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NORTHERN DISTRICT OF CALIFORNIA

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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9 (SAN FRANCISCO DISTRICT)

10
11 ANDRES CAMPUSANO, SANDRA
CAMPUSANO CAMACHO, AND
12 ELIAS ROCHA

13 Plaintiffs,

14 vs.

15 ROBERT J. CORT, an individual, THE
ROBERT J. CORT TRUST, an unknown
16 entity, and DOES 1 through 10, inclusive,

17 Defendants.

Case No.: C98-3001MJJ

~~PROPOSED~~
ORDER GRANTING
PRELIMINARY INJUNCTION.

Hearing Judge: Martin J. Jenkins
Department: Courtroom 11, 19th Floor
Time: 9:30 A.M.
Hearing Date: September 3, 1998
Date action filed: July 31, 1998
Trial date: to be determined

18
19 To ROBERT J. CORT and THE ROBERT J. CORT TRUST:

20 The application of Plaintiffs ANDRES CAMPUSANO, SANDRA CAMPUSANO
21 CAMACHO and ELIAS ROCHA for the Preliminary Injunction made herewith came regularly
22 for hearing by this court on September 3, 1998, pursuant to an Order to Show Cause, issued by
23 this court on July 31, 1998. Said hearing took place before the Honorable Martin J. Jenkins.
24 Plaintiffs were represented by Brooke Oliver and Associates through BROOKE OLIVER.
25 Defendants were represented by JAMES KNOPF.

26 Having considered the oral arguments of counsel and based on reading the Complaint,
27 motion and response for preliminary injunction, supporting declarations and Memoranda of
28

1 Points and Authorities on file in this action, and it appearing from these that this is the proper
2 case for issuance of a Preliminary Injunction, the Court finds GOOD CAUSE to issue a
3 Preliminary Injunction in accordance with the provisions below.
4

5 FINDINGS:

6 1. The mural entitled "Lilli Ann" located on the south-facing wall at the property
7 located at 2030 Harrison, City and County of San Francisco, State of California, is a work of
8 visual art afforded protection under the Visual Artist Rights Act (hereinafter "VARA") 17 U.S.C.
9 §101 et. seq., §101, and California Art Preservation Act (hereinafter "CAPA") California Civil
10 Code §987;

11 2. The Lilli Ann mural is a work of recognized stature. The mural is the subject of
12 great public interest and civic pride to the citizens of the City and County of San Francisco, State
13 of California and beyond, and is the type of visual art that VARA was promulgated to protect;

14 3. Defendants failed to provide ninety (90) days notice to plaintiffs of their intention
15 to alter the Lilli Ann mural as required by VARA, 17 U.S.C. §113(d)(2)(B) and CAPA, Cal. Civ.
16 Code §987(H)(2);

17 4. Defendants failed to make a good faith or diligent effort to notify the artist by
18 certified mail their intention to alter the Lilli Ann mural as required by VARA, 17 U.S.C.
19 §113(d)(2)(A);

20 5. The damage to the Lilli Ann mural harms the integrity, honor and reputation of the
21 artists;

22 6. It is more likely than not that the Lilli Ann mural is removable, although more
23 study is needed about how this mural can be removed;

24 7. There is a likelihood that plaintiffs would prevail on the merits in this action and
25 would suffer irreparable injury absent further injunctive relief. Alternatively, there are serious
26 questions raised, and a balancing of the hardships favors plaintiffs;

1 8. Ms. Vera Cort has not been qualified as an expert in the fields of building masonry,
2 preservation, construction or waterproofing. Therefore, her testimony in defendant's declaration
3 in opposition to Preliminary Injunction regarding these issues is not credible.

4
5 STIPULATION TO POSTPONE CASE MANAGEMENT CONFERENCE

6 9. Pursuant to the parties' stipulation, the case management conference is rescheduled
7 from September 16, 1998, to September 23, 1998, at 2:00 p.m., in Department 11.

8
9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

10 10. During the pendency of this action, Defendants ROBERT J. CORT and THE
11 ROBERT J. CORT TRUST, each of them, any servants, agents, employees, successors and
12 assigns; the agents employees, tenants, lessees, successors and assigns of each of them; and all
13 persons acting in concert or participating with any of them shall be restrained and enjoined from
14 applying any chemical or chemical compound over the Lilli Ann mural in any manner, as
15 provided for below. Defendants are further restrained and enjoined from altering the mural in its
16 existing state through usage of, but not limited to, oil or acrylic base paint, white-wash or any
17 other paint or chemical;

18 11. During the pendency of this action, defendants shall continue to display the sign
19 currently posted on the property pursuant to the party's Stipulation to Reschedule Hearing on
20 Issuance of Preliminary Injunction which was filed with this court on August 18, 1998;

21 12. The parties shall permit experts to examine the mural. Such experts may apply
22 limited materials and other chemicals which are reasonably necessary to determine how the
23 mural may be restored, repaired or removed for re-display;

24 13. The security payment of \$2,500.00 which was deposited by plaintiffs to secure the
25 Temporary Restraining Order pursuant to Rule 65(c) of the F.R.C.P.. shall be refunded to them;

26 14. Parties shall meet for a case management conference on September 23, 1998, at
7 2:00 p.m., in Department 11, to discuss settlement.

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IT IS SO ORDERED.

Given under my hand, in the City of San Francisco, California, on 9/14/98.

Stamped

HON. MARTIN J. JENKINS