

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

NO.

MARY MISS

Plaintiff

v.

EDMUNDSON ART CENTER, INC., d/b/a
DES MOINES ART CENTER

Defendant

FACTUAL ALLEGATIONS

I. Contractual Agreement

5. Plaintiff reasserts the preceding paragraphs as if fully set forth herein.
6. On or about April 4, 1994, the parties entered into a written agreement [hereinafter “the Agreement”] wherein Plaintiff agreed to accept compensation for creating and installing an art project known as “Greenwood Pond: Double Site,” [hereinafter “the Project.”] located in Greenwood Park in the City of Des Moines Iowa.
7. A copy of the Agreement is attached hereto as **exhibit 1**.
8. The Agreement provides, in pertinent part, that upon the completion of the Project the Art Center would receive title to the Project. See **exhibit 1**, section 8.
9. However, the Agreement further provides that “Art Center agrees that it will not intentionally damage, alter, relocate, modify or change the [Project] without the prior written approval of the Artist...Art Center shall notify the Artist of any proposed alteration of the Site that would affect the intended character and appearance of t

11. The Agreement further provides that “the covenants and obligations set forth in this Article shall be binding upon the parties, their heirs, legatees, executors, administrators, assigns, transferee and all their successors in interest, and Art Center’s covenants do attach and run with the Work and shall be binding to and until twenty (20) years after the death of the artist.

12. Finally, the Agreement provides that there is no limitation on the Plainti ’s “rights and remedies available...under the Visual Arts Rights Act of 1990 or under any other law which may now or in the future be applicable.” **Ex. 1**, section 8.7.

II. Recent Developments

13. Plainti completed the Project on a timely basis, and since that time the people of the City of Des Moines have been enjoying the Project.

stood the test of time and weather,” (the two elements the Art Center had agreed to protect the Project from). **Ex. 2, email exchange.**

18. Plaintiff was out of the county at the time the email was sent.

19. The very next day, on October 21, 2023, Ms. Baum informed Plaintiff that not only was part of the Project being closed to the public, but was also already in the process of being demolished. *Id.*

20. After demolishing part of the project without Plaintiff

**COUNT I – TEMPORARY RESTRAINING ORDER PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE 65(b)(1)**

30. Plaintiff realleges the preceding paragraphs as if fully set forth herein.

31. Plaintiff is entitled to a temporary restraining order in this matter in order to preserve the status quo pursuant to 17 U.S.C. § 502 and 17 U.S.C. § 106a.

32. 17 U.S.C. § 502(a) specifically permits the issuance of a temporary injunction “on such terms as [the court] may deem reasonable to prevent or restrain

infringement of a copyright.

40. Plaintiff prays, given the singular nature of the Project, the resulting irreparable harm that will arise from its destruction, and the impending commencement of its destruction, that this Court enter a Temporary Restraining Order without notice.

41.

48. Pursuant to 17 U.S.C. §504 (c)(2), Plaintiff is entitled to damages in an amount not to exceed one-hundred and fifty thousand dollars (\$150,000.00), for this intentional destruction of Plaintiff's artwork.

49. As a result of Defendant's willful acts of destruction, Plaintiff is also entitled to reasonable attorney fees.

WHEREFORE, Plaintiff prays the Court enter judgment against the Defendant in an amount not to exceed the statutory cap of \$150,000.00, plus interest, costs, and reasonable attorney fees, and provide all other relief as the Court deems fair and equitable, all as provided by law.

65. As a result of Defendant's repudiation of the contract, Plaintiff is entitled to an award of reasonable attorney fees. *Berryhill v. Hatt*, 428 N.W.2d 647 (Iowa 1988).

WHEREFORE, Plaintiff prays for judgement against the defendant in an amount to be determined at trial, plus costs and interest, and reasonable attorney fees, all as provided by law.

JURY DEMAND

Plaintiff prays for a trial by jury on all issues so triable.

Respectfully submitted,

VERIFICATION PURSUANT TO F.R.C.P. 65 (b)(1)(A)

My name is Mary Miss and I am the Plaintiff in the above captioned action. I have reviewed the application and complaint and I swear and affirm it is true and accurate to the best of my belief.

Date: Apr 4, 2024



Mary Miss.