SUITE 332

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October 11, 1938

Mrs. Maurice M. Lichtmann,
Roerich Academy of Arts,
250 West 57th Street,
New York City.

My dear Mrs. Lichtmann:

Re: Roerich, et als., vs. Horch, et als.

I have read the briefs of both sides in the Appellate Division in the above entitled cause and the brief of your counsel, Mr. Plaut, in the Court of Appeals. I have examined the record in part. I have talked with Mr. Plaut and he informs me that he does not believe that a continuance can be obtained from October 17th, or the week of October 17th, which is the time now fixed for the argument of the case in the Court of Appeals.

It would be physically impossible for any lawyer to prepare himself for an argument in the Court of Appeals within the time which will elapse between the time you first saw me and October 17th, if he had anything to do except the one case. And even if he had but the one case, it would be extremely difficult for him to so familiarize himself with this record as to make an effective argument.

There is little law in the case; it comes down to the resolution of a question of fact; while the suit is in equity it is there primarily because of the relief required rather than because of any equitable principles involved. The question is whether, at the time of the organization of the Master Institute of United Artists, Inc., stock was intended to be issued and was issued to the seven trustees, that stock to be held in their own right, or whether all of the stock was supposed to be owned by Horch and whether all of the stock issued to the other trustees was immediately endorsed to Horch and whether the transaction of escrow of 1923 was in effect a mere sham. The underlying reason why the lower courts have accepted the Horch version of the transaction is that they have considered that it is inconceivable that Horch should have gone into the enterprise intending to put

large sums of money into it without insisting that he should have control. Acting upon this theory as to how men would ordinarily act (sometimes a very dangerous theory upon which to act as men very often do foolish things as viewed by others) the lower courts have brushed aside the transaction of April 1923, which is wholly inconsistent with the Horch claim. In assuming that Horch would never have entered into the transaction if the stock was to be issued and owned as claimed by you, and acting upon that assumption in holding that all of the stock was always owned by Horch, the courts have placed you and your associates in the position of doing a very foolish thing, for, while it may be reasonable to expect that under the circumstances Horch would demand a majority of the stock or control, it is unreasonable to expect that you and your associates should receive nothing in the way of stock and should have no part in the management of the corporation. There was no middle course for the courts below to adopt.

It would seem that if either theory, yours or that of Horch leads to a result which is not in accord with what one would expect, the parties should be left where they placed themselves by their written documents rather than that, to avoid a result which can only be predicated upon the fact that one of the parties performed a foolish act, the court should disregard the written documents as pure sham. Upon the theory of Horch and that adopted by the court the agreement of April 1923 was foolish and perfectly ridiculous and no reasonable explanation has been given for the transaction.

The trouble is that the court, in assuming that Horch could never have contemplated putting money into the corporation unless he had control, overlooked that fact that we are not dealing with a business proposition of the usual type nor with the usual type of individuals. There would be great force in the observations of the Referee which were adopted by the majority of the Appellate Division if we were here dealing with a manufacturing concern and not with an "art concern". It is quite apparent that Horch was the type of man who, after he had made money in the hundrum work of foreign exchange, desired to associate himself with artistes. There are many of his type. In the presence of art, to use a trite expression, they feel an inferiority complex. They desire to soar above the mundane. It is not always easy for the man with money

and little art to associate himself with those who have art and little money, or at least the man with money and little art so thinks. The result is that he is happy when he can connect himself with "art" and he is perfectly willing to spend his money for that purpose. He receives a complete quid pro quo in the thought that he is associated with "art". And so it was with Horch. He was perfectly willing to expend his money for the privilege of being associated with Roerich and his associates. "True art is the expression of the radiant spirit, through art though hath the light".

It is a grave mistake, therefore, it seems to me, in judging as to what one would or would not do, to consider that this transaction is the ordinary one of the ordinary business enterprise.

I should assume that not only is it not clear (and it certainly would have to be clear in order to justify the court in disregarding the written instruments) that it cannot be assumed that Horch would advance this money if he did not have control of the corporation, but, on the contrary, it is not to be assumed that he would demand control for that which gratified his vanity and his urge for association with "art" was that "art" should consider him as openhanded. By his openhandedness he was demonstrating his qualification to be admitted into the inner circle. I think the testimony of Horch, commencing on page 499, is illuminating.

Now it may be that in the eyes of those not "artistic" or desiring to be "artistic" the conduct of Horch was foolish, but that is not a factor to be considered for there is no charge that he was imposed upon and that the transaction should be undone for that reason. The charge is that the transaction never took place as you and your associates contend; I think that the proof is that it did and the probabilities are with the proof.

It is obvious, however, that to argue this case with any effectiveness one must havean intimate knowledge of testimony. Any argument which I could make would be pro forma because I am not familiar with the testimony. I have talked with Mr. Plaut and I have suggested to him that it seems to me that there is no one who is better qualified to argue the case in the Court of Appeals than

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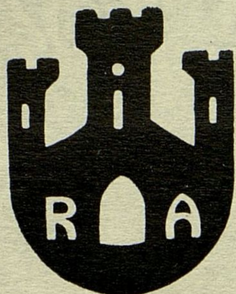

ROERICH ACADEMY OF ARTS
250 WEST 57th STREET • NEW YORK CITY
• CIRCLE 5-5377

Director
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Mrs. Maurice M. Lichtmann, October 11, 1938

he is. He has been in the case from the beginning and is fully familiar with the details of the testimony and is prepared to answer any questions which may be put by the bench. His briefs are full and complete.

I herewith hand you the papers.

I am,

Sincerely yours,

M. Lane

Merritt Lane
Raymond-Commerce Building
Newark, New Jersey