

**Italic Inst. of Am., Inc. v Columbia Univ.**

2013 NY Slip Op 31317(U)

June 14, 2013

Sup Ct, NY County

Docket Number: 652948/2012

Judge: Marcy S. Friedman

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MARCY S. FRIEDMAN PART 60  
*Justice*

ITALIC INSTITUTE OF AMERICA, INC., INDEX NO. 652948/2012

Plaintiff,

-against-

MOTION DATE \_\_\_\_\_

COLUMBIA UNIVERSITY and THE TRUSTEES OF  
COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK,

Defendants.

MOTION SEQ. NO. 001

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to dismiss and cross-motion for leave to amend.

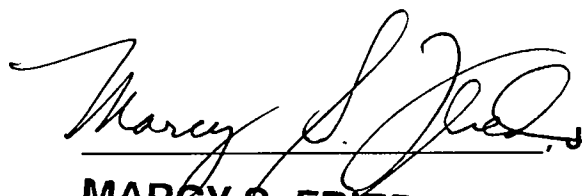
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... No (s). \_\_\_\_\_  
Answering Affidavits — Exhibits \_\_\_\_\_ No (s). \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_ No (s). \_\_\_\_\_

Cross-Motion:  Yes  No

These motions are decided in accordance with the accompanying decision/order.

SO ORDERED.

Dated: 6-14-13

  
\_\_\_\_\_  
MARCY S. FRIEDMAN, J.S.C.

- 1. Check one: .....  CASE DISPOSED  NON-FINAL DISPOSITION
- 2. Check as appropriate:.....Motion is:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. Check if appropriate:.....  SETTLE ORDER  SUBMIT ORDER  
 DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK – PART 60

PRESENT: HON. MARCY S. FRIEDMAN, J.S.C.

\_\_\_\_\_ x  
ITALIC INSTITUTE OF AMERICA, INC.,

*Plaintiff,*

Index No.: 652948/2012

- against -

DECISION/ORDER

COLUMBIA UNIVERSITY and THE TRUSTEES  
OF COLUMBIA UNIVERSITY IN THE CITY OF  
NEW YORK,

Motion Seq. 001

*Defendants.*

\_\_\_\_\_ x

In this action, plaintiff Italic Institute of America, Inc. (Italic Institute) sues defendants Columbia University and The Trustees of Columbia University of the City of New York (collectively, Columbia) for breach of an alleged charitable trust which provided Columbia with a building known as La Casa Italiana (the Italian House) that was intended to serve as a center for Italian language and culture. Italic Institute alleges that it is the legal representative of descendants of the families who were the principal donors to the trust. Columbia now moves to dismiss the complaint, pursuant to CPLR 3211, on the ground, among others, that Italic Institute lacks standing. Italic Institute cross-moves for leave to amend, pursuant to CPLR 3025 and CPLR 1003, to add as plaintiffs sixteen descendants of the original principal donors.

Members of the Paterno, Campagna, and Ciluzzi families and others donated to establish the Italian House Fund Inc. to construct the Italian House on real property owned by Columbia. (Compl., ¶ 1.) After construction was complete, the Italian House was donated to Columbia in

1927. (Id.) As evidenced by a document to which plaintiff refers as the donative parchment, the Italian House Fund Inc. transferred the Italian House to Columbia “for use by the University as the center and seat of its work in the field of Italian language, literature, history and art . . . . on behalf of and in the name of the people of Italian birth and descent in the United States of America and other American citizens who are interested in the diffusion of Italian culture in this country.” (Compl., Ex. A.) In addition, Dr. Charles Paterno donated 20,000 volumes of Italian literature in 1927 to the Italian House and, in 1938, established a fund to maintain the library (Paterno library). (Compl., ¶¶ 1, 4.)

In 1990, Columbia sold the Italian House to the Republic of Italy in exchange for a long-term lease and monies to maintain and modernize the building, including \$7.5 million for renovations and \$10 million to create and endow the Italian Academy for Advanced Studies in America (Academy). (Compl., ¶ 16; Ex. I [Memo. Of Intention between the Republic of Italy and Columbia; Charter for the Academy].) As part of this transition, the Paterno Library was moved to Columbia’s main library, and the Italian language department moved from the Italian House to another building. (Compl., ¶ 16.)

Italic Institute identifies itself as an educational non-profit and brings this suit “as representative of the Paterno, Campagna, and Ciluzzi families,” alleging that Columbia’s current use of the Italian House is “off-track” and that the Academy is “elitist and detached.” (Compl., ¶¶ 5, 12, 17.) Specifically, Italic Institute pleads that Columbia breached a “fiduciary duty of obedience to the donor Families,” breached a charitable trust and breached its duties under Section 720(a) of the Not-For-Profit Corporation Law by, among other things, “failing to use the donation for furthering research and instruction on Italian culture,” removing the Paterno Library

from the Italian House, using the Italian House “for instruction and research unrelated to Italian history, culture, literature and art,” and “failing to encourage or support use of the building by the Italian language department, Italian-American students, organizations, scholars, or fellows from the Italian American community.” (Compl., ¶¶ 20, 27, 32.) Italic Institute also pleads that the gift of the Italian House and the Paterno Library gave rise to a “contract or contracts” that Columbia breached “by failing to honor the original intent” of the donors. (*Id.*, ¶ 35.)

The parties dispute whether a charitable trust, express or implied, was established when the Italian House was transferred to Columbia. Columbia represents that there was no “formal written gift agreement concerning the Paterno/Campagna donation.” (Ds.’ Memo. Of Law In Support at 6.) Columbia further contends that even assuming *arguendo* that a trust exists, both the Italic Institute and the individual descendants lack standing to maintain this action. (Ds.’ Memo. Of Law in Support at 11-13.)

Standing is “an aspect of justiciability which, when challenged, must be considered at the outset of any litigation.” (*Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 769 [1991].) Section 8-1.1(f) of the Estates, Powers and Trusts Law provides that “[t]he Attorney General shall represent the beneficiaries of [] dispositions [of property] for religious, charitable, educational or benevolent purposes and it shall be his duty to enforce the rights of such beneficiaries by appropriate proceedings in the courts.” (See also EPTL 8-1.4 [Supervision of Trustees for Charitable Purposes].) Settled authority recognizes, however, that donors, including administrators of donors’ estates, may have concurrent standing. (*Smithers v St. Luke’s-Roosevelt Hosp. Ctr.*, 281 AD2d 127, 140-41 [1st Dept 2001] [holding that donor, and by extension special administratrix of donor’s estate, had standing to pursue claims against recipient

hospital for enforcement of terms of charitable gift].) Beneficiaries of a trust may also have concurrent standing under limited circumstances. (Alco Gravure, Inc. v The Knapp Found., 64 NY2d 458, 465 [1985] [holding that “a particular group of people” with “a special interest in funds held for a charitable purpose, as when they are entitled to a preference in the distribution of such funds and the class of potential beneficiaries is sharply defined and limited in number” had standing].)

In contrast, the courts have consistently held that a party’s relationship to the donor is not sufficient, without more, to confer standing. (Board of Educ. of Mamaroneck Union Free Sch. Dist. v Attorney General of State of New York, 25 AD3d 637, 638-39 [2d Dept 2006], lv denied 7 NY3d 807 [holding that grandson of donors lacked standing to enforce restrictive covenants in deeds conveying gifts because he had no “special interest” in the gifted property]; Matter of Alaimo, 288 AD2d 916 [4th Dept 2001], lv denied 97 NY2d 609 [2002] [holding decedent’s grandson and honoree of the trust lacked standing to challenge administration of charitable trust]. See also Rettak v Ellis Hosp., 362 Fed Appx 210, 212 [2d Cir 2010] [applying New York law] [same].)

Italic Institute has cited no authority that supports its standing or the standing of the proposed individual plaintiffs. Smithers, on which Italic Institute relies, is not to the contrary. There, the Appellate Division of this Department expressly noted that the administrator did not bring the action on her own behalf. (281 AD2d at 138.) The Court held that she had been appointed administrator of the donor’s estate “for the purpose of pursuing claims by the estate against the hospital” and “therefore ha[d] standing to sue the Hospital for enforcement of the Gift terms.” (Id. at 140-41.) Nor does Smithers support a claim to standing on the part of Italic

Institute or the proposed plaintiffs based on the Attorney General's failure to pursue Italic Institute's complaint.<sup>1</sup>

In its opposition to defendants' motion, Italic Institute and the proposed plaintiffs took the position that they were entitled to standing as descendants of the donors "who represent donors' interests" (P.'s Memo. Of Law In Support of Cross-Motion at 8-9), and not as beneficiaries. At the oral argument, Italic Institute asserted for the first time that it and the proposed plaintiffs have standing because they have a "special interest" in the gift. (March 28, 2013 Tr. at 9.) To the extent that Italic Institute and the proposed plaintiffs claim standing as beneficiaries of the trust, they fail to plead allegations that they fall within a "sharply defined and limited" class of potential beneficiaries entitled to a preference in the use of the trust. (See Alco Gravure, Inc., 64 NY2d at 465). In fact, the donative parchment that Italic Institute relies on recites that the Italian House was donated "for use by [Columbia] . . . . on behalf of and in the name of the people of Italian birth and descent in the United States of America and other American citizens who are interested in the diffusion of Italian culture in this country." (Compl., Ex. A.) To the extent that this document expresses the intent of the donors, the intent is not to benefit a limited class but, rather, virtually everyone with an interest in Italian culture.

The court accordingly holds that under the governing standards, the Italic Institute does not have standing and that an amendment to add the descendants cannot cure the defect in

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<sup>1</sup>Italic Institute filed a complaint with the New York State Department of Law Charities Bureau, dated November 27, 2009, alleging that the 1990 sale of the Italian House to the Republic of Italy did not serve "the original intent of the donors." (Mancini Aff., Ex. A.) After forwarding the complaint to Columbia and receiving Columbia's response, the Attorney General declined to take further action. (Mancini Aff., ¶ 4, Ex. B [Aug. 11, 2010 Letter from Columbia to Charities Bureau].)

standing.<sup>2</sup> The proposed amendment should thus be denied as plainly lacking in merit or palpably insufficient. (See Crimmins Contr. Co. v City of New York, 74 NY2d 166 [1989]; MBIA Ins. Corp. v Greystone & Co., Inc., 74 AD3d 499 [1st Dept 2010].)

In reaching this result, the court rejects Italic Institute's apparent contention, made at oral argument but not in the motion papers, that it needs discovery in order to oppose the motion. (March 28, 2013 Tr. at 18.) This argument is based on a letter from John Freschi, chair of the committee that raised funds for the Italian House, to Frank Fackenthal, Secretary to Columbia, dated October 22, 1927. There, Mr. Freschi stated that the "control and management" of the Italian House should "be under the absolute jurisdiction of the University authorities, without any outside interference, although, no doubt, recommendations from every proper source would receive careful consideration." (Aff. Of Catherine Williams in Support of Ds.' Motion to Dismiss, Ex. 7.)

Relying on this language, Italic Institute now claims that the descendants of the donors are a "proper source." (March 28, 2013 Tr. at 11.) Accepting its contention at face value, even if the descendants were a proper source for consultation, the letter, which states that it was written after the Italian House had been turned over to Columbia, accepts without reservation that management should be under the absolute control of Columbia. There is thus nothing in the letter to suggest the existence of any other donative documents imposing any restrictions on

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<sup>2</sup>Similarly, Italic Institute has failed to plead any facts that would confer standing under Section 720(a) of the Not-For-Profit Corporation Law to maintain an action against Columbia. (N-PCL § 720(b); E. Lisk Wyckoff, Jr., Practice Commentaries, McKinneys Cons Laws of NY, Book 37, N-PCL § 720(a) [explaining that an action under Section 720(a) may be brought by the Attorney General or the corporation as well as by directors, officers, receivers, trustees in bankruptcy, and other enumerated parties].)

Columbia's use of the gift. Significantly also, Italic Institute has not uncovered any such documents although it acknowledges that it has "done an enormous amount of factual research, corresponded with Columbia University, spoke[n] with some representatives there, [and] spoke[n] with the Attorney General (*id.* at 17), and had document discovery in connection with its complaint to the Attorney General (Mancini Aff., Ex. B). Italic Institute fails to make any showing that discovery may lead to evidence relevant to establish a claim of standing. (See generally CPLR 3211[d].)

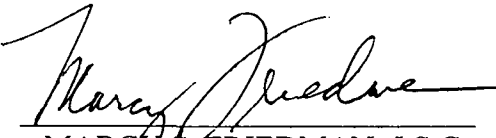
In view of this disposition, the court need not reach Columbia's additional claims that the complaint should be dismissed based on the statute of limitations or failure to state a cause of action.

It is accordingly hereby ORDERED that Columbia's motion to dismiss the complaint is granted; and it is further

ORDERED that Italic Institute's cross-motion for leave to amend the complaint is denied.

This constitutes the decision and order of the court.

Dated: New York, New York  
June 14, 2013

  
\_\_\_\_\_  
MARCY S. FRIEDMAN, J.S.C.