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BARTALK



ART RESTORATION

When Detroit went bankrupt, Honigman Miller helped save a city museum's collection. **BY JULIE TRIEDMAN**

U.S. BANKRUPTCY
Judge Steven Rhodes was halfway through reading his 48-page decision approving Detroit's reorganization plan on Nov. 7 when Honigman Miller Schwartz & Cohn's Arthur O'Reilly began choking up.

O'Reilly was in the courtroom as the Detroit Institute of Arts' lead litigator. The city's July 2013 bankruptcy filing had raised the specter that some or all of the DIA's collection would be sold off, and O'Reilly had spent the better part of two years preparing the city-owned museum for possible litigation if the city attempted to do so. But the plan Judge Rhodes signed off on—the so-called Grand Bargain, in which the museum commits to raise \$100 million of \$816 million in donations and state appropriations over 20 years to benefit the city's retirees—was an outcome he couldn't have imagined 18 months earlier. In transferring title to a new nonprofit entity,



the judge ensured that the DIA's 60,037-piece collection would forever be beyond the reach of the city and its potential creditors.

"To sell the DIA art would be to forfeit Detroit's future," the judge read.

Afterward, O'Reilly walked the three blocks back to his office, closed the door and "just sat there," he says, letting the good news sink in. In terms of billings, he says, "it was a lost day." He didn't mind.

The DIA is one of the only major

Left to right: Honigman's Joshua Opperer, Alan S. Schwartz and Arthur O'Reilly

municipally owned museums in the nation, and its fortunes have been tied to Detroit's for much of its 128-year history. Its collection, including "The Wedding Dance" by Pieter Bruegel the Elder, "The Postman" by Van Gogh and many other masterpieces, grew with the fortunes of the city's industrial elite. More recently, its budgets have suffered from a drought in public funds.

Honigman is likewise rooted in Detroit, representing many of its most important companies, civic groups

and cultural institutions. Honigman

budget—wasn't feasible either. He and Gargaro began mapping out a litigation and political strategy

The DIA's position was "You can't sell a single piece."

vice chair Alan S. Schwartz, the DIA's outside general counsel, was recruited by the DIA in 1983, when the city moved to take over its operations. In 1997, Schwartz assisted the museum again when Detroit, facing significant financial constraints, flipped control (though not ownership) back to an independent, nonprofit board. Five years ago, when the DIA lost almost all of its remaining state funding, Honigman lawyers helped write and pass the state legislation that let the museum benefit from an extra property tax levy in three suburban counties. Schwartz has never charged the museum for his time, according to DIA chair Eugene Gargaro, a former Dykema Gossett partner. (Some 60 lawyers and staffers at Honigman who worked on DIA matters during the bankruptcy were paid reduced fees, Gargaro says.)

By early 2013, Detroit's finances had slid into the abyss. In March 2013, representatives of the city's new emergency manager, former Jones Day partner Kevyn Orr, informed Gargaro that the art was on the table. If Detroit filed for bankruptcy, the city's lawyers said, the museum would have to come up with \$400 million to \$500 million. The DIA's position was "You can't sell a single piece," Schwartz says. But the amount the city wanted—15 times its annual

in daily 5:30 a.m. calls. "We're both early risers," says Gargaro. For additional firepower, Gargaro enlisted Cravath, Swaine & Moore's Richard Levin, an author of the modern-day Chapter 9 of the bankruptcy code. Levin's opinion was that Chapter 9 protected the DIA from direct creditor action; moreover, if Orr wanted to sell art assets worth more than \$50,000, he would need the governor's approval.

A more complicated issue was whether the city's title authorized it to sell any art. Honigman contacted Michigan Attorney General William Schuette, whose duties include protecting state charitable institutions. Over the next few months, according to communications later released in discovery, Honigman argued to the AG that the art couldn't be sold under state charitable trust law and provided Schuette's office with a

trust. Simultaneously, O'Reilly began building a detailed case that much of the collection couldn't be sold under contracts with donors that restricted such transfers. Sales were only permitted to fund further acquisitions.

In June 2013, Schuette issued an opinion echoing the DIA's positions. Though the bankruptcy judge didn't have to abide by the opinion, "it was huge in building up support for the DIA in the legislature," which ultimately had to pass legislation to fund and enable the Grand Bargain, says museum lobbyist Kirk Profit.

Orr maintained that the city didn't want to sell any art. Still, in August 2013, after the city's bankruptcy filing, he asked Christie's International Plc to appraise 2,781 works the city had purchased outright; the estimate came in between \$454 million and \$867 million.

But an alternative path for the museum had begun to take shape. Detroit's chief bankruptcy judge, Gerald Rosen, lead mediator between the city and its creditors, hatched the Grand Bargain to protect the DIA while funding city retirees' pensions, which otherwise faced major cuts.

Although the city held legal title to the DIA's collection, Honigman argued, the works were held in charitable trust.

trove of museum documents. The DIA contended that though Detroit held legal title to the collection—and had purchased about 5 percent of the collection outright—it was barred from selling any of it to pay off its debts, because the entire collection was held in charitable

Ricardo Castro, then-general counsel of the Ford Foundation, which had roped in broad foundation support for Rosen's plan, led negotiations toward a binding agreement, but as counsel to the museum, Honigman also played a significant role in those

negotiations, Castro and others say. Honigman lawyers, particularly Joshua Oppen, drafted the term sheet that was signed in June 2014, and drew up a simple donor template to help the DIA solicit donations as quickly as possible. By mid-July, the DIA had already received pledges of \$80 million toward its funding commitment.

Once the state jumped in, contributing \$350 million, the city, the pensioners and the unions fell in line. But two creditors, Financial Guaranty Insurance Co. and Syncora Guarantee Inc., which had insured billions of dollars in city debt, cried foul, demanding that the judge reject the plan as unfair. In a trial beginning Sept. 3, they argued that the deal removed the single most valuable city asset from creditors' grasp—the museum—and that pension holders stood to recover more than them, violating the bankruptcy code.

"What was achieved was more than anyone could have expected even a year ago."

A turning point, says O'Reilly, came on Sept. 18, when he put the museum's executive vice president, Annmarie Erickson, on the stand. Unexpectedly, the judge had some



Not for sale: Bruegel's "The Wedding Dance"

questions for her. What, he asked, was the non-monetary value of the museum's collection to 60,000 schoolchildren, adults, families, and the larger community? "It opens [children] up to a world that they might not be open to," she responded. Adults "go as a reminder of possibilities." In Rhodes' Nov. 7 ruling, he noted that Erickson's answers had informed his decision.

Syncora settled; FGIC settled on Oct. 18.) Rhodes also wrote that the DIA would have likely prevailed in any litigation over the city's right to sell the art.

A day after the decision, many of the same dignitaries and lawyers in Rhodes' courtroom met again in the museum's courtyard for its annual black-tie gala. Gargaro stood up to speak, but was silenced as the crowd stood and applauded. "It was surreal. He didn't need to say much. Everyone there knew what could have happened. What was achieved," Schwartz says, "was more than anyone could have expected even a year ago."

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