

Vakras and Raymond application to VCAT over Cripps' breach of contract. It was merged into defamation case by Judge Bowman on the following grounds: "Dispute re breach of contract ... involving alleged defamation arising from basically the same facts" Further info: <http://www.humanisttranshumanist.com>

VCAT Reference: C5251/2011

Claim by 1<sup>st</sup> applicant Demetrios Vakras and

2<sup>nd</sup> applicant Lee-Anne Raymond

against

Redleg/Robert Raymond Cripps, 1<sup>st</sup> & 2<sup>nd</sup> respondents.

31/8/2011

Refund for exhibition and associated costs as well as payment for damages with regards to our exhibition entitled "Humanist Transhumanist". This exhibition which ran from 17/6/2009 until 5/7/2009 (inclusive) was held at Guildford Lane Gallery, located at 20-24 Guildford Lane, in Melbourne's CBD.

The gallery is a for-hire gallery. It was hired for the exhibition and sale of artworks and merchandise. The artworks included oil paintings and drawings, and the merchandise included digital prints, framed/mounted/unframed as well as our publication (book) titled *Humanist Transhumanist: Raymond & Vakras - Symbolism Surrealism Fantastic Art*, (ISBN: 978-0-646-52188-6).

*(Note/clarification: state/government "galleries" are museums, which put onto public display - exhibit - pieces for the purpose of them being viewed with cost recovery managed through ticketing or the selling of merchandise such as publications; a commercial gallery space is one wherein the works/merchandise exhibited, is put onto public display for the purpose of selling the items displayed. Unlike standard commercial galleries which rely on generating money via a commission from sales, for-hire galleries, such as Guildford Lane Gallery, cover their entire costs in the fee paid for hire and therefore do not rely on or need the artist to make any sales. The gallery describes its role in Section 11 a of the contract.)*

Our claim is for our non-recoverable costs (losses), as well as for the loss of prospective sales. These losses are due to the actions of the Gallery owner who prevented our ability to promote and sell our work, in breach of the contract we had agreed to and signed. The losses include the cost of the gallery hire; loss of prospective sales of art and associated merchandise. The director/owner, Cripps, barred our attending our exhibition (*denying our ability* to manage the exhibition) despite this being one of his contractual obligations.

Our proposal to exhibit at this gallery was submitted to Guildford Lane Gallery on 21/9/2008. On 29/10/2008, the gallery advised us by email of the acceptance of our exhibition proposal. An initial contract for the hire of the venue for the exhibition was sent to us, by email, but was never agreed to by us.

A meeting with the gallery personnel was arranged by us for 23/1/2009 to discuss the prospective exhibition and inspect the area for hire. This was arranged by email on 21/1/2009. We met Robert Raymond Cripps (Director) and Yolande Pickett (Gallery Manager). Part of the discussions during this meeting included the hiring of the "Open Studio", which during our inspection, we came to realise was not included in the initially proposed (but never agreed to) contract. We also discussed the publication ("manifesto/catalogue") that was to be launched during the exhibition (ISBN 9780646521886). Following this meeting the "Open Studio" was included in a revised contract. The gallery sent us a revised contract on 10/2/2009 by email. This was agreed to by us. It was printed, and signed by us. This signed copy was submitted to the gallery in person.

- Consistent with this contract we paid \$1980.00, the first (of two) instalments, for the gallery hire, on, or before, 17/3/2009.
- Consistent with the contract we paid the second and final \$1980.00 instalment and a \$500.00 bond on, or before, 5/5/2009.

It was after the final payment that the gallery began to alter without consultation what had been agreed to, despite the contract stipulating that changes had to be made in writing and agreed to by both parties before implementation.

Without consultation the gallery refused to sell our publication and eventually came to refuse to even store it on their premises. This publication formed an integral part of our overall presentation.

We first became aware that the gallery *might* not sell our publication on 8/6/2009 when we made an inquiry about a plinth on which we intended to display our merchandise, including the publication; this was one week before we were to set up our exhibition.

(Note 1: The gallery had been made aware of the publication by email as early as 12/12/2008. Additionally, the publication was discussed in some detail on 23/1/2009 in person with Cripps and Pickett before we agreed to any contract. No indication was ever made that the gallery would not sell it;

Note 2: the gallery sells the merchandise of others, such as the music CDs of entertainers performing at that venue. Example: Andrea Keeble, sold her music CD at the gallery; the promotion of her CD is available online on Guildford Lane Gallery's own page: <http://www.guildfordlanegallery.org/exhibitions/andrea-keebles-actuality>)

To reiterate: we would never have entered into any agreement with the gallery if we were ever advised that the gallery would not sell some, part, or any of our merchandise, as the purpose of the exhibition was to sell.

At this stage we were locked into a contract. We had already made payment in full when we were informed that our publication would not be sold. The grounds for this reversal were "past problems with others". We feared losing the entire amount paid to the gallery if we cancelled our exhibition at this stage. The contract states: "7.

*Cancellation*

*The Gallery must be given 2 calendar months notice if the Hirer wishes to cancel the hiring of the Venue.*

*a. Cancellations with less than 2 calendar months notice will incur the loss of the deposit under Clause 2.a.i.*

*b. If the Venue is re-hired by another party for this term of hire for the full hire amount, the Gallery must refund 50% of the forfeited deposit to the Hirer, within 14 calendar days of receiving confirmation of the re-hire."*

By this stage we had paid not only for the venue hire, but for advertising in art magazines; for printed invitation cards (which had been distributed to various venues); for the printing of our publication; as well as a number of other miscellaneous costs (referred to in Subtotal costs below).

Cripps made this change despite section 11 of the contract, "*GENERAL*" which clearly states:

*"e. This Agreement may only be changed in writing signed by all parties."*

We hoped that we could accommodate this change, to which we never agreed either verbally or in writing, by attending and supporting the exhibition by our personal attendance. When we had arranged for the inclusion of the "Open Studio" in the hire agreement the gallery manager promoted it as a space in which artists provided demonstrations. This had been discussed on 23/1/2009. Part of this discussion was that, in lieu of a single demonstration "artists floor talk", Vakras, who worked nights, could and would attend the exhibition from midday until 5:00 pm Wed - Sun during the exhibition to demonstrate artistic practice within that space and that by this means support (sell) the catalogue and promote the artworks.

### **MATTERS BECOME WORSE**

At the opening of the exhibition (Thursday 18/6/2009) Cripps created a scene. He began to yell and scream at us, before of a crowd of visitors, that both our exhibition, and we ourselves, are racists. The exhibition was in part a critique of religious values, such as those of Christians/Judaists as found in Leviticus; or those of Islam such as those found in passage 9.38-52 of the Koran. Cripps yelled that to criticise Islam was racist; and that it was insensitive to Palestinians (who were not mentioned in any part of the exhibition). He yelled at us to leave the gallery. He yelled to all that we were racist.

Subsequent to this, in shock, we did not return to the gallery for a few days after the opening. When we returned (Saturday 20/6/2009) we did so to pick up some boxes of our publication because the gallery had advised, that they did not want to "store" it on their premises. Following this we were informed by friends who visited the show on the Sunday (21/6/2009) that Cripps had placed disclaimers around our exhibition which read "*The management would like to state clearly that the views and opinions expressed in this exhibition are those of the artists, and not in any way representative of the views or opinions of the management, staff or volunteers of Guildford Lane Gallery.*" He had also placed a large disclaimer at the bottom of the stairs leading up to our hired space, in extremely large print with "WARNING" as a header, so that anyone who might wish to go upstairs would be dissuaded from doing so and/or be made to pre-judge the exhibition as problematic.

We both arranged to meet and photograph the disclaimers at our earliest opportunity (Wednesday 24/6/2009 – the gallery is closed Monday - Tuesday). We went together because at this stage we had absolutely no faith in Cripps' integrity or honesty. Cripps heard us enter and came running at us, yelling at us. He ordered us out of the space. He told us that our exhibition was a violation of the contract that we had agreed to ("*6. Hirer's warranty and indemnity... b. ...that the event does not contain any illicit, dangerous, illegal, unethical or seditious material or content to the Hirer's knowledge under the Hire Agreement, and the Hirer indemnifies the Gallery against any and all claim*"); he told us that he was calling the police to evict us if we did not leave immediately. We refused to leave as the contract gave us a legal right to be in the space that we had paid for. Cripps continued yelling that we were racists, and that Vakras threatened him and that he had witnesses that saw Vakras attack him. We offered to remove our works for a full refund, but this led to a repeat of the claim that our works were racist and that by being racist we had violated the contract and were thus not entitled to any refund. (This subsequently led to a request by us for him to show us where this racism he claims occurred).

Vakras photographed the disclaimers and our works and we left, never to return until

takedown.

The contract we had agreed to included a "disputes" section. *Section 10* stipulates that changes be in writing (part a); and that all parties will meet within 14 days to discuss the matter (part b), and that another 7 days of discussion to resolve the issue have to occur (part d). We put our complaints to him in writing, and sent these complaints to him by email. He did not address any element of anything that we put into writing. Instead, he glossed over the matter, this time claiming that Vakras made him and his staff "extremely uncomfortable", and that prior notice had to be sought before Vakras could enter the gallery at all. We had never agreed to any of this. We would never agree to any of this. We would never have agreed to have hired the gallery at all if these were its conditions of hire.

Our works remained in this gallery for the remaining period and despite our contractual right to attend we were barred from doing so. Our right to attend is noted in section 4 of the contract "*Gallery's Responsibilities*", section "c": "*ensures that the Hirer has access to the Venue from 8am until 10pm 7 days a week during the Hire Term.*" And our responsibility for selling our own works is covered in section 11 of the contract, "*General*", part a: "*the Gallery is not the Hirer's Agent and is not entitled to a commission for the sale of the Hirer's work, nor is the Gallery responsible for the production, sale, administration, marketing or direct agency of the Hirer*".

The disclaimer at the bottom of the stairs was a great disincentive to anyone who might want to look at the works upstairs; it was a disincentive to anyone who might consider buying any works. Any prospective buyer might not want to become embroiled in a dispute with the gallery, or be associated with works that might be seen as racist, lest they be seen to be racist too.

Only one sale was ever made, and this was very early on during the opening, before Cripps announced that our exhibition was racist. Not a single copy of our publication was ever sold through the Gallery. Yet even at the conclusion of the term of the venue hire Cripps refused to pay for this one sale or return the bond unless we met another of his unilateral conditions that: "**there will be NO outstanding business or legal issues regarding our exhibition at Guildford Lane Gallery**" (emailed to Raymond: 8/8/2009).

**COST CLAIM** (for non-recoverable costs):

\$3960.00 (gallery hire)

\$60.00 (printing cost of posters promoting our publication)

\$407.00 (Art Almanac advertising of the exhibition)

\$251.00 (transport of works to and from gallery for installation and take down)

\$3750.00 (prospective sale of 250 of the printed publications at \$15.00 each =

\$3750.00 \*note: the printing costs for the publication were \$3740.00)

\$10000.00 (prospective Vakras sales, includes paintings as well as selling unframed/unmounted digital prints, which were to be promoted)

\$8500.00 (prospective Raymond sales)

**SUBTOTAL = \$26928.00**

In addition another \$8000.00 is being claimed for the time taken to organise the exhibition, prepare the works for transportation, arranging transportation, transporting the works to and from exhibition, promoting the exhibition to journalists, to websites such as artabase, that's melbourne, and other sites, hanging the exhibition, taking

down of the exhibition and other such non-recoverable costs. (This show was timed around the Salvador Dalí exhibition that was being held at the NGV, which had resulted in increased interest in surrealism. It is not a circumstance that can be recreated.)

**TOTAL** \$34928.00 (rounded to \$35000.00)

**SUMMARY**, failure to provide what was contractually agreed: The exhibition was for our works to be put on public display for them to be sold. This always included our publication. The exhibition was to augment our artistic profile and bona fides. We made a business agreement, in the form of the contract. We had a reasonable expectation that this contract would be honoured in full and not be subject to unilateral alteration at the whim of the gallery owner. We were, contrary to the contract, denied access to our show to support it, and given no means of redress despite that means existing within the contract. Our exhibition essentially was abandoned. Our artwork and the intent of the exhibition suffered from the misrepresentation of it as racist. As a for-hire gallery which is not dependant on commissions from sold works to cover costs, it does not need to promote the works for sale, or even to sell them (even though that is the gallery's purpose and our reason for hiring it) if the gallery decides not to do so as it gains nothing additional from doing so. Rather than augmenting our artistic bona fides the gallery damaged them at our financial expense.

Demetrios Vakras

Lee-Anne Raymond