

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL HUNT STOLBACH,
159 Old Boyer Road
Fleetwood, PA 19522

Plaintiff,

v.

ALBRIGHT COLLEGE,
13th and Bern Streets
Reading, PA 19612

Defendant.

CIVIL ACTION

No.: _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Michael Hunt Stolbach (“Mr. Stolbach” or “Plaintiff”), through his attorneys, alleges for his complaint against Defendant Albright College (“Albright”):

The Parties

1. Mr. Stolbach is an adult individual residing at 159 Old Boyer Road, Fleetwood, Pennsylvania 19522.
2. Albright is a nonprofit corporation incorporated under the laws of the Commonwealth of Pennsylvania with its principal place of business located at 13th and Bern Streets, Reading, Pennsylvania 19612.

Jurisdiction and Venue

3. This is an action based upon violation of the Visual Artists Rights Act (“VARA”) under 17 U.S.C. § 106A and the Copyright Act, 17 U.S.C. §§ 101 et seq.

4. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a). This action arises under the laws of the United States, including VARA and the Copyright Act.

5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1400(a). Albright maintains its principal place of business within this District and so is subject to personal jurisdiction herein.

Facts

6. Mr. Stolbach is a Harvard-educated painter and sculptor who has exhibited his abstract, contemporary work in various New York and Washington, D.C. galleries.

7. Mr. Stolbach was among the first group of artists that produced original paintings, drawings, and sculptures explicitly dealing with Acquired Immunodeficiency Syndrome (“AIDS”) and AIDS-related themes.

8. Throughout the 1980s and early 1990s, Mr. Stolbach created a series of works dealing with AIDS, and the emergence and impact of the disease on the gay community. This collective body of work included approximately 300 original paintings, drawings, and sculptures solely created by Mr. Stolbach.

9. Several large sculptures were included within Mr. Stolbach’s AIDS-themed work. The largest and most important of Mr. Stolbach’s sculptures was “We the People, We the Gay People of the United States,” which he completed in 1991.

10. “We the People, We the Gay People of the United States” (1991) was a mixed media sculpture (72 x 78 x 27.25 inches) that Mr. Stolbach described as a “Mummy House” because it depicted a mummy (covered with obituaries and other accounts of the deaths of gay men from AIDS) placed within a scaled-down cutaway of a house (covered with text from the United States Constitution).

11. For over a decade, Mr. Stolbach exhibited his AIDS-themed work in galleries in New York, Washington, D.C., Amsterdam, Buffalo, Philadelphia, and other cities.

12. In 1993, Ellen Hurwitz, Ph.D., then President of Albright, pursued Mr. Stolbach’s donation of a sculpture to Albright in memory of Albright alumnus David Kline, who had died of AIDS.

13. In May 1994, Mr. Stolbach donated his sculpture “We the People, We the Gay People of the United States” (1991) (hereinafter “Mr. Stolbach’s sculpture” or “We the People . . .”) to Albright in memory of Mr. Kline.

14. Mr. Stolbach presented “We the People . . .” to Albright in connection with a formal installation ceremony held at the Freedman Gallery on May 8, 1994. The installation ceremony occurred over Alumni Weekend and was attended by approximately 100 people, including Albright administration and faculty, as well as family and friends of Mr. Kline, who was a native of Reading, Pennsylvania.

15. During the installation, Mr. Stolbach delivered a speech about his sculpture, its artistic meaning, and its place at Albright. He closed his remarks, as follows:

It is my hope and belief that this “Mummy House” will find safe haven on the Albright campus, as it itself is meant to provide safe haven for all those who must remain among us – although lost to AIDS.

16. On multiple occasions, Mr. Stolbach attempted to engage officials from Albright and its Freedman Gallery regarding the conditions appropriate for the permanent display of “We the People . . .” on Albright’s campus.

17. In a letter dated December 8, 1994, Albright’s Director of Development, Patricia L. Benes, thanked Mr. Stolbach for the gift of his sculpture and assured him that “plans for the preservation and security of the sculpture are being discussed.” Ms. Benes added: “You will be advised of the outcomes of the discussion soon.”

18. Mr. Stolbach did not receive any correspondence from Albright for more than a decade.

19. Mr. Stolbach wrote to Albright numerous times inquiring as to the whereabouts and current state of preservation of “We the People . . .”.

20. Finally, after two letters from Mr. Stolbach’s legal counsel, Albright in a letter dated November 21, 2007 notified undersigned counsel that Mr. Stolbach’s sculpture “was disposed of in 2004.” A copy of Albright’s letter is attached hereto as Exhibit A.

21. Albright, in its letter, admitted that: “The work was deaccessioned and disposed of following policies and guidelines established by Albright College governing unrestricted gifts to the College.” See Exhibit A.

Cause of Action

22. Paragraphs 1 through 21 are incorporated herein by reference.

23. Mr. Stolbach created, under the definition as set forth in 17 U.S.C. § 101, an original and unique sculpture entitled: “We the People, We the Gay People of the United States” (1991).

24. Mr. Stolbach's sculpture "We the People . . ." was a work of recognized stature, as described in 17 U.S.C. § 106A(a)(3)(B).

25. Mr. Stolbach's sculpture "We the People . . ." constituted a work of visual art within the meaning of VARA and the Copyright Act as set forth in 17 U.S.C. § 101.

26. Mr. Stolbach has the right, under 17 U.S.C. § 106A(3), to "prevent any destruction" of his sculpture "We the People . . .".

27. Mr. Stolbach never waived any of his rights under VARA.

28. To the extent that Albright disposed of Mr. Stolbach's sculpture "We the People . . ." pursuant to "policies and guidelines established by Albright College," such policies and guidelines do not preempt the rights conferred upon Mr. Stolbach by VARA.

29. Albright's destruction of "We the People . . ." was intentional, willful and grossly negligent. Albright's actions and omissions amount to a violation of Mr. Stolbach's rights under 17 U.S.C. § 106A(a)(3)(B).

30. Albright's intentional, willful and grossly negligent acts and/or omissions have caused Mr. Stolbach to suffer substantial injury, loss, and damages.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment as follows:

- (a.) award Plaintiff actual damages suffered as a result of the destruction of "We the People . . ." under 17 U.S.C. § 504(b);
- (b.) in lieu of the relief requested in paragraph (a.) above, award Plaintiff statutory damages for the destruction of "We the People . . ." under 17 U.S.C. § 504(c);
- (c.) award Plaintiff costs and expenses of this action, together with attorney's fees under 17 U.S.C. § 505; and

- (d.) award Plaintiff such other and further relief as this Court deems just and appropriate.



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