

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT
2017-J-0510

Berkshire County, ss.

THOMAS ROCKWELL, JARVIS ROCKWELL, PETER ROCKWELL,
TOM PATTI, TOM PATTI DESIGN LLC, JAMES LAMME, DONALD
MACGILLIS, JONAS DOVYDENAS, and JEAN ROUSSEAU,
Plaintiffs,

v.

TRUSTEES OF THE BERKSHIRE MUSEUM and
MAURA HEALEY, in her capacity as Attorney General
of the Commonwealth of Massachusetts,
Defendants.

CONSOLIDATED WITH

JAMES HATT, KRISTIN HATT, AND ELIZABETH WEINBERG,
individually and derivatively on behalf of the
Trustees of the Berkshire Museum,
Plaintiffs,

v.

TRUSTEES OF THE BERKSHIRE MUSEUM, et al.,
Defendants.

On Appeal From Berkshire Superior Court

Joint Status Report of the Attorney General and
Trustees of the Berkshire Museum

Date: 02/05/2018

The Substituted Plaintiff-Appellant Attorney General Maura Healey ("AGO") and Defendant-Appellee Trustees of the Berkshire Museum (the "Museum") submit this joint status report.

The AGO has now concluded its investigation into the decision by the Museum to sell 40 works from its collection. The additional time granted by this Court for the investigation permitted the AGO, with the Museum's cooperation, to undertake additional review of *inter alia* over 1500 documents and interview further key Museum employees and board members.

The AGO believes that the 40 works at issue are subject to restrictions, which the Museum does not believe exist. The AGO and the Museum have agreed to resolve these differences and will file a petition for judicial relief pursuant to the principles of equitable instruction, deviation and/or *cy pres* with the Single Justice of the Supreme Judicial Court on February 9, 2018 or shortly thereafter. The AGO will support the relief requested by the petition. In addition, the Museum will not sell any of the 40 works until the SJC acts on the petition or until the Berkshire County Superior Court enters final judgment regarding the AGO's complaint in the matter captioned *Rockwell et al. v. Trustees of the Berkshire Museum*, No. 17-253 (allowing, if the Museum should prevail, for 7 calendar days post-judgment for the AGO to seek

further relief pending appeal), should such proceedings again become necessary. The Museum and the AGO intend to file a motion in the trial court requesting that proceedings there be held in abeyance while the aforementioned petition is pending. As a result of these commitments by the Museum, the AGO does not seek any further injunctive relief or stay of Superior Court proceedings at this time.

Respectfully submitted,

By: /s/ Emily T. Gabrault
Courtney M. Aladro (BBO No. 671104)
Emily T. Gabrault (BBO No. 682555)
Andrew M. Batchelor (BBO No. 673248)
Adam Hornstine (BBO No. 666296)
Assistant Attorneys General
One Ashburton Place
Boston, MA 02108
(617) 963-2545
Courtney.Aladro@state.ma.us
Emily.Gabrault@state.ma.us
Andrew.Batchelor@state.ma.us
Adam.Hornstine@state.ma.us

*Attorneys for Substituted Plaintiff-
Appellant Attorney General Maura Healey*

and

By: /s/ William F. Lee
William F. Lee (BBO # 291960)
Mark C. Fleming (BBO # 639358)
Felicia H. Ellsworth (BBO # 665232)
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
Tel: (617) 526-6000
william.lee@wilmerhale.com
mark.fleming@wilmerhale.com
felicia.ellsworth@wilmerhale.com

*Attorneys for Defendant-Appellee
Trustees of the Berkshire Museum*

Dated: February 5, 2018

CERTIFICATE OF SERVICE

I, Emily T. Gabrault, hereby certify, under the penalties of perjury that on February 5, 2018, I filed the foregoing with the Clerk of the Appeals Court via the Court's electronic filing service and served by email and on counsel of record listed below:

Michael B. Keating
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02210

Nicholas M. O'Donnell
SULLIVAN & WORCESTER LLP
ZAG/S&W LLP
One Post Office Square
Boston, MA 02109

William F. Lee
WilmerHale
60 State Street
Boston, MA 02109

I further certify that the foregoing document was served by email and first-class mail on this day with Associate Justice John A. Agostini of the Superior Court for Berkshire County.

_/s/ Emily T. Gabrault _____

Emily T. Gabrault, AAG