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КУЛЬТУРНЫЕ ЦЕННОСТИ КАК ПРЕДМЕТ ЗАЛОГА: ПРАВОВЫЕ ПРОБЛЕМЫ КРЕДИТОВАНИЯ ПОД ОБЕСПЕЧЕНИЕ ПРОИЗВЕДЕНИЯМИ ИСКУССТВА В ЕВРОПЕЙСКИХ ПРАВОПОРЯДКАХ

Аннотация: *настоящая публикация посвящена анализу правовых аспектов использования произведений искусства в качестве обеспечения кредитных обязательств (art-secured lending) в контексте европейских правовых систем. В работе проводится сравнительный анализ институтов залога движимого имущества, представленных во французском (gage и nantissement), швейцарском и английском праве. Выделяются специфические риски, присущие произведениям искусства как объекту залога, включая отсутствие непрерывного рыночного ценообразования, критическую зависимость стоимости от атрибуции и провенанса, а также необходимость специализированного хранения. Демонстрируется, что отсутствие гармонизированного европейского регулирования art-secured lending вынуждает кредиторов и заёмщиков конструировать обеспечительные механизмы на основе фрагментированных норм общего обеспечительного права, что создает значительную правовую неопределенность, особенно в трансграничных сделках.*

Ключевые слова: *залог, art-secured lending, обеспечительное право, произведения искусства, провенанс, кредитование, Европа, art law.*

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CULTURAL PROPERTY AS COLLATERAL: LEGAL ISSUES IN ART-SECURED LENDING IN EUROPEAN JURISDICTIONS

Abstract: *this article is devoted to the analysis of the legal aspects of the use of works of art as collateral for credit obligations (art-secured lending) in the context of European legal systems. The paper provides a comparative analysis of the institutions of pledge of movable property represented in French (gage and nantissement), Swiss and English law. The specific risks inherent in works of art as collateral are highlighted, including the lack of continuous market pricing, the critical dependence of value on attribution and provenance, as well as the need for specialized storage. It is demonstrated that the lack of harmonized European regulation of art-secured lending forces lenders and borrowers to construct security mechanisms based on fragmented rules of general security law, which creates significant legal uncertainty, especially in cross-border transactions.*

Key words: *pledge, art-secured lending, security law, works of art, provenance, lending, Europe, art law.*

Introduction

In recent years, there has been a significant expansion in the practice of lending secured by works of art in Europe. This financial instrument allows collectors to obtain liquidity while maintaining their collections. Industry research indicates that by the end of 2023, the global art-secured lending market will reach an estimated $29-34 billion. Most lenders view Europe as a strategically important but relatively undeveloped market for further growth [1; 2]. However, unlike financing secured by exchange-traded securities or real estate, art-secured lending

in Europe does not have special legal regulation. Instead, lenders and borrowers rely on the general provisions of legislation on the pledge of movable property, which were developed without taking into account the distinctive characteristics of works of art as an asset class.

This article is an analysis of the main legal instruments designed to ensure the rights to works of art within the framework of three European jurisdictions: France, Switzerland and England. It identifies specific legal risks caused by the nature of collateral as a unique cultural object, as opposed to an interchangeable financial asset. It is argued that the combination of fragmented legislation in the field of national security and the problems inherent in works of art related to evaluation, authenticity and storage generates a level of legal uncertainty that could be effectively reduced through a more harmonized European system.

1. Security Over Movable Property in French Law: Gage and Nantissement

In France, there are two main ways to obtain collateral using works of art. The traditional approach, enshrined in articles 2333 and subsequent of the Civil Code, was to pledge movable property, which required the creditor to physically remove the pledged object from the debtor's possession (dispossession) [3]. However, since 2006, the legislation on collateral has undergone changes. Now, the pledge of movable property, including works of art, can be issued by registering it (inscription), which allows the debtor to keep the pledged object, while maintaining its collateral status for the creditor. Public registration serves as a mechanism to protect the interests of third parties. In cases where the creditor nevertheless takes possession of the work of art, French practice usually requires its transfer to specialized, insured storage facilities. This decision is dictated both by the need for prudent risk management and by the practical consideration that few creditors have the necessary conditions for the safe storage of works of art.

French law provides for an alternative collateral mechanism, the nantissement, which is primarily used to secure intangible assets such as accounts

receivable, goodwill, or securities portfolios [4; 5]. Despite the fact that a nantissement is not the main tool for securing tangible works of art directly, a hybrid approach is often used in the practice of lending secured by art. It consists in combining the collateral of a physical object with the financing of related intangible rights, such as income from resale or insurance payments. This practice demonstrates that in France, art-backed financing usually requires the use of several common security tools, rather than relying on a single, field-specific regime [4].

2. Switzerland and England: Established Centres of Art-Secured Lending Without a Dedicated Regime

In the art finance industry, Switzerland and the United Kingdom stand out as countries with highly developed and specialized art-lending markets. This maturity does not stem from a special legislative regime governing the provision of works of art, but rather is the result of accumulated market practices integrated into existing general norms of collateral law and security of movable property. Their well-developed infrastructure, including free ports and private banking services, also plays a key role [6]. According to Swiss law, securing movable property usually requires either the physical seizure of property from the mortgagor (Faustpfand), or, in limited cases, its registration, which reflects the ownership logic of traditional French collateral [7]. In English law, the security of movable property such as a painting can be realized either through possessory collateral, requiring physical possession by the lender or its custodian, or through a mortgage of movable property, in which the legal or equitable title of property is transferred to the lender as security, although the borrower may retain ownership depending on the conditions [6].

Since there is no specific legislation governing the securing of works of art in both jurisdictions, lenders rely heavily on contractual terms. These conditions, covering storage, insurance, revaluation, and restrictions on the disposal of works of art, help manage risks that could be handled by a more specialised law. As emphasized in the scientific literature, this dependence on contractual agreements,

rather than on a single legislative framework, is one of the main practical barriers to the growth and standardization of the European art-lending market [9].

3. Risks Specific to Art as Collateral

Works of art are associated with a number of unique risks that significantly distinguish them from traditional forms of collateral, such as financial assets or real estate, for which European collateral legislation has been developed. One of the key factors is the risk assessment. Unlike publicly traded securities, the art market is characterized by a lack of constant disclosure of price information; transaction data becomes available only sporadically, mainly at auctions or as part of confidential private sales. This forces lenders to rely on subjective expert assessments rather than on observable market prices [9; 10]. The consequence of this uncertainty is the conservative loan-to-value ratios commonly used for art loans, ranging from 40 to 70 percent of the estimated value, which is significantly lower than for financial collateral [10].

The second problem is the risks associated with the title and authenticity of the work. As is known from studies in the field of art law devoted to misattribution and forgery, the value of a work of art, and in extreme cases, its suitability for sale, depends entirely on its authenticity and provenance. These critical elements can be challenged even after the work has been accepted as collateral. Therefore, before accepting a work as collateral, the responsible creditor must conduct a thorough review, which includes not only an assessment of the market value, but also a detailed study of the origin, previous encumbrances, authenticity, condition and any legal difficulties affecting the possibility of enforcement. This comprehensive check is much more time-consuming than when working with standard financial support [6; 9].

The third crucial point is the risks associated with the storage and preservation of the collateral. The value of a work of art directly depends on its physical condition. Therefore, lenders typically require borrowers to place the collateral in a professionally secured climate-controlled vault. Full insurance and documented

health monitoring are also required. Moreover, any conservation work that may change the quality of the work or its insured value must be pre-approved by the creditor [6]. Thus, the mechanisms of storage and responsible storage become the cornerstone in negotiations between the borrower and the lender. This is due to the fact that they directly affect both the loan amount and the lender's practical ability to repay its funds if the borrower fails to fulfill its obligations.

4. The Case for a More Coherent European Framework

The growing trend towards cross-border art-secured lending, driven by the international nature of large collectors and lenders, is complicated by significant obstacles. The inconsistency of national security regimes and the inherent risks lead to the fact that legally established and validated security (for example, under French law) does not receive automatic recognition abroad. If the collateral is moved to another country (for example, Switzerland or the United Kingdom) for storage or display, the original collateral may require a separate review. This creates a risk that the creditor's rights to collateral may be violated or subordinated to other requirements due to a change in the location of the asset [6; 9]. There is a discussion in professional circles about the need to develop a more international or at least unified European approach to regulating lending secured by works of art. Special attention is paid to the cross-border recognition of such collateral rights in order to minimize the legal uncertainty accompanying international financing in this area [9].

It is proposed not to introduce a new sui generis lien regime for works of art, but instead to develop a more unified European approach. Such an approach could be based on the French model of registering collateral without taking the object, which allows the borrower to retain ownership and access to the work of art (for example, for continued display), while ensuring the lender the rights to it. To implement this approach at the European level, it is necessary to establish common minimum standards for the storage, insurance and proof of origin of works of art, similar to those already used under EU due diligence law for the import of cultural property. This approach, which is being actively discussed by experts, will not solve

all the problems related to the valuation and authenticity of works of art, but it will significantly reduce the legal uncertainty caused by differences in national laws on collateral.

Conclusion

Currently, the European practice of lending secured by works of art does not rely on a specialized legal framework. Instead, it is based on the general rules of the law on the pledge and security of movable property in force in each individual jurisdiction (for example, the French "gage" and "nantissement", the Swiss "Faustpfand", the English pledge of movable property or mortgage). These standards are complemented by a comprehensive contractual framework covering storage, insurance, and valuation issues. This atypical approach, while suitable for purely internal transactions, creates significant legal uncertainty in the context of increasingly widespread cross-border art lending. This is due to the fact that a security interest achieved in one jurisdiction may not be transferred along with the security to another. Taking into account the continuous growth of this market and its identified potential in Europe, the development of more harmonized standards for the improvement and international recognition of protection interests in relation to works of art, combined with standards of due diligence and provenance documentation standards, which are already being implemented in other EU countries as part of the regulation of the art market, would significantly reduce legal the costs and risks currently borne by lenders, borrowers and, ultimately, the cultural facilities themselves.

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