

## **Miami Pop Artist Must Pay Rent While Fighting Lease**

*By Carolina Bolado*

A Florida judge on Sunday rejected Miami-based pop artist Romero Britto's request to deposit rent for his Miami Beach art gallery into a court registry while he takes his landlord to court over crime and nuisance in the area that he says have driven away customers.

Judge Thomas J. Rebull said the Brazilian-born artist's allegations in his complaint against landlord The Denison Corp. "do not allege circumstances sufficient to rise to the level of constructive eviction so as to merit payment of the rent into the court registry."

He said Britto did not allege that he had abandoned the property on South Beach's famed Lincoln Road pedestrian mall, which is generally considered a condition for filing a claim of constructive eviction, in which a landlord fails to uphold its legal duties to maintain a habitable property.

Britto filed suit on May 29, claiming that Denison, which owns the building at 532 Lincoln Road, has failed to maintain a quiet and peaceful environment around the art gallery. The landlord has permitted crowds of vagrants to congregate at the property and has allowed street performers to create a nuisance by blaring loud music, according to the suit.

He asked the court to declare that the 10-year lease he signed in May 2015 has been terminated.

"As a result of defendant's breach, plaintiffs are no longer able to utilize the property as an art gallery, have been constructively evicted from the property, and have suffered damages," Britto said.

But Denison argued that in order to make a claim for constructive eviction, Britto has to abandon the premises first. The gallery is still open.

Denison also argued that the disturbances alleged in the complaint are not caused by or within the control of the landlord but are matters that should be taken up with the City of Miami Beach.

"We are pleased that the judge has quickly denied Romero Britto's request to stop paying rent on his Lincoln Road art gallery, especially when the underlying basis for Britto's causes of action are beyond the control of the landlord," Denison's attorney Bruce Weil of Boies Schiller Flexner LLP said. "Further, Britto is continuing to utilize the space and must pay his rent to the Denison Corp. while this case is being litigated."

Britto's attorney Alan Kluger of Kluger Kaplan Silverman Katzen & Levine said Britto has been a model tenant in the entire time he's been on Lincoln Road, but he's now dealing with regular vagrants and beggars who intimidate customers and interfere with business.

"Romero's landlord has been unresponsive to multiple requests for relief, including additional security or assistance with enforcement," Kluger said. "This is a clear violation of the lease, which guarantees Romero a peaceful place to conduct business."

Britto first opened a gallery on Lincoln Road in 1994, when it was dotted with artists' studios that began to usher in the

resurgence of the once run down pedestrian mall that now boasts an Apple store and some of the most expensive retail rents in the country. After Britto's original location, 818 Lincoln Road, was sold in 2014, he moved down the street to the property owned by Denison.

Britto was the official artist for the 2010 World Cup, ambassador to the 2014 World Cup in Brazil and a global ambassador to the 2016 Olympic games in Rio de Janeiro. He has partnered with a number of international brands like Audi, Coca-Cola, Disney and Mattel to showcase his artwork.

Britto is represented by Alan J. Kluger and Ryan Bollman of Kluger Kaplan Silverman Katzen & Levine.

Denison is represented by Bruce Weil of Boies Schiller Flexner LLP.

The case is HRH 818 LLC et al. v. The Denison Corp., case number 2018-017484-CA, in the Eleventh Judicial Circuit Court of Florida.

--Editing by Pamela Wilkinson.

Update: This story has been updated to add comment from Britto's counsel.