

NEW YORK

NYC Graffiti Case Could Leave Its Mark on Legal Arena

A lawsuit concerning the destruction of former graffiti-art mecca 5Pointz could be a watershed moment in the interpretation of the Visual Artists Rights Act



A mural by Maria Castillo, aka Toofly, at 5Pointz that was demolished in 2014 was submitted as evidence in a trial against developer Jerry Wolkoff in federal district court in Brooklyn. PHOTO: 5POINTZ

By Thomas MacMillan

Nov. 27, 2017 2:36 p.m. ET

[21 COMMENTS](#)



The outcome of a federal civil lawsuit in Brooklyn concerning the destruction of former graffiti-art mecca 5Pointz could hold an important lesson for artists and landlords: Make your agreements in writing.

Earlier this month, jurors issued an advisory ruling in favor of the plaintiffs—21 artists who sued real-estate developer Jerry Wolkoff after he whitewashed and demolished his warehouses in Long Island City, Queens. Until it came down in 2014, the complex, known as 5Pointz, had stood for more than a decade as an open-air museum of graffiti art by some of the medium’s most revered practitioners.

The Brooklyn federal court judge presiding over the case will now decide whether the landlord is liable and the artists are entitled to damages. That decision is expected in December or January. The plaintiffs haven’t asked for a specific amount, but could win several million dollars in damages.

But even before the case is resolved, legal observers are marking the jury ruling as a possible watershed moment in the interpretation of a seldom-used federal law called the Visual Artists Rights Act. The law protects artworks—even on private property—if they have recognized merit, which is up for interpretation.

“I would clearly characterize it as a landmark ruling,” said Barry Werbin, who heads the intellectual-property practice at the law firm Herrick Feinstein. “It’s a major shot across the bow for developers and property owners.”



The 5 Pointz outdoor graffiti-exhibit space in Long Island City neighborhood of Queens in August 2014. The site has been demolished to make way for residential construction. PHOTO: KEITH BEDFORD FOR THE WALL STREET JOURNAL

The ruling underscores the need for written agreements regarding artwork, said Mr. Werbin and other legal experts. When an artist and a landlord agree on the installation of artwork on private property, they should write up a clear agreement about whether the art can be altered or destroyed, or else they may end up in court.

The jury decision represents another validation for an art form that has been steadily gaining legitimacy. Once a symbol of a gritty and dangerous New York City, graffiti art—also known as aerosol art or street art—now has mainstream cachet. Artists such as Banksy have earned global art-world recognition and street art is now regularly featured by high-fashion brands and others looking to claim a contemporary urban aesthetic.

For years, graffiti artists working with Mr. Wolkoff's permission decorated 5Pointz with colorful spray-painted murals. The area became a destination for artists from all over the world, and drew busloads of tourists.

When Mr. Wolkoff decided to demolish the building to make way for a \$400-million residential and retail development, artists filed for an injunction to block the move. After the legal effort failed, Mr. Wolkoff had the buildings whitewashed in the middle of the night.

Mr. Wolkoff's attorney declined to comment.





A mural by Christian Cortes at 5Pointz that was demolished in 2014 was submitted as evidence in a trial against developer Jerry Wolkoff in Federal District Court in Brooklyn, where artists accused him of violating the Visual Artists Rights Act. PHOTO: 5POINTZ

In court filings, Mr. Wolkoff argued that the artists always knew that the building eventually would be demolished, that they themselves sometimes painted over their work, and that the murals were impossible to sell and had no value.

In the trial that resulted this year, 21 artists set out to prove that 49 murals were worthy of protection under federal law. The case marks the first time that a jury has considered the Visual Artists Rights Act since it was passed in 1990.

“It’s interesting for folks who watch VARA,” said Kate Lucas, an attorney specializing in art law at Grossman LLP. “One of the big issues in this case is what does it mean for a work to be ‘of recognized stature.’ ”

Art expert Renee Vara sought to establish that stature during the trial by showing that the art was esteemed by appraisers, other artists, and by the public in general. The works have been valued at \$50,000 to \$90,000 each.

While it won’t affect illegal graffiti, the jury’s decision may signal that landlords should take extra steps to protect themselves when allowing artists to alter their property, said Michael Salzman, co-chair of the art law practice at Hughes Hubbard & Reed. “The landlord in a case like this could have avoided all his troubles by getting the artists to sign a written waiver of their rights,” he said.



Former graffiti center 5Pointz in Queens, shown in 2013. Artists sued a developer after he whitewashed and demolished the buildings. PHOTO: XINHUA/ZUMA PRESS

On the other side, the ruling may give artists extra leverage when negotiating a commission for a mural or sculpture on private property, Mr. Werbin said. If the landlord wants a waiver, the artist can ask for more money, he added.

“This case will be very influential across the country,” Mr. Werbin said. “Some artists could be empowered.”

“I feel our art form is getting more recognition from the legal and academic world,” lead plaintiff, artist and 5Pointz curator Jonathan Cohen, aka Meres One, wrote in an email. “It is a new step in the right direction for an entire movement.”

Appeared in the November 28, 2017, print edition as 'Graffiti Case Sparks Buzz.'