

INTELLECTUAL PROPERTY

LANDLORDS BEWARE: A TENANT'S JUNK COULD BE VALUABLE ART

by Caleb L. Green

As a landlord or property owner, there are several reasons that may lead you to evict a tenant or otherwise remove their personal property. But you may be exposing yourself to intellectual property liability if proper care and legal precautions are not taken. In the noteworthy case, *Narkiewics-Laine v. Doyle*, involving the overlap between commercial landlord-tenant law and intellectual property law, the United States Court of Appeals for the Seventh Circuit affirmed a jury damages award of \$300,000 to a tenant whose landlord destroyed his abandoned artwork.

What Happened?

In 2004, Narkiewics-Laine, an artist, leased storage space from members of the Doyle family. The lease lasted about six years until Mr. Narkiewics-Laine failed to make several payments for the storage space and the utilities for the property. Like any reasonable landlord, the Doyles then discarded of Mr. Narkiewics-Laine's stored property and cleared the rental space. Mr. Narkiewics-Laine asserted that among the discarded items, the Doyles destroyed 1,457 pieces of artwork that he created. In effort to recover damages from his destroyed property, Narkiewics-Laine brought suit in federal district court asserting, among other claims, a violation of the Visual Artists Rights Act of 1990.

The Visual Artists Rights Act of 1990 (VARA)

VARA rights extend to works of art that may be destroyed in the eviction process—a lesson the Doyles learned the hard way. VARA, an amendment to Copyright Act, adopted in 1990, provides protection for a limited set of moral rights for artists. Specifically, under VARA the United States recognizes: (1) the right of integrity and (2) the right of attribution. An artist's right of integrity includes the right to prevent the modification, mutilation, or distortion of the artist's work, and in some cases, to prevent its destruction. Rights of attribution generally include an artist's right to be recognized as the author of his/her work, to publish anonymously and pseudonymously, to prevent attribution of his/her name to works he/she did not create, and to prevent his/her work from being attributed to other artists.

Although VARA is an amendment to the Copyright Act, registration with the U.S. Copyright Office is not required for an artist to bring claims for violation of VARA. However, the statutory coverage of VARA is restricted to specific categories of fine art, namely paintings, drawings, prints, sculptures, and certain photographs.

Lessons Learned

So what should the Doyles have done? The *Narkiewics-Laine* case has one very important and practical implication: property owners and

landlords must take steps to avoid infringing on moral rights of their tenants during the eviction process. In the case of *Narkiewics-Laine v. Doyle*, we see VARA rights extended from the traditional landscape of fine arts and evolve into a tenuous landlord-tenant dispute, resulting in a six-figure damages award. However, property owners could have eliminated their liability by taking prophylactic measures.

1. Take Caution with a Tenant's Personal Property

Property owners beware: A piece of art that is protected under VARA may not be apparent at first glance. Such was case in *Narkiewics-Laine*, where the landlords discarded what they thought was "trash, not art."

It is important for property owners to recognize that courts have a broader interpretation for "works of art" than one may initially assume. For example, in *Mazer v. Stein*, the U.S. Supreme Court determined a lampstand constituted a sculpture and was protected under the Copyright Act. As such, property owners should take care in disposing of all of a tenant's personal property, regardless of the circumstances under which the tenancy was terminated.

2. Include Protective Provisions in Lease Agreements

Landlords also should ensure their prospective lease agreements contain waivers of liability for intellectual property claims, including VARA claims. Already-existing lease agreements likewise should be modified with an intellectual property liability waiver clause. Such modifications may be permitted under the terms of the lease agreement, or may require acceptance by a tenant agreement.

In light of this decision, it is important for landowners take care of their tenant's personal property throughout the eviction process. Additionally, it may be necessary to consult with an attorney to include protective provisions in your lease agreements to protect from intellectual property liability.

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