

**Neri v. Monroe,
No. 11-cv-429-slc (W.D. Wis. Feb. 26, 2014)**

Year	2014
Court	United States District Court for the Western District of Wisconsin
Key Facts	Defendants Melinda Monroe, president and co-owner of the Architectural Building Arts (ABA) architectural and design firm, and others entered into an agreement with plaintiff Quincy Neri, a glass-blowing artist, to create a sculpture for an entryway ABA was designing. Plaintiff Neri installed special lighting to create spiral shadows on the ceiling and walls, which Neri contended was an integral feature of the artwork. Upon completion and installation of the sculpture, defendants photographed “before” and “after” images of the renovation with the entryway owner’s permission. Defendants used these photographs to advertise and promote their firm and as part of their application materials for “Contractor of the Year” awards. Neri brought this action, alleging that defendants had taken and displayed photographs of the sculpture without her authorization. Plaintiff appealed the district court’s ruling in defendants’ favor to the Seventh Circuit Court of Appeals which remanded the case back to the district court for further consideration.
Issue	Whether defendants’ unauthorized use of photographs of plaintiff’s glass ceiling sculpture for the purposes of promoting the firm’s work constituted fair use.
Holding	The court held that defendants’ use of the photographs constituted fair use. The court concluded that the pictures were highly transformative images of the glass ceiling because, while the sculpture was a three-dimensional, impressionistic composition used to decorate an entryway, the photographs were two-dimensional, realistic images of an interior space used to inform the public about ABA’s work. Despite the commercial nature of the photographs as advertisements and promotional tools, the court found that advertising ABA’s design and construction was a new purpose, also weighing in favor of fair use. The court concluded that the second factor favored plaintiff because the sculpture was a highly creative work. However, on the third factor, the court noted that because the sculpture was mounted onto another work, a newly constructed barrel vault ceiling specifically designed to hold the sculpture, it was therefore impossible to photograph the entire room/entryway without also including the ceiling, and that the photographs only incidentally included images of portions of the sculpture as a component of the home’s overall design scheme. Finally, the court found that no evidence existed to demonstrate that the photographs had an adverse market impact on either Neri’s ability to be commissioned for future works or to sell photographs of the sculpture.
Tags	Seventh Circuit; Photograph; Sculpture
Outcome	Fair use found

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