

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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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 RICHARD
his official capacity, THE CITY OF NEW YORK,	: HAAS 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.	:
	:
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I, RICHARD HAAS, 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, Kit-Yin Snyder (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 am writing specifically to address Defendants’ inaccurate arguments that I waited to commence this lawsuit after knowing for over a year that my Artwork was going to be destroyed, and Defendants’ mischaracterization of the nature of my communications and contact with Defendants.

I. The Decision to Destroy My Artwork Was Not Final Until April 2022

4. First, the PDC did not vote to approve Defendants’ plan to destroy my Artwork until April 11, 2022. (*See* the Declaration of Dora Blount, dated May 17, 2022 (“Blount Decl.”) at Ex. P).

5. I previously served as a Commission Member on the PDC (previously the Art Commission), and I understand from my experience that a decision regarding the future of an artwork is not final and is always subject to change prior to the PDC voting and issuing a resolution on the matter.

6. Accordingly, the decision to destroy my Artwork was not set until April 11, 2022, and even now, the decision is still subject to challenge through the administrative processes.

7. Additionally, the Resolution specifically states that the work needs to commence by April 2024. With this timeframe, and the fact that DDC has not even awarded the contract to a design-builder for the construction of the New Facility, I thought there was more time before my Artwork would be destroyed.

II. My Conduct with the City Has Been Consistent with my Contractual Obligations

8. Second, my communication with DDC has been consistent with my contractual obligation to consult with the City regarding my Artwork. Specifically, Section 7.3(a) of the I entered into with Urbahn & Litchfield Grosfeld, a Joint Venture, on behalf of the City, and Plaintiff Kit-Yin Snyder (“Snyder”) dated July 2, 1987 (the “Contract”) provides:

“The City shall have the right to determine after consultation with a professional conservator, when and if repairs and restorations to the Art Work will be made. During the Artist’s lifetime, the Artist shall have the right to be consulted on all repairs and restorations, provided, however, the Artist agrees not to unreasonably withhold approval for any repair or restoration of the Art Work. To the extent practical, the Artist, during the Artist’s lifetime, shall be given the opportunity to make or personally supervise significant repairs and restorations and shall be paid a reasonable fee for such services, provided that the City and the Artist shall agree in advance and in writing upon the Artist’s fee for such services.”

(See Declaration of Richard Haas, dated May 11, 2022 (“Haas Decl.”) at Ex. A, § 7.3).

9. To be clear, Defendants have never once asked me if I consent to their plan to destroy my art installation, “Immigration on the Lower East Side.” I do not consent, nor have I ever consented, to Defendants destroying my Artwork.

10. Defendants wish that I be penalized for attempting to make the best out of a bad situation and work with them throughout their plans to replace the MDC with a New Facility, and that I should somehow be held accountable for their failure to meet their contractual obligations and their infringement of my rights under VARA.

11. When DDC first contacted me in March 2021, it was not my understanding that my Artwork would be destroyed. To the contrary, the stated purpose of the conversation was “to have a dialogue with [me] about the artworks as we move forward.” 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.

12. A great deal of time went by after I met with DDC and DCA in April 2021 and our next meeting in December 2021.

13. It was not until December 6, 2021 at a DCA meeting, when I finally understood that there was a possibility that my Artwork could be destroyed. Until that time, DDC had never told me that they were no longer attempting to include my Artwork in the design for the New Facility.

14. On December 21, 2022, DDC presented at the Community Board 1 meeting regarding its plans with respect to my Artwork. 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 in danger. I did my best to before the PDC voted on the matter, but now my Artwork is slated for destruction.

15. I am devastated that my Artwork is being destroyed. I feel as if I am constantly fighting for my artwork, but it is a losing battle. More than half of the murals I have installed on buildings have been destroyed intentionally by developers or by failure to maintain the work. But here, I considered my Artwork to be safe, because the City had commissioned it and the taxpayers had paid for it.

16. To be clear, I do not want my Artwork destroyed. I would like Defendants to honor their contractual obligations and to honor my rights under VARA, and to design the New Facility in such a way that my Artwork can still be enjoyed by the public and does not need to be destroyed.

17. However, I am a realist. Here, I tried to make the best out of a situation that I find to be truly devastating by working with Defendants to find the best case scenario for my Artwork.

18. Unfortunately, an acceptable alternative has not been developed, and there is no substitute to respecting and honoring my Artwork in its intended medium in the location where it was designed.

19. I have done absolutely nothing that is inconsistent with my stated desires and my contractual obligations.

III. I Did Not Consent to the Removal of My Artwork

20. Pursuant to 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 Haas Decl., at §§ 7.2, 7.4, 7.5 (emphasis added).

21. 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* Haas Decl. at § 16.

22. 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* Haas Decl. at § 17.

23. 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.

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

24. My Artwork was paid for by New York City taxpayers through the Percent for Art program pursuant to the Contract. *See* Haas Decl. at Ex. A.

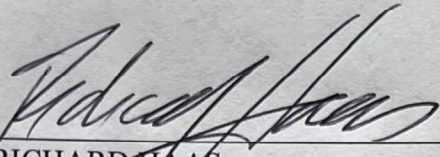
25. I created my Artwork for the community. The community is entitled to receive the benefit of the Contract awarded on its behalf.

CONCLUSION

26. 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


RICHARD HAAS