

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

---

MARY MISS,	)	CASE NO. 4:24-CV-00123
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
EDMUNDSON ART FOUNDATION, INC.	)	<b>BRIEF IN SUPPORT OF</b>
d/b/a DES MOINES ART CENTER,	)	<b>MOTION TO DISSOLVE OR</b>
	)	<b>OTHERWISE MODIFY</b>
Defendant.	)	<b>PRELIMINARY INJUNCTION</b>

---

Defendant Edmundson Art Foundation, Inc. d/b/a Des Moines Art Center (the “Art Center”), by and through the undersigned counsel, hereby submits this Brief in Support of its Motion to Dissolve or Otherwise Modify Preliminary Injunction.

**FACTUAL BACKGROUND**

On July 17, 2024, the Art Center was ordered by the City of Des Moines to repair or remove key structural elements of the Double Site from Greenwood Park (the “City’s Order”). The Art Center understands the Court is very familiar with the factual background of this dispute and therefore only provides a brief overview of relevant facts related to this significant change of circumstances.

As the Court knows, in 1990, the Art Center and the City of Des Moines entered into a 28E agreement (the “Operating Agreement”) related to the ownership, installation, and maintenance of outdoor installations in Greenwood Park. (ECF No. 10-1, Ex. A.) Relevant here, Section III(A) of the Operating Agreement permits the City to “require the ART CENTER to repair or remove a structure if the ART CENTER has failed to either maintain the structural integrity of a sculpture or to correct any unsafe condition within a sculpture.” (*Id.* at 5.) If so ordered, the Art Center has a “reasonable time” to take corrective action, which the Agreement generally defines as 15 days.

(*Id.* at 6.) The Operating Agreement also provide

enjoined the Art Center from removing the Double Site pending trial or “other developments impacting the Court’s analysis of the parties’ respective rights and obligations.” (ECF No. 28 at 19.)

Subsequently, on July 17, 2024, the Art Center received a letter from Des Moines City Manager Scott Sanders. (Baum Decl., Ex. A). The letter incorporates by reference an inspection report of the Double Site conducted by City officials in late May. (*Id.* at 3-4.) Those officials concluded the Double Site’s boardwalk violates city ordinances and is unsafe due to dilapidation, decay, and structural instability. (*Id.*) Citing the underlying report, Mr. Sanders’s July 17 letter concludes that the current condition of the Double Site’s boardwalk “violates the City’s Building Code as well as the Operating Agreement.” (*Id.* at 1.) The letter continues:

The structural integrity of elements of the Mary Miss Double Site, as detailed in the attached report of the City Building Official and Plans Examiner, is compromised and said elements are unsafe, therefore, as provided in said Section III.A of the Operating Agreement, **the City is requiring the Art Center to repair or remove the unsafe structural elements of the Mary Miss Double**

## ARGUMENT

### **I. THE CITY’S ORDER CONSTITUTES A CHANGE IN CIRCUMSTANCES THAT REQUIRES THE COURT TO LIFT OR OTHERWISE MODIFY THE MAY 3 PRELIMINARY INJUNCTION.**

This Court sits in equity and therefore has wide discretion to dissolve the preliminary injunction previously entered in this case. *See Am. United for Separation of Church & State v. Prison Fellowship Ministries*, 555 F. Supp. 2d 988, 991 (S.D. Iowa 2008) (citing *Amado v. Microsoft Corp.*, 517 F.3d 1353, 1360 (Fed. Cir. 2008)). Dissolution is warranted “when there has been a change of circumstances...that would render the continuance of the injunction in its original form inequitable.” *Ahmad v. City of St. Louis*, 995 F.3d 635, 640 (8th Cir. 2021) (quoting *Favia v. Indiana Univ. of Pa.*, 7 F.3d 332, 337 (3d Cir. 1993)); *see* Fed. R. Civ. P. 60(b)(5). In other words, a preliminary injunction should be modified or dissolved “if a significant change either in factual conditions or in law renders continued enforcement detrimental to the public interest.” *Ahmad*, 995 F.3d at 640 (quoting *Horne v. Flores*, 557 U.S. 433, 447 (2009)).<sup>1</sup>

The City’s Order is certainly a significant development in this litigation. Indeed, considering the Court’s interpretation of the interplay between the Operating Agreement and the Artist Agreement, the absence of a directive from the City proved dispositive at the preliminary injunction stage. As this Court recognized in its May 3 ruling, without City involvement, the Art Center had no unilateral authority to remove the Double Site over Miss’s objection. (ECF No. 28 at 11.) Yet, according to this Court, “Paragraph III.A of the 28E Agreement would supersede Section 8.2(i) of the Artist Agreement if the City required the Art Center to repair or remove the Site.” (ECF No. 28 at 11.)

---

<sup>1</sup> In *Ahmad*, the Eighth Circuit applied the Supreme Court’s standard from *Horne* to requests to modify or dissolve preliminary injunctions, even though “Rule 60(b)(5) on its face is limited to relief from final orders.” 995 F.3d at 640.



To comply with both the Operating Agreement and the Artist Agreement, the Art Center must be permitted to remove the Double Site in its entirety—not merely the “unsafe structural elements” cited by the City or those elements determined unsafe under local ordinance. For purposes of the Artist Agreement, the Double Site is one installation, a fact recognized by both parties to this litigation. (*See, e.g.*, ECF No. 15 at 8 (“GPDS is a unique piece of art that exists nowhere else in the world”); ECF No. 18 at 3 (“All elements taken together make up the Double Site, not its individual components.”)) Removal of any one individual element of the Double Site—especially a key element such as the boardwalk or the sunken trough—necessarily affects the overall aesthetic of the installation and constitutes an “alteration” within the meaning of Section 8.2(i) of the Artist Agreement. (ECF No. 28 at 9; *see* ECF No. 10-1, Ex. C, at 7.) Thus, once the Art Center complies with the City’s Order,

otherwise modify its preliminary injunction to permit the Art Center to remove Greenwood Pond:  
Double Site to comply with all relevant contractual obligations.

Dated this 26th day of July 2024.

Respectfully submitted,

BELIN McCORMICK, P.C.



---

Wayne E. Reames

Kelsey J. Knowles

Michael S. Boal

666 Walnut Street, Suite 2000

Des Moines, IA 50309-3989

Telephone: (515) 283-4631

Facsimile: (515) 558-0631

[wereames@belinmccormick.com](mailto:wereames@belinmccormick.com)

[kjknowles@belinmccormick.com](mailto:kjknowles@belinmccormick.com)

[msboal@belinmccormick.com](mailto:msboal@belinmccormick.com)

ATTORNEYS FOR DEFENDANTS