

Court of Common Pleas of Montgomery County Orphans' Court Division

COVER SHEET

1A. Does this matter already have an Orphans' Court number or Register of Wills number?

☐ NO ☒ YES

1B. Orphans' Court Number/Register of Wills Number

If Yes in box 1A, please fill in number as follows: YEARX####

58,788

2. NAME OF ESTATE/ENTITY (E.G.: NAME OF DECEDENT FOR DECEDENT'S ESTATE)

Friends of the Barnes Foundation, Evelyn Yaari, Sandra G. Bressler, et al. (see attached)

3. TYPE OF ESTATE/ENTITY

☐ DECEDENT'S ESTATE/TESTAMENTARY TRUST ☐ SETTLOR'S TRUST ☐ (ALLEGED) INCAPACITATED PERSON
☐ MINOR/MINOR'S ESTATE ☐ PRINCIPAL (POWER OF ATTORNEY) ☐ NON-PROFIT CORPORATION
☐ ADOPTION ☒ MISCELLANEOUS/MISCELLANEOUS SEALED

4. NAME OF FILING PARTY (NOT ATTORNEY FOR FILING PARTY)

Petitioners, Friends of the Barnes Foundation, Evelyn Yaari, Sandra Bressler, et al. (see attached)

5. FILING PARTY'S RELATIONSHIP TO ESTATE/ENTITY

Non-profit corporations and individuals interested in the preservation of the Barnes Art Collection.

6A. NAME OF ATTORNEY FOR FILING PARTY

Samuel C. Stretton, Esquire

6B. NAME OF ATTORNEY'S FIRM AND ADDRESS OF ATTORNEY (OR ADDRESS OF FILING PARTY, IF NOT REPRESENTED)

301 S. High Street

6C. PHONE NUMBER

(610) 696-4243

P.O. Box 3231

West Chester, PA 19381-3231

6D. FAX NUMBER

(610) 696-2919

6E. E-MAIL ADDRESS

s.stretton@verizon.net

7A. SUPREME COURT I.D. NUMBER OF ATTORNEY

18491

7B. DATE

May 18, 2011

8. To the Clerk of the Orphans' Court:

Kindly Enter My Appearance on behalf of the Filing Party Identified Above.

SIGNATURE OF ATTORNEY (OR IF UNREPRESENTED, SIGNATURE OF FILING PARTY)

9. If this filing responds to a prior filing (by another party) please insert the date and title of the prior filing, as well as the "suffix" number assigned to the prior filing. The "suffix" can be found in a column labeled "suffix" on the docket for the case. The suffix also appears on the label affixed to any filed document as the numbers after the decimal following the Orphans' Court Case Number for any case.

DATE OF PRIOR FILING:

DOCUMENT NUMBER OF PRIOR FILING, INCLUDING SUFFIX:

TITLE OF PRIOR FILING:

Commonwealth's Preliminary Objections to Petition to Reopen the Matter

10. OTHER PARTIES: PLEASE ATTACH A SEPARATE SHEET LISTING THE NAME, ADDRESS AND TELEPHONE NUMBER FOR EACH UNREPRESENTED PARTY, AND THE NAME OF EACH REPRESENTED PARTY, TOGETHER WITH THE NAME ADDRESS AND TELEPHONE NUMBER OF THAT PARTY'S ATTORNEY OF RECORD.

11. PLEADING OR DOCUMENT FILED (PLEASE SELECT FROM LIST OF PLEADINGS AVAILABLE FROM THE CLERK OF THE ORPHANS' COURT OR AT <http://rwoc.montcopa.org/forms>)

Answer / Reply / Response

12. PLEASE SELECT YES FOR ONE (AND ONLY ONE) OF THE FOLLOWING FIVE TYPES OF FILINGS:

12A. Is a Citation requested?

☐ Yes

12B. Is a Rule Returnable attached requesting a return date and/or a hearing?

☐ Yes

12C. Is Notice required?

☐ Yes. Copy of Notice attached to filing. Date of Notice

12D. Consent.

☐ Yes. Consents/Joinders of all interested parties are attached.

12E.

☒ This is a responsive pleading which requires no notice, Citation or Rule.

Petitioners continued:

Hope Broker;

Richard Feigen;

Sidney Gecker;

Dr. Walter Herman;

Nancy Clearwater Herman;

Sue Hood;

Julia Bissell Leisenring;

Robert Marmon;

Toby Marmon;

Costa Rodriguez;

Barbara B. Rosin; and

Barnes Watch

10.) Other Parties:

Party: Commonwealth of Pennsylvania

Lawrence Barth, Esquire
Senior Deputy Attorney General
Commonwealth of Pennsylvania
Office of the Attorney General
Charitable Trusts & Organizations Section
21 South 12th Street, 3rd Floor
Philadelphia, PA 19107-3603
(215) 560-2981
Attorney for Commonwealth of Pennsylvania

Party: The Barnes Foundation

Ralph G. Wellington, Esquire
Schnader, Harrison, Segal & Lewis
1600 Market Street, Suite 3600
Philadelphia, PA 19103
(215) 751-2488
Attorney for the Barnes Foundation

Party: Richard R. Feudale, Esquire, Petitioner

Richard R. Feudale, Esquire
33 E. 3rd Street
P.O. Box 227
Mount Carmel, PA 17851-0227
(570) 339-2633

Party: Friends of the Barnes Foundation, Evelyn
Yaari, Sandra G. Bressler, Hope
Broker, Richard Feigen, Sidney Gecker, Dr.
Walter Herman, Nancy Clearwater Herman, Sue
Hood, Julia Bissell Leisenring, Robert Marmon,
Toby Marmon, Costa Rodriguez, Barbara B.
Rosin, Barnes Watch, Petitioners

Samuel C. Stretton, Esquire
301 South High Street
P.O. Box 3231
West Chester, PA 19381-3231
(610) 696-4243
Attorney for Petitioners, Friends of the Barnes,
et al.

SAMUEL C. STRETTON, ESQUIRE
301 SOUTH HIGH STREET
P.O. BOX 3231
WEST CHESTER, PA 19381-3231
ATTORNEY I.D. NO. 18491
(610) 696-4243

IN RE: THE BARNES FOUNDATION, : IN THE COURT OF COMMON PLEAS
A CORPORATION : MONTGOMERY COUNTY, PENNA.
: ORPHANS' COURT DIVISION
: NO. 58,788

ORDER

AND NOW, this day of , 2011,
it is hereby ORDERED that the Preliminary Objections of the
Attorney General are DENIED.

BY THE COURT:

J.

SAMUEL C. STRETTON, ESQUIRE
301 SOUTH HIGH STREET
P.O. BOX 3231
WEST CHESTER, PA 19381-3231
ATTORNEY I.D. NO. 18491
(610) 696-4243

IN RE: THE BARNES FOUNDATION, : IN THE COURT OF COMMON PLEAS
A CORPORATION : MONTGOMERY COUNTY, PENNA.
: ORPHANS' COURT DIVISION
: NO. 58,788

PETITIONERS' ANSWER TO PRELIMINARY OBJECTIONS
OF THE ATTORNEY GENERAL

The Petitioners, Friends of the Barnes Foundation, Evelyn Yaari, Sandra G. Bressler, Hope Broker, Richard Feigen, Sidney Gecker, Dr. Walter Herman, Nancy Clearwater Herman, Sue Hood, Julia Bissell Leisenring, Robert Marmon, Toby Marmon, Costa Rodriguez, Barbara B. Rosin, Barnes Watch, by their counsel, Samuel C. Stretton, Esquire, hereby answer the Preliminary Objections of the Attorney General and request that they be denied for the following reasons:

1. Denied. It is admitted the Attorney General should be acting as parens patriae, but it is denied that they did throughout these proceedings because the Attorney General had a conflict of interest that was not revealed. See Petitioners' Brief in Opposition, which is incorporated by reference.

2. Admitted.

3. Admitted, but the Petitioners set forth in detail their interest, standing and in their Petition to Reopen, which

is incorporated by reference and in their Brief in Opposition, which is incorporated by reference.

I. Scandalous and Pertinent Information

4. Petitioners incorporate by reference their answers to paragraphs one through three.

5. Admitted, although the Petitioners' Petition speaks for itself and is incorporated by reference.

6. Denied. It is denied that the allegation does not reveal the existence of new information. The Petitioners set forth serious misconduct by the Attorney General. It is denied that this is scandalous and impertinent information. The statements of the Attorney General in the film, *The Art of the Steal*, which are quoted in the Petitioner's Petition to Open, are incorporated by reference. Those statements are shocking and go much farther than anyone knew at any time before and suggest coercive conduct by the Attorney General and a gross conflict of interest. The information suggests the Attorney General prior to litigation played a major threatening role in causing the transfer. This conflict should have been revealed to the Court by the Attorney General and perhaps by the Barnes Foundation. It was not revealed during pertinent times. (See Brief of Petitioners, which is incorporated by reference).

7. Denied as stated. Denied that the Attorney General's role is as stated in the Attorney General's allegations in

paragraph 7. Such is a conclusion of law to which no answer is required. The Petitioners incorporate by reference their Brief in Opposition to the Preliminary Objections. The Attorney General's role is to protect the public and to represent the public's interest. But this cannot be done if the Attorney General has already made a decision to become an active participant through coercive means to cause the paintings to be transferred and the Board to be modified. The Attorney General, at a minimum, should have timely disclosed this conflict to the Court. This created a conflict of interest, which should preclude the Attorney General's involvement.

8. Denied as stated. This is a conclusion of law to which no answer is required and the Petitioners incorporate by reference their Brief. But, the Attorney General has an obligation to point out conflict of interest like any other attorney. The Attorney General's direct early involvement and participation in a coercive fashion in the events that lead to the litigation should have been revealed by the Attorney General. The Attorney General then should have disqualified his office so the Court could appoint someone else to fulfill the representation of the public's interest. (See Brief of the Petitioners.)

9. Denied as stated. This is a conclusion of law to which no answer is required. In this case, the Attorney General

did not conduct investigations and institute enforcement.

Instead, the Attorney General became a player and a participant for moving the paintings to Philadelphia. The Attorney General failed to disclose this involvement and conflict. There was no independent examination to determine what to do. The Attorney General had a conflict of interest and should have recused himself. (See Petitioners' Brief).

10. Denied as stated. This is emphatically denied. But one will never know since the Attorney General's conflict of interest prevented the record from being fully developed. This allegation is denied. (See Petitioners' Brief).

11. Admitted that the Attorney General has participated. Denied that the participation is satisfactory. On the contrary, even Judge Ott noted that participation was woefully inadequate. At the time, no one knew the reasons why the Attorney General failed to adequately represent the public interest. The Attorney General participated with a gross conflict of interest, which would have disqualified any other attorney. Therefore, the participation does not count. (See Petitioners' Brief, which is incorporated by reference).

12. Denied as stated. Strict proof will be demanded at trial. The Attorney General's Office set the course under Attorney General Fisher. There was no revealing of the conflict of interest or Mr. Fisher's involvement until he admitted the

same in the movie, *The Art of the Steal*. If there is a conflict of interest in the Attorney General's Office, that cannot be cured by other people in the office becoming involved. The conflict of interest prevents anyone in the Attorney General's Office from participating. This is a conclusion of law to which no answer is required. The Petitioners incorporate by reference their Brief.

13. Denied as stated. This is a legal conclusion to which no answer is required. But, what the Attorney General ignores is the fact that whether he remains neutral or not, the Attorney General owes an obligation to set forth and expose any and all conflicts of interest. If the Attorney General is a major participant in getting a result and that result is then challenged, the Attorney General cannot come in and pretend to represent the public without full and complete disclosure of the gross conflict. That was not done here. (See Petitioners' Brief, which is incorporated by reference.)

14. The Petitioners are glad the Attorney General agrees with their statement of law. The Petitioners deny that the objectives of the Attorney General were to preserve the collection. The Petitioners' Brief is incorporated by reference.

15. Denied as stated. It is denied that the Attorney General accomplished its goal consistent with the public

interest. If, in fact, that was done, then there would have been no need for criticism by Judge Ott. Further, the Attorney General had an absolute obligation to make full disclosure. This was not done. The Petitioners incorporate by reference their Brief.

16. Denied as stated. The Petitioners have no knowledge of what the Attorney General is currently doing. But, the Petitioners' position is and will always be, that the Attorney General should not be supervising and representing in this case because of the conflict of interest, which would cause the disqualification. (See Petitioners' Brief, which is incorporated by reference).

17. Denied that the allegations were scandalous and impertinent.

WHEREFORE, the Petitioners respectfully request that this Honorable Court deny the Preliminary Objections of the Attorney General.

II. Failure to State a Claim

18. The Petitioners incorporate by reference their answers to paragraphs one through 17.

19. Denied as stated. See Petitioners' Brief. The Petitioners have newly relevant information to present. First and most foremost is the conflict of the Attorney General. Second, the Petitioners will present evidence that there were

means and funds and revenue to preserve the art collection in its current place and there was sufficient revenue. (See attached Brief of Petitioner, which is incorporated by reference).

20. Denied as stated. The conduct of Attorney General Fisher and then-Governor Ed Rendell was not known in 2003 and 2004. In 2005, there was a newspaper article that revealed some of the material, but not all. The film, *The Art of the Steal*, did not come out until either late 2009 or early 2010, and for the first time fully revealed the extent of the activity of the Attorney General and the coercive action of the Attorney General. None of this information was revealed during the hearings on the merits. Judge Ott never reached any decision on the merits even concerning the newspaper article in 2007 since he denied standing again. (See Petitioners' Brief, which is incorporated by reference).

21. Denied as stated. The Petitioners have no idea when Judge Ott was aware of the \$107 million appropriation, but it appears he was not aware of the appropriation during the hearings in 2003 or 2004. The Petitioners incorporate by reference their Answers to the Barnes Foundation Preliminary Objections, paragraphs 54 through 63. (The Petitioners incorporate by reference their Brief).

22. Denied as stated. The Petitioners' Petition and Brief speak for themselves. The Petitioners' Brief is incorporated by reference.

23. Denied as stated. This is a conclusion of law. But, the Attorney General misses the point. If the \$107 million capital appropriation had been fully known, issues could have been raised as to why there could not have been a separate request made for funding. Issues could have been raised as to the timing of the funding. There are also issues concerning other avenues of funding, which were not explored during the hearings due to the conflict of interest of the Attorney General.

24. Denied as stated. Petitioners need a hearing to set forth all of their evidence as to why the painting should not be moved. The Petitioners main point is that the hearings that were conducted in 2003 and 2004 were tainted because of the failure of everyone to understand the role and conflict of the Attorney General. The Attorney General did not vigorously represent the public's interest. The conflict should have been revealed and it wasn't. Judge Ott noted the failure of the Attorney General to fully develop the record. Since the record was inadequate and the conflict is known, that by itself should cause the matter to be reopened. (The Petitioners incorporate by reference their Brief).

25. Denied as stated. Denied that the Court was well aware, at least during the adjudicative time periods 2003 and 2004 of all the issues raised. Certainly no one was aware of the Attorney General's coercive role until the film, *The Art of the Steal*, came out, which was after all the hearings. The Petitioners incorporate by reference their Brief.

26. Absolutely and emphatically denied. The issues have not been fully litigated due to the Attorney General's conflict of interest that were not revealed. (See Petitioners' Brief, which is incorporated by reference).

WHEREFORE, the Petitioners, Friends of the Barnes Foundation, Evelyn Yaari, Sandra G. Bressler, Hope Broker, Richard Feigen, Sidney Gecker, Dr. Walter Herman, Nancy Clearwater Herman, Sue Hood, Julia Bissell Leisenring, Robert Marmon, Toby Marmon, Costa Rodriguez, Barbara B. Rosin, Barnes Watch, by their counsel, Samuel C. Stretton, Esquire, respectfully request this Honorable Court dismiss the Preliminary Objections of the Attorney General.

III. Standing

27. The Petitioners incorporate their answers to paragraphs one through twenty-six.

28. Denied as stated. This is a conclusion of law. The Petitioners are seeking now, and some sought in the past, to be parties in this matter. They were denied standing because the

Attorney General was supposedly representing the public's interest. But, the Attorney General had a conflict of interest, which was not revealed and which resulted in the Attorney General not representing the public's interest. Therefore, the Petitioners do have a right to proceed. The Petitioners' Brief is incorporated by reference.

29. Denied as stated. See Petitioners' Brief. The Petitioners have set forth a very good reason why they should be given standing. The reason is the Attorney General didn't do the job he was supposed to do. Judge Ott so noted. Now the reason why is known since the Attorney General had a blatant conflict of interest. The Petitioners could have been granted standing through a private Attorney General theory. Therefore, the prior denial of standing is of no importance. (See Petitioners' Brief, which is incorporated by reference).

30. Denied. The Petitioners are not required to provide an answer since this is a legal conclusion. But, the Petitioners would incorporate by reference their Brief in Opposition. The Petitioners do have a basis for standing under the private Attorney General theory and also under their own special interests. But the most important thing was the failure of the Attorney General to make the disclosures necessary of the conflict. (See Petitioners' Brief, which is incorporated by reference).

31. Denied as stated. This is a conclusion of law to which no answer is required. The Petitioners incorporate by reference their Brief.

32. Denied as stated. This is a conclusion of law to which no answer is required. The Petitioners incorporate by reference their Brief.

33. Denied. This is a conclusion of law to which no answer is required and Petitioners incorporate by reference their Brief. It should be noted there cannot be res judicata and stare decisis if the matters were not fully and properly litigated due to a gross conflict of interest not revealed by the Attorney General. Further, the parties were not the same since standing was denied.

34. Denied. The Petitioners' Brief and Petition speak for itself and the Brief is incorporated by reference.

35. Denied. This is a conclusion of law to which no answer is required. But, Petitioners incorporate their Brief and also suggest the private Attorney General's theory for standing.

36. Denied. Petitioners do have a substantial interest. The Attorney General did not do his job properly. The Petitioners incorporate by reference their Brief and Answer to the same.

WHEREFORE, the Petitioners, Friends of the Barnes Foundation, Evelyn Yaari, Sandra G. Bressler, Hope Broker, Richard Feigen, Sidney Gecker, Dr. Walter Herman, Nancy Clearwater Herman, Sue Hood, Julia Bissell Leisenring, Robert Marmon, Toby Marmon, Costa Rodriguez, Barbara B. Rosin, Barnes Watch, by their counsel, Samuel C. Stretton, Esquire, respectfully request the Preliminary Objections be denied and request for attorney's fees be denied.

Respectfully submitted,

A handwritten signature in dark ink, appearing to be 'S. Stretton', is written over a horizontal line.

Samuel C. Stretton, Esquire
Attorney for Petitioners
301 South High Street
P.O. Box 3231
West Chester, PA 19381-3231
(610) 696-4243
Attorney I.D. No. 18491

VERIFICATION

I, Evelyn Yaari, hereby verify that the facts set forth in the attached Answers to Preliminary Objections of the Attorney General in the captioned matter are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

Date:

5/17/11



Evelyn Yaari

VERIFICATION

I, Sandra G. Bressler, hereby verify that the facts set forth in the attached Answers to Preliminary Objections of the Attorney General in the captioned matter are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

Date:

5.17.2011



Sandra G. Bressler

SAMUEL C. STRETTON, ESQUIRE
301 SOUTH HIGH STREET
P.O. BOX 3231
WEST CHESTER, PA 19381-3231
ATTORNEY I.D. NO. 18491
(610) 696-4243

IN RE: THE BARNES FOUNDATION, : IN THE COURT OF COMMON PLEAS
A CORPORATION : MONTGOMERY COUNTY, PENNA.
: ORPHANS' COURT DIVISION
: NO. 58,788

CERTIFICATE OF SERVICE

I hereby certify I am this date serving a copy of
Petitioners' Answer to Preliminary Objections of the Attorney
General in the captioned matter upon the following persons in
the manner indicated below.

Service by First Class Mail addressed as follows:

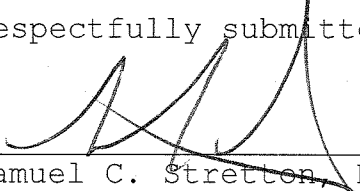
1. Honorable Stanley R. Ott
Montgomery County Courthouse
P.O. Box 311
Norristown, PA 19404-0311
2. Lawrence Barth, Esquire
Senior Deputy Attorney General
Commonwealth of Pennsylvania
Office of the Attorney General
Charitable Trusts & Organizations Section
21 South 12th Street, 3rd Floor
Philadelphia, PA 19107-3603
3. Ralph G. Wellington, Esquire
Schnader, Harrison, Segal & Lewis
1600 Market Street, Suite 3600
Philadelphia, PA 19103
4. Richard R. Feudale, Esquire
33 E. 3rd Street
P.O. Box 227
Mount Carmel, PA 17851-0227

5. Eveyln Yaari
35 Overhill Road
Bala Cynwyd, Pennsylvania 19004

Respectfully submitted,

3/18/11

Date



Samuel C. Stretton, Esquire
Attorney for Petitioners
301 S. High Street
P.O. Box 3231
West Chester, PA 19381
610-696-4243
Attorney I.D. No. 18491