

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---------------------------------------|
| ----- | X |
| KIT-YIN SNYDER and RICHARD HAAS, | : |
| | : |
| Plaintiffs, | : |
| | : |
| v. | : Case No.: 1:22-CV-03873-LAK |
| | : |
| ERIC ADAMS, Mayor of the City of New York, in | : REPLY DECLARATION OF KIT-YIN |
| his official capacity, THE CITY OF NEW YORK, | : SNYDER IN FURTHER SUPPORT OF |
| NEW YORK CITY DEPARTMENT OF DESIGN | : MOTION FOR A PRELIMINARY |
| AND CONSTRUCTION, NEW YORK CITY | : <u>INJUNCTION</u> |
| DEPARTMENT OF CULTURAL AFFAIRS, NEW | : |
| YORK CITY DEPARTMENT OF CORRECTION, | : |
| NEW YORK CITY PUBLIC DESIGN | : |
| COMMISSION, | : |
| | : |
| Defendants. | : |
| ----- | X |

I, KIT-YIN SNYDER, declare under penalty of perjury that:

1. I am a Plaintiff in the above-referenced action. This Reply Declaration is based upon my personal knowledge. If called to testify, I could and would testify competently to the facts contained herein.

2. I respectfully submit this Reply Declaration in further support of Plaintiffs’ motion, brought by order to show cause, for a temporary restraining order (“TRO”) and a preliminary injunction enjoining Defendants Mayor Eric Adams, the City of New York (“New York City” or the “City”), New York City Department of Design and Construction (DDC), New York City Department of Cultural Affairs (“DCA”, New York City Department of Correction and New York City Public Design Commission (“DOC”) (together, “Defendants”) from taking any actions to destroy, distort, mutilate and/or modify the long-standing works of visual art (the “Artwork”) installed by myself and my co-Plaintiff, Richard Haas, (collectively, “Plaintiffs”)

located at or around the Manhattan Detention Center, 124-125 White Street, New York, New York (the “MDC”) in violation of 17 U.S.C. § 106A (the “Visual Artists Rights Act” or “VARA”) and copyright law.

3. I understand that Defendants are arguing that I have somehow waived my rights under VARA by having limited discussions with them regarding the upkeep of my Artwork and their ever-changing, partial and undisclosed plans with respect to how to address my Artwork as Defendants demolish the MDC and replace it with a new facility as part of the Borough Based Jail (“BBJ”) Project. This could not be farther from the truth.

4. Even more specifically, I want to address a number of misstatements and mischaracterizations about my Artwork, my intent, my contact with the City, DDC and DCA, and my purported “consent” of the removal of my Artwork set forth in the Declaration of Dora Blount, dated May 17, 2022 (the “Blount Decl.”) in opposition to this motion.

I. The Harm to Me is Real, Irreversible and Imminent

5. If this motion is not granted, my Artwork will be destroyed forever. Once “Upright” is demolished, there is no turning back. It will be gone.

6. The PDC only made its decision regarding the destruction of my Artwork on April 11, 2022. The commencement date for the destruction of my Artwork was unclear at that time. The PDC Resolution even stated that its approval was “preliminary” and “conditioned upon commencement of work before April 11, 2024.” (*See* Blount Decl. at Ex. P).

7. Given the express language of the PDC’s Resolution and the fact that DDC still has not awarded the construction project to a design-builder and there is no design for the construction of the new Facility (*See* Blount Decl. at ¶ 10), I had no idea at that time how quickly the demolition of my Artwork could start.

8. As more fully set forth herein, Defendants have not been in communication with me regarding the destruction of my Artwork for years, as they imply in their opposition papers. The fate of my Artwork was only just decided last month.

9. As soon as I learned that destruction of my Artwork was imminent, this lawsuit was commenced and the instant motion filed. This occurred less than one month after the final decision to destroy my Artwork was made by the PDC.

II. I Have Never Consented to the Destruction and Removal of My Artwork

10. To be clear, Defendants have never once asked me if I would explicitly consent to their plan to utterly destroy my art installation, “Justice” (also known as “Judgement”), and to send my sculptures “Solomon’s Throne” and “The Seven Columns of the Temple of Wisdom” to Riker’s Island to be stored indefinitely. I know this because my answer to that question is and always has been an unequivocal “no”.

11. I do not consent, nor have I ever consented, to Defendants destroying my Artwork to which I devoted seven and a half years of my life. I do not consent, nor have I ever consented, to Defendants sending my Artwork as prisoners to Riker’s Island.

A. I Did Not Expressly Consent to the Removal of my Artwork Nor Did I Sign Any Document Consenting to the Removal of my Artwork

12. Pursuant to the contract I entered into with Urbahn & Litchfield Grosfeld, a Joint Venture, on behalf of the City, and Plaintiff Richard Haas (“Haas”) dated July 2, 1987 (the “Contract”), the City agreed that it would “*not* intentionally destroy, damage, alter, modify or change the Art Work in any way,” would “*not* use the Art Work in any manner which would reflect discredit on the Artist’s name or reputation as an Artist or which would violate the spirit of the Work,” and would maintain the Artwork on a regular basis using best efforts to reasonably

assure that the Artwork was properly maintained against the ravages of time and the elements. See Exhibit A to the Declaration of Kit-Yin Snyder, dated May 10, 2022 (“Snyder Decl.”), at §§ 7.2, 7.4, 7.5 (emphasis added).

13. The Contract further provides: “No alteration, change or modification of the terms of the Agreement shall be valid unless made in writing and signed by both parties hereto and approved by appropriate action of the City.” See Snyder Decl. at § 16.

14. The Contract also provides: “No waiver of full performance by either party shall be construed, or operate as a waiver of any subsequent default of any terms, covenants and conditions of this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.” See Snyder Decl. at § 17.

15. At no point did I ever enter into an amendment or a rider to the Contract or otherwise modify the Contract in writing so as to alter, change or modify the City’s specific promise not to “intentionally destroy, damage, alter, modify or change the Art Work in any way” in Section 7.4 of the Contract.

B. I Did Not Implicitly Consent to the Removal of my Artwork Through My Conduct

16. When DDC first contacted me in late February 2021 to advise that their construction project at 125 White Street would “impact all of the artworks at the site” and that they sought “a dialogue with [me] regarding planning for the future of [my] artworks,” I did not think that the City was contemplating actions contrary to its express contractual promise not to intentionally destroy, damage, alter, modify or change my Artwork or infringe on my moral rights. (See Blount Decl. at Ex. B).

17. Ms. Blount claims that my daughter and I met with DDC, DCLA, the PMC and BCA on April 1, 2021. (Blount Decl. at ¶ 12). Notably absent from her recount is that the meeting took place via Zoom, with which I am not well-versed.¹ At no point during this meeting did Defendants indicate that my Artwork would be destroyed. To the contrary, the agenda for this meeting provided a line item for “Concerns of Artists Regarding Disassembly, Storage, Reassembly,” leading me to believe that my Artwork would be returned to its proper place after construction. I assumed Defendants were taking apart my Artwork to protect it, but then would reassemble it in the same location.

18. Further, Ms. Blount claimed that I stated that I “was only minimally involved in the implementation of the pavement design.” (Blount Decl. at ¶ 12). This is absolutely false. Not only was I involved in the implementation of the pavement design, I paid an additional \$3,000 out-of-pocket to have the specially colored pavers used.

19. Additionally, the claim that I did not object to “the proposed plan of disposing of the existing pavers and reconstructing the artwork with new pavers” is misleading. There was no discussion of “Upright” being destroyed and possibly reconstructed completely elsewhere. Under the Contract, the City has an obligation to maintain, repair and restore the Artwork. (*see* Snyder Decl. at Ex. A, §§ 7.2, 7.3). Repairing broken pavers is consistent with that understanding.

20. Interestingly, the Meeting Minutes also provide:

Kit-Yin Snyder explained the original plaza design included apple trees, and these were essential to the overall design. They were intended to

¹ On page 2 of Defendants’ Memorandum of Law in Opposition, Defendants claim that DDC engaged with the artists on numerous occasions through “in-person meetings.” No in-person meetings occurred.

represent New York City and wisdom; they were inspired by iconographies of “good judgment.”

* * *

DDC questioned the acceptability of separating the individual artworks in the new installation. Kit-Yin Snyder replied that she conceived of the artwork as a whole site, a single artwork made up of three “interrelated” pieces, with site specificity being an important feature.

(*See* Blount Decl. at Ex. C).

21. The City has referred to a number of Interim Reports that it has not annexed to its papers. At no point did the City ever ask me to sign one of the Interim Reports. At no point did the City ever ask me if what was contained in the Interim Reports reflected my intent or priorities. Further, the Interim Reports did not state that my Artwork would be destroyed permanently or that my Artwork would be stored in Riker’s Island indefinitely; the Interim Reports always contemplated reinstallation at the New Facility. In the purported Final Report annexed to the Blount Decl. as Exhibit A, DDC’s conservator contemplated “selective demolition” and “restoration” of “Upright.” This implies that “Upright” would still be in its current location and restored.

22. It was not until December, 2021, that I finally understood that there was a possibility that my Artwork could be destroyed and indefinitely stored as a prisoner on Riker’s Island, but even then I believed the design to still be in flux and the decision still up to the PDC.

23. On December 6, 2021, I attended a DCA Meeting via Zoom, which was apparently an update on the Artwork. There was no agenda provided prior to the meeting and, while there was discussion of dismantling and storing my Artwork, it was still not clear that there was a possibility that my Artwork would not be reinstalled at the New Facility.

24. At that time DDC and DCA presented the removal plan as PDC's decision to make, and not ours or even DDC's or DCA's. They made it seem like our best chance at protecting my Artwork was to present a good case with PDC.

25. On December 8, 2021, my daughter, Kim Snyder, emailed Ms. Blount, with my input and copying me. Specifically, Kim wrote:

"I was speaking with my mother who is feeling quite sad about the idea of the sculpture that she had worked so long on coming dow [sic], with the idea that there is a likelihood that it will no longer be in that site. She spent many years designing and building the sculpture and as a family that frequents Chinatown, we have visited it regularly over the last ~ 30 years.

Since my mother was having trouble hearing you, she has asked that you send us an email outlining the main points and the timeline so that she can see it in writing.

Two other things I want to emphasize:

- My mother is an immigrant from Canton, China and the location of the sculpture borders Chinatown. That is a significant connection and one that we would like communicated clearly with the building designers so they can can [sic] factor that into their design ideas.
- If the sculpture turns out not be a fit for the new design, the idea that there would be a process for identifying other locations is very important to us. Her sculpture is modular and could look beautiful in a park space – for example, one of her first public pieces was at Bryant Park. Would you include a note that there will be an effort to identify alternative places that in your memo to my mother."

(See Blount Decl. at Ex. D).

26. In Ms. Blount's response, she gave me one business day notice to review the removal plan DDC planned to share with PDC. She urged Kim and myself to prepare a statement to submit to PDC, again giving me the impression that PDC was the entity which would be able to protect my Artwork.

27. In her Declaration, Ms. Blount stresses that my daughter's statement to the PDC stated that DDC had been "clear and communicative about the proposed plans," when she knows full well that she asked us to state that and my daughter only did because she thought it would help make a better case to the PDC to preserve my Artwork. The fact that Ms. Blount knew this is demonstrated by the exhibits annexed to her Declaration. Specifically, by email dated December 27, 2022, Kim wrote:

When we spoke on December 7 and discussed writing statements for the Public Design Commission, you had asked that we mention that your offices had been communicative with us. I thought it odd, but in good faith I did so, because at that time I thought that you had been. However, since attending the CBI meeting and what I have learned since then tell me that you had not been open at all, in fact quite the contrary.

(See Blount Decl. at Ex. G).

28. On December 21, 2022, DDC presented at the Community Board 1 meeting regarding its plans with respect to my Artwork. The meeting was once again held over WebEx, with which I am not savvy, so I listened through my daughter's phone. The plan presented was not in the same form that it is in now, but it was clear for the first time that my Artwork was truly in danger. I was shocked and devastated. I was not given notice prior to the meeting that Defendants had planned to destroy my Artwork and indefinitely store it at Riker's Island. Yet, the decision was still not final and I understood that the PDC still might change the plans. Additionally, the design for the New Facility had not been finalized, nor had a design-builder even been awarded the construction project. At that point, we had only attended two meetings with DDC, both via Zoom, and this came out of nowhere.

29. I could barely hear the meeting, but my daughter, Kim Snyder, told me after the meeting that DDC indicated that the jail project was immense – that it was a block-sized building

with no option for outdoor public space – and that DCA had outlined a process by which new proposals for Artwork for the New Facility would be submitted and selected. This was perhaps the most shocking; DDC and DCA had never planned to include my Artwork, as I would be in my 90s when the proposals were due.

30. On December 27, 2021, after I had time to process the Community Board 1 meeting, my daughter again wrote to DDC on my behalf, in consultation with me, and copying me on the email. In the email, Kim wrote, in pertinent part:

. . . During the first April meeting, when the whole issue of dismantling surfaced for the Kit-Yin, the focus was on documenting how the sculpture had been put together. In fact, the agenda for that meeting included a section, “Concerns of Artists Regarding Disassembly, Storage and Reassembly”, the operative word being reassembly. The scale of what was planned for the site—such as a long-standing and highly controversial plan to demolish the current buildings to erect a 50-story jail complex—did not come up. It is worth noting that the timing of our first meeting was very shortly after the NYS Supreme Court had ruled in Mayor DeBlasio’s favor to proceed with the project.

During the December 7 meeting we were informed that the existing buildings would be demolished, and now there was a timeline for the dismantling of the sculpture. We learned that two of the public works -- Kit’s pavement design and Richard Haas’s murals would be destroyed. You had indicated that the RFP for the next design would include something that asks the design builders to consider existing artwork that was being dismantled, but we also discussed the possibilities of alternative locations.

You mentioned that there would be a presentation meeting in January. Next we learned of the December 21 Community Board meeting. At that meeting, more was uncovered, the most substantial of which was on slide #39 of Kendal’s presentation, “New Percent for Art Artworks.” A process for selecting new artworks has already been defined. This includes plans for temporary artwork to be installed, to then be followed by a process to select new artists for the site. This in turn would be followed by a proposal review process and then a presentation of the selected proposal to the Community Board. The timeframe for this is 2023-2027, with artwork “reinstalled” in 2027. As Richard Haas noted in his comments, both he and

Kit-Yin will be in their 90's at that point. Can we now be honest and say that their pieces will never return there?

Other things that were learned at that meeting and in the time following:

- Community members had been appalled by the city's neglect of the artwork and had stated that given that lack of care, could DDC and DCA be trusted with this process?
- The removal of the artwork was actually a small part of a much larger city-wide project to close down Rikers Island
- An entire grassroots community had formed to protest what a massive jail complex would do to the residential and business community in Chinatown—one of the NY communities hardest hit by Covid
- The 12/21 meeting itself had been rushed forward ahead of an originally planned January meeting date
- Sasha Ginzberg, who is overseeing the project, is hoping for a registration of contract for demolition by the end of the week, meaning they were trying to get this through in the last week of the year
- The push to move this project forward was just ahead of a transition to the newly elected Mayor Adams, who is on record as being opposed to the placement of a jail in Chinatown, and the replacement of City Council Member Margaret Chin, with Christopher Marte, a founder of Neighbors United Below Canal, the grassroots group formed in opposition to the jail in Chinatown

Questions were raised as to whether the urgency to move up the meeting date was part of an effort to push forward a project which would serve to further the out-going Mayor's legacy, a politician known for self-promotion at all cost.

If the "Chinatown jail" project proceeds, which I sincerely hope it does not, Kit-Yin and I are asking for the identification of an alternative location and a contract for the reassembly in that new location. One of the speakers at the Community Board meeting mentioned finding alternative locations in Chinatown. That would be the perfect place to start. . .

To reiterate, you were not at all straight-forward with us, and have not been since our first meeting in April.

(See Blount Decl. at Ex. G).²

² In Defendants' Memorandum of Law in Opposition, Defendants claim that Mr. Haas and I waited until almost a year to seek a temporary restraining order and a preliminary injunction. This is not true. The PDC did not vote to destroy my Artwork until April 11, 2022,

31. Further making it clear that I did not consent to the removal of my Artwork, after DDC invited me to a meeting in late January 2022 to discuss possible reincorporation of my Artwork into the New Facility with potential designers for the New Facility (who had still not been selected or awarded the contract for the construction project), on January 24, 2022, my daughter Kim wrote, on my behalf, with my input and copying me:

Meanwhile, in an earlier email you had raised a question about whether Kit-Yin wants her artwork restored to the site. For the record: I want to confirm that yes she does, my mother would prefer that her work never been dismantled, and in lieu of that it be saved and restored to the site. It is her legacy and she never wanted it taken down in the first place.

32. I asked DDC that I be permitted to bring counsel or a lobbyist with me to that meeting, and DDC refused.

33. There have been two PDC hearings on the removal plan for my Artwork. During the February 14, 2022 PDC hearing, I spoke in opposition to the removal plan and it was not approved by the PDC in total. It was not until April 11, 2022, when the PDC approved the portion of the removal plan that permitted the destruction of my Artwork.

34. This clearly shows that I never consented to the destruction of my Artwork, and I did not delay in commencing this action. The destruction of my Artwork was not settled until April 11, 2022, and further, the construction project that is replacing my Artwork has not even been designed. The City wants to destroy my Artwork to replace it with something that is so in flux that it has not even been designed.

and I absolutely have not known for a year that there was even a possibility my Artwork would be destroyed.

35. Additionally, throughout the Memorandum of Law in Opposition, Defendants have made statements such as “there is an intent to reproduce [the Artwork]” and the Artwork is being stored “with the intent to incorporate them into the new facility”, but Defendants are also careful to state “if a particular piece of artwork cannot be included in the new design. . .” (*See* Memorandum of Law in Opposition at 4, 5, 12). No agreement has been presented or signed. This nebulous “intent” couched in terms of “ifs” and “maybes” is no assurance that my Artwork is being protected.

III. My Artwork Was Paid for By the Community; It is the Community that is Entitled to Receive the Benefit of the City’s Bargain

36. Lastly, my Artwork was paid for by New York City taxpayers through the Percent for Art program pursuant to the Contract. *See* Snyder Decl. at Ex. A.

37. I created my Artwork for the community. The community is entitled to receive the benefit of the Contract awarded on its behalf.

38. My Artwork has been widely considered to be of recognized stature, including by Defendants who have highlighted my Artwork on their websites and given me an award for design excellence.

CONCLUSION

39. By reason of the foregoing, it is respectfully submitted that this motion be granted in its entirety.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 17th day of May 2022



A handwritten signature in black ink, appearing to read 'Kit-Yin Snyder', is written above a horizontal line.

KIT-YIN SNYDER