

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

MOLLY MASON,

Plaintiff,

v.

KIRKWOOD COMMUNITY COLLEGE,

Defendant.

CIVIL ACTION

NO:

**PLAINTIFF’S MOTION FOR A
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

COMES NOW, the Plaintiff, Molly Mason (“Mason” or Plaintiff”), and for her Motion for A Temporary Restraining Order and Preliminary Injunction (“Motion”), states the following:

1. The Plaintiff has filed her Complaint against Kirkwood Community College (“Kirkwood” or “Defendant”) contemporaneously hereto.

2. The Plaintiff is a trained sculptor and has enjoyed a successful career as an artist for more than forty-five years.

3. In 2006, the Plaintiff agreed to create a sculpture which would be incorporated into the lobby of a new conference center being built on the Defendant’s campus.

4. The Defendant requested that the Plaintiff include a water feature in the sculpture. Pursuant to this explicit request, which was reiterated in subsequent discussions and design meetings, the Plaintiff’s finished work consisted of two sculptures with an integrated water feature, titled “Before the Sun Speaks” (“Work”). The Work was ultimately completed in January of 2009 and unveiled during a special event at Kirkwood.

5. In June of 2020, the Plaintiff learned Kirkwood had inserted plants and soil into the Work and shut off its water feature component without her permission. The plants and soil caused damage to the Work and the Defendant refused to make the repairs needed to restore the

Work to its original, intended condition. The Defendant's actions amounted to distortion, mutilation, or other modification of the Work.

6. On December 23, 2020, the Plaintiff received a 90-day notice ("Notice") from Defendant informing her that if she did not remove the Work, at her own expense, by March 23, 2021, the Defendant would remove it.

7. As set forth more fully in the Memorandum in Support of this Motion ("Memorandum"), filed contemporaneously hereto, the Plaintiff has the right to prevent the destruction of the Work since it is a work of visual art of recognized stature pursuant the Visual Artists Rights Act ("VARA"). 17 U.S.C. Section 106(a)(3)(A)-(B). The Defendant's intentional destruction of the Work and subsequent threat of removal constitutes a violation of the Plaintiff's VARA rights. *Id.*

8. In an effort to protect the Work, the Plaintiff is seeking an injunction to prohibit the Defendant from removing the Work following the expiration of the 90-day notice period, which is March 23, 2021.

9. In ruling on a motion for a preliminary injunction, the Court must consider whether the plaintiffs have established that: (1) there is a substantial likelihood of success on the merits; (2) there exists, absent injunctive relief, a significant risk of irreparable harm; (3) the balance of hardship tilts in plaintiffs' favor; and (4) granting the injunction will not negatively affect the public interest. *TEC Engineering Corp. v. Budget Molders Supply Inc.*, 82 F.3d 542, 544 (1st Cir. 1996).

10. As set forth more fully in the Memorandum, without an injunction, the Defendant intends to remove the Work following its arbitrary deadline of March 23, 2021. Without an

injunction, the Work, and in turn, the Plaintiff, will suffer irreparable harm in violation of the rights and protections afforded by VARA.

WHEREFORE, the Plaintiff, Molly Mason, respectfully requests that the Court issue a temporary restraining order preventing Defendant from removing the work effective March 22, 2021; set a hearing date on the issuance of said temporary restraining order; grant a preliminary injunction requiring the Defendant to maintain the *status quo* and preserve the Work pending the outcome of this litigation; and such further relief this Court deems just and proper.

Respectfully submitted,

PUGH HAGAN PRAHM PLC

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