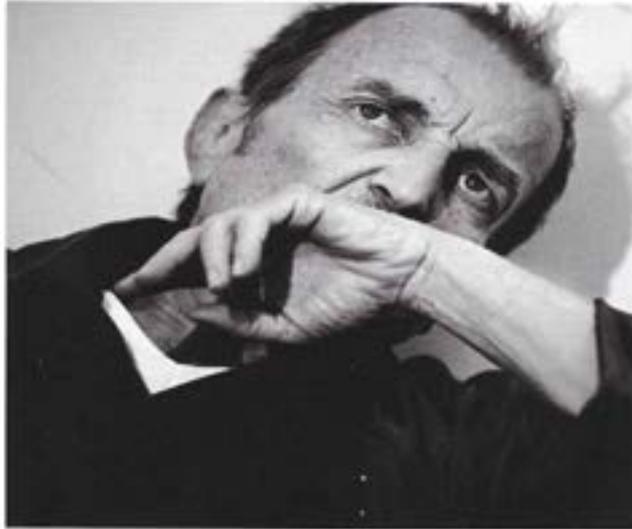


ArtReview : 'The legacy of Franz West', by Daniel McClean, November 2015



The Legacy of Franz West

Who sits on the artist's furniture rights?



top Franz West. © Peter Rigaud, Agentur Shotview Berlin

bottom Franz West, *Artist's Chairs*, 2015, multiple, first produced 2006.
Photo: Marina Faust. © Franz West Privatstiftung, Vienna

The Law and Its Ideas

No 11

by Daniel McClean

Introduction

The ownership of artistic legacies is currently one of the most bitterly contested territories in the contemporary artworld. An artist's legacy can assume many forms, among them control over the artist's works and archive, as well as control over the artist's intellectual property rights (including copyright, moral rights of authorship) and the authority to authenticate artworks. At stake is the question of who has the right to speak in the name of the artist, and more often than not to sell their work when he or she is no longer around.

When an artist dies, ownership of some or all of the artist's legacy rights (which can be valuable) may be fought over by different factions, including by family members and rival foundations. Artist-legacy wars tend to arise when an artist fails to plan properly during his or her lifetime as to what should happen to their legacy post mortem. Unsurprisingly, perhaps, these wars occur with considerable regularity in the artworld, as attested by spectacular disputes involving the legacies of the artists Alberto Giacometti, Donald Judd and Lygia Clark.

The Dispute

Gagosian Gallery has recently become embroiled in a highly public legacy dispute between the Vienna-based nonprofit Archiv Franz West (created in 2011) and the Franz West Privatstiftung, or Foundation (created in 2012). The dispute regards who controls the right to posthumously reproduce and distribute copies of furniture designs created by the highly influential Austrian artist when he was alive (West died in 2012). Since his death, individual examples of West's furniture have sold at auction for in excess of £20,000.

The Archiv Franz West claims to be the exclusive licensee of copyright in Franz West's furniture designs and is therefore entitled to control their posthumous reproduction and sale. However, the Franz West Foundation also maintains that it controls these rights and has posthumously fabricated West's furniture works in its Vienna studio since 2014.

In September 2015, the Archiv sought to obtain a temporary restraining order in the New York Southern District Court preventing Gagosian from exhibiting a selection of Franz West furniture posthumously produced by the Foundation and consigned to it by the Foundation for sale. The disputed furniture is currently featured in the Gagosian exhibition *Franz West: Möbelskulpturen/Furniture Works* (until 7 November at the gallery's 976 Madison Avenue address) and includes the celebrated *Artist's Chairs* – minimal dining chairs whose seats and backs are made from canvas lacquered in monochrome hues.

The Archiv Franz West claimed in the New York proceedings that the reproduced furniture infringed the copyright on West's furniture designs that it exclusively holds, and that these were therefore unauthorised versions of West's work. It argued that the furniture

Gagosian 'plans to sell is an unauthorized – essentially, an imitation – version of West's work' and one that is 'not disclosed to potential buyers. The distribution of unauthorized copies of West's work will lead to confusion among art buyers and collectors and reduction in the confidence of art market participants as to whether works by West being offered are genuine, which confusion is very likely to spill over to all works of West thereby damaging the artistic and commercial value of West's work generally.'

On 10 September 2015, the New York court rejected the Archiv's motion and declined to issue the temporary restraining order it had sought, thereby enabling Gagosian's exhibition to proceed. Despite the Archiv's setback, the case remains open according to reports, which means that the litigation could resume after the exhibition closes.

It is not clear who owns the rights to the contested Franz West furniture designs. In its favour, the Archiv apparently points to two written and executed copyright licence agreements that Franz West entered into with the Archiv in 2011. It also points to a declaration issued by the Commercial Court of Vienna in April 2015 apparently upholding its rights to certain Franz West furniture designs.

By contrast, the Foundation and Gagosian, in their defence in the New York court proceedings, maintain that Franz West nullified the 2011 licence agreements with the Archiv and thereafter transferred the rights to the Foundation before he died in 2012. Complicating the situation is the ongoing (since 2013) dispute between the estate of Franz West and the Foundation in the Vienna civil courts. The heirs of Franz West allege that the artist lacked the required mental capacity to form the Foundation, just days before his death, as he was in severe pain at the time as a consequence of a debilitating illness.

So far, the Archiv appears to have been unsuccessful in its attempt to enforce its asserted copyrights in foreign jurisdictions. In particular, the Archiv failed in August 2015 in the Swiss courts to enforce an injunction against the Swiss art dealer Eva Presenhuber to prevent the exhibition of West's furniture works (consigned by the Foundation) on her Zürich gallery premises.

Conclusion

The dispute between the Archiv Franz West, the Franz West Foundation and Gagosian Gallery reveals the value that an artist's intellectual property rights can assume after the artist's death. As the dispute shows, such control can help to determine not only how an artist's work is posthumously publicised (for example, in books, magazines, posters and postcards) but how the work itself is reiterated and recreated over time, as seen, for example, in posthumously created editions and design works. Given that copyright in EU countries, including in Austria, currently lasts for the lifetime of the artist plus 70 years, whoever owns the rights to Franz West's furniture designs will have a long period of time in which to sit on them.