

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA**

MOLLY MASON, Plaintiff, v. KIRKWOOD COMMUNITY COLLEGE, Defendant.	CIVIL ACTION NO: DECLARATION OF PLAINTIFF MOLLY MASON
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STATE OF NEW YORK)
) ss.:
COUNTY OF Suffolk)

MOLLY MASON, being duly sworn, deposes and says:

1. I am the Plaintiff in this action.
2. I have read the Complaint filed contemporaneously herewith and I verify all facts stated in the Complaint are true to the best of my knowledge and belief.
3. I trained as an artist at the University of Iowa School of Art and Art History where I earned an MFA, MA, and BFA.
4. I have worked as a professional sculptor for 45 years. During my career I have created more than 25 permanent public sculpture commissions in architectural and natural settings, as well as over 200 sculptures that reside in more than 125 public, corporate, and private collections around the world.
5. I am known for the technical quality of my work. I use highly sophisticated techniques in durable and archival sculptural materials including stainless steel, cast and fabricated bronze, aluminum, kiln-formed glass, water components, stone, and polychromed surfaces.

6. Some of my public art commissions include the following: a sculpture for Germantown Performing Arts Center, outside of Memphis, TN; two large sculptures for Ogden Weber Technical College, Ogden, UT; sculpture for Meyer Amphitheater, West Palm Beach, FL; two outdoor sculptures and a water feature for the University of Central Florida, Orlando, FL; a gateway sculpture for the River Oaks Art Center, Alexandria, LA; a sculpture for Historic Constructions, New Orleans, LA; two works for Northwest Oro Valley Medical Center, Tucson, AZ; a sculpture for a public park in Brisbane, Australia; five exterior sculptures for the City of Albuquerque, NM; a sculpture for the Long Island Cultural Center, NY; two sculptures for Forma Viva International Sculpture Park, Kostanjevica, Slovenia; and a sculpture for the National Sculpture Park of Hungary, Villany, Hungary.

7. My work is held in various museum and corporate collections, including the Ogden Museum of Southern Art, New Orleans, LA; Michener Art Museum, Doylestown, PA; Gallerie Moderne, Vienna, VA; Royal Caribbean Cruise Lines, Norway; Texaco Corporation, New Orleans, LA; State St. Bank, Boston, MA; and Wyeth Laboratories, Collegeville, PA.

8. I have taught graduate and undergraduate sculpture at several universities around the country, including SUNY Stony Brook, NY, Tulane University, LA, University of New Mexico, and Southern Illinois University at Edwardsville. I have also been a Visiting Artist at multiple colleges throughout the United States.

9. I have been awarded more than 45 fellowships, grants, and awards for my work, which includes a Fulbright Senior Research Professorship in Japan; a Soros Foundation Fellowship in Hungary; a Millay Colony for the Arts Fellowship, NY; an American Association of University Women Award; two Ford Foundation Fellowships; two New York Foundation for the Arts (New York, NY) Special Opportunity Stipends; a Vermont Studio Center Fellowship,

VT; a Women's Studio Workshop Artist's Fellowship, NY; a Minnesota State Arts Board Individual Artist Fellowship; a Louisiana State Arts Board Individual Artist Fellowship; and two Grahame Memorial Fellowships at the University of Iowa School of Art and Art History.

10. I was voted into membership in 1995 by the Sculptors Guild in New York City, a historical organization of sculptors founded in 1932.

11. In 2000, I was contacted by Mary Kayt Conrad (“Conrad”), the Dean of Humanities and Arts at Kirkwood. Conrad and the other members of Kirkwood’s Art Acquisition Committee (“Committee”) indicated they had admired my sculptures for years and were interested in having me create a piece for Kirkwood.

12. I began discussing the terms for the artwork with the Committee in 2006. They told me they wanted the piece to integrate a water feature. We agreed to a budget of \$80,000 for the artwork and I began the design process in June of 2006. My work was to be placed in the new continuing education building that was being built at Kirkwood (“Conference Center”).

13. I submitted a preliminary design plan and model to the Committee in February of 2007 which incorporated a water feature within my sculptures per the Committee’s request. They initially asked that the sculpture be made of bronze, but I informed them that bronze was incompatible with water flowing through it, as water will destroy the lacquer on the bronze and change its color to a deep brown. The Committee ultimately decided that its desire for an artwork incorporating a water feature was more important than its desire for the work to be in bronze, and we agreed to use stainless steel instead.

14. Ultimately, my finished work consisted of two sculptures in stainless steel and kiln-formed glass, with an integrated water feature, titled “Before the Sun Speaks” (“Work”).

The Work was installed at the Conference Center on October 26, 2008, and the kiln-formed glass was added in January of 2009.

15. The Work was formally unveiled and introduced on November 6, 2009. The Work was the subject of three articles published in the *Cedar Rapids Gazette* in 2009, in an internationally-distributed book *SoHo20 Gallery 1973-2013: Celebrating 40 Years of Supporting Women in the Arts* by Jenn Dierdorf and Francine LeClercq, online by The International Sculpture Center (a world-wide sculpture-focused organization), and in the Public Art Archive.

16. Additionally, Kirkwood promotes the Work on its website, as well as in countless images that Kirkwood features on its social media pages.

DESTRUCTION OF ARTWORK

17. For over a decade, the Work has been a highly visible work of public art in Kirkwood's art collection. Kirkwood has never contacted me about any issues, concerns, or problems with the Work since it was fully installed in January of 2009.

18. In June of 2020, I learned Kirkwood had taken actions to intentionally distort, mutilate, and modify the Work, with the result that the water feature component of the Work had been shut off and the jets and lights had been covered with a great deal of plant material and potting soil, resulting in decaying plant matter. This insertion of plant material began around the end of March of 2018, with the number of plants increasing over time. The water feature was shut off sometime in the summer of 2018.

19. I contacted the President of Kirkwood, Dr. Lori Sundberg ("Sundberg"), about the modification of the Work. She detailed a recent "Engineer's Report" ("Report") which allegedly indicated that certain bolts on the Work were rusting. I asked Sundberg for a copy of the Report.

20. About two weeks later, Sundberg informed me she was advised by counsel not to give me the Report. Despite this, I volunteered to help repair the damage to the Work, asking only reimbursement costs, but Sundberg refused. She went so far to say that Kirkwood could do anything it wanted with the Work because it owned it.

21. During this call Sundberg advised that I had three (3) options with respect to the Work. First, Kirkwood could remove the dedication plaque on the Work that identified me as the artist. Second, I could come to Kirkwood and remove the Work, at my own expense, within a ninety (90) day period. Third, Kirkwood could maintain the Work, as modified, without the water feature and instead, with planters and soil. Sundberg also claimed that OPN Architects (“OPN”), Miron Construction (“Miron”), and Larry Weeks (“Weeks”), had rescinded their rights as “co-authors” of the Work, pursuant to VARA. OPN, Miron, and Weeks were not co-authors of the Work. Although they were involved with its installation, their contributions did not arise to the level of co-authorship under VARA. I am the only author of the Work.

22. On August 27, 2020, I called Kirkwood and asked to be connected to its business office so that I could request a copy of any agreements I entered into with Kirkwood with respect to the Work. I left a voicemail stating my name, telephone number, and a summary of what I was requesting. An hour later, James Choate (“Choate”) of Kirkwood called me and left a voicemail in which he claimed there was no contract “available” to send me. He also recommended that I contact Sundberg as she had two (2) solutions for me with respect to the Work.

23. On August 29, 2020, I e-mailed Conrad about the situation. Conrad worked at Kirkwood until 2006 when she left for her current position as the Administrator in the Division of Performing Arts at the University of Iowa. She said she would reach out to Arbe Bareis, the Fine and Performing Arts Specialist and Curator at Kirkwood, to see if he could help.

24. An hour later, I received an email from Sundberg wherein she requested that I “Cease and Desist” from contacting anyone at Kirkwood regarding the Work. She presented me with two (2) options – I could either remove the Work within ninety days at my own expense, or let her know what plants I wanted to be used in the Work and, if they were reasonably priced, Kirkwood would comply.

25. On November 20, 2020, counsel for Kirkwood contacted my attorney and claimed A) the Work never functioned properly in that it “sprayed water on the floor” and “made too much noise for anyone to have a conversation in the vicinity of the Work”, B) it was rusting, C) the water feature had become malodorous, D) the work done to the Work was not violative of VARA, E) the Work was not covered by VARA, F) there were co-authors who had waived their VARA rights, and G) Kirkwood was prepared to issue a 90-day removal notice.

26. My attorney received Kirkwood’s 90-day removal notice on December 22, 2020. He sent a response addressing the claims in their previous letter on January 22, 2001.

VISUAL ARTISTS RIGHTS ACT

27. I filed this declaratory judgment action pursuant to the Visual Artists Rights Act (“VARA”), 17 U.S.C. §106A, to preserve the artwork I created for Kirkwood.

28. When the Work was installed, all elements of the water feature component of the Work (“Water Feature”), and the Work as a whole, operated properly. In addition, there are more than one hundred images of the Work online, including from Kirkwood’s own website and social media accounts, that show the Water Feature operating properly from its installation through May of 2018.

29. In the proposal documents I negotiated with Kirkwood, I specified only stainless-steel bolts and other stainless hardware for acorn bolts and washers were to be used to secure the

two sculptures to their concrete bases. If any of the stainless-steel bolts or other hardware were substituted with mild steel or other materials, that would be the cause of the rust, if it does exist. Kirkwood was responsible for the installation of the Work. If they used a different material to secure the Work in contravention to my explicit instructions, they are the cause of the rust.

30. I performed an enormous amount of research on the water quality in the Conference Center and obtained written documentation from nationally prominent water purification experts as well as Cedar Rapids public water supply experts, which I gave Kirkwood at the time the Work was installed. I also provided a Copper Ion purification system which was to be installed directly in the Water Feature, a filter pump, and all corresponding manuals to address the necessary maintenance.

31. Kirkwood was responsible for the cleaning of the water once the Work was installed. Kirkwood was also responsible for all regular maintenance of the Work. Any malodorous water would have been prevented by Kirkwood's proper maintenance.

32. At some point between March 25, 2018 and April 1, 2018, Kirkwood began adding ornamental plants and soil directly into the Work, inside the pool, upon the sculpture's bases, and directly into the large lower "cone" form of the plumbed sculpture. These actions constitute intentional and willful distortion, mutilation, manipulation, or other modification of the Work, which is prejudicial to my honor and my reputation as an artist.

33. The Water Feature continued to run with the plants inserted into it beginning around April 1, 2018 through at least May 20, 2018, and possibly until August 28, 2018, causing months of damage. The introduction of decaying plant material and soil would contaminate the water supply which in turn would clog the Water Feature's pumps, the computerized spray jet heads, and the lighting elements set in the pool. In addition to their negative effects on the water

supply, the plants and soil likely damaged the paint throughout the Work's "cone" interiors. These damages could have been avoided had Kirkwood not inserted plants and soil into the Work.

34. The Water Feature is a central aspect of the Work, per Kirkwood's explicit request. Deactivating the Water Feature destroys the complete Work – the two sculptures integrated with the Water Feature – that was specifically requested and approved by Kirkwood's Committee in 2007.

35. I advised Kirkwood, through my counsel, that this could be resolved with only a few small steps. First, all plants must be removed from the Work and Kirkwood must agree not to replace them. Second, it must inspect, repair, and/or replace the pumps that control the Water Feature, the water jet components, the computerized variable water movement system, the lighting in the pool, and any damage to the painted surfaces, so that the Work is fully restored. I have continually offered to contribute my expertise to consult on the restoration, but my help has been refused.

36. In a letter dated February 3, 2021, counsel for Kirkwood rejected my proposed solution and reiterated their plan to remove the Work after the expiration of the 90-day notice.

37. I am requesting injunctive relief in order to safeguard the integrity of the Work by preventing any intentional distortion, mutilation, modification, or destruction that would be prejudicial to my honor and reputation. I have not consented to the removal of the Work, thus despite Kirkwood's 90-day notice, they are prohibited from removing the Work pursuant to my rights under VARA.

38. The Work is a highly visible public work of art that has been and continues to be attributed to me, and any destruction, mutilation, or manipulation of the Work is prejudicial to

my honor, as it would A) ruin the aesthetics of the Work because the Water Feature is no longer incorporated into the sculptures; B) destroy its symbolic significance by preventing people from observing and appreciating the Work as I intended; C) tarnish the honor and purpose of my work; and D) reasonably be misconstrued that I caused or allowed it to occur.

39. There is no prior application for the relief sought in the Complaint and no prior application for injunctive relief has been made in any other court or jurisdiction.

WHEREFORE, for all the foregoing reasons, I respectfully request that this Court maintain the *status quo* in order to preserve the Work, pending the outcome of this litigation by granting a temporary restraining order, together with such further relief as this Court deems just and proper.

Molly Mason
Molly Mason

Signed and sworn to before me by Molly Mason on this 16 day of March, 2021.

Patricia Genovese
Notary Public

Patricia Genovese
Notary Public, State of New York
No. 01GE6043821
Qualified in Suffolk County
Commission Expires 6/26/22