

Members of the Berkshire Museum Appeal Ruling on Planned Sale of Critical Pieces of its Collection

Posted by Nicholas O'Donnell on November 20, 2017 at 10:22 AM

Sullivan & Worcester LLP has filed an appeal on behalf of its clients, the members of the Berkshire Museum who sued to enjoin the museum's sale of 40 works of art and sculpture. The appeal is brought as a result of the Berkshire County Superior Court's November 7, 2017 denial of their request for an injunction, and dismissal of the case (before the Appeals Court ultimately enjoined the sale until at least December). That Superior Court order denied not only the members' request, but also a motion by another group that include Norman Rockwell's sons and the motion by Attorney General Maura Healey to pause the sale originally scheduled for November 13, 2017 at Sotheby's in New York — a sale that would have included Rockwell's *Shuffleton's Barbershop* and other masterpieces.

Nicholas M. O'Donnell, attorney for the members appealing the dismissal, said, "The Superior Court's November 7, 2017 order acknowledged that members of a non-profit corporation can have standing to oversee its governance, but then accepted the museum's unsupported assertions about who the members are. My clients—the museum's members—respectfully disagree with that conclusion, and are confident that the dismissal based on that finding was premature and justifies reinstating their case. In addition, the members believe that information disclosed by the Attorney General's investigation—in particular the museum's undisputed violation of its own collection policy before changing that policy to excuse those violations—support entry of an injunction until the trial of the case. My clients look forward to making their case to the Appeals Court, and continue to support efforts to guide the museum back onto the right track."

Background:

Initially chartered by statute in 1871, the legislature placed geographic restrictions on the collection of what was then known as the Athenaeum, requiring its display within Pittsfield. Paper manufacturer Zenas Crane and his family endowed it with its land and significant artwork in the early 20th century. The legislature chartered the entity that now constitutes the museum in 1932 as the Trustees of the Berkshire Museum.

The artwork proposed for sale includes masterpieces by Norman Rockwell and Frederic Edwin Church, and by several members of the Hudson River School whose work is inextricably

connected to the Hudson River watershed in which Pittsfield is located. *Shuffleton's Barbershop* is widely considered Rockwell's greatest work.

In the summer of 2017, The Berkshire Museum announced what it termed a "New Vision," pointing to the sale proceeds of the artwork as the financial foundation of its plans. Independent financial experts have examined the supposed fiscal need and determined that the Museum could sustain itself on an endowment a fraction of the one that it claims it needs the sale to realize, without the harmful collateral effects of the sale of art.

Similarly, the professional museum community is overwhelmingly opposed to the Berkshire Museum's plan to sell art to support operations and capital improvements. Monetizing the Berkshire Museum's extremely important collection of American art will assure that all or most of the works will disappear into private hands while concurrently corroding the financial underpinnings of American museums and compromising trust in their integrity.

The Massachusetts Appeals Court stopped sale on November 10, 2017 in response to an emergency motion by the Attorney General, until at least December 11, 2017