

Supreme Court of the State of New York
County of New York

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NICHOLAS ROERICH and HELENA ROERICH,

Plaintiffs,

- against -

LOUIS L. HORCH, NETTIE S. HORCH, and
MASTER INSTITUTE OF UNITED ARTS, INC.,

Defendants.

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STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

MAURICE M. LICHTMANN, being duly sworn, says:

Prof. Nicholas Roerich and Mme. Helena Roerich, the plaintiffs in this action, are at present in British India and have been there for several months. I am making this affidavit on personal knowledge of all the facts hereinafter detailed because I have been in personal touch with the situation ever since 1921.

In 1920, Prof. Roerich, who is a world-famous artist, explorer and archaeologist, was exhibiting his paintings in this country. My wife, Sina Lichtmann, and I met Prof. Roerich and Mme. Roerich and we became enthusiasts with him in the idea of creating a school which would teach all arts under one roof. In 1921, the four of us organized the Master School of United Arts. Previous to that time, Mrs. Lichtmann and I had operated a large music school.

Shortly thereafter, Miss Frances R. Grant, who had been editor of "Musical America", a national magazine devoted to music, joined with the four of us. Miss Grant thereafter introduced to us Mr. and Mrs. Horch, who are the defendants in this case. The Horches expressed a great desire to join our movement, and since Mr. Horch had been a successful business man, all of the business details were left to him.

The seven of us then applied to the Regents of the University of the State of New York for a charter incorporating ourselves under the Education Law under the name of Master Institute of United Arts, Inc.; and on September 28, 1922, the Regents granted a provisional charter, a copy of which is as follows:

"THE UNIVERSITY OF THE STATE OF NEW YORK

Provisional Charter of

Master Institute of United Arts, Inc.

THIS INSTRUMENT WITNESSETH That the Regents of the University of the State of New York have granted this provisional charter incorporating Louis L. Horch, Nicholas Roerich, Maurice Lichtmann, Frances R. Grant, Nettie Horch, Helena Roerich, Zena Lichtmann,

and their associates and successors as an educational institution

for the instruction of persons of both sexes, in painting, music, languages, literature, drawing, designing, engraving: sculpture, singing, dramatic art, under the corporate name of 'Master Institute of United Arts, Inc.' to be located at 312 West 54th Street in the Borough of Manhattan, City and State of New York, with seven trustees to be at first the named incorporators, to hold until their successors shall be chosen by the shareholders of the corporation at and for such time as their by-laws shall provide; with power in the corporation to have a capital stock to be divided into seven shares of nominal or no par value, to be issued upon such terms as the trustees shall determine, and upon which may be distributed to the holders thereof dividends or shares of the surplus profits of the corporation, subject to the condition that the corporation shall begin business with a capital of at least \$7500.00; and this provisional charter will be replaced by an absolute charter if within five years the corporation shall acquire resources and equipment deemed suitable and sufficient by the Regents of the University for its chartered purposes and be maintaining an organization of usefulness and character satisfactory to them.

GRANTED September 28, 1922 by the
 Regents of the University of
 the State of New York executed
 under their seal and recorded in
 their office. Number 3183

Chester S. Lord
 Chancellor"

Frank P. Graves
 President of the University

The Court will note that the authorized capital stock was to be divided into seven shares of no par value. I have been informed by Herbert Plaut, one of the attorneys for the plaintiffs, that he has seen the stock book of the corporation and that there were entries made for each of the seven, setting forth that each became the owner of a share of stock under date of November 22, 1922.

Prof. Roerich was the moving spirit in all of the activities. He became known as the president founder or the honorary president. All of our educational work and artistic work was conceived by him.

All of us had great faith and confidence in Mr. Horch. He was elected Treasurer of the corporation and then the President.

On May 8, 1923, Prof. Roerich was scheduled to sail with Mme. Roerich for a five years' exploration trip into Central Asia. This exploration trip had for its purposes scientific investigation and the production of works of art. It lasted until 1928, and during that time Prof. Roerich painted almost 500 pictures, and he and his son wrote many books concerning the life and customs of the people in countries he saw. That expedition was a unique one in that it covered a route theretofore untravelled by any westerner. That expedition was sent out by Master Institute of United Arts, Inc. and two other organizations, Corona Mundi, and the Roerich Museum. Money was raised by way of contributions, and Mr. Horch was one of the principal contributors to the expenses of the expedition.

About two weeks prior to the sailing of Professor and Mme. Roerich for Asia, and on April 23, 1923, a written agreement was made among the seven of us, a copy of which is attached hereto and marked Exhibit A. As appears from the preamble of that agreement, all of us wished to effectively protect our shares of stock in the corporation so as to be sure that the corporation would remain in the control of its founders and its workers. We selected Mr. Horch to be the one to hold each share of stock in escrow, and the agreement provided that he should so hold the stock as an escrowee and to keep the shares of stock in a "suitable vault or safe deposit box". Each share of stock, as far as I can recall, was endorsed in blank and was left with Mr. Horch under the terms of the agreement. I believe, also, that a notation was made on each share of stock that it was subject to the agreement. A copy of the agreement was deposited with the corporation's records.

In 1926 the charter of the corporation was amended by the Regents at our request, although at that time Prof. and Mme. Roerich were in Asia. The amendment is as follows:

"THE UNIVERSITY OF THE STATE OF NEW YORK

Amendment to charter of

MASTER INSTITUTE OF UNITED ARTS, INC.

THIS INSTRUMENT WITNESSETH, That the Regents of the University of the State of New York have amended the provisional charter granted September 28, 1922, to the Master Institute of United Arts, Inc. by striking out the stated address '312 West 54th Street, in the Borough of Manhattan, City and State of New York' and inserting in place thereof the address 'Number 310 Riverside Drive in the Borough of Manhattan, New York City', and by further striking out the following words; 'and on which may be distributed to the holders thereof dividends or shares of the surplus profits of the corporation' and inserting in place thereof, the following words:

'providing that no stockholder shall receive directly or indirectly any part or portion of the income, earnings or profits of the corporation and no dividends in any way shape or form shall be paid to the holders of the stock of the corporation from and out of its surplus earnings; that all income, earnings and profits of the corporation from any and all sources whatsoever shall be devoted entirely to and appropriated exclusively for the maintenance, support and enlargement of the educational institution conducted by it, the creation of scholarships for students, and such other educational purposes as its trustees may direct; and that no person in any way associated with the corporation or any institution maintained by it, either as officer, trustee, stockholder, employee, or otherwise shall profit in any way from such connection and receive any remuneration, profit or recompense from the corporation or any institution maintained by it, except reasonable compensation for services rendered in effecting some object and purpose for which the corporation was created.'

GRANTED March 25, 1926 by the Regents
of the University of the State of
New York executed under their seal
and recorded in their office.
Number 3537

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Chester S. Lord
Chancellor

Frank P. Graves
President of the University"

By that amendment the corporation was deprived of the right of distributing income or profits to its stockholders and it was affirmatively provided that all such income or profits should be devoted exclusively to the support and maintenance of the educational institution operated by the corporation, for scholarship funds, and for other educational purposes.

The activities of Master Institute of United Arts, Inc. soon became submerged in the activities of the dominant corporation, Roerich Museum; and for a long while Master Institute of United Arts, Inc. was merely a department, a school department, of the Roerich Museum.

In 1928 Roerich Museum became the owner of a large plot of ground at 103rd Street and Riverside Drive, and a large building was erected to house the activities of the Roerich Museum and its affiliated institutions, as well as apartments.

In and about 1932, the Roerich Museum fell upon financial difficulties, and foreclosure proceedings were begun against the property. Finally, a plan of reorganization was adopted, the essence of which was that the bondholders should organize a corporation known as the Riverside Drive and 103rd Street Corp., and that corporation was to buy in the property at the sale, and then turn that property over to a financially unembarrassed corporation made up of the "present Roerich Museum interests," which said latter corporation was to give back a large mortgage to the Riverside Drive and 103rd St. Corp. That plan was approved by Hon. Charles C. Burlingham, Referee, and his report was confirmed by Mr. Justice Shientag.

The corporation of "the present Roerich Museum interests" which was selected to be the one to receive the property from the bondholders corporation was none other than Master Institute of United Arts, Inc., the corporation here involved.

On or about February 23, 1935, the closing took place. Riverside Drive and 103rd St. Corp. conveyed the title to the property to Master Institute of United Arts, Inc., and the latter gave back a mortgage for \$1,674,900.

Up until this time there had been no question raised as to whether or not the Roerichs, Miss Grant, my wife and I were the stockholders of the corporation.

In 1925, when the corporation petitioned the Regents for the Amendment to the charter, that petition, dated and acknowledged on December 31, 1925, and signed by Louis L. Horch, as President, and Nettie S. Horch, as Secretary, stated:

"SEVENTH: That the names and post office addresses of all the holders of the capital stock of the Master Institute of United Arts, Inc., and the number of shares of stock owned or held by

each are as follows:

<u>Names</u>	<u>Post Office Addresses</u>	<u>No. of Shares</u>
Nettie S. Horch,	915 West End Avenue New York,	1
Louis L. Horch,	915 West End Avenue New York,	1
Sina Lichtmann,	311 Riverside Drive New York,	1
Maurice Lichtmann,	311 Riverside Drive New York,	1
Francis R. Grant	310 Riverside Drive New York,	1
Nicholas Roerich	310 Riverside Drive, New York	1
Helena Roerich	310 Riverside Drive New York,	1"

In 1935, when the mortgage was given to the Riverside Drive and 103rd St. Corp., Mrs. Horch prepared a Secretary's Certificate of Consent in which she certified "That the total number of shares of the capital stock of said corporation outstanding entitled to vote thereon is seven (7) shares; that according to the books of said corporation the persons who have executed the consent to mortgage dated February 18, 1935, are holders of the number of shares set opposite their respective names". The separate consent dated February 18, 1935, contains the names of Louis L. Horch, Nettie S. Horch, Maurice M. Lichtmann, Sina Lichtmann, Frances R. Grant, but instead of Prof. and Mme. Roerich, Sophie Schafran and Mrs. Sidney M. Newberger. The reason why the signatures of Prof. Roerich and Mme. Roerich were not obtained was that at that time Prof. Roerich was in Asia heading an expedition sent out by the United States Department of Agriculture to find drought resisting grasses, and Mme. Roerich at that time was in India.

Mrs. Schafran and Mrs. Sidney M. Newberger were at that time closely associated with us, and Mr. Horch selected them as the substitutes for Prof. Roerich and Mme. Roerich because of the impossibility of obtaining the signatures of the Roerichs. In the minutes of the meeting of the Trustees of Roerich Museum, held on February 20, 1935, is the following explanation:

"Mr. Horch states that upon advice of the attorneys a meeting was held by the Master Institute of United Arts, Inc. on Feb. 19, at which Mrs. Schafran and Mrs. Sidney M. Newberger acted as trustees in the absence of Prof. and Mme. Roerich. This was found necessary to be done by the attorneys. A similar action took place in 1928. After the building is turned over to the Master Institute of United Arts, Inc. both Mrs. Schafran and Mrs. Newberger will resign, and Prof. and Mme. Roerich will be reelected again as trustees of Master Institute of United Arts."

Shortly after the building came into the hands of Master Institute of United Arts, Inc., as a matter of fact only two days later, and on February 25, 1935, Mr. and Mrs. Horch went through a transaction in connection with the shares of stock, not telling any of us anything about it and we never knew anything about it until about a week ago, when Mr. Plaut conducted an examination before trial of Mr. and Mrs. Horch on a separate action similar to this one which action has been brought by Mrs. Lichtmann, Miss Grant and myself against the same defendants. In that examination before trial Mr. Horch testified that on February 25, 1935, he took four certificates of stock of Master Institute of United Arts, Inc., in the names of Mrs. Lichtmann, Miss Grant and myself, and one other, either that originally issued to Prof. Roerich or Mme. Roerich, all of which had been deposited with him under the terms of the agreement of April ~~25~~ 23, 1923, and coupled with the one share of stock he owned, he turned these five shares of stock into the corporation for cancellation and received a new certificate made out to himself for five shares. On the following day, February, 26, he testified that he endorsed the new certificate for five shares and delivered it to his wife, Nettie S. Horch, and she acquired, also, the sixth share which had been Prof. or Mme. Roerich's. Mrs. Horch had been the owner of one share, so that as a result she thereupon had all of the seven outstanding shares.

Nothing of transaction was told to us and I believe not to Prof. Roerich or Mme. Roerich either.

On December 16, 1935, Mrs. Horch, acting as the purported sole stockholder of the corporation, had a meeting of stockholders at her apartment. No notice of the meeting was sent to the Roerichs, Miss Grant, my wife or myself. I became aware that such a meeting would be had the day before, that is, December 15, but my information was that Mr. Horch, not Mrs. Horch, was the one who purported to be acting as sole stockholder, and I tried to stop the meeting by an injunction. However, the time was too short and I was unable to serve the stay in time to prevent the meeting. It later turned out that Mrs. Horch, not Mr. Horch, was the one claiming to own all the stock.

I know of my own knowledge that for many years, from ^{about} 1922 to 1935, Mr. Horch acted as the confidential agent of Prof. Roerich. Prof. Roerich was away in Asia from 1923 to 1928 on the expedition above noted, and was away after that for great periods of time. Mr. Horch had power to sign checks on the bank account of Professor Roerich. Professor Roerich deposited his will with him. The agreement of April 23, 1923, shows the great confidence which all of us reposed in Mr. Horch.

In taking the stock as Mr. Horch did he violated the duties imposed upon him by the agreement to hold the stock in escrow, and he also violated the fiduciary duties which he owed to Prof. and Mme. Roerich who deposited the stock with him. Mrs. Horch must have known about the agreement because she was a party who signed it. Furthermore, the stock certificates all bore notations that they were subject to the agreement. The corporation must have known about the agreement because the agreement was deposited among the corporation's records, and both Mr. and Mrs. Horch were members of its Board of Trustees; Mr. Horch was its President and Treasurer, and Mrs. Horch was its Secretary.

Unless the defendants are restrained there is great danger that they will further assign stock or wrongfully purport to vote that stock at stockholders' meetings. They should be restrained from making any decree in this action ineffectual.

Wherefore, I respectfully ask that an injunction issue during the pendency of this action in the manner prayed for in the attached notice of motion.

Sworn to before me this

1st day of April, 1936.

Maurice M. Lichtmann

M. M. LICHTMAN

Organization of the corp. in 1922, Sept 28.

offer original charter and application for charter.

substitutè copies (6)

identify 7 persons

Previous history of the enterprise - 1921-1922

meeting with Roerichs

who Roerichs were

who Lichtmanns were offer Lichtmann Music School - Env. 2, file G.

Nov. 17, 1921 regarded as date of founding

offer Horner report "Roerich M and affiliated Institutions" p. 8.

" " Exhibit D Roerich Biography

coming of Miss ~~Grant~~ Grant

Miss Grant introduced to group in 1922

At that time school already organized - Master School its ideals and objectives
"Decade" p. 19.

rented place on 54th St. Rs paid rent

offer rent receipts Env. 3 file R

offer file Educational Dept. - letters 12/1/21, 12/8/21, 12/17/21.

What each did in that school

What each contributed - R paintings - L their \$4,000 and work of their school

faculty - number of students

offer reprint from Musical America 7/29/22 Env. 2 file G

when corp. organized in 1922 it took over and continued this school

The Stock Deals

relations between the seven - LLH taking care of business affairs.

issuance of stock

offer stock and stock-certificates book showing issuance of stock as of Nov. 22, 1922

the certificates were delivered - he put his in safe deposit box.

Roerichs were to leave on 5 year expedition in May, 1923.

purposes of expedition - institution sent him

Horches went with them - back in Sept. 1923

Prior to leaving, agreement of April 23, 1923 made

offer agreement (7)

Horch's attys - Bloomberg - drew it

He turned in his stock certificate to Horch

offer receipt (8)

- offer stock certificate #3 showing notation
- Amendment to charter 1925-1926 (Env. 3, file R)
- offer petition to amend (1)
- offer proceedings on account of R8s absence
- offer amendment (6)

Expansion of activities

offer reports of MI to educational Dept. 22-23 23-24

Roerich Museum activities soon became dominant

Master Institute became school dept.

moved to larger quarters - 103rd St and Riv. Dr.

what Roerichs sent in -

pictures (see catalogue)

value later stated at \$5,000,000

he was the leader

offer X -6/6.23 (two letters)

kept constantly advised by reports.

Roerich's visit in 1924 (10)

what offer Horch's affidavit Aug. 1924 (4)

what Roerich did while here in 1924.

what Lichtmanns and Miss Grant did, such as dean, director of school, curator of Museum, executive director. They gave up all other activities - concentrated solely on school and museum activities.

work that Horches did - gave land for the building

all continued as trustees of all institutions, although there were others as trustees of Roerich Museum.

New building, 1928.

picture

LIH conceived ideas for building - but others acquiesced.

MML and LIH joined on guaranty of bonds.

PR consulted about building

All here were consulted and joined in planning

PR's visit in 1929

celebrations

cerimonies in opening on Oct. 17, 1929.

offer Y 7/11/29, Y 7/29/29, Y 10/6/29, Y 2/2/30

school's activities thenceforth carried on at this building - other activities also housed there

The foreclosure proceedings in 1932.

LLH and MHL also sued on their guaranty

all acting in concert in defence of building and maintenance of institution.

Greenbaum W & E their attys, and still his attys in actions to enforce personal liability.

They were fighting to retain building for Roerich Museum

Attorneys informed them that foreclosure would result in nothing more than "book-transfer" back to them

offer 19 F 3

First definite plans as to who would get the building

offer E page 4

Then Master Institute was agreed upon as the repository of title

offer E pages 5-6

Reorganization also adopted

offer plan, order of reference Burlingham report and order Shientag 6/26/34
(Env. 2 - reorganization memos)

What was done after plan was adopted

- offer 7 L 2 (12/30/24)
- 6 L 1 (1/7/34)
- 8 L 1 (1/13/35)
- 8 L 2 (1/20/35)
- 5 G 3 (2/24/35)
- 8 L 3 (2/ 10/35)
- 9 L 1 (2/16/35)

they were told that there was difficulty at the closing because of the absence of the Roerichs.

offer 9 L 3 and (L 2 (2/20/36)

Had not known that Roerich's stock had ever been changed to anyone except to meet a technicality in 1928 when they were in India - no resignation by them as trustees - no meeting ever held to pass on that.

custom of following Horch's instructions about signing of papers.

offer bond, mtge., sec'y's certificate and consent as of 2/18/35 (3)

call for and offer minutes of meeting of 2/18/35

offer 1928 resolutions from Lawyers Title Corp. (2)

Nothing said in 1928 about Roerichs not being stockholders - onlu technicality.

offer letter G. W. & E. April 21, 1935

When Pr here in 1934 he acted as chairman of Bd. of Trustees

offer minutes March 18 - April 20, 1934.

When PR here in 1929 he also acted as chairman

Nothing said about Feb 25-26 transactions to them

- offer minutes 2/24 pars. 2-3
- 2/25 " 2-3
- 2 /27
- 3/10 par. 1

The Roerichs were praised and extolled

offer minutes 3/17 par 16
3/24 " 3, 12
3/31 " 7

They were extolled

offer minutes 3/24 par.7

After the closing they continued at their work

The main objective that spring was the signing of the Roerich Pact on April 15th.

explain pact

offer minutes 4/21 par. 1

Efforts to raise funds

offer minutes 3/17 pars. 5, 8.
3/20 " 8
3/31 " 1,7
5/30 " 1
6/25 " 1, p.2

Get Nobel Peace prize for Roerich

To counteract unfavorable press notices about Roerich

offer minutes 6/30 par. 1.

Attend to the school

offer minutes 7/28 Prs. 1 and 3 - annual report

Up to this time nothing of a split appeared - that did not come until late June.

What took place then

Renunciation by Horches of Roerichs

offer Y 8/7/35
Y ~~8/11/35~~ 9/11/35
Y 9/27/35

Split over monet affairs

offer minutes 8/17 par. 7
8/20 par. 11

Still nothing learned about stock transactions

How they heard about it

Tax difficulty of PR

sent atty to see Greenbaum W & E on Dec. 14, 1935, who did not report to them until Dec. 15, 1935

heard on 12/15/35 for first time that LLH was assuming to be sole stockholder

What was done to prevent meeting

offer file

that action dismissed

offer briefs (12)

Horches had the books - tried to get information from books

did not know who was elected.

demand 1/10/36 (13)

written demands and answers (14)

As a result, commenced mandamus proceeding

offer file

Meeting of June 5, 1936 - first time he knew who were purportedly elected trustees

read statement (16)

what was done at that meeting

offer letters and certified copies of resolutions (15)

What occurred when they were locked out of their offices on June 24th, (17)

Never authorized transfer of his stock and knows that Roerichs did not.