

GERMANY

Loans, Lawyers, and El Lissitzky

Jen Lissitzky, son of the Russian artist El Lissitzky and his German wife, Sophie Küppers, remembers growing up in the former Soviet Union and hearing his mother's stories about the art world in Hannover. She had been married to Paul Küppers, director of Hannover's progressive Kestner Society, an organization founded in 1916 to support contemporary art. It was there that she met El Lissitzky, who had been granted a scholarship, which included the use of a studio, by the society.

After Paul Küppers died, his widow became the sole owner of their collection of works by artists such as Kandinsky, Klee, Mondrian, Schmidt-Rottluff, and Léger. In 1926 she loaned 13 of the works to the Hannover Provincial Museum (today's Sprengel Museum) before going to Moscow, where she later married Lissitzky.

The couple planned to return to Germany, but political developments in the Soviet Union made emigration impossible. Their only child, Jen, was born in 1930. El Lissitzky died in Moscow in 1941, and a few years later Küppers and her son, viewed as Germans, were exiled to Siberia.

Sophie Küppers never returned to her native land. She died in the Soviet Union in 1978. But in 1989, after almost 15 years of waiting for an exit visa, Jen Lissitzky was allowed to emigrate and became a German citizen. And remembering the stories told him by his mother, he began searching for the works of art she had left behind.

The first one turned up soon after his arrival, when the Lempertz Auction House in Cologne featured a Kandinsky watercolor, *Zwei schwarze Flecke*, on the cover of a sale catalogue. The description inside noted that the picture had been missing until this time and that it had been given as a present by the artist to Sophie Küppers, probably shortly after it was created in 1923. On the back of the work was the inscription "Property of S. Küppers, not for sale."

The picture sold for DM 1.1 million (about \$670,000) to the German collector P. H. Bendix. Lempertz refused to tell Lissitzky who the consignor was.

But Clemens Toussaint and Patrick Thewalt, partners in a Cologne art research venture, T. T. Consult, have discovered that the consignor was an heir to Lotte Beck, a teacher at the boarding school attended by Küppers' two sons from her first marriage. Toussaint and Thewalt believe that sometime during the 1930s a Hannover Museum employee brought several works from the Küppers collection to the boarding school to prevent them from falling into the hands of the Nazis. The children (who are both dead) later moved to Moscow to join their mother, but the works remained behind. Several other works from the Küppers collection, also consigned by the Beck heir, were auctioned by Hauswedell & Nolte in Hamburg in 1989.

Last March another work from the Küppers collection, Paul Klee's *Sumpflgende*, was the object of contention when Lissitzky's lawyer, a court bailiff, and representatives of a transportation company arrived at Berlin's Altes Museum, where the "Entartete Kunst" exhibition was on view. The lawyer had a court order to impound the painting. Christoph Stölzl, director of the German Historical Museum, which is officially responsible for the Berlin exhibition, refused to allow the picture to be re-

moved. He pointed out that the painting could not leave the premises without first being properly prepared for transport, and he argued that there were absolutely no grounds for impoundment, a procedure applicable only in cases in which a plaintiff can prove that the property in question is endangered. To claim that the painting, on loan to the exhibition from Munich's Lenbach House Gallery, was in danger of disappearing was an affront to his integrity as well as to that of the Munich museum. Stölzl said, "I am very much in favor of Mr. Lissitzky being granted his legal rights," he told *ARTnews* in a telephone interview. "But we live in a constitutional state and the proper legal channels must be pursued."

Lawyers for both sides worked out an agreement to allow the painting to remain in the exhibition, after which it will be returned to Munich while the courts decide who the legal owner is.

But the complexity of the legal issues involved in the case will make this decision a difficult one. *Sumpflegende* was confiscated from the Hannover Provincial Museum in 1937, when the Hitler-appointed Ziegler Commission swept through German museums searching for "degenerate" art. A law passed in 1938 (that is, after the fact) to justify the action stated that no compensation need be paid for confiscated art owned by citizens of the Reich or by public institutions. But Mrs. Küppers, when she married Lissitzky, gave up her status as a citizen of the Reich.

Another legal issue is raised by the fact that in September of 1948 the museums in West Germany agreed to relinquish all claims to works that had been confiscated by the Ziegler Commission. Lissitzky, however, questions whether a museum can relinquish claims to works that it did not own but that were merely on loan. In a book published in 1949, the art historian Paul Ortwin Rave pointed out that almost all works confiscated from museums by the Ziegler Commission that had been on loan to the museums were subsequently returned to their owners. The only exception, he notes, and this without any apparent reason, was in the case of works from Mrs. Lissitzky-Küppers.

The provenance of *Sumpflegende* is well documented. It was sold by the Nazis to the Kunstkabinett Dr. Hildebrand Gurlitt, a private gallery, in 1941. In 1962 it was consigned by a Dr. Peters to the Lempertz Auc-

tion House, where it was purchased by the Galerie Ernst Beyeler in Basel. From 1963 to 1973 it was in a private Swiss collection before being sold to the Galerie Rosengart in Lucerne and then to the Lenbach House Gallery in 1982.

Armin Zweite, director of Lenbach House at the time, was aware of the paint-

these wrongs did occur," he said. "Now the federal government must prove that it is willing to correct them."

Klaus Otto, liaison between the Office of the Chancellor and the German Historical Museum, sees things differently. He believes that the courts must decide this issue based on existing laws and that it is highly unlikely that the executive or legislative branch of the government will become involved. He pointed out that any new law passed to clear up the issue of ownership of "degenerate art" could have far-reaching consequences both within Germany and beyond its borders.

Helmut Friedl, the current director of Lenbach House, told *ARTnews* that he "fully understands Mr. Lissitzky's position." His main concern, he said, is to ensure that the work remains accessible to the public. Which, of course, brings up the question of what Jen Lissitzky plans to do with *Sumpflegende* and other works if the courts determine that he is the legal owner.

"That is fully open at the moment," he told *ARTnews* in a telephone interview. "First, the case must make its way through the courts and then different options can be discussed. The most important thing right now is to establish who the legal owner is. I lived almost my entire

life under an unjust system and now I am here in the West in a democratic state. I only want to see that justice prevails."

—Ginger Henry-Künzel



Who owns Paul Klee's *Sumpflegende*—Jen Lissitzky, whose mother owned it in the '30s, or the museum that bought it in 1982?

ing's provenance and requested that the city's legal department issue an opinion as to whether clear title to the work could be obtained. Walter Grasser, then as now the city's legal counsel in the matter, determined that title was clear for two reasons: the painting had been sold unchallenged at public auction in 1962 and it had been in one owner's hands in Switzerland for more than five years, placing it outside the Swiss statute of limitations for claims. In a recent study commissioned by Lissitzky, however, the Max Planck Institute for International Private Law in Hamburg noted that "Frau Lissitzky-Küppers, or her son Jen, did not lose their rights to ownership of the picture through subsequent sales."

Although the case is now in the hands of the court, Louis Peters, Lissitzky's lawyer, thinks that it should not be left to the judicial branch alone. "This must be seen in a political light rather than merely as a legal matter," Peters told *ARTnews*. He pointed out that the government of the Federal Republic of Germany, as the legal successor to the government of the Third Reich, can be forced to right legal wrongs committed by the Nazis. "And it is very certain that