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LA judge halts sale of disjointed tavern mural

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The owners of a Los Angeles bar and restaurant can't sell art they acquired when they took possession of the building, according to a temporary restraining order issued Friday by U.S. District Judge Fernando M. Olguin.

Graffiti artist Marquis Lewis, professionally known as RETNA, claims Mike and Carla Torres, owners of Black Rose Tavern Inc., removed a mural he painted on a wall of the building, cut it into six separate pieces and are attempting to sell each piece as unique RETNA pieces without the rights to his work. *Lewis v. Black Rose Tavern, Inc. et al*, 15cv7860 (C.D. Cal., filed Oct. 7, 2015)

Lewis is claiming infringements of right of attribution and right of integrity under Visual Artists Rights

Act of 1990, violation of Lanham Act for attempting to profit from the RETNA trademark, intentional desecration of fine art, conversion and negligence. He is seeking statutory and punitive damages of an amount to be determined.

The order forbids any altering or selling of the mural or any of its pieces, and set Monday morning as the time plaintiff could visually inspect the mural.

Aurele Danoff Pelaja and Christopher Frost of Eisner Jaffe APC, the firm representing Lewis, went to the scheduled meeting place to inspect the art and said they found defendants weren't there and a facility employee told them only two of the six pieces were present in storage. The remaining four pieces are believed to be at Julien's Auctions, to which Eisner Jaffe has sent a copy of the order.

The mural spells out a quotation from a 1963 speech of Ethiopian

leader Haile Selassie I in Lewis' proprietary script, which according to court documents is inspired by Gothic blackletter script, Egyptian hieroglyphs, Arabic, Asian and Hebrew calligraphy and traditional street-based graffiti.

"The careful cutting of that mural into six, separate, roughly equivalent pieces, constitutes physical destruction of, and distortion of the integrity of the mural," Olguin wrote. "In other words, now that the mural is in six separate pieces, there is no way to decipher the Selassie quote unless the pieces are put back together."

Lisa E. Davis, partner at Frankfurt Kurmit Klein & Selz PC who is not involved in the case, said the question of what happens to physical artwork when a building changes hands is a common one, but this case remains unusual.

"This actually seems pretty egregious," she said. "Without contact-

ing him at all they made these irreparably damaging changes to his work of art and tried to sell it out from under him."

Davis said she recently worked with a client to address this hypothetical scenario and provide clarity as to what happens to physical artwork in the event her client leaves the property in which it is installed.

"I think you're going to see more of these [kinds of cases]," she said. "There's such an appreciation of graffiti artists and there's a lot of site-specific artwork that's being commissioned."

Steven Thomas, head of the art law practice group at Irell & Manella LLP who is also not involved in the case, said this lawsuit is "a bit novel" and he is interested to see how the court responds to the arguments under the Visual Artists Rights Act.

"It's within the realm of what

VARA was intended to protect, but there haven't been that many VARA cases," he said, adding that Lewis will have the burden of proving the modification of the work is prejudicial to his honor or reputation.

"There's no good ruling that everyone's looking to that says, 'Here's how you determine whether there's harm to an artist's reputation or honor,'" Thomas said, adding that the facts in this case seem pretty straight forward. "I think there's a really good argument to say, 'That's harmful to me because it doesn't reflect what I actually created.'"

According to court documents, in 2011 Lewis created the mural free of charge for The Joint, a now defunct music venue and restaurant, as a favor to its owner Eddie Donaldson. Lewis and Donaldson agreed that plaintiff would retain all rights in and to the mural.

Around 2014 The Joint closed

and the building was sold. In August Lewis learned through art dealers his work had been cut into six pieces and that they were for sale. Lewis responded with a cease and desist letter to defendants demanding they stop attempting to sell the mural and return it.

"Once someone takes possession of a piece of art, that's not the end of the story," said Michael Eisner, founding partner of Eisner Jaffe. "An artist retains certain rights and has the right to preserve and protect those rights."

Defendants have not yet declared counsel in this case and Olguin's order denied as moot their request for extension of time.

A hearing on whether a preliminary injunction should be issued, or the temporary restraining order should be lifted, is scheduled for November 10.

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