PEARSE-HOCKER v. USA Doc. 25

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ANNE PEARSE-HOCKER,	)	
	)	
Plaintiff,	)	
	)	No. 10-269 C
v.	)	Judge Edward J. Damich
	)	
THE UNITED STATES,	)	
	)	
Defendant.	)	
	)	

DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

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DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendant, the United States (the government), respectfully moves for summary judgment under Rule 56 of the Rules of the Court of Federal Claims (RCFC) that this Court lacks subject matter jurisdiction over plaintiff's breach of contract claim. And even if subject matter jurisdiction existed for this claim, the plaintiff is not entitled to the return of the photographs as relief for breach of contract under the pleaded facts in her amended complaint (Docket No. 17) and the exhibits attached to plaintiff's original complaint (Docket No. 1). Thus, no contract remedies are available in this Court to mandate a return of the photographs-at-issue.

As described more fully below, this action relates to plaintiff's copyrighted collection of photographs, which was donated to the National Museum of the American Indian, Smithsonian Institution (Smithsonian) in 1997, and the subsequent use of three of those photographs in a documentary relating to the 1973 siege at Wounded Knee, South Dakota, which was first broadcast in 2009. Plaintiff's breach of contract claim, in turn, is based entirely on the Smithsonian's alleged failure to meet the terms of the Deed of Gift (Exhibit B to plaintiff's complaint) by which the Smithsonian obtained the photograph collection. The Deed of Gift

donated the "legal and equitable title" in the photographs to the Smithsonian and also granted it an irrevocable, royalty-free license to use and publish the photographs. Ms. Pearse-Hocker retained ownership in the copyright to the photographs. In addition, the Smithsonian agreed to direct requests by third parties to publish the photographs to Ms. Pearse-Hocker.

After the three photographs-at-issue were broadcast in the documentary, Ms. Pearse-Hocker filed this suit, alleging that the Smithsonian's actions amount to copyright infringement and breach of contract. She is seeking, *inter alia*, the return of the entire collection of over 2,000 photographs (as well as destruction of electronic copies) and breach of contract damages. Those claims must fail because the alleged contract, the Deed of Gift, is not a money-mandating contract. It does not require the payment of money in the event of a breach, and, in fact, the alleged contract does not mention money at all.

Likewise, plaintiff's claim for the return of the photographs must fail because she transferred title to those photographs by gift, not by contract. The Deed of Gift placed conditions only on the transfer of the copyright license to the Smithsonian, not on the transfer of the title. Accordingly, this Court does not possess jurisdiction over such claims that arise out of gifts.

Finally, even if the plaintiff could establish a breach of contract claim in this Court, the plaintiff would not be entitled to the return of the photograph collection (and the destruction of electronic copies). Rescission is only available as a remedy where there is mutual mistake, fraud, or illegality in the formation of the contract. In this case, plaintiff is merely alleging that the alleged contract was breached. Moreover, terminating the contract does not entitle plaintiff to a return of the collection, as it, unlike rescission, only cancels future performance and does not

return the parties to the pre-contractual status quo.

STATEMENT OF THE ISSUES

1. Whether this Court possesses jurisdiction to entertain plaintiff's claim for breach of contract based on a deed of gift that is not money-mandating.

2. Whether this Court possesses jurisdiction to entertain plaintiff's claim for return of the photograph collection given that title was transferred to the government by gift, not by contract.

3. Whether plaintiff is entitled to return of the photograph collection under the remedy of rescission when she has failed to plead mutual mistake, fraud, or illegality in the formation of the alleged contract.

4. Whether plaintiff is entitled to the return of the photograph collection by exercising a potential right to terminate the alleged contract.

STATEMENT OF THE CASE

I. Nature of the Case

On August 23, 2010, Ms. Pearse-Hocker filed a first amended complaint alleging copyright infringement and breach of contract and seeking various forms of relief, including return of the photographs and monetary damages. Docket No. 17 at 8-11¶¶30-45, 11¶¶A-G. Plaintiff's original complaint included these claims as well as a claim to contributory copyright infringement, which was subsequently dropped. Docket No. 1 at 9-11¶¶37-45.

II. Statement of Facts

The facts in this case are largely undisputed. In December 1997, following discussions between the parties, Ms. Anne Pearse-Hocker and the Smithsonian executed a Deed of Gift that donated a collection of photographs, including many photographs taken during the siege at Wounded Knee, South Dakota, in 1973. Docket No. 1 at Ex. B (attached as Defendant's Exhibit (DX 1)); Docket No. 17 at 4 ¶13. The Deed of Gift both transfers "full legal and equitable" title to the photographs to the Smithsonian and grants an "irrevocable, non-exclusive, royalty-free" license to "use, reproduce, display, and publish [the photographs], in all media, including electronic media and on-line." DX 1. Ms. Pearse-Hocker retained ownership of the copyright to the photographs. *Id*. Accordingly, this license to the photographs was subject to the condition that "[r]equests by people or entities outside the Smithsonian to reproduce or publish the photographs shall be directed to the donor." *Id.* The Smithsonian paid no money in exchange for either the title to the photographs or the license to use and publish them. *Id.*

In February 2008, the Smithsonian approved an application by a third party, Firelight Media, Inc. (Firelight), to use three of plaintiff's photographs in a five-part documentary series entitled "We Shall Remain," which is over six hours in length. Docket No. 1 at Ex. D; *see also* http://www.pbs.org/wgbh/amex/weshallremain/the_films/index (providing full length episodes). "We Shall Remain" was first broadcast in 2009 on public broadcasting stations as part of the "American Experience" series. DX 2. Ultimately, the three photographs-at-issue were only used in "Episode 5: Wounded Knee" (the Wounded Knee documentary), and were shown for a total of roughly 30 seconds. DX 2; Docket No. 17 at 6¶21.

After viewing broadcasts of the documentary in 2009, Ms. Pearse-Hocker contacted the

Smithsonian and ultimately filed this suit, alleging that she had not been contacted regarding Firelight's use of the photographs. Docket No. 17 at 7 ¶22. Plaintiff is seeking, among other forms of relief, compensatory damages for breach of contract (Count II of the amended complaint). Docket No. 17 at 9-11. Plaintiff also seeks equitable relief, including a ruling that the Smithsonian must return the entire collection of photographs and permanently delete all electronic copies of the same. Docket No. 17 at 11¶A. This motion seeks a summary judgment dismissing the breach of contract claim as well as plaintiff's claim for the return of the photographs.

ARGUMENT

I. Standard of Review

Summary judgment is a method of disposition "designed 'to secure the just, speedy and inexpensive determination of every action.'" *Sweats Fashions, Inc. v. Pannill Knitting Company, Inc.*, 833 F.2d 1560, 1562 (Fed. Cir. 1987) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)). It is appropriate when there are no genuine disputes as to any material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-52 (1986); *Mingus Constructors, Inc. v. United States*, 812 F.2d 1387, 1390 (Fed. Cir. 1987); RCFC 56(c). A "material fact" is one "that might affect the outcome of the suit under the governing law." *Anderson*, 477 U.S. at 248.

For a question of fact to be considered genuine, the question must raise more than a "metaphysical doubt as to [a] material fact," *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986), and it must be substantial, *Anderson*, 477 U.S. 242, 252. As the Federal Circuit has emphasized, "the burden is *not* on the movant to *produce evidence*

showing the absence of a genuine issue of material fact." *Sweats Fashions*, 833 F.2d at 1563 (emphases in original). Rather, "the burden on the moving party may be discharged by 'showing' . . . that *there is an absence of evidence to support the non-moving party's case*." *Id*. (emphasis in original) (quoting *Celotex Corp. v. Catrett*, 477 U.S. at 325).

As discussed below, there is no genuine dispute over any fact that could affect the outcome of plaintiff's action. Indeed, most of the issues addressed in this motion involve contract interpretation, which are particularly well-suited for resolution by summary judgment. *E.g.*, *Textron Defense Systems v. Widnall*, 143 F.3d 1465, 1468 (Fed. Cir. 1998). Accordingly, disposition of these aspects of plaintiff's claims through summary judgment is appropriate.

II. This Court Does Not Possess Jurisdiction To Entertain Plaintiff's Claim For Breach Of Contract Because The Alleged Contract Is Not Money-Mandating.

Plaintiff's claim for breach of contract (Count II of the amended complaint) must be dismissed in its entirety because the alleged contract upon which it is based is not a money-mandating contract. Plaintiff claims that this Court has jurisdiction for this claim under the Tucker Act, which (1) provides jurisdiction to this Court over specified actions brought against the United States and (2) waives sovereign immunity for those actions. Specifically, the Act provides:

> The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

28 U.S.C. § 1491(a)(1); *United States v. Mitchell*, 463 U.S. 206 (1983). Nevertheless, the

Tucker Act creates no substantive right enforceable against the United States. *United States v. Testan*, 424 U.S. 392, 398 (1976). Therefore, "a plaintiff must identify a separate source of substantive law that creates the right to money damages," *Fisher v. United States*, 402 F.3d 1167, 1172 (Fed. Cir. 2005) (en banc), which must be for "actual, presently due money damages from the United States," *United States v. King,* 395 U.S. 1, 3 (1969).

Thus, for this Court to have jurisdiction over a breach of contract claim, the contract must "fairly be interpreted as mandating compensation by the Federal Government." *See United States v. Navajo Nation*, 129 S. Ct. 1547, 1551 -1552 (2009) (explaining that the Tucker Act waives sovereign immunity "for claims premised on other sources of law (e.g., statutes or contracts)," and that the "other source of law must fairly be interpreted as mandating compensation by the Federal Government.") (citations removed). Thus, "[t]he government's consent to suit under the Tucker Act does not extend to every contract," *Rick's Mushroom Service, Inc., v. United States*, 521 F.3d 1338, 1343 (Fed. Cir. 2008), because a "breach does not give rise to money damages for default in every contract with the government." *Holmes v. United States*, 92 Fed. Cl. 311, 317 (2010) (citing *Cook v. United States*, 85 Fed. Cl. 820, 823 (2009)).

Several Court of Federal Claims cases have held that a plaintiff need not point to a money-mandating provision in a contract, concluding instead that establishing the existence of a contract is itself sufficient to establish jurisdiction. *See Mastrolia v. United States*, 91 Fed. Cl. 369, 380 (2010) ("[T]here is 'no generic requirement . . . that contracts must include specific language indicating that damages will be paid upon a breach.") (quoting *Stovall v. United States*, 71 Fed. Cl. 696, 700 (2006)); *Greenhill v. United States*, 81 Fed. Cl. 786, 790 (2008) ("The fact

that the settlement agreement did not specifically provide for money damages in the event of a breach does not deprive the Court of jurisdiction."); *Westover v. United States*, 71 Fed. Cl. 635, 640 (2006) ("[P]laintiff is not required to show that the contract is money mandating."); *Chevron U.S.A., Inc. v. United States*, 71 Fed. Cl. 236, 261 (2006).

Nevertheless, while a contract need not contain specific language indicating that money damages are available upon a breach, the language of the contract must support a "fair inference" that such damages are available for this Court to have jurisdiction. *See Holmes*, 92 Fed. Cl. at 318 (citing *United States v. White Mountain Apache*, 537 U.S. 465, 472 (2003)). In other words, contracts, like statutes and regulations, "must fairly be interpreted as mandating compensation by the Federal Government" in order to invoke this Court's jurisdiction under the Tucker Act. *See White Mountain Apache*, 537 U.S. at 472.

In some instances, this requirement may be fulfilled by the presumption that damages will be available upon a breach of a contract. *Stovall*, 71 Fed. Cl. at 700. But, as this Court has made clear, contract liability under the Tucker Act "does not extend to every agreement, understanding, or compact which can semantically be stated in terms of offer and acceptance or meeting of minds." *Kania v. United States*, 227 Ct. Cl. 458, 464 (1981) (finding no Tucker Act liability for breach of a plea bargaining agreement). Instead, money damages are principally available when the government "engages in the purchase and sale of goods, lands, and services," activities that are akin to those of private entities. *Id.*

Under these standards, the Deed of Gift is clearly not money-mandating. Money is not mentioned anywhere in the document. DX 1. Consistent with its title, the Smithsonian paid no money for either the transfer of "full legal and equitable title" to the photographs or the "royalty-

free license" to use and publish them. Moreover, no money damages are enumerated in the event that the Smithsonian failed to direct requests by third parties to publish the photographs to Ms. Pearse-Hocker. *Id.*

The Deed of Gift is simply not a typical contract in which the Government pays money in return for goods or services. The Government's only duty under the contract was not to pay the plaintiff, but instead to direct third parties to her for permission to publish her photographs. That duty alone cannot give rise to an interpretation of the agreement as mandating compensation by the government.

III. This Court Does Not Possess Jurisdiction To Entertain Plaintiff's Claim For Return Of The Photographs Because Title To The Photographs Was Transferred By Gift, Not By Contract.

Alternatively, plaintiff's claim for return of the photographs must also be dismissed because she transferred "full legal and equitable title" to those photographs to the Smithsonian by gift, not by contract. In determining jurisdiction over a breach of contract claim, "any agreement can be a contract within the meaning of the Tucker Act, provided that it meets the requirements for a contract with the Government," which includes an "offer and acceptance" and "consideration." *Trauma Serv. Group v. United States*, 104 F.3d 1321, 1326 (Fed. Cir. 1997) (citations omitted). The plaintiff has the burden to establish that a valid contract existed between her and the government. *San Carlos Irr. and Drainage Dist. v. United States*, 877 F.2d 957, 959 (Fed. Cir. 1989).

As explained below, there was no consideration given by the government in the Deed of

Gift for the transfer of the photograph collection.[1] The only arguable exchange of promises relates to the grant of a copyright license in the photographs to the government. Thus, even if the portion of the Deed of Gift relating to the copyright license grant is deemed to be a contract, the portion relating to the transfer of the photographs is clearly not.

The Deed of Gift provides for the transfer of photographs and the copyright license separately. Consistent with its title, the first sentence of the document plainly states that "I [plaintiff] *hereby donate* the materials described below to the National Museum of the American Indian, Smithsonian Institution, to become its *permanent property* . . . ." DX 1 (emphasis added).[2] The deed further states:

> [I] hereby transfer to the Trustees full legal and equitable title to said materials. I hereby *also* assign and transfer all copyrights that I possess to the National Museum of the American Indian, Smithsonian Institution, subject only to the conditions which may be specified below.

Id. (emphasis added). Use of the term "also" makes clear that the deed treats the transfer of the photographs and the transfer of the copyright separately. Moreover, this language makes clear that only the transfer of the copyright is subject to the conditions.

Likewise, in a later section entitled "Conditions," the document states that "I [plaintiff] *do not, by this gift, transfer copyright* in the photographs to the Smithsonian Institution." DX 1 (emphasis added). The subsequent sentences explain (1) that Ms. Pearse-Hocker was granting

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[1] The term "gift" is frequently defined as a voluntary transfer of property to another made gratuitously and without consideration. *E.g., Bradley v. Bradley*, 540 S.W.2d 504, 511 (Tex. Civ. App. 1976).

[2] This is consistent with the legal principle that a completed gift of property cannot be revoked. *See, e.g., Smith v. Shafter*, 89 Ohio App. 3d 181, 183 (1993) ("An *inter vivos* gift is an immediate, voluntary, gratuitous and irrevocable transfer of property by a competent donor to another.").

the Smithsonian Institution an "irrevocable, non-exclusive, royalty-free, license to use, reproduce, display, and publish . . . the photographs for all standard educational, museum purposes" and (2) that third-party requests to the Smithsonian Institution to reproduce or publish the photographs "shall be directed to the donor [Ms. Pearse-Hocker]." *Id.* Again, the deed makes clear that the transfer of copyrights is distinct from the "gift" of the photograph collection. To the extent that there was a bilateral agreement between the parties, it relates entirely to the grant of a copyright license.

Despite its clear language to the contrary, plaintiff nonetheless alleges that the conditions in the Deed of Gift provided consideration for the alleged contract. Docket No. 17 at 9-10¶¶ 38-40. But again, those cited conditions pertain only to the transfer of the copyright, and thus the transfer of the title of the photographs amounts to a gift, not a contract. DX 1. Thus, this Court does not possess jurisdiction over Ms. Pearse-Hocker's claim for the return of the photograph collection.

IV. Even If A Valid Breach of Contract Claim Were Established, No Remedy For The Return Of Plaintiff's Photograph Collection Would Be Available.

Even if the donation of the photograph collection was found to be part of an enforceable contract, there would be no contractual remedies available to the plaintiff for return of the photographs and permanent deletion of all electronic copies by the Smithsonian Institution. Though plaintiff's complaint does not articulate what specific contractual remedies are implicated by its claim for a return of the collection, it appears clear that rescinding the alleged contract (e.g. voiding it) or seeking to terminate the contract are the only possible legal pathways

to undoing the transfer of the collection.[3] *See* Restatement (Third) of Restitution & Unjust Enrichment § 37 (T.D. No. 3, 2010) (attached as DX 3) (explaining that rescission allows the injured party to return to the precontractual status quo).

A. Plaintiff Is Not Entitled To Remedy Of Rescission Because She Has Failed To Plead Mutual Mistake, Fraud, Or Illegality.

Rescission is an equitable remedy that effectively voids a contract from its inception, treating the contract as if it never existed. *Dow Chem. Co. v. United States*, 226 F.3d 1334, 1345 (Fed. Cir. 2000). For this remedy to be available to the plaintiff in this Court, however, she must establish that there was mutual mistake, fraud, or illegality in the formation of the contract. *Id.* ("Contract rescission is a remedy which is available under our precedent only when one or more of [the] circumstances [of mutal mistake, fraud, or illegality] are present.").[4] As the Federal Circuit explained, "[b]ecause rescission is essentially an equitable remedy, it will not ordinarily be invoked where money damages . . . will adequately compensate a party to the contract." *Id.* at 1345-46.

In this case, plaintiff, Ms. Pearse-Hocker, never alleges mutual mistake, fraud, or

[3] Under 28 U.S.C. § 1498(a), this Court's jurisdiction over plaintiff's copyright infringement claims only permits the award of "reasonable and entire compensation" and not the equitable relief encompassed by plaintiff's claims for return of plaintiff's collection of photographs and destruction of all electronic copies of same.

[4] Apart from *Dow Chemical*, numerous other precedential cases support this position. *See, e.g., Rosenberg Lumber Co. v. Madigan*, 978 F.2d 660, 665 (Fed. Cir. 1992) (finding in case where both parties were mistaken about stumpage prices for trees that rescission applies when "there has been a mutual mistake of material fact, resulting in a contract which does not faithfully embody the parties actual intent."); *Amer. Sci. and Eng'g, Inc. v. United States*, 663 F.2d 82, 87 (Ct. Cl. 1981) (holding in a CT scanner licensing contract case that it "will not declare a contract between the government and a private party *void ab initio* unless there was 'plain illegality' in the contract); *Pacific Architects and Eng'rs, Inc. v. United States*, 491 F.2d 734, 742 (Ct. Cl. 1972) (stating in operation of food facilities contract case that "[a] party who has been induced to enter into a contract by a material misrepresentation of fact has the option of either ratifying or [rescinding] the contract at his election").

illegality in the formation of the alleged contract.[5] Instead, she simply alleges that the Smithsonian "breached the terms of the Deed of Gift" by failing to obtain her approval for Firelight's request for the photographs-at-issue and thereby permitting unauthorized reproduction of those photographs. Docket No. 17 at 10¶42. There is no allegation that there was any misunderstanding of any kind between the parties upon formation of the alleged contract, but rather only plaintiff's blanket assertion that "[t]he Deed of Gift is a reasonable, valid, and enforceable contract, and is supported by more than adequate compensation." *Id.* at 10¶40.

Moreover, other allegations in the amended complaint suggest that money damages would be adequate. Plaintiff alleges that she has "suffered money damages as a direct and proximate result of the Smithsonian's breaches of the Deed of Gift," Docket No. 17 at 11¶45, and requests compensatory or statutory damages in return, *id.* at 11¶¶C-D. Accordingly, for all the reasons stated, the remedy of rescission should not be available for the alleged breach of the Deed of Gift.

B. Plaintiff Is Not Entitled To A Return Of The Photograph Collection Collection By Simply Terminating The Alleged Contract.

Generally, a party has a right to terminate a contract due to a material breach, or repudiation by the other party to the contract.[6] *See, e.g., Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 217 F.3d 8, 10 (1st Cir. 2000). Upon termination, no further performance by the injured party is required, but, unlike rescission, the contract is still deemed to have existed up

[5] Although *Dow Chemical* involved a patent license, this Court has previously acknowledged that "prior decisions involving patent licenses between a private party and the government may sometimes be helpful when a dispute involves alleged copyright infringement by the government" *RT Computer Graphics v. United States*, 44 Fed. Cl. 747, 758 n.10 (1999).
[6] This motion for summary judgment does not advance our further contention that the alleged breach was immaterial.

until the time of termination. Restatement (Third) of Restitution & Unjust Enrichment § 37 (T.D. No. 3, 2010) (attached as DX 3). By contrast, rescission attempts to restore the pre-contractual status quo. *Id.* Accordingly, the injured party is entitled to terminate the contract in many circumstances in which rescission is impossible or unavailable. *Id.*

Nevertheless, in this case, the transfer of photographs to the Smithsonian Institution in December 1997 occurred roughly 10 years before the alleged breach, the approval of Firelight's February 2008 request to use the three photographs-at-issue in the Wounded Knee documentary. Terminating the contract now should not permit the Court to go back years in time and return the collection to Ms. Pearse-Hocker. Moreover, if the Court did unwind the alleged contract and return the collection, the remedy would amount to rescission by effectively voiding the contract, which as discussed above, is not permitted under the pleaded facts of this case. *See Amer. Sci. & Eng'g, Inc.*, 663 F.2d at 87 (stating that "this court will not declare a contract between the government and a private party void *ab initio* unless there was *'plain illegality'* in the contract") (citations omitted).

Even if the right of termination was a viable legal route for undoing earlier contractual actions, an injured party is not entitled to terminate the Smithsonian's "irrevocable" copyright license to use the collection, much less ask for its return. *See Nano-Proprietary, Inc. v. Canon, Inc.*, 537 F.3d 394, 398 (5th Cir. 2008). In *Nano-Proprietary*, the Fifth Circuit found that an "irrevocable, perpetual, nonexclusive" patent license to Canon could not be terminated because Canon improperly used the patent license in a joint venture with Toshiba. *Id.* As the Court explained, "[t]he term 'irrevocable' is defined as '[u]nalterable; committed beyond recall,' or [i]mpossible to retract or revoke." *Id.* This understanding is consistent with the principles of

contractual interpretation set forth by the Federal Circuit. For example, in *Massachusetts Bay Transportation Authority v. United States*, 129 F.3d 1226 (Fed. Cir. 1997), the Court stated that "[n]o contract provision can be ignored" because "[i]t is a fundamental rule of contract interpretation that the provisions are viewed in a way that gives meaning to all parts of the contract, and that avoids conflict, redundancy, and surplusage among the contract provisions." 129 F.3d at 1231 (citing *United Int'l Investigative Servs. v. United States*, 109 F.3d 734, 737 (Fed. Cir. 1997)); *see also McAbee Contrs., Inc. v. United States*, 97 F.3d 1431, 1435 (Fed. Cir. 1996).

In this case, the term "irrevocable" should similarly be viewed in accordance with its ordinary meaning, and, as stated above, not rendered meaningless by an overbroad interpretation of the right of termination. The alleged contract (the Deed of Gift) granted the Smithsonian Institution an "irrevocable, non-exclusive, royalty-free, license to use, reproduce, display, and publish . . . the photographs for all standard educational, museum, and archival purposes." DX 1. Similarly, the first sentence of the Deed of Gift states that the collection itself is to become the Smithsonian's "permanent property." If this license to use is revoked and, as plaintiff relief seeks, the photograph collection returned (with electronic photograph copies destroyed), the terms "irrevocable" and "permanent" will have been given no meaning and the clear intent of the Deed of Gift will be ignored.

CONCLUSION

For the reasons stated above, the United States respectfully requests that the Court grant its motion for partial summary judgment and deny plaintiff's claims for breach of contract and

for return of her donated collection of photographs and destruction of the Smithsonian's electronic copies of those photographs.

Respectfully submitted,

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Dated: December 15, 2010

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