

STATE OF INDIANA

COUNTY OF PORTER

SS:

IN THE PORTER SUPERIOR COURT

NO. _____

CAUSE NO. 64D__-1911-PL-_____

JEAN-CHRISTOPHE SCHEERE,

Plaintiff,

vs.

KRAFT AUCTION SERVICE LLC;

GARY COMMUNITY SCHOOL CORPORATION;

CITY OF GARY, INDIANA;

and

PAUL TERRAULT,

Defendants

**COMPLAINT FOR DAMAGES, POSSESSION, AND DECLARATORY
JUDGMENT AND DEMAND FOR JURY TRIAL**

COMES NOW, Plaintiff, Jean-Christophe Scheere, by counsel, Michael Ray Smith and Rachelle N. Ponist of HAND PONIST HORVATH SMITH & RAYL, LLC, and respectfully submits this Complaint for Damages, Possession, and Declaratory Judgment and Demand for Jury Trial. In support thereof Plaintiff states as follows:

PARTIES

1. Plaintiff, Jean-Christophe Scheere (“Mr. Scheere”), is an individual residing in Brussels, Belgium.

2. Defendant, Kraft Auction Services LLC (“Kraft”), an auction company licensed under I.C. § 25-6.1-3-4, is an Indiana limited liability company with a principal office address of 48 N. 450 E., Valparaiso, Porter County, Indiana.
3. Defendant, Gary Community School Corporation (“School Corporation”) is an Indiana community school corporation as defined at Ind. Code § 20-23-4-3 (2019), a public school as defined at I.C. § 36-1-13-3.5-3, and a political subdivision as defined at I.C. § 36-1-2-13.
4. Defendant, City of Gary, Indiana, is an Indiana municipality as defined at I.C. § 36-1-2-11 and a political subdivision as defined at I.C. § 36-1-2-13.
5. Upon information and belief, Defendant, Paul Terrault (“Mr. Terrault”), is an individual residing in the State of Wisconsin.

THE EMERGENCY MANAGER

6. In 2017, the Indiana General Assembly designated School Corporation as a distressed political subdivision (as defined at I.C. § 6-1.1-20.3-2), placing School Corporation under the control of the Indiana Distressed Unit Appeal Board (the “DUAB”). I.C. § 6-1.1-20.3-6.8.
7. As mandated by I.C. § 6-1.1-20.3-7.5, the DUAB engaged Gary Schools Recovery, LLC, an Indiana limited liability company (the “Emergency Manager”) as the emergency manager of School Corporation.
8. The Emergency Manager has “full responsibility and authority related to financial and academic matters related to [the School Corporation],” I.C. § 6-1.1-20.3-6.8, and is mandated to “assume and exercise all the power,

authority, and responsibility of both the executive and fiscal body of [the School Corporation],” I.C. § 6-1.1-20.3-8.5(b).

9. Of relevance to this lawsuit are the Emergency Manager’s power, responsibility, and authority to cause School Corporation to enter into contracts, I.C. § 6-1.1-20.3-8.5(b)(6); to sell School Corporation’s assets, *id.* at § 8b(b)(12); and to transfer property not needed by School Corporation, *id.* at § 8.5(b)(16).
10. I.C. § 6-1.1-20.3-8.5(b)(12) and 8.5(b)(16) require the Emergency Manager to notify the mayor (“Mayor”) of the City of Gary, Indiana (the “City”) of sales of assets or transfers of property thirty days in advance and to confer with the Mayor if objections or concerns are raised.

THE MODEL AND THE AUCTION SALE

11. The focal point of this lawsuit is a wooden model of the Picasso sculpture that stands in Chicago’s Daley Plaza (the “Model”) that Mr. Scheere purchased from School Corporation at an auction conducted by Kraft (the “Auction Sale”).
12. The Model was donated to School Corporation almost fifty years ago.
13. For most of its existence, the Model sat in obscurity inside the gymnasium of School Corporation’s Gary Area Career Center where it was neglected, abused, and vandalized, with its identity and significance all but forgotten.
14. In late 2018, the Emergency Manager decided to cause the School Corporation to sell the Model.

15. The Emergency Manager notified the Mayor of the sale in writing. Lauren Cross, *Auction for Picasso model extended; \$20K bid still in play*, N.W. Indiana Times (February 7, 2019), https://www.nwitimes.com/news/local/lake/auction-for-picasso-model-extended-k-bid-still-in-play/article_af1fd0c3-0c2c-5c5d-87a1-2c3f6199a063.html (attached as Exhibit 1, advertisements and other irrelevant material omitted).
16. The Emergency Manager caused the School Corporation to enter into an agreement with Kraft to offer the Model for sale in Kraft's 42nd Anniversary Antique and Collection Auction to be held at Valparaiso, Porter County, Indiana over several days in January 2019.
17. Kraft advertised the offering of the Model at the Auction Sale on its own website, on the websites of the major internet auction platforms, in the catalogs of various auctioneers around the world, and in local Gary newspapers.
18. Mr. Scheere, after learning that the Model would be offered for sale and with the hope of acquiring it, completed Kraft's process for registering as a bidder in the Auction Sale. A copy of the registration form, including Kraft's terms and conditions, is attached as Exhibit 2.
19. On January 19, 2019, Kraft opened bidding on the Model. Bids were accepted in person in Valparaiso, over the internet, and by telephone.
20. Mr. Scheere bid by telephone from Brussels.

21. When Kraft closed the bidding the same day, Mr. Scheere's bid of \$20,000 was the highest.
22. On or about January 22, 2019, Kraft sent Mr. Scheere an email message confirming that he had submitted the winning bid, congratulating him on his purchase, instructing him to wire to Kraft the amount of \$23,000 (US) as payment of the purchase price and expenses, and inviting him to make arrangements to transport the Model to his desired destination. Email message from Jonathan Kraft, Kraft Auction Service, to Jean-Paul Scheere (January 22, 2019) (attached as Exhibit 3).
23. On or about January 23, 2019, Mr. Scheere wired to Kraft the amount of \$23,000 (US).

POLITICAL CONTROVERSY AND THE REOPENING OF BIDDING

24. Gary City Councilwoman Rebecca Wyatt, chair of the Council's historic preservation committee, was "infuriate[d]" when she learned (apparently from media reports) that the Model had been sold to someone who intended to remove it from Gary. Carole Carlson, *Auction extended for Gary's wooden Picasso replica*, Post-Trib. Of N.W. Indiana (January 31, 2019), <https://www.chicagotribune.com/suburbs/post-tribune/ct-ptb-picasso-back-in-gary-st-0202-story.html> (attached as Exhibit 4, advertisements and other irrelevant material omitted).
25. Shortly after the Auction Sale was completed, Councilwoman Wyatt sent a message to the Mayor and the Emergency Manager, inquiring whether the

Mayor had been notified in advance of the Auction Sale as required by I.C. § 6-1.1-20.3-8.5(b)(12). *Id.*

26. The Mayor acknowledged receiving a written notice of the Auction Sale but claimed that it did not itemize the assets to be sold. *Id.*
27. On January 29, 2019, the School Corporation sent the Mayor a second written notice informing her that bidding would be reopened at least until February 28, 2019. Letter from Tracy Coleman, Robert A Lewis & Associates, to Karen Freeman-Wilson (January 29, 2019) (attached as Exhibit 5).
28. Once again, to the best of Mr. Scheere's knowledge and belief, the Mayor did not object to selling the Model.
29. Indeed, the School Corporation reopened the bidding "after consultation and collaboration with the [M]ayor." Exhibit 1.
30. Kraft cooperated with the School Corporation's decision by reopening the bidding on its website but without informing Mr. Scheere.
31. On or about February 27, 2019, the Mayor and Emergency Manager held a public meeting to discuss the sale of art owned by the School Corporation.
32. At that meeting, Councilwoman Wyatt again expressed her anger, accusing the Emergency Manager of selling off the City's history. Carley Lanich, *'This is about our kids': Gary emergency manager vows students are his priority above district art auctions*, N.W. Indiana Times (February 27, 2019), https://www.nwitimes.com/news/local/lake/this-is-about-our-kids-gary-emergency-manager-vows-students/article_d30cf8f3-1c22-557d-acb9-

- [5325ce4498c6.html](#) (attached as Exhibit 6, advertisements and other irrelevant material omitted).
33. Some “concerned citizens” objected to the sale of the Model. Email message from Paul Kraft, Kraft Auction Service LLC, to Jean-Christophe Scheere (March 14, 2019) (attached as Exhibit 7).
34. In late February, having received no bids, the School Corporation decided to extend the bidding yet again until March 15, 2019. Lauren Cross, *Snafu extends Picasso auction yet again; Community forum set for tonight*, N.W. Indiana Times, February 27, 2019, https://www.nwitimes.com/news/local/lake/snafu-extends-picasso-auction-yet-again-community-forum-set-for/article_9df5f44b-7ce8-5dc9-a936-c01353411fa4.html (attached as Exhibit 8, advertisements and other irrelevant material omitted).
35. Kraft again cooperated by extending the bidding, again without informing Mr. Scheere.
36. After the bidding was closed, it was announced that the Model had been sold to Mr. Terrault for \$40,500. Carole Carlson, *Picasso auction nets \$40,500 for Gary schools*, Post-Trib. Of N.W. Indiana (April 10, 2019), <https://www.chicagotribune.com/suburbs/post-tribune/ct-ptb-gary-picasso-auction-st-0411-story.html> (attached as Exhibit 9, advertisements and other irrelevant material omitted).

CONCERTED ACTIONS IN DEFIANCE OF MR. SCHEERE'S OWNERSHIP RIGHTS

37. Between January 19, 2019 (the day of the Auction Sale) and March 14, 2019 (the day before the extended bidding closed), Mr. Scheere, unaware that the School Corporation, the Emergency Manager, the City, and Kraft were acting in concert to deny him the right to the Model that he had lawfully purchased, contacted companies that specialized in transporting artwork to have the Model shipped to Belgium as Kraft's message of January 22, 2019 invited him to do so.
38. During that time, no one informed Mr. Scheere that there was any doubt at all about the validity of the Auction Sale – not the School Corporation, not the Emergency Manager, not the City, not the Mayor, and not Kraft.
39. To the contrary, Kraft and Mr. Scheere exchanged email messages, with Kraft giving Mr. Scheere assurances that the delay in giving him possession of the Model was temporary and that there were no problems with his purchase and with Mr. Scheere keeping Kraft apprised of his progress in identifying a company to crate and transport the Model. In addition, Mr. Scheere received frequent email messages from Kraft advertising its auctions with no mention of reopening or extending the bidding on the Model.
40. In contrast to the original Auction Sale in January, Kraft did not publicize either the reopening or the subsequent extension, which might have alerted Mr. Scheere of the actions being taken in defiance of his ownership of the Model.

41. The Kraft website continued to show the Model as having sold for \$20,00 until at least late February, Exhibit 8, and the internationally recognized websites Invaluable, Inc., *Lot 201: Original Chicago Picasso Wood Working Model*, <https://www.invaluable.com/auction-lot/original-chicago-picasso-wood-working-model-ef04a03b86#> (last visited November 13, 2019) and Live Auctioneers, *Original Chicago Picasso Wood Working Model*, https://www.liveauctioneers.com/item/68114288_original-chicago-picasso-wood-working-model (last visited November 13, 2019), still showed the Model as having sold for \$20,000 shortly before the filing date of this Complaint.
42. On February 12, 2019, Mr. Scheere received an email message from Kraft acknowledging receipt of payment in full. The message also stated that there was some delay, claiming that the Emergency Manager had approved the sale of the Model in November 2018 but “did not give proper notice to the [M]ayor.” The message concluded:

So we have talked to the Mayor and they are not wanting the piece. The notice to the mayor is a curtesy [sic] gesture really and she cannot stop the sale. So the notice was given a few days after the sale, and the item can be removed after February 23rd. I know you are not from here, but unfortunately this is how Gary works and I am as furious about this situation as anyone.

Email message from Jonathan Kraft, Kraft Auction Service LLC, to Jean-Christophe Scheere (February 11, 2019) (attached as Exhibit 10).

43. Significantly, Kraft sent the above message with the full knowledge that bidding was reopened and that it would remain open until at least February 28, 2019.
44. Kraft's duplicity denied Mr. Scheere the information he could have used to take legal action to stop the reopened and extended bidding on the Model.
45. Finally, on March 14, 2019, the day before the extended bidding period expired, Kraft sent an email message to Mr. Scheere admitting that it had intentionally hidden from him the fact that it had first reopened and then extended bidding on the Model in cooperation with the School Corporation, the Emergency Manager, and the City.

So I never explained the full issue we were dealing with because I didn't know if you'd understand the politics of it all, though now you need to hear the complexity so you can make a decision on what you want to do.

The Gary school system use to be run by the city of Gary, but after racking up almost \$100,000,000 in debt and failing schools the state stepped in and took over 3 years ago. The most recent emergency manager [1], Peggy Hinckley, was on a mission to liquidate all unused assets to right their finances the best they could and turn the focus back on the students. With that being the case she had us selling a variety of school assets including some art, one being the Picasso. After asking about the piece last year it was decided it should be offered in our January auction. In the middle of

¹ The Emergency Manager employs an individual whose job title is also "emergency manager."

November we received an email from Peggy approving the sale of the piece.

Before we can sell anything though Peggy had to give 30 day notice to the mayor of the sale of assets. We have done this for months with other assets, and Peggy had told the attorney to give written notice for the upcoming sales but the attorney never stated the Picasso in the notice like she was suppose [sic] to. I never knew of this issue or Peggy, because we never heard a word from the mayor.

...[A]fter the auction [the local newspapers] wanted to know everything about [the sale of the Model] and it became front page news. Since then there was public outcry how terrible this was. Well it was at that point the mayor said she didn't know and proper notice wasn't made to her. So at that point we immediately gave notice and that's why I told you there would be a little delay on getting the piece because now there was at least a 30 day hold on the piece. Well at the end of the 30 days the mayor held a public meeting about the Picasso and the remaining school art. Obviously those now upset by it all came to voice their opinion.

So the new emergency manager and mayor told me to post the Picasso back on my website and give any of these concerned citizens an opportunity to place a bid. It has actually been on there for about 10 days now and anyone to submit a bid has until tomorrow.

Their initial thought was no one will make an offer and to keep the sale to you and we are done. ...

Well that all changed now that some of concerned citizens have gotten together to make an offer and plan on donating it to a local museum for public display. The museum actually is the one who made the offer on it. The offer was also more then you paid for it too, and that makes it difficult too.

So here is our dilemma, technically it was sold to you but without the notice to mayor it really wasn't sold, but we wanted to still honor that bid for you. Now the schools are stuck because they have a higher local offer that keeps everyone here happy and only you unhappy. They don't want that either though. So my question to you is, would you be ok if they sold it to a local group to keep here and refund you your money? The money is still in my account and has never been paid to the school. I probably can get them to pay you a fee for your time if you'd like. Or if you really want it and do not care about the local issues and will do anything to make sure you still get it, then let me know and I'll relay that message to the school system so they can make their decision.

Exhibit 7.

46. By then, it was too late for Mr. Scheere to take legal action to stop the purported second sale of the Model.
47. Shortly thereafter, it was announced that Mr. Terrault had purchased the Model with a bid of \$40,500. Exhibit 9.

MR. SCHEERE HOLDS ALL TITLE AND INTEREST IN THE MODEL

48. The Auction Sale is governed by Indiana's adoption of Article 2 of the Uniform Commercial Code, I.C. § 26-1-2-1, et seq., and I.C. § 26-1-2-328 (Sale by Auction) in particular. Although both the United States of America and Belgium are signatories to the United Nations Convention for the International Sale of Goods, the Convention does not apply to sales by auction.

49. The City and the School Corporation have made conflicting statements whether the Mayor received prior notice of the Auction Sale and, if so, whether it satisfied the statutory requirements.
50. In a letter dated April 5, 2019, counsel for the School Corporation stated that it was discovered on or about January 25, 2019, that “the statutory notice had not been provided to the Mayor.” Letter from Michelle Cooper, Lewis Kappes, to Samin Advani, Willkie Farr & Gallagher (April 5, 2019) LLP (attached as Exhibit 11).
51. The Mayor has been consistently quoted as saying the notice was sent but that it did not contain a list of the items to be sold, but she has given contradictory statements about the adequacy of the notice, at one time stating that the statute did not require the detailed information, Exhibit 1 and at another time stating that the notice did not satisfy the statute, Exhibit 4.
52. Regardless of the existence or validity of the pre-Auction Sale notice, the sale is valid.
53. The Mayor was correct when she stated that statute does not require a list of the items to be sold, merely a notice that assets of the School Corporation are to be sold.
54. Even if the notice sent to the Mayor in 2018 did not include a list of items to be sold, the Mayor was put on notice that the School Corporation intended to

sell some of its assets, giving her the opportunity to request more information so that she could decide whether to object or raise concerns.

55. Accordingly, the notice served its statutory purpose even if it did not contain a list of items to be sold, and the sale was properly authorized.
56. Moreover, the Auction Sale was valid even if the Mayor did not receive notice as required by the statute. The requirement for notice is an obligation of the Emergency Manager, like other reporting obligations the statute imposes on the Emergency Manager, but it is not a condition to the Emergency Manager's authority to cause the sale or transfer of assets or property of the School Corporation. The Emergency Manager had authority to sell the Model whether the Emergency Manager gave perfect notice, flawed notice, or even no notice at all.
57. The statute gives the Mayor has the right to be heard by the Emergency Manager, but not the power to stop a sale or transfer, and it gives the Emergency Manager the obligation to confer with the Mayor, but not obligation to honor her preferences. See I.C. §§ 6-1.1-20.3-8.5(b)(12) and -8.5(b)(16).
58. Even if the requirement to furnish the Mayor notice were a condition to the Emergency Manager's authority to sell or transfer the Model, and even if the condition was not satisfied, the Emergency Manager had apparent authority to engage Kraft, and Kraft, in turn, had apparent authority to sell the Model to Mr. Scheere.

59. Ultimately, any question regarding the pre-Auction Sale notice to the Mayor is a red herring. The School Corporation is bound by Auction Sale that was completed on January 19, 2019, because the Emergency Manager had authority, either actual or apparent, to sell the Model, and it was sold to Mr. Scheere.
60. Under I.C. § 26-1-2-328(2), “A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner,” and I.C. § 26-1-2-106 defines a “sale” as the passing of title from the seller to the buyer.
61. Accordingly, when Kraft announced the closing of bids at the Auction Sale on January 19, 2019 (whether by the fall of a hammer, by announcing “sold,” or otherwise), title to the Model passed immediately to the highest bidder, Mr. Scheere.
62. Once the bidding Auction Sale closed on January 19, 2019, neither Kraft, nor the School Corporation, nor the Emergency Manager, nor the City had any lawful power or authority to cancel or revoke the sale of the Model to Mr. Scheere.
63. After the Auction Sale, the School Corporation held no title because all title it previously held passed to Mr. Scheere.
64. At most, the School Corporation held a possessory lien to secure Mr. Scheere’s obligation to pay, but that lien terminated when Mr. Scheere paid

the purchase price, plus expenses, to Kraft, acting as agent for the School Corporation.

- 65. Accordingly, after Mr. Scheere paid for the Model, he held not only title but also an exclusive, unqualified, unconditional right to immediate possession.
- 66. As of July 9, 2019, the Model remained in the Gary Area Career Center at 1800 E. 35th Avenue in Gary, Indiana.

NOTICE AND DEMAND

- 67. On April 1, 2019 Mr. Scheere, by counsel, demanded that the School Corporation acknowledge Mr. Scheere's ownership of the Model. Letter from Samir Advani, Willkies Farr & Gallagher LLP, to Michelle Cooper, Lewis Kappes (April 1, 2019) (attached as Exhibit 12).
- 68. On April 5, 2019, the School Corporation, by counsel, responded by asserting that the sale to Mr. Scheere was invalid because "the statutory notice had not been provided to the Mayor." Exhibit 11.
- 69. On May 2, 2019, Mr. Scheere responded, by counsel, to the School Corporation's letter of April 5, 2019, rebutting the School Corporation's argument regarding notice. Letter from David Sanders, Patterson Law Firm, to Michelle Cooper, Lewis Kappes (May 2, 2019) (attached as Exhibit 13).
- 70. On May 17, 2019, counsel for the School Corporation reconfirmed the School Corporation's position that "once proper notice was acknowledged by the Mayor, Mr. Scheere was not the highest bidder." Email message from Shelice

Tolbert, Tolbert & Tolbert, to David Sanders, Patterson Law Firm (May 17, 2019) (attached as Exhibit 14).

71. On July 16, 2019, Mr. Scheere served the City and School Corporation (through its Emergency Manager at the address of the Emergency Manager's registered agent in Indiana) notice of his tort claims (the "Tort Claim Notice") as required by I.C. § 34-13-3-8. Letter from Rachelle Ponist, Hand Ponist Horvath Smith & Rayl, LLC, to the City of Gary, to the Gary School Corporation (c/o the Emergency Manager at the address of its Indiana registered agent), to the Indiana Political Subdivision Risk Management Commission, and to the Indiana Distressed Unit Appeal Board (July 16, 2019) (attached as Exhibit 15). The notice was served within 180 days after Mr. Scheere's tort claims accrued.
72. On July 18, 2019, Mr. Scheere served the School Corporation and the City notice of intent to sue (the "School Claim Notice") with a specific request for relief as required by I.C. §§ 34-13-3.5-4 and -5. Letter from Rachelle Ponist, Hand Ponist Horvath Smith & Rayl, LLC to the Gary School Corporation (c/o the Emergency Manager at the address of its Indiana registered agent) (July 18, 2019) (attached as Exhibit 16).
73. On July 19, 2019, counsel for Mr. Scheere sent copies of the Tort Claim Notice and School Claim notice to counsel for the School Corporation. Email message from Michael Smith, Hand Ponist Horvath Smith & Rayl, LLC, to Shelice Tolbert, Tolbert & Tolbert (July 19, 2019) (attached as Exhibit 17).

74. On July 21, 2019, Mr. Scheere cautioned the School Corporation, through its counsel, not to move the Model from its location at the Gary Area Career Center until the right to possession is resolved and to preserve evidence related to the Model and its sale. Email message and Letter from Michael Smith, Hand Ponist Horvath Smith & Rayl, LLC, to Shelice Tolbert, Tolbert & Tolbert (July 21, 2019) (attached as Exhibit 18).
75. On July 22, 2019, Mr. Scheere informed Mr. Terrault of the dispute regarding ownership of the Model and cautioned him not to move the Model from its location at the Gary Area Career Center and to preserve evidence related to the Model and its sale. Letter from Michael Smith, Hand Ponist Horvath Smith & Rayl, LLC to Paul Terrault (July 22, 2019) (attached as Exhibit 19).
76. More than 90 days has passed since the Tort Claim Notice was served, and neither the City nor the School Corporation has approved a settlement. Accordingly, as provided by I.C. § 34-13-3-11, the City and the School Corporation are deemed to have denied his claims, and this lawsuit is permitted by I.C. § 34-13-3-13.
77. More than 15 days has passed since the School Claim Notice was served, and the School Corporation has not offered to provide the requested relief. Accordingly, this lawsuit may not be dismissed under I.C. § 34-13-3.5-6.

COUNT I: BREACH OF CONTRACT (SCHOOL CORPORATION)

78. Paragraphs 1 through 74 and paragraphs 88 through 123 are hereby incorporated into this Count as if set forth fully herein.

79. Under I.C. § 26-1-2-301, the School Corporation has the duty to transfer and deliver, and Mr. Scheere has the duty to accept and to pay in accordance with the contract created by the Auction Sale.
80. Mr. Scheere satisfied his obligation to pay on January 23, 2019.
81. He stands ready to accept delivery, with an unqualified, unconditional right to immediate possession.
82. In most auctions of goods, the seller delivers possession of the goods to the auctioneer in advance of the sale, and the auctioneer serves as the seller's agent for delivering possession to the buyer.
83. In this case, the School Corporation retained possession of the Model and the obligation to deliver possession to the buyer.
84. The School Corporation is in breach of that obligation, and thus in breach of the contract of sale created at auction, by refusing to deliver possession of the Model to Mr. Scheere.
85. Because the Model is unique, Mr. Scheere is entitled to specific performance of the sale and to replevin of the Model under I.C. § 26-1-2-716.
86. To the best of Mr. Scheere's knowledge and belief, the School Corporation remains in possession of the Model as of the date this Complaint is filed.

WHEREFORE, Mr. Scheere respectfully requests that this Court enter judgment against the School Corporation; order the School Corporation to specifically perform its obligations under the contract arising from the Auction Sale

by delivering possession of the Model to Mr. Scheere; and grant all other relief just and proper in the premises.

**COUNT II: ACTION IN REPLEVIN (SCHOOL CORPORATION OR, IN THE
ALTERNATIVE, MR. TERRAULT)**

87. Paragraphs 1 through 86 and paragraphs 93 through 123 are hereby incorporated into this Count as if set forth fully herein.
88. A person whose goods are wrongfully taken or unlawfully detained may bring an action in replevin. I.C. § 32-35-2-1.
89. The School Corporation's detention of the Model is unlawful in that it constitutes a breach of the contract arising from the Auction Sale and is in defiance of Mr. Scheere's right of possession.
90. As of July 10, 2019, the Model remained in the possession of the School Corporation.
91. Plaintiff is without knowledge of the current location of the Model or if the School Corporation has transferred possession of the Model to Mr. Terrault.

WHEREFORE, Mr. Scheere respectfully requests that this Court enter a judgment against the School Corporation (or, in the alternative, against Mr. Terrault, if he is shown to have possession of the Model) in accordance with I.C. § 32-35-2-33; order the School Corporation (or, in the alternative, Mr. Terrault) to deliver the Model to Mr. Scheere; and order the School Corporation (and, if he is shown to have possession of the Model, Mr. Terrault) to pay Mr. Scheere damages,

to be proven at trial, for the unlawful taking and detention of the Model; and grant him all other relief just and proper in the premises.

COUNT III: CIVIL CONVERSION (KRAFT, SCHOOL CORPORATION, AND THE CITY)

92. Paragraphs 1 through 91 and paragraphs 97 through 123 are hereby incorporated into this Count as if set forth fully herein.
93. “In order to maintain an action for conversion, the plaintiff must establish the appropriation of personal property by another for that party's own use and benefit in exclusion and defiance of the owner's rights. The essential elements of the plaintiff's claim are an immediate, unqualified right to possession resting on a superior claim of title.” *Shourek v. Stirling*, 621 N.E.2d 1107, 1109 (Ind. 1993).
94. A defendant may incur liability for a tort, including civil conversion, either by acting alone or by participating in a civil conspiracy to commit the tort.

A civil conspiracy is a combination of two or more persons who engage in a concerted action to accomplish an unlawful purpose or to accomplish some lawful purpose by unlawful means.

Birge v. Town of Linden, 57 N.E.3d 839, 845 (Ind. Ct. App. 2016) (quotation marks and citation omitted).

Civil conspiracy is not an independent cause of action. It must be alleged with an underlying tort. Unlike criminal conspiracy, the gist of a civil conspiracy is not the unlawful agreement, but the damage caused by acts committed in pursuance of the agreement. Thus, an allegation of civil conspiracy is just another way of asserting a concerted action in the commission of a tort.

Id. at 846 (quotation marks and citations omitted).

95. In this case, Kraft, the School Corporation, the Emergency Manager, and the City (including the Mayor) acted individually and in concert to appropriate the Model for their own use and benefit in defiance of Mr. Scheere's rights.

WHEREFORE, Mr. Scheere respectfully requests that this Court enter judgment against Kraft, the School Corporation, and the City; order Kraft, the School Corporation, and the City to pay him damages arising from the conversion of the Model in an amount to be determined at trial, and grant him all other relief just and proper in the premises.

**COUNT IV: ACTION UNDER THE CRIME VICTIMS RELIEF ACT FOR
CRIMINAL CONVERSION (KRAFT, THE SCHOOL CORPORATION, AND THE
CITY)**

96. Paragraphs 1 through 95 and paragraphs 104 through 123 are hereby incorporated into this Count as if set forth fully herein.
97. I.C. § 34-24-23-1 of the Crime Victims Relief Act permits the victims of certain crimes to file an action for treble damages plus attorneys' fees and other expenses.
98. One of the crimes eligible for treble damages, attorneys' fees, and other expenses is criminal conversion under I.C. § 35-43-4-3: "A person who knowingly or intentionally exerts unauthorized control over property of another person commits criminal conversion...."
99. I.C. § 35-41-2-4 further provides that a person who aids another in the commission of criminal conversion also commits criminal conversion.

100. The principal difference between the elements of criminal conversion and the elements of civil conversion is mental state. Unlike civil conversion, criminal conversion requires that unauthorized control to be exerted knowingly or intentionally.
101. The facts set forth in this Complaint demonstrate that, in addition to committing civil conversion, Kraft, the School Corporation, and the City also committed criminal conversion.
102. Although the City and the School Corporation are immune an award of punitive damages as provided by I.C. § 34-13-3-4(b), they are not immune from an award of compensatory damages under I.C. § 34-24-23-1.

WHEREFORE, Mr. Scheere respectfully requests that Court order Kraft to pay him treble the damages he incurred as a result of conversion; to order the City and the School Corporation to pay Mr. Scheere the damages he incurred as a result of the conversion; and to order Kraft, the City, and the School Corporation to pay Mr. Scheere his attorneys' fees and other expenses permitted by the Crime Victims' Relief Act, all in amounts to be shown at trial; and grant him all other relief just and proper in the premises.

COUNT V: FRAUD (KRAFT)

103. Paragraphs 1 through 101 and paragraphs 110 through 123 are hereby incorporated into this Count as if set forth fully herein.
104. "The elements of common-law fraud are (1) a material misrepresentation of past or existing fact which (2) was untrue, (3) was made with knowledge of or

in reckless ignorance of its falsity, (4) was made with the intent to deceive, (5) was rightfully relied upon by the complaining party, and (6) which proximately caused the injury or damage complained of. ... [F]raud is not limited only to affirmative representations; the failure to disclose all material facts can also constitute actionable fraud.” *Kesler v. Hubler Nissan, Inc.*, 997 NE 2d 327, 335 (Ind. 2013).

105. In this case, Kraft failed to disclose to Mr. Scheere the fact that the School Corporation had reneged on the sale and was trying to find another buyer in direct defiance of Mr. Scheere’s rights.
106. Kraft clearly intended to deceive Mr. Scheere so he could not take any preemptive legal action to enforce his rights under the Auction Sale, action which might interfere with the reopening and extension of the bidding.
107. Mr. Scheere reasonably believed and relied upon Kraft’s statements to him and he reasonably believed that Kraft would tell him if there was a problem with the sale.
108. In reliance upon Kraft’s statements and omissions, Mr. Scheere waited, expecting to receive word any day that he could take possession of the Model. That decision to wait until it was too late to stop the purported sale to Mr. Terrault prejudiced Mr. Scheere.

WHEREFORE, Mr. Scheere respectfully requests that this Court enter judgment against Kraft; order Kraft to pay him damages incurred by his reasonable

reliance on Kraft's fraudulent concealment in an amount to be proven at trial; and grant him all other relief just and proper in the premises.

COUNT VI: DECLARATORY JUDGEMENT (MR. TERRAULT)

109. Paragraphs 1 through 108 and paragraphs 113 through 123 are hereby incorporated into this Count as if set forth fully herein.

110. At the close of the Auction Sale Mr. Scheere held exclusive title to the Model.

111. The School Corporation held no title and, therefore, had no power to transfer title to Mr. Terrault.

WHEREFORE, Mr. Scheere respectfully requests that this Court enter declaratory judgment under T.R. 57 to the effect that he holds all right, title, and interest to the Model and that Mr. Terrault holds no such right, title, or interest; and grant Mr. Scheere all other relief just and proper in the premises.

COUNT VII: TORTIOUS INTERFERENCE WITH A CONTRACT (THE CITY)

112. Paragraphs 1 through 111 and paragraphs 120 through 123 are hereby incorporated into this Count as if set forth fully herein.

113. Indiana law recognizes tortious interference with a contract as a cause of action consisting of the following elements:

(i) existence of a valid and enforceable contract; (ii) defendant's knowledge of the existence of the contract; (iii) defendant's intentional inducement of breach of the contract; (iv) the absence of justification; and (v) damages resulting from defendant's wrongful inducement of the breach.

Winkler v. VG Reed & Sons, Inc., 638 NE 2d 1228, 1235 (Ind. 1994).

114. In this case, there existed a valid and enforceable contract between Mr. Scheere and the School Corporation for Mr. Scheere's purchase of the Model from Mr. Scheere.
115. The City was aware of the contract between Mr. Scheere and the School Corporation.
116. The City, acting through the Mayor and others, induced the School Corporation to breach its contract with Mr. Scheere.
117. In doing so, the City acted without justification.
118. Mr. Scheere has suffered damages from the City's inducement of the School Corporation's breach of contract.

WHEREFORE, Mr. Scheere respectfully requests that this Court enter judgement against the City; order the City to pay him damages he suffered as a result of its tortious interference of contract in an amount to be shown at trial; and award him all other relief just and proper under the premises.

COUNT VIII: MONEY HAD AND RECEIVED (KRAFT AND SCHOOL CORPORATION)

119. Paragraphs 1 through 118 are hereby incorporated into this Count as if set forth fully herein.
120. Money had and received is an equitable claim in the nature of restitution or unjust enrichment:

An action for money had and received is an equitable remedy that lies in favor of one person against another, when that other person has received money either from the plaintiff himself or third

persons, under such circumstances that in equity and good conscience he ought not to retain the same, and which money belongs to the plaintiff, and where money has been received by mistake of facts or without consideration, or upon a consideration that has failed, it may be recovered back. Such an action rests upon an implied promise and may be maintained against the person who received money from the plaintiff under circumstances which in equity and good conscience he should not retain.

Lawson v. First Union Mortg. Co., 786 NE 2d 279, 283-84 (Ind. Ct. App. 2003).

121. Mr. Scheere paid Kraft \$23,000 for the purchase price of the Model and expenses.
122. Kraft accepted payment in its capacity as an agent of the School Corporation and, as of March 14, 2019, still held the money in its trust account. Exhibit 10.
123. If this Court finds that Mr. Scheere does not hold title to the Model, consideration for that payment will have failed, and, in equity and good conscience, neither the School Corporation nor Kraft should be allowed to retain it.

WHEREFORE, as an alternative remedy to be awarded if the Court finds that Mr. Scheere does not hold title to the Model, Mr. Scheere respectfully requests that this Court order Kraft and the School Corporation to return to him the \$23,000 he paid; and grant him all other relief just and proper in the premises.

CONCLUSION

WHEREFORE, Mr. Scheere respectfully requests that this Court:

GRANT him judgment in this matter;

GRANT him possession of the Model;

ORDER Defendant Gary Community School Corporation or Defendant Paul Terrault, as applicable, to deliver possession of the Model to Mr. Scheere;

ORDER Defendants Kraft Auction Services LLC, Gary Community School Corporation, and the City of Gary, Indiana to pay Mr. Scheere such damages, attorneys' fees, expenses, and other amounts to which he is entitled;

GRANT him declaratory judgment under Ind. Trial Rule 57 to the effect that Mr. Scheere holds all right, title, and interest in the Model and that Defendant Paul Terrault holds no such right, title, or interest; and

GRANT him such other relief or remedies as may be just and proper in the premises.

Respectfully submitted,

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DEMAND FOR JURY TRIAL

Comes now Plaintiff, Jean-Christophe Scheere, pursuant to Ind. Trial Rule 38, and respectfully requests a trial by jury in the above-captioned cause of action.

Respectfully submitted,

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LIST OF EXHIBITS

- Exhibit 1. Lauren Cross, *Auction for Picasso model extended: \$20K bid still in play*, N.W. Indiana Times (February 7, 2019), https://www.nwitimes.com/news/local/lake/auction-for-picasso-model-extended-k-bid-still-in-play/article_af1fd0c3-0c2c-5c5d-87a1-2c3f6199a063.html (advertisements and other irrelevant material omitted)
- Exhibit 2. Kraft Auction registration form and Kraft terms and conditions
- Exhibit 3. Email message from Jonathan Kraft, Kraft Auction Service, to Jean-Paul Scheere (January 22, 2019)
- Exhibit 4. Carole Carlson, *Auction extended for Gary's wooden Picasso replica*, Post-Trib. Of N.W. Indiana (January 31, 2019), <https://www.chicagotribune.com/suburbs/post-tribune/ct-ptb-picasso-back-in-gary-st-0202-story.html> (advertisements and other irrelevant material omitted)
- Exhibit 5. Letter from Tracy Coleman, Robert A Lewis & Associates, to Karen Freeman-Wilson (January 29, 2019)
- Exhibit 6. Carley Lanich, *'This is about our kids': Gary emergency manager vows students are his priority above district art auctions*, N.W. Indiana Times (February 27, 2019), https://www.nwitimes.com/news/local/lake/this-is-about-our-kids-gary-emergency-manager-vows-students/article_d30cf8f3-1c22-557d-acb9-5325ce4498c6.html (advertisements and other irrelevant material omitted)
- Exhibit 7. Email message from Paul Kraft, Kraft Auction Service LLC, to Jean-Christophe Scheere (March 14, 2019)
- Exhibit 8. Lauren Cross, *Snafu extends Picasso auction yet again: Community forum set for tonight*, N.W. Indiana Times, February 27, 2019, <https://www.nwitimes.com/news/local/lake/snafu-extends-picasso->

[auction-yet-again-community-forum-set-for/article_9df5f44b-7ce8-5dc9-a936-c01353411fa4.html](https://www.chicagotribune.com/suburbs/post-tribune/ct-ptb-gary-picasso-auction-st-0411-story.html) (advertisements and other irrelevant material omitted)

- Exhibit 9. Carole Carlson, *Picasso auction nets \$40,500 for Gary schools*, Post-Trib. Of N.W. Indiana (April 10, 2019), <https://www.chicagotribune.com/suburbs/post-tribune/ct-ptb-gary-picasso-auction-st-0411-story.html> (advertisements and other irrelevant material omitted)
- Exhibit 10. Email message from Jonathan Kraft, Kraft Auction Service LLC, to Jean-Christophe Scheere (February 11, 2019)
- Exhibit 11. Letter from Michelle Cooper, Lewis Kappes, to Samin Advani, Willkie Farr & Gallagher LLP (April 5, 2019)
- Exhibit 12. Letter from Samir Advani, Willkies Farr & Gallagher LLP, to Michelle Cooper, Lewis Kappes (April 1, 2019)
- Exhibit 13. Letter from David Sanders, Patterson Law Firm, to Michelle Cooper, Lewis Kappes (May 2, 2019)
- Exhibit 14. Email message from Shelice Tolbert, Tolbert & Tolbert, to David Sanders, Patterson Law Firm (May 17, 2019)
- Exhibit 15. Letter from Rachelle Ponist, Hand Ponist Horvath Smith & Rayl, LLC, to the City of Gary, to the Gary School Corporation (c/o the Emergency Manager at the address of its Indiana registered agent), to the Indiana Political Subdivision Risk Management Commission, and to the Indiana Distressed Unit Appeal Board (July 16, 2019)
- Exhibit 16. Letter from Rachelle Ponist, Hand Ponist Horvath Smith & Rayl, LLC to the Gary School Corporation (c/o the Emergency Manager at the address of its Indiana registered agent) (July 18, 2019)
- Exhibit 17. Email message from Michael Smith, Hand Ponist Horvath Smith & Rayl, LLC, to Shelice Tolbert, Tolbert & Tolbert (July 19, 2019)

- Exhibit 18. Email message and Letter from Michael Smith, Hand Ponist Horvath Smith & Rayl, LLC, to Shelice Tolbert, Tolbert & Tolbert (July 21, 2019)
- Exhibit 19. Letter from Michael Smith, Hand Ponist Horvath Smith & Rayl, LLC to Paul Terrault (July 22, 2019)