

Connick Windows

Thoughts, news and comments concerning the art and craft of Connick stained glass, published periodically by...
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Moral Rights of Artists -- Possible Protection for Stained Glass?

Judith G. Edington

Recently, stained glass windows at St. Mary's Church in East Boston were removed by the new owner and are presumed to have been destroyed. One of these windows was a small window designed by Charles J. Connick (See photograph). A parish already grieving from the change in circumstances that led to the sale of its house of worship now had to accept this additional loss.



When Marilyn Justice shared this sobering story in a recent email to the Directors of the Connick Foundation, a long ago law school research project came to mind. Might the laws protecting the "moral rights" of artists been employed to prevent the destruction of these windows? After dusting off my seminar paper and conducting a modest review of current developments in this body of law, I think the answer is probably, no—at least not the work of the Connick Studio, its contemporaries and predecessors. However, knowledge of these laws may be useful in protecting today's stained glass windows. I thought, therefore, that a summary of these laws might be of interest to the Foundation's audience.

Moral rights refer to certain non-economic rights, often referred to as "rights of personality," an artist has in his or her work. Massachusetts was one of the first states to recognize these rights by the passage in 1984 of the Massachusetts Art Preservation Act ("MAPA").¹ Formally cited as M.G.L. ch. 231, § 85S (a), this law provides:

The general court hereby finds and declares that the physical alteration or destruction of fine art, which is an expression of the artist's personality, is detrimental to the artist's reputation, and artists therefore have an interest in protecting their works of fine art against such alteration or destruction; and that there is also a public interest in preserving the integrity of cultural and artistic creations.

MAPA provides that an artist retains the right to claim authorship of a work of fine art and, for reasonable cause, to disclaim authorship in that work (the "right of paternity").

Further, MAPA prohibits anyone but the artist still possessing that artist's work from intentionally or through gross negligence defacing, mutilating, altering or destroying a work of fine art (the "right of integrity"). Importantly, MAPA gives the artist or an appropriate designee the right to commence an action to enforce MAPA by enjoining destructive action before it happens. If that is not possible, the appropriate person needs to seek damages. These rights last for the life of the artist plus 50 years.

Special rules apply to works of fine art incorporated into a building. If the artwork cannot be removed from a building without substantial harm to the art, the rights afforded by MAPA do not apply unless expressly reserved in a written instrument signed by the owner of the building and recorded in the registry of deeds prior to the installation. So long as the writing is recorded it is binding on subsequent owners.

If the art can be removed from the building without substantial harm — as is the case with a stained glass window — MAPA does apply, but with an important caveat. In this case, if a building owner wants to destroy the work (or is indifferent to its destruction), the burden is shifted to the artist to remove the work or pay for its removal. The building owner must diligently attempt to contact the artist or his heirs to inform the artist of the owner's intention toward the work; however, if the owner is unable to find the artist or his heir or, if contacted, the artist does not remove or pay for the removal within 90 days, then the Act's provisions cease to apply.

If we return to the case of St. Mary's, is it possible that the provisions of MAPA would have applied? The Massachusetts and federal moral rights laws do not apply retroactively to protect works transferred to new owners by the artist prior to the enactment of these laws. The Connick window was created in 1916. It is likely that the other windows removed were roughly contemporary.

There may be other interpretive hurdles as well. For instance, MAPA defines an "artist" as a natural person who actually creates a work of fine art. If a work of stained glass comes out of a studio with separate legal identity and the attribution of the work is to the studio and not to an individual artist, has protection under MAPA been lost? Also, it is unlikely that the federal moral-rights legislation would include stained glass in its definition of "work of visual art," which includes paintings, drawings, prints, sculpture and still photographic images produced for exhibition purposes. MAPA is broader and protects "fine art" defined as "any original work of visual or graphic art of any media which shall include, but is not limited to, any painting, print, drawing, sculpture, craft object, photograph, audio or video tape, film, hologram, or any combination thereof, of recognized quality." Given that stained glass windows have an "applied" aspect to them, might they be excluded from the definition of fine art as provided in MAPA?

In the absence of any findings from further case law before Massachusetts courts, offering answers to these questions would, for the moment, be entering into speculation. Nonetheless, contemporary stained-glass artists and studios should be aware of federal and state protections under moral-rights laws.² Increasingly religious buildings are being put to new uses and their stained glass windows are not always consonant with that new use. The creators of contemporary stained-glass windows may well have the legal right to protect their glass from senseless destruction.

¹ Moral rights have long been recognized in European countries. In December 1990, limited US federal protection of these rights was added to this country's copyright laws with the passage of the Visual Artists Rights Act (VARA). Because VARA protects a more limited subset of art, the Massachusetts Art Preservation Act is not completely preempted by the federal legislation. See *Philips v. Pembroke Real Estate, Inc.* 288 F. Supp. 2d 89 (D. Mass. 2003).

² Other states that have some level of protection for moral rights include California, New York, Maine, Louisiana, New Jersey, Pennsylvania, New Mexico, Rhode Island, Connecticut and Nevada.

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