

“Barnes Foundation seeks dismissal of court petition”

By Christopher Knight

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I've been reading through the beleaguered Barnes Foundation's preliminary objections to the latest petition to reopen a nearly 7-year-old court decision, which permitted the move of its famed art collection from its historic home into a new building being erected a few miles away in downtown Philadelphia.

I'm no lawyer, but I have to say I'm surprised. Apparently the Barnes is hoping the judge won't be reading too closely.

On Tuesday, the court will be asked to dismiss a suit brought by opponents of the move, who claim that significant new information has come to light in the case. The opponents' petition argues that state officials -- notably, then-Atty. Gen. Mike Fisher, who is now a federal judge -- applied inappropriate pressure to a school designated as steward of the collection in order to diminish its role on the Barnes board of trustees.

Fisher recounted his actions in the 2009 documentary movie "The Art of the Steal." The court ruled in 2004 that the collection could be moved.

The Barnes objects that the Fisher information is not new because it was "widely reported at that time -- more than seven years ago -- in the local press." Five stories published in the Philadelphia Inquirer are cited in support of that position.

And that's where the surprise comes in.

I looked up the five Inquirer stories. Four of them say only that Fisher supported the plan to move and participated in negotiations to make it happen. That's expected, since a state attorney general has jurisdiction over nonprofit charities. But none of these four stories offers anything remotely close to the details divulged by Fisher in the film.

The fifth article, ironically headlined "The Deal of the Art," does go into considerably more depth. The attorney general is quoted extensively.

By my reading, this otherwise fascinating Inquirer story doesn't go nearly as far as Fisher did in the film. But let's stipulate, just for the sake of argument, that the movie's information was no different from what the newspaper already reported. Here's the hitch: This Inquirer story ran on May 22, 2005 -- five months after the court had ruled that the collection could be moved.

Absent a time machine, it's hard to see how a 2005 newspaper story could inform a 2004 court decision.

Tuesday's court appointment is expected to be brief. According to a report in the Main Line Times, the judge is likely to do one of three things: establish a briefing schedule to allow the case to go forward, set an actual hearing date or dismiss the case outright.

If it's the third, of course, actually reading those old newspaper stories will be immaterial.