

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART III**

In the Matter of)
)
FISK UNIVERSITY,) **NO. 05-2994-III**
)
Petitioner.)

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MEMORANDUM AND ORDER

On its own initiative and as authorized by the Tennessee Rules of Civil Procedure, the Court, for clarity and completeness, amends its November 3, 2010, Memorandum and Order to add the following findings of fact to the "Approval of Revised Sharing Agreements" section, page 25, and the following findings of fact and reasoning to the "Endowment" section, pages 29-30, of the Memorandum. The following do not replace but, instead, supplement and are in addition to the matters already stated in the November 3, 2010 Memorandum and Order.

Add to Page 25 - "Approval of Revised Sharing Agreement"

Additional Findings of Fact

In finding that Crystal Bridges has promised to adhere to the O'Keeffe intention, the Court relies, in addition to provisions in the Revised Sharing Agreements, on Deposition Exhibit 24 to trial exhibit 208, the Workman deposition. The Court finds that this exhibit is

a statement from Alice Walton, the founder of the Crystal Bridges Museum, which discusses, at pages 3-4, Ms. Walton's understanding and appreciation of the legacy of the Collection:

As an art collector, and as founder of Crystal Bridges American Art Museum, I understand the importance of honoring a donor's intent. I also recognize and appreciate the historical importance of the Collection, taking into account that it was personally selected by Georgia O'Keeffe with items from her own collection and from the collection of her husband, Alfred Stieglitz.

* * * *

Under such an arrangement, Fisk University and Crystal Bridges would own jointly the Collection, which would be kept intact and continue to be known in perpetuity as the Alfred Stieglitz Collection. The Collection would be available to the public, one-half of the time at Fisk University and the other one-half of the time at Crystal Bridges' new state-of-the-art facility in Bentonville, Arkansas.

Such an arrangement not only would keep this historically important collection intact and available to the public, but it would double (at least) the funds available to Fisk University to support its continuing interest in the Collection and its educational mission.

Add to Pages 29-30 - "Endowment"

Additional Findings of Fact

1. The August 2010 trial testimony of Dr. William Eiland established the importance of the Stieglitz Collection to the study and history of art. Dr. Eiland testified that there is no collection comparable to the Stieglitz. It provides the viewer, through 101 artworks, an understanding of the development of American Modernism in several ways,

including the use of various media and showing the transition from 19th Century to 20th Century art. The Collection is also an excellent teaching tool for the visual arts. The Collection is "irreproducible," Dr. Eiland testified, because of its history and the artistic developments its artworks depict and span.

2. Based upon Dr. Eiland's testimony, the Court finds that there is much Fisk can do with a Collection of this artistic importance and teaching value to fulfill Ms. O'Keeffe's purpose in placing the Collection at Fisk for Nashville and the region to have access to and to study.

3. As to Fisk's efforts to date to fulfill the O'Keeffe intent, the testimony at the August 2010 trial established that Fisk has been limited by its financial distress.

4. What Fisk's curator would like to do with the Collection, if Fisk had the funds, was established through trial exhibit 207 and the testimony of President O'Leary. The Court finds that exhibit 207 is a "wish list" prepared by Fisk. Trial exhibit 207 is a plan to add student guides ("docents") and staffing for the guides; a curator of education for Fisk students, visitors to Fisk and outreach to educate Nashville and the region about the Collection; grant writers; membership services; graphic and exhibition designers; student guide education training for ten guides biannually as a summer program; resources such as computers and printers; and dedicated fundraising opportunities. All of this, President O'Leary testified, Fisk would like to provide for the Collection.

5. Trial exhibit 207 states \$1.3 million in annual costs for the items listed in paragraph 4 above.

6. The testimony of President O'Leary established that Fisk has never been able to provide this sort of outreach and education because it has not had the funds.

7. President O'Leary testified that Fisk annually spends about \$131,000 on basic maintenance of the Collection.

8. The "wish list," trial exhibit 207, she testified, would provide support and promotion of the Collection in the nature of education and outreach beyond the minimum \$131,000 required as basic maintenance for the Collection.

9. President O'Leary also testified that Alice Walton has pledged \$1 million in connection with the Collection. The pledge was admitted into evidence as trial exhibit 71. It provides funds for improvements to the gallery at Fisk where the Collection is displayed.

10. Based upon the testimony of President O'Leary, and comparing trial exhibits 71 and 207, the Court finds that the Fisk "wish list," trial exhibit 207, contains items Fisk seeks to provide for the Collection independent of and in addition to the Walton pledge, trial exhibit 71.

11. Dr. Eiland's testimony about the University of Georgia Museum corroborates, the Court finds, that an annual budget of \$1 million or less for promotion and education, as detailed in exhibit 207, is an appropriate amount.

Reasoning

Based upon the foregoing findings of fact, the Court has ordered, as part of its *cypres* remedy, that the \$1 million or less income per year from the \$20 million endowment of the Collection shall be restricted in its use by Fisk. The Court has ordered that the annual endowment income must be used by Fisk for the Collection as per trial exhibit 207. The Court ordered this remedy for three reasons.

- First, it was Georgia O'Keeffe's intention, in placing the Collection at Fisk, to draw the Nashville community and region to the campus, and for Fisk to share and display the Collection with its students, the city and the region. This mission has been a difficult one for Fisk to accomplish because of its financial distress. Requiring Fisk to use the \$1 million or less annual endowment income in accordance with trial exhibit 207 will enable Fisk to meaningfully share the Collection with its students, Nashville and the South as intended by Ms. O'Keeffe.

The student guides ("docent") program, outlined in trial exhibit 207, would enable Fisk students to study and present the Collection to visitors to the Fisk gallery. Similarly, a summer program for training docents would add to their education as well as enable them to provide outreach services to the community, such as speaking at local high schools, colleges and civic organizations. Inclusion in trial exhibit 207 of a graphic designer and exhibition staff contemplates exhibitions, receptions, promotions, notices and advertisements of the Collection and events related to it for Nashville high schools, colleges, art clubs, civic


organizations and work with Metro resources on tourism. The annual endowment income enables Fisk to fund student projects and research on the Collection, and for them to participate in exhibitions. The annual endowment income enables Fisk to fund art experts/professors and art history experts/professors to provide exhibitions, lectures and guest speakers related to the Collection for Fisk students, Nashville and the region. In short, with the annual endowment income devoted to the Collection, Fisk can effectively and meaningfully perform Ms. O'Keeffe's intent that Nashville and the region be drawn to the Fisk campus and gallery to study this important Collection, and thereby promote the study of art in a manner Fisk has never been able to afford and in keeping with this important Collection.

- The second reason the Court ordered the remedy of restricting Fisk's use of the annual endowment income to the Collection is that the Court seeks to be absolutely certain that Fisk does not breach or default on its monetary obligations under the Crystal Bridges Agreement. It is important that Fisk perform the Crystal Bridges Agreement so as not to jeopardize placement of the Collection in Nashville under the Sharing Agreement. The \$1 million or less annually makes certain that Fisk can perform those obligations and responds to the executory contract issues raised by the Attorney General in its October 2010 briefing.

- The final reason the Court restricts Fisk's use of the annual endowment income to the Collection are the implications of those restrictions should Fisk file bankruptcy. As

explained by the Court in the "Bankruptcy" section of the November 3, 2010 Memorandum and Order, the Court's research established that should Fisk file bankruptcy, neither the Collection nor the endowment are part of Fisk's bankruptcy estate for either it or creditors to claim. Restricting the income from the endowment for use in furtherance of the Collection and Ms. O'Keeffe's intentions further separates the Collection and the endowment from Fisk, the institution, if Fisk is placed into bankruptcy.

It is therefore ORDERED that the November 3, 2010 Memorandum and Order is amended to add the foregoing findings of fact as part of the section on "Approval of Revised Sharing Agreements" at page 25, and the foregoing findings of fact and reasoning as part of the section on "Endowment" beginning on page 29.



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