

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
No. SJ-2018-065

TRUSTEES OF THE BERKSHIRE MUSEUM

v.

MAURA HEALEY, ATTORNEY GENERAL OF THE  
COMMONWEALTH OF MASSACHUSETTS

MEMORANDUM OF DECISION

The plaintiff, the Trustees of the Berkshire Museum (Museum), brought a complaint in equity pursuant to G. L. c. 214, §§ 1 and 10B, seeking an order of equitable deviation or *cy pres*, authorizing a limited sale of up to forty works of art from the Museum's collection.<sup>1</sup> The requested equitable relief is premised on the Museum's contention that without a limited sale of its collection, the Museum cannot sustain its operations and will be forced to close in the near future. Following an investigation into the proposed sale and the Museum's financial outlook, the Attorney General of Massachusetts assented to the Museum's motion for entry of judgment granting the equitable relief sought.

---

<sup>1</sup> The parties have stipulated that, to the extent there are restrictions on the artwork at issue, the limited sale of the artwork is permissible under the doctrine of equitable deviation or *cy pres*.

This court allowed certain non-party individuals ("the Amici") to submit briefs in opposition to the proposed sale and to appear at a non-evidentiary hearing before the Single Justice for the purpose of voicing their concerns about the proposed sale.<sup>2</sup> The Amici voiced serious concerns regarding, among other aspects of the sale, the effect on the Museum's collection, oversight of the sale, and the broader cultural impact on the residents of the Commonwealth, particularly in Berkshire county. This court acknowledges those legitimate concerns. Based on the Attorney General's investigation into the sale and her assent to the requested relief, the Museum has satisfied its burden of establishing that it has become impossible or impracticable to administer the Museum strictly in accordance with its charitable purpose, thus entitling the Museum to relief under the doctrine of equitable deviation. Accordingly, the court allows the Museum's request for equitable relief to sell the designated artwork.

It is ordinarily the Attorney General's exclusive province to ensure that a charitable trust established for the benefit of the public is properly administered. Trustees of Dartmouth

---

<sup>2</sup> The individuals opposing the sale of the artwork are not parties to the litigation and do not have standing to challenge the sale. The Amici include a group of "Berkshire County Citizens" and James Hatt, Kristin Hatt, and Elizabeth Weinberg. The court also received an additional amicus brief from Martin Gammon.

College v. Quincy, 331 Mass. 219, 225 (1954), citing Dillaway v. Burton, 256 Mass. 568, 573 (1926) ("It is [her] duty to see that the public interests are protected and to proceed in the prosecution or to decline so to proceed as those interests may require"). See also G. L. c. 12, § 8. "[T]he Attorney General serves as the guardian of the public interest with respect to charitable trusts, and when a trustee seeks direction or approval of the court, we expect the Attorney General's recommendation to be furnished after due diligence and careful consideration." DeGiacomo v. Quincy, 476 Mass. 38, 46 (2016).

In short, the Museum contends that without the equitable relief sought, it will soon be unable to operate, completely frustrating its charitable purpose of "aid[ing] in promoting for the people of Berkshire county and the general public the study of art, natural science, and the cultural history of mankind and kindred subjects by means of museums and collections." This court has long held that under the *cy pres* doctrine, "a liberal construction is to be given to charitable donations, with a view to promote and accomplish the general charitable intent of the donor, and that such intent ought to be observed, and when this cannot be strictly and literally done, this court will cause it to be fulfilled, as nearly in conformity with the intent of the donor as practicable." New England Hosp. v. Attorney Gen., 362 Mass. 401, 404 (1972), citing Rogers v. Attorney Gen., 347 Mass.

126, 131 (1964). See Worcester v. Directors of Worcester Free Pub. Library, 349 Mass. 601 (1965) ("It is only when it becomes impossible or impracticable to administer a charitable trust according to its terms that a court of equity will apply the doctrine of *cy pres*"). Otherwise stated, "[t]he application of the *cy pres* doctrine should 'carry out the essential purpose of the donor and at the same time . . . preserve as far as reasonably practicable the details of . . . [her] original scheme.'" New England Hospital, *supra*, quoting Briggs v. Merchants Natl. Bank, 323 Mass. 261, 275 (1948). Similarly, under the doctrine of equitable deviation, "the court will direct or permit the trustee of a charitable trust to deviate from a term of the trust if it appears to the court that compliance is impossible or illegal, or that owing to circumstances not known to the settlor and not anticipated by him compliance would defeat or substantially impair the accomplishment of the purposes of the trust." Museum of Fine Arts v. Beland, 432 Mass. 540, 544 n. 7 (2000), quoting Restatement (Second) of Trusts § 381 (1959). See Trustees of Dartmouth College v. Quincy, 357 Mass. 521, 531 (1970).

There is no question that the Amici care deeply about the Museum and the future of art and culture in the Berkshires. Indeed, the art displayed in the Berkshire Museum enriches the lives of the entire community, and the Museum is a reservoir of

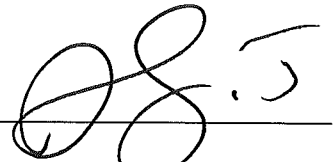
cultural nourishment for all who visit. The Museum's charitable purpose of aiding in the study of art, natural science and cultural history must be protected. The Attorney General is that protector. She is the attorney for the people, including those who now oppose the sale. Following a comprehensive seven-month investigation into the Museum's financial state and its plan to sell a portion of its collection to avoid insolvency, the Attorney General concluded that "the Museum cannot practicably survive without lifting or amending the restrictions on at least some of the works of art to permit their sale."<sup>3</sup> Not only has the Attorney General determined that a limited sale of artwork is necessary, the Attorney General will maintain an active role in overseeing the deaccession of the artwork to ensure that the public's interests are protected.<sup>4</sup> Although the Amici disagree with the Attorney General's ultimate conclusion, the Attorney General has fulfilled her role of investigating the administration of the Museum, particularly the proposed sale.

---

<sup>3</sup> According to the Attorney General, the investigation revealed that notwithstanding the Museum's dire financial situation, the Museum considered alternatives to selling a portion of its collection. Ultimately, however, the Museum concluded -- and the Attorney General agreed -- that the Museum's survival would be impossible without the proposed sale.

<sup>4</sup> Pursuant to paragraph forty-eight of the Trustees of the Berkshire Museum's Verified Complaint, the Museum will provide reports to the Attorney General throughout the deaccession process.

See G. L. c. 12, § 8. Based on that investigation, she has determined that an application of *cy pres* or equitable deviation is necessary to allow the Museum to continue its charitable purpose into the future. This is precisely the Attorney General's role in this domain.<sup>5</sup> Accordingly, the assented-to motion for entry of judgment is ALLOWED, and the proposed judgment shall be entered forthwith.



David A. Lowy

Associate Justice

April 5, 2018

---

<sup>5</sup> Given the important concerns presented by the amici, this court encourages that, to the extent possible and with the Museum's best efforts, it shall endeavor to sell the identified works of art as it plans to do with *Shuffleton's Barbershop*, with restrictions for public access to the art. As the Amici have argued, art is best preserved for the benefit of the many, not the few highest bidders.