

Matter of Morris Museum, Inc.
2021 NY Slip Op 30497(U)
February 23, 2021
Supreme Court, New York County
Docket Number: 161170/2020
Judge: Laurence L. Love
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
HON. LAURENCE L. LOVE
J.S.C.

In the matter of the Application of

THE MORRIS MUSEUM, INC.,

ORDER

Petitioner,

Index No.: 161170/2020

Motion Sequence 001

for an order approving the temporary modification
of certain restrictions on the use and the investment
and management of one of Petitioner’s institutional
funds.

-----X

Petitioner The Morris Museum, Inc. (the “**Museum**”), being the recipient of a grant (the “**Grant**”), pursuant to that certain Agreement by and between The Lutece Foundation, Inc. (the “**Foundation**”) and the Museum, dated September 25, 2003 (the “**Agreement**”), as amended pursuant to that certain Agreement of Amendment by and between the Foundation and the Museum, dated February 23, 2011 (the “**Amendment**”), consisting of (i) the Murtoogh D. Guinness Collection (the “**Collection**”), one of the world’s most important collections of mechanical musical instruments and automata (robotic figures of animals and people) and (ii) funds to establish The Murtoogh D. Guinness Endowment Fund (the “**Endowment**”); and

Petitioner having filed a Petition in this Court, pursuant to Section 555(c) of the New York Not-for-Profit Corporation Law, requesting that the Court temporarily modify (1) the terms of the Grant with respect to the Endowment, pursuant to Article III of the Agreement, as amended by the Amendment, requiring the Museum to use the Endowment “for the care, management and display of the Collection” (the “**Use Restriction**”) in order to permit the Museum’s Board of Trustees, during the period from July 1, 2020 through June 30, 2023, to appropriate for expenditure from the Endowment such amounts as the Board of Trustees deems

prudent in accordance with the rules and procedures contained in Chapter 5-A of the NPCL for any purpose related to the Museum's ongoing operations in furtherance of its charitable and educational purposes, which are centered around the Collection, but not limited to its care, management and display and (2) the terms of the Grant, with respect to the Endowment, pursuant to Article III, Section 4 of the Agreement, as amended by the Amendment, allowing the Museum to "appropriate for expenditure such amounts from the Endowment for the care, management and display of the Collection as the Board of Trustees deems prudent in accordance with the rules and procedures contained in Chapter 5-A of the New York Not-for-Profit Corporation Law (the New York Prudent Management of Institutional Funds Act), except that the Board of Trustees may not appropriate for expenditure in any year more than four percent (4%) of the fair market value of the Endowment, calculated on the basis of market values determined at least quarterly and averaged over a period of no fewer than five (5) years immediately preceding the year in which the appropriation for expenditure is made" (the "**Appropriation Restriction**") in order to permit the Museum's Board of Trustees, during the period from July 1, 2020 through June 30, 2023, to appropriate for expenditure from the Endowment such amounts as the Board of Trustees deems prudent in accordance with the rules and procedures contained in Chapter 5-A of the NPCL, except that the Board of Trustees may not appropriate for expenditure more than (i) in the period July 1, 2020 through June 30, 2021, 10%, (ii) in the period July 1, 2021 through June 30, 2022, 9% and (iii) in the period July 1, 2021 through June 30, 2022, 8%, in each case, of the fair market value of the Endowment calculated on the basis of market values determined at least quarterly and averaged over a period of no fewer than five (5) years immediately preceding the year in which the appropriation for expenditure is made; and

Petitioner having shown that during the ongoing COVID-19 pandemic and the subsequent public health and economic recovery, (1) application of the Use Restriction is impracticable and wasteful and (2) application of the Appropriation Restriction is impracticable and wasteful, an impediment to the management of the Collection, and because of circumstances not anticipated by the Foundation, a temporary modification of the Appropriation Restriction will further the purposes of the Endowment; and

The New York State Attorney General's Office having submitted an Affirmation of No Objection indicating that the Attorney General's Office does not object to the Court granting the relief Petitioner seeks in its Petition; and

No opposition to Petitioner's application having been filed; and

Upon reading the Petition and supporting papers, and after due deliberation having been held thereon, and it appearing that the relief proposed by Petitioner will most effectively accomplish the purposes of the Grant and that the interests of the Foundation will be thereby promoted and the public interest will not be adversely affected by the relief requested;

NOW, upon the above referenced papers, it is:

- (a) ORDERED, that (1) the Use Restriction is temporarily modified during the period from July 1, 2020 through June 30, 2023, in order to permit the Museum's Board of Trustees to appropriate for expenditure from the Endowment such amounts as the Board of Trustees deems prudent in accordance with the rules and procedures contained in Chapter 5-A of the NPCL for any purpose related to the Museum's ongoing operations in furtherance of its charitable and educational purposes, which are centered around the Collection, but not limited to its care, management and display and (2) the Appropriation Restriction is temporarily modified during

the period from July 1, 2020 through June 30, 2023, in order to permit the Museum's Board of Trustees to appropriate for expenditure from the Endowment such amounts as the Board of Trustees deems prudent in accordance with the rules and procedures contained in Chapter 5-A of the NPCL, except that the Board of Trustees may not appropriate for expenditure more than (i) in the period July 1, 2020 through June 30, 2021, 10%, (ii) in the period July 1, 2021 through June 30, 2022, 9% and (iii) in the period July 1, 2021 through June 30, 2022, 8%, in each case, of the fair market value of the Endowment calculated on the basis of market values determined at least quarterly and averaged over a period of no fewer than five (5) years immediately preceding the year in which the appropriation for expenditure is made; provided that the Museum will continue to use the Endowment in a manner consistent with the charitable purposes of the Museum; and it is further

- (b) ORDERED, that a copy of this Order as signed by this Court shall be served by Petitioner's counsel on the New York State Attorney General.

ENTER,

Dated: _____

2/23/2021



HON. LAURENCE L. LOVE
J.S.C.