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“Group files petition to reopen Barnes case

Friends of Barnes asks Montco Orphans’ court judge to oust current board of trustees

by Cheryl Allison

In a scathing, 79-page petition filed Monday, opponents of relocating the Barnes Foundation’s priceless art collection from Merion to Philadelphia asked a judge to reopen the epic case.

Going further, the Friends of the Barnes Foundation, together with students and neighbors, call on Montgomery County Orphans’ Court Judge Stanley Ott to rescind his 2004 decision permitting the move. They also ask Ott to remove the current board of trustees and place the foundation in the hands of a court-appointed caretaker.

Speaking at noon press conference at the home of Dr. Walter and Nancy Herman, across Latch’s Lane from the gallery, attorney Mark Schwartz said new evidence not available to Ott in 2004 and changed circumstances since the decision merit new consideration.

The petition also asserts that the Barnes board has violated its fiduciary responsibilities and, in its single-minded “mission” to move the art to Philadelphia, has dismissed less costly remedies to preserve the institution where its founder, Dr. Albert C. Barnes, wanted it to remain: in Merion.

“The problem has never been the trust indenture,’ Albert Barnes’ instructions, Schwartz said. “The problem is and always has been the board. So what we’re suggesting is, given the board’s continued failure to exercise its fiduciary obligations, that now is a good time for the judge to get rid of the board and place [the foundation] in receivership.”

A spokesman for the Barnes Foundation, Andrew Stewart, said it had not seen the petition and would have no comment on the suit.

The filing came less than a week after an acrimonious public parting of the ways between Bryn Mawr resident Schwartz, who had also been working to prepare a petition on behalf of Montgomery County, and board of commissioners President Tom Ellis. Schwartz resigned Aug. 21, forestalling his firing by the county.

The issues, according to the various parties, had to do with Schwartz’s continued representation of the Friends, the timing of court action, and the tone of his draft petition.

Ellis has said Montgomery County remains committed to the fight to keep the Barnes in Merion, and will file its own petition, working with in-house counsel, possibly as soon as next month.

In an interview, Schwartz said the Friends have “been ready to file for a month.” Symbolically, they felt it was imperative to act sooner, before the Barnes board names an architect for the new museum. The board has said it wants to announce its selection before the end of the summer.

The tone of the petition is strong.

Drawing a picture of a web of connections between Barnes board members and other entities interested in a move to Philadelphia of which the court may not have been fully informed, the petition says the board has “come to the court with unclean hands,” and conflicts of interest should be investigated. Among those entities are the three major benefactors of the move, the Pew Charitable Trusts and the Annenberg and Lenfest foundations.

The petition is also harshly critical of the state attorney general’s office, which oversees non-profit organizations, and the passive, if not outright supportive, role it has played. The roles of politicians from Gov. Ed Rendell to Philadelphia state Sen. Vincent Fumo are also called into question. Among allegations: that the governor and then Attorney General Mike Fisher influenced Lincoln University, which then controlled the Barnes board, to drop out of the legal fight by proffering \$50 million in state aid to the school.

A major focus in the petition is an appropriation in a 2002 state capital budget of \$107 million for a new Barnes facility in the city. The bill, which carries Fumo’s name as a sponsor, predated the Barnes’ request to Ott for relief from the indenture. Uncovered last year by a Merion resident, that earmark and its origins have never been explained. Schwartz calls it “The Immaculate Appropriation.”

Ott has said he was not made aware of that appropriation during months of court deliberations. “If any of the parties knew of or sought this appropriation, not bringing it to the attention of this court was nothing less than a fraud perpetrated upon this court,” the suit asserts.

But the petition goes further still. It mentions that promises made to the court have not been met. A site on the Benjamin Franklin Parkway is still in question. Fund raising for the move is murky. And, even though the Barnes argued that an expanded board of 15 members was necessary to promote fund raising, no more than 12 members have been appointed, three years after Ott’s ruling.

Although area residents, the art community and the court have been led to believe the Barnes experience will be replicated in a new, more accessible gallery, “petitioners believe and affirm that the endgame may come when the compromised and co-opted Barnes Foundation decides that the collection needs to be housed in a place of last resort, that just so happens to have some space, e.g., the Philadelphia Museum of Art.”

Besides those issues for review, the petition points out changes since 2004 that could support the Barnes in Merion. Montgomery County has offered a \$50 million bond-funded purchase and lease-back arrangement, which would provide the foundation with needed funds.

Lower Merion Township recently amended its zoning code to more than double admissions from 62,000 to 144,000 per year, also bringing in new revenues.

And, at the Friends' request, the Department of the Interior's National Park Service has determined that the complete Barnes complex in Merion, including the gallery building, arboretum and the art collection, is eligible for National Historic Landmark status.

Achieving such a designation could make the Barnes eligible for additional grant funding. But, like with the county and township proposals, the Barnes board has shown no interest.

The petition has been filed on behalf of several Barnes students, neighbors and the Friends organization, which it argues have more than a common interest in the case and should have legal standing. But even if Ott finds that they do not, it point out, the court itself can take action to review the points made.

Speaking at the press conference, one of those students, Jay Raymond, whose appeal of Ott's decision previously went all the way to the state Supreme Court, said "there is no alternative to a Barnes in Merion."

"It is already understood," he said, "that no matter how beautiful and prestigious a new container for the paintings would be, a Barnes on the parkway will never be the work of art that Albert Barnes created, but will be the work of vandalism that others created.

"We are here today," Raymond said, "to announce that a deal that has never been close to done, is coming undone."