



Provided by:
Overhauser Law Offices LLC
www.injlaw.org
www.overhauser.com

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

TERRY CHAMP,)	
)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:18-cv-1473
)	
CITY OF SEYMOUR)	COMPLAINT
)	
Defendant)	DEMAND FOR JURY TRIAL

COMPLAINT

Plaintiff, Terry Champ (“Champ”), sues Defendant, City of Seymour, and alleges:

JURISDICTION AND VENUE

1. This is a civil action for damages for violation of the Visual Artists Rights Act (“VARA”), 17 U.S.C. § 106A, and concerns an intentional, willful or grossly negligent destruction of a work of visual art.

2. This Court has subject matter jurisdiction over Champ’s claims pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).

3. This Court has federal question jurisdiction over Champ’s claims under VARA, 17 U.S.C. § 106A.

4. This Court has personal jurisdiction over the Defendant because Defendant does business in the State of Indiana, Defendant’s acts of infringement complained of herein occurred in the State of Indiana, and Defendant has caused injury to Champ within the State of Indiana.

5. Venue is proper in this Court under 28 U.S.C. § 1391, in that Defendant has its principal place of business in Indiana and in this judicial district, and because a substantial part

of the events giving rise to the claim occurred in the Southern District of Indiana. Alternatively, venue is also proper pursuant to 28 U.S.C. § 1400(b) because the Defendant transacts business, committed the acts of infringement, and has a regular and established business in this judicial district.

6. For purposes of this Complaint, unless otherwise indicated, “Defendant” includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogates, representatives and insurers of Defendant named in this caption.

PARTIES

7. Champ, an individual, is a citizen of Jackson County, Indiana. He is a well-known artist and sculptor skilled in working with gold leaf, whose artworks have been exhibited in Indiana, the Midwest, and nationally for over forty years.

8. The City of Seymour is a municipality located in Jackson County, Indiana.

COUNT I

VIOLATION OF THE VISUAL ARTISTS RIGHTS ACT

9. In or about October 2010, Champ created and completed *Trinity*, a nine-foot-tall steel sculpture covered in a pearl auto paint with two different techniques of hand-done 24-karat gold and variegated gold work, which was intended to symbolize the Holy Trinity in the religion of Christianity. *Trinity* is pictured below:



10. Plaintiff is a “copyright owner” who holds “exclusive rights” to his “copyrighted work[s],” including *Trinity*, pursuant to 17 USC §§ 101 and 106.

11. Champ’s creation of *Trinity* was sponsored by the Community Foundation of Jackson County as part of its Adopt-a-Spot art project, an initiative by the Greater Seymour Chamber of Commerce and Southern Indiana Center for the Arts “to enhance the community with art and spotlight local artists.” *Jessica Squires, Public Art enlivens Seymour scene, Indiana Economic Digest, October 9, 2010.*¹ The article noted that *Trinity* “will soon be erected at the traffic stop at the intersection of Second Street and Community Drive.” *Id.*

12. *Trinity* was subsequently loaned to the City of Seymour.

13. The City of Seymour accepted *Trinity*, thereby assuming care, custody and control.

¹ <http://www.indianaeconomicdigest.net/main.asp?SectionID=31&ArticleID=56517>

14. At the time of its loan to the City of Seymour, Champ estimates that *Trinity's* value was \$35,000.

15. *Trinity* was a work of recognized stature and its location at Second Street and Community Drive in the City of Seymour enhanced itself and the property it stood at. *Trinity* was protected as a work of visual art under VARA and is subject to copyright protection under 17 U.S.C. §§ 101, 102(a)(5) and 106A.

16. At all times, *Trinity* was in good condition and undamaged.

17. On or about April 18, 2016, following a request from the Director of Facilities and Grounds for Seymour Community Schools to the Board of the Seymour Department of Public Works ("DPW") that *Trinity* be removed, *Trinity* was removed from its established location at Second Street and Community Drive, without notice to Champ, and delivered to the DPW's garage in Freeman Field at 865 F Avenue East in the City of Seymour.

18. *Trinity* was found by Champ at the DPW's garage lying on its side in gravel.

19. *Trinity*, its paint and its gold leaf, were destroyed during the removal process and every section of *Trinity* had numerous nicks, scratches and gouges that extended into the steel. In addition, the bottom point of one section of *Trinity* was bent.

20. Restoration of *Trinity* would require complete stripping and replacement of its paint and gold leaf. A substantial amount of grinding and filling would also be required to prepare the steel for repainting.

21. *Trinity* is protected as a work of visual art under VARA and is subject to copyright protection (17 U.S.C. §§ 106A and 101).

22. The destruction of *Trinity* violated VARA, 17 U.S. Code § 106(a)(3)(A) and (B).

23. The City of Seymour, either intentionally, willfully or through its gross negligence, destroyed *Trinity* and/or enabled its destruction.

24. The intentional distortion, mutilation, or other modification of *Trinity* prejudiced Champ's honor and reputation.

25. The City of Seymour knew, or should have known, that the destruction of *Trinity* without the permission of Champ violated VARA.

PRAYER FOR RELIEF

WHEREFORE, Champ seeks judgment against the City of Seymour in the amount of \$150,000, the maximum enhanced statutory damages under 17 U.S.C. § 504(c)(2), plus attorney's fees pursuant to 17 § U.S.C. 505, and such other relief as the Court deems appropriate.

Dated: May 14, 2018

Respectfully submitted,



Kenan L. Farrell
IN# 24176-49
451 N. New Jersey Street
Indianapolis, Indiana 46204
Phone: (317) 721-7604
kfarrell@klflegal.com
**Counsel for Plaintiff,
TERRY CHAMP**

Jonathan S. Chernow
FLEISCHNER POTASH CARDALI
CHERNOW COOGLER
GREISMAN STARK
STEWART LLP
303 Old Tarrytown Road
White Plains, New York 10603
Phone: (646) 520-4253
jchernow@fleischnerpotash.com
**Counsel for Plaintiff,
TERRY CHAMP**
(Awaiting Pro Hac Vice Admission)

DEMAND FOR JURY TRIAL

Plaintiff, Terry Champ, hereby requests trial by jury for all issues so triable.

Dated: May 14, 2018

Respectfully submitted,



Kenan L. Farrell

IN# 24176-49

451 N. New Jersey Street

Indianapolis, Indiana 46204

Phone: (317) 721-7604

kfarrell@klflegal.com

**Counsel for Plaintiff,
TERRY CHAMP**