

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

NO. SJ-2018-0065

TRUSTEES OF THE BERKSHIRE MUSEUM,

Plaintiff,

v.

MAURA HEALEY, ATTORNEY GENERAL
OF THE COMMONWEALTH OF
MASSACHUSETTS.

Defendant.

**MOTION FOR LEAVE TO FILE BRIEF IN INTERVENTION
OR, IN THE ALTERNATIVE, AS AMICUS CURIAE**

This matter is a joint petition by the Trustees of Berkshire Museum and the Attorney General of the Commonwealth to have certain restrictions removed from works of art owned by the Berkshire Museum. Tom Patti, Tom Patti Design LLC, James Lamme, Donald MacGillis, Jonas Dovydenas, and Jean Rousseau (the “Original Plaintiffs”) hereby move for leave to file a brief in this matter as intervenors or, in the alternative, amicus curiae, on a schedule convenient to the Court.

The Berkshire Museum announced in July 2017 that it planned to auction 40 works of art worth between roughly \$46,000,000 and \$68,000,000. The Museum’s records and the Attorney General’s recent appellate briefing establish that these 40 works constitute “substantially all of

the valuable pieces of art in its collection.”¹ The works to be sold include two masterpieces personally donated to the Museum by local artist Norman Rockwell (“Shuffleton’s Barbershop” and “Shaftsbury Blacksmith Shop”), as well as numerous other important works representing the cultural heritage of Berkshire County. The Museum did not disclose this extraordinary plan to the local community or to the Attorney General until after the Museum had signed a consignment contract with Sotheby’s, which includes penalties for withdrawal of the works from sale. The Museum apparently intended to split the proceeds of the sale between a \$20 million “New Vision” construction project and a general endowment fund. The announcement by the Museum that it contracted to sell the art generated fierce opposition from the residents of Berkshire County and members of the museum communities.

The Original Plaintiffs, including Berkshire County artist Tom Patti and several citizens of Berkshire County, filed suit to stop the sale on October 20, 2017, alleging, among other things, breach of trust and breach of fiduciary duty, and joined the Attorney General as a necessary party pursuant to GL c.12, §8G.² In an order dated November 7, 2017, the Superior Court held that said Original Plaintiffs lacked standing to challenge the sale and denied their motion for a preliminary injunction.

In the Superior Court action, the Attorney General successfully moved to become a plaintiff, and then filed a cross-claim alleging, among other things, that based upon her investigation, the Museum’s officers and directors were acting in breach of trust and in violation

¹ See Ex. A. (Brief of Attorney General at Substituted Plaintiff-Appellant, *Rockwell et al. v. Trustees of the Berkshire Museum, et al.*, No. 2017-P-1548 (Mass. App. Ct.)) at 1, 7, 24, 29, 43.

² See Ex. B (Complaint, *Rockwell et al. v. Trustees of the Berkshire Museum*, C.A. No. 1776CV00253 (Mass. Super.)). The plaintiffs to that action also included the three sons of Norman Rockwell, but they are not parties to this Motion.

of their duties of care. The Superior Court denied the Attorney General's motion for preliminary injunction. The Attorney General successfully secured an injunction pending appeal from the Single Justice of the Appeals Court and, less than a month ago, filed an appellate brief asserting that the art was subject to restrictions preventing its sale and that "the Museum's fiduciaries breached their duty of care to the organization and its charitable purposes."³

Late last week, said Original Plaintiffs were abruptly informed that the Attorney General and the Museum had settled the case and that the Attorney General now supported the sale. Although the Original Plaintiffs were among the plaintiffs who initiated the suit, prior to that time they were never informed by the Attorney General that the Attorney General was negotiating the settlement of this matter. The Original Plaintiffs had no involvement with negotiating this settlement and only received its full terms last Friday evening, February 9, 2018. Several aspects of the proposed settlement set forth in the petition are concerning, including, among other things, its failure to explain how much and which pieces of the remaining art are expected to be sold following the sale of "Shuffleton's Barbershop" and in what order, and what, if any, conditions and monitoring will be imposed upon the Museum's use of the proceeds from the sale of the art.

These concerns bear on the Court's exercise of its equitable discretion. However, because the two parties to this *cy pres* action are acting in concert to support the sale, there is nobody to bring these and other concerns to the Court's attention. Accordingly, the Original Plaintiffs respectfully seek leave to participate in this action as intervenors or, in the alternative, *amicus curiae*.

³ See Ex. A (Brief of Attorney General at Substituted Plaintiff-Appellant, *Rockwell et al. v. Trustees of the Berkshire Museum, et al.*, No. 2017-P-1548 (Mass. App. Ct.)) at 21.

Respectfully submitted,

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(On behalf of Plaintiffs Tom Patti & Tom
Patti Design LLC only)

Date: February 15, 2018

Certificate of Service

I, Daniel McFadden, certify that I served the attached Memorandum on February 15, 2018, by delivering a copy of the Memorandum by e-mail and first class mail, postage pre-paid, to:

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