SURROGATE'S COURT : NEW YORK COUNTY

New York County Surrogate's Court
DATA ENTRY
Date: APRIL 15, 2011

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In the Matter of the Application of
ALVIN ROSENTHAL, DAVID PANZIRER, WALTER
PANZIRER, SANDOR FRANKEL AND JOHN CODEY,
as Trustees of the Leona M. and Harry B.
Helmsley Charitable Trust Created by

LEONA M. HELMSLEY,

deceased,

for Advice and Direction pursuant to
Section 2107(2) of the Surrogate's
Court Procedure Act.
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File No. 2007/2968/A

A N D E R S O N, S .

Four animal welfare charities move to intervene in a now terminated proceeding involving the interpretation of a charitable trust established by Leona Helmsley during her lifetime. The motion in effect seeks to set aside a decision dated February 18, 2009 (the "Decision"), which had resolved the issues in such proceeding (the "underlying proceeding") on the merits, so that movants can be heard on the substantive issues addressed in the Decision. Respondents in the underlying proceeding, i.e., the trustees and the Attorney General of the State of New York (the latter on behalf of the ultimate charitable beneficiaries of the trust), oppose the application.

The trust in question was created under an instrument executed on April 23, 1999, and amended thereafter. By a petition styled as one for advice and direction under SCPA § 2107, the trustees asked the court to determine the scope of their discretion in making charitable grants under the instrument. The application was

prompted by the trustees' concern "that dog-related charities [would] seek to challenge the Trustees' grants" in light of a "Mission Statement" executed by Mrs. Helmsley in 2004 and referred to in the amended trust agreement.[1] The only other party joined as a respondent in the proceeding was the Attorney General, as the statutory representative of ultimate charitable beneficiaries (EPTL § 8-1.1[f]). In the Decision, this court held that, whether or not the Mission Statement is in force (an issue raised in the petition), the language of the trust agreement accords the trustees absolute discretion to apply trust funds for all charitable purposes (Matter of Helmsley, NYLJ, Feb. 24, 2009, at 33, col 4).

Movants are The Humane Society of the United States (the "Humane Society"), the American Society for the Prevention of Cruelty to Animals (the "ASPCA"), Maddie's Fund, and Dedication and Everlasting Love to Animals ("D.E.L.T.A. Rescue"). They seek leave to intervene not as individual charities, but as proposed representatives of unnamed charitable beneficiaries dedicated to "the provision of care of dogs." Since the underlying proceeding has already concluded, movants also seek an order vacating the

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[1] The Mission Statement provided that: "[i]t shall be the mission of the [trust] to make such grants in such amounts and proportions and to or for the benefit of the following specific purposes as the Trustee shall determine: 1) purposes related to the provision of care of dogs; and 2) such other charitable activities as the Trustees shall determine. I reserve the right to alter, amend or replace this Mission Statement as [sic] such time or times as I shall determine."

Decision and permitting them, among other things, to file responsive pleadings to the petition in the underlying proceeding to assert that the trustees, in making grants, are required to give "special emphasis" to dog welfare charities.[2]

Movants contend that they are entitled to intervene under each of the applicable intervention statutes, namely CPLR §§ 1012 (intervention as of right) and 1013 (permissive intervention). However, before examining the merits of movants' arguments, we must first consider whether the motions meet the threshold requirement of timeliness (see Yuppie Puppy Pet Products, Inc. v Street Smart Reality, LLC, 77 AD3d 197 [1st Dept 2010]).

In examining such issue, "courts do not engage in mere mechanical measurements of time, but consider whether the delay in seeking intervention would cause a delay in resolution of the action or otherwise prejudice a party" (Id. at 201, citing Teichman v Community Hosp. of W. Suffolk, 87 NY2d 514 [1996], and Poblocki v Todoro, 55 AD3d 1346 [4th Dept 2008]). Motions to intervene have been granted even after an action has been concluded by a final judgment (see e.g. Civil Service Bar Ass'n v City of New York, 64 AD2d 594 [1st Dept 1978]; Auerbach v Bennett, 64 AD2d 98 [2d Dept

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[2] There are two pending motions to intervene. The Humane Society, the ASPCA, and Maddie's Fund sought intervention first, followed shortly thereafter by D.E.L.T.A. Rescue. Movants are hereinafter referred to collectively since D.E.L.T.A. Rescue has adopted the intervention arguments of the other movants.

1978], mod on other grounds 47 NY2d 619 [1979]; see also 3 Weinstein-Korn-Miller, NY Civ Prac, ¶ 1014.03, at 10-209 [2d ed][noting that "[a] motion to intervene may be timely even if the motion is not made until after trial, after entry of judgment, or even on appeal or after the order determining the appeal"]).[3]

Here, although the intervention motions were made approximately six months after the Decision issued, it cannot be said, as the trustees assert, that the motions were untimely. Notably, movants were not given formal notice of the underlying proceeding, and nothing in the record contradicts their assertion that they learned of it only after the Decision had issued. The record confirms that, once movants' became aware of the Decision, they began assessing their rights and alternatives. Certain movants sought to contact the trustees directly concerning their belief that Mrs. Helmsley intended that the trustees give "special emphasis" to the interests of dog care and welfare. To that end, The Humane Society, on its own behalf and on behalf co-movant, Maddie's Fund, then presented their position to the trustees in a letter dated April 2, 2009. However, the trustees thereafter 1) expressed unwillingness to meet and discuss the issues, and 2) announced their first round of charitable grants from the trust on

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[3] As noted above, upon intervention, movants also seek to vacate the Decision (CPLR 5015[a]) and file a proposed answer in what would then be a proceeding which could proceed to a resolution on the merits with movants as a party.

April 21, 2009, which, in movants' view, included insufficient grants for dog welfare charities. Thus, the Humane Society and Maddie's Fund, joined by the ASPCA, proceeded with the preparation and filing of their substantial motion to intervene. Shortly after that, D.E.L.T.A. Rescue filed its motion to intervene.

Under these circumstances, movants' conduct was not dilatory. Moreover, the motions did not delay resolution of the proceeding (because the proceeding had already concluded) or otherwise prejudice the trustees or the Attorney General. In this regard, it is noted that movants are not seeking to challenge grants the trustees have already made. For these reasons, the court will consider the motions.

We now turn to the merits of the intervention issue. Analysis must begin with reference to CPLR § 1012(a)(2), which provides for intervention as of right "[w]hen the representation of the [movant's] interest by the parties is or may be inadequate and the person is or may be bound by the judgment ...."[4] In this connection, movants concede that where, as here, the enforcement of the donor's charitable intent is at issue, EPTL § 8-1.1(f) provides that the Attorney General has direct responsibility for representing the interests of unnamed charitable beneficiaries

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[4] Movants initially did not cite the specific subparagraph of CPLR § 1012 under which they sought intervention. However, only CPLR § 1012(a)(2) is arguably relevant and indeed movants confirm in their reply papers that they seek intervention only under this subparagraph.

who have a potential stake in the disposition.[5] In such circumstances, a possible beneficiary of a trust or a member of a class of possible beneficiaries does not have standing to participate in court proceedings to enforce the provisions of the trust or otherwise challenge actions by the trustees (see e.g. Alco Gravure, Inc. v Knapp Foundation, 64 NY2d 458 [1985]; Matter of Lurie, NYLJ, May 20, 2010, at 35, col 6). Important policy considerations underlie the rule, namely the prevention of "vexatious litigation and suits by irresponsible parties who do not have a tangible stake in the matter and have not conducted appropriate investigations" (Alco, 64 NY2d at 466).

However, the rule is not absolute. In Alco, the Court of Appeals identified an exception where a class of unnamed beneficiaries has a "special interest" in the funds held for a charitable purpose (Id. at 465).[6] Nevertheless, in the more than 25 years since the Alco decision, no New York court has found

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[5] Prior to the enactment of EPTL § 8-1.1, the Attorney General had authority to represent potential beneficiaries of charitable dispositions under the Tilden Act of 1893 and thereafter under Section 12 of the Personal Property Law and Section 113 of the Real Property Law (see Lefkowitz v Lebensfeld, 68 AD2d 488 [1st Dept 1979], affd 51 NY2d 442 [1980]).

[6] Although Alco involved a question of standing, the Court's "analysis is apposite to a proposed intervention as of right, given the link between the two concepts" (Matter of Lurie, NYLJ, May 20, 2010, at 35, col 6).

standing under the "special interest" exception.[7]

Since movants contend that Alco supports intervention here, we begin with a discussion of that case. Alco involved a nonprofit foundation established to assist employees and the families of employees of the founder's corporations (and successor corporations). The trustees sought to dissolve the foundation and to transfer its assets to a fully charitable (and tax exempt) entity that had been created by the same founder and administered by the same trustees. The new entity would not assist individuals but, instead, would promote a broader range of charitable purposes. The dissolution was sought because, over the years, the number of applications for assistance by employees had dwindled to almost none, while the foundation continued to pay federal income tax despite the broad charitable uses to which its income was being applied. Under these circumstances, the Attorney General did not object to an amendment of the foundation's certificate of incorporation, which would allow the proposed transactions, and the Supreme Court approved it. Thereafter, a successor corporation on behalf of its employees as well as two employees of the successor corporation sued the foundation. They sought, among other things,

[7] Consumer Union of U.S., Inc. v State of New York (5 NY3d 327 [2005]) is not to the contrary. As discussed more fully infra, the basis for that decision was not that the subscribers had a "special interest" in the fund, but rather, that the Attorney General had a conflict of interest that disqualified him from acting.

to enjoin the foundation's dissolution and the transfer of its assets.

The Court of Appeals noted that, while "a possible beneficiary of a charitable trust" normally does not have standing to sue for enforcement of a trust, this general rule may yield "when a particular group of people has 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" (Id. at 465 [citations omitted]). Within this framework, the Court found that the individual plaintiffs comprised a class of beneficiaries that was "both well defined and entitled to a preference in the distribution" of the funds at issue (Id.). In addition, the Court also considered the above-noted policy reasons for limiting standing and concluded that they were not applicable because the action did not concern the "ongoing administration of a charitable corporation," but rather, "the dissolution of that corporation and the complete elimination of the individual plaintiffs' status as preferred beneficiaries of the funds ...." (Id. at 466). Based upon these considerations, the Court found that the individual plaintiffs had standing.[8]

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[8] The Court also determined that the corporate plaintiff had standing. However, for present purposes, the Court's analysis in that regard is of no import.

Movants argue that the facts in Alco are "remarkably similar to those here." They are incorrect. In Alco the plaintiffs' interest in the trust was certain at the time that they sought to enjoin the dissolution of the foundation. Here, by contrast, movants' claim to standing assumes the answer to the very question at issue in the proceeding in which they seek to intervene, i.e., whether any particular charitable purpose has a special claim upon the charitable fund. But even assuming for argument's sake what the court did not hold in the Decision, namely that the trustees are required to give "special emphasis" to charitable purposes "related to the provision of care for dogs," the facts here bear little resemblance to those in Alco.

The "special interest" exception of Alco was based upon the plaintiffs' status as members of a "well defined" and "sharply limited" class of "preferred beneficiaries" of a foundation which sought to challenge the dissolution of the subject foundation (Id. at 465-66). Such dissolution would have resulted in the plaintiffs' loss of a preferred right to benefits from the foundation as well as their ability to obtain any funds from the proposed transferee foundation. Under these specific circumstances, the class of intended beneficiaries of the foundation was given standing to challenge its dissolution.

Here, movants seek to intervene on behalf of dog welfare charities. However, they are no more than a class of possible

beneficiaries to whom, we have assumed for argument's sake, the trustees should give "special emphasis" in making grants. The grantor did not specifically earmark funds for movants' benefit as was the case in Alco, where the trust instrument gave the individual plaintiffs absolute priority to the foundation's income. Further, unlike in Alco, each member of the class here cannot expect to obtain funds simply by applying and qualifying for a distribution. Nor can it be said that dog welfare charities would be at risk of being eliminated altogether as possible beneficiaries of the trust as was the case in Alco. Indeed, even under the Decision, the trustees have absolute discretion to make grants to all qualified charities, including dog welfare charities.[9] Accordingly, whatever interest dog welfare charities may have in the trust, it cannot be equated to the "preferred interest" of, and the imperiled stake to be protected by, the class of intended beneficiaries in Alco.

Moreover, far from being "sharply defined and limited in number," the proposed class of possible beneficiaries here appears to include all animal welfare organizations that serve "fundamentally charitable purposes." There is no requirement that the activities of a member of the class be limited to the welfare of dogs since none of movants' charitable missions is so limited.

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[9] Movant ASPCA, for example, received a $100,000 grant from the trustees in April 2009.

Nor is there any indication as to how much or how little of a charity's activities must be devoted to "the provision of care of dogs" in order for it to qualify as a class member. Although movants attempt to downplay the breadth and size of the class, the class's proportions remain unclear and problematic. Thus, for example, the class might - or might not - include veterinary hospitals and universities conducting relevant research and might - or might not - be geographically restricted to the United States. These unanswered questions underscore the fact that movants cannot reasonably claim to represent a class of potential beneficiaries that is "sharply defined and limited in number" (Alco, 64 NY2d at 465).[10]

The size of the class and specific criteria to define it were important considerations for the Alco Court and for good reason. When a class of beneficiaries is not easily identifiable and the number of beneficiaries is large and uncertain, it is inevitable that procedural problems will arise, including those related to class representation and the binding effect of rulings by the court. Here, we have assumed that movants are appropriate

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[10] The only other case movants cite in support of their argument that the "special interest" exception in Alco supports intervention is a decision from the District of Columbia Court of Appeals, Hooker v Edes Home, 579 A2d 608 [1990]. However, that case is distinguishable for myriad reasons, including that, in Hooker, specific criteria defined and limited the class and the record and the nature of the action demonstrated just how limited in number the class actually was.

representatives of the class. Nonetheless, the record already reflects tension over which animal welfare charities are suitable class representatives. Although the original movants, The Humane Society, the ASCPA and Maddie's Fund, asserted that they were "uniquely suited" to protect the interests of dog welfare charities and that they had broad support among the class, at least one charity, D.E.L.T.A. Rescue, did not share that view. D.E.L.T.A. Rescue sought to intervene as well, claiming that the original movants "are by no means representative of what is probably the largest segment of that community: hands on animal rescue and care organizations" and "are removed from direct involvement 'related to the provision of care for dogs'."[11]

Movants suggest in a footnote in their reply memorandum of law that any concern that a ruling by this court would be binding on all possible class members is easily remedied. They contend that the court could simply exercise its authority under what movants term the "broad mandate" of SCPA § 2101(4)[12] to fashion a class and certify movants as class representative under the CPLR. Whether or

[11] It is noted in this regard that I-Speak, "an organization that provides for the care of dogs, as well as other animals," wrote to the court and asked the court to "hold the [underlying] Petition in abeyance" in order to permit I-Speak "to intervene as a party, or, in the alternative to file an amicus curiae brief." The court did not hold the matter in abeyance and I-Speak never sought to intervene or file an amicus curiae brief.

[12] SCPA § 2101(4) permits the court in a Miscellaneous Proceeding to "grant appropriate relief, grant or deny the relief in whole or in part upon such terms as it deems proper and make such decree or order as justice shall require ...."

not SCPA § 2101(4) could ever be employed for this purpose, the fact that such an exercise might be required (if intervention were permitted in a situation such as this) supports the necessity of the Attorney General's representative role.

Perhaps because, as noted above, inadequate representation is the central requirement of CPLR § 1012(a), movants also attempt to cast Alco as a case involving a conflict of interest of the Attorney General in representing the employees' interests, on the one hand, and, on the other, the broader class of charitable beneficiaries who might have benefited from the new charitable entity. On that basis, movants proffer that the Attorney General has an "irreconcilable conflict" in representing dog welfare charities simultaneously with all other charities. However, as discussed above, the basis for the Court's decision in Alco was not that the Attorney General was unable to represent the class of "preferred beneficiaries" adequately. Indeed, the Court did not address considerations of, or imply that, any such conflict factored into its decision.

That is not to suggest that the Attorney General can never have a conflict of interest that would render him unable to carry out the authority granted by the Legislature under EPTL § 8-1.1(f). However, contrary to movants' contention, the other case upon which movants rely in this regard, Consumer Union of U.S., Inc. v State of New York (5 NY3d 327 [2005]), is inapposite. There, the Court

of Appeals granted limited standing to subscribers to bring an action challenging an insurer's conversion to for-profit status. However, the Court's ruling was not based upon a conflict of interest arising from the Attorney General's representation of potential beneficiaries. Rather, the Court recognized that, because the Legislature had passed a law permitting the conversion, which the Attorney General was obligated to defend, the Attorney General was in a "unique position" amounting to an untenable quandary (Id. at 353-54). In contrast, there is no legislation here that would compromise the Attorney General's ability to represent the interests of all potential charitable beneficiaries.

By conferring authority on the Attorney General to represent all possible unnamed charitable beneficiaries, the Legislature necessarily acknowledged that representation of competing charitable concerns is not a basis for disqualification (see EPTL § 8-1.1[f]; Matter of May, 213 AD2d 838 [3rd Dept 1995]). The fact that among the unnamed charities is a class (dog welfare charities) that we are assuming arguendo may have a greater interest in the trust funds than other charities does not create an "irreconcilable conflict" requiring intervention as movants suggest. As noted above, the only conflict case cited by movants (i.e., Consumer Union), did not involve a conflict among competing charitable concerns. Further, Alco arguably involved the very type of

conflict of interest movants argue is present here, but the Court in that case did not confer standing on that basis.

Movants insist that the policy reasons for limiting standing would not be undermined by permitting intervention here. Despite their protestations, it is clear that allowing them to intervene would invite the very type of needlessly onerous litigation that EPTL § 8-1.1(f) was established to prevent. The Attorney General's representative role would be substantially diminished because the circumstances in which a charity or group of charities could arguably seek intervention would be vastly expanded. And certainly, if this court were to recognize a conflict of interest under the circumstances here, it would open the door to claims of inadequate representation whenever the Attorney General took a position that might be viewed as favoring one unnamed charity or group of charities over others. In other words, the rule could be swallowed by the exception, and the legislative purpose inherent in the statute would be readily lost in the process. These ramifications are indeed troubling.

Finally, movants suggest that the Attorney General has failed "to fulfill his obligations" in this matter and that they, therefore, should be allowed to intervene to ensure that Mrs. Helmsley's charitable intent (to favor dog welfare charities) is honored. This argument fails as well.

It is initially observed that the underlying proceeding in which movants seek to intervene involved an inquiry into the meaning and effect of the trust instrument and related documents. No one, movants included, has suggested that such an inquiry called for resort to extrinsic evidence. Indeed, movants' arguments on this motion are premised on the contention that the face of the relevant documents clearly expressed Mrs. Helmsley's intent that the trustees give "special emphasis" to dog welfare charities. The Attorney General addressed this legal issue on behalf of the ultimate charitable beneficiaries and presented to the court, based upon the language of the trust document, his position, namely that Mrs. Helmsley intended that her trustees have absolute discretion to make charitable grants to all charities, including animal welfare charities.

Despite their position in this regard, movants still assert that the Attorney General had an obligation to go beyond the four corners of the relevant documents. They fault the Attorney General because there is nothing "in the public record to suggest that the Attorney General conducted any probing inquiry of the Trustees or the relevant papers under their custody to gain a better understanding of relevant facts and circumstances." Notably, movants do not indicate the nature of what such "probing inquiry" might entail, what important information it would have revealed, or what significance such information might have had to a construction

issue where no one is disputing that the intent of Mrs. Helmsley could be discerned from the plain language of the documents.

Matter of Martin v Lefkowitz (40 Misc 2d 857 [Sup Ct, NY County 1963]), upon which movants rely, does not support their position.[13] Martin involved a settlement agreement which would have diverted funds from a charitable gift. The issue was whether the Attorney General, representing one or more charitable beneficiaries, had entered into the agreement without diligent inquiry or investigation. The court determined that the Attorney General's actions were subject to review by the court. However, the obligations of the Attorney General in determining whether a settlement is appropriate cannot reasonably be equated with his obligations when called upon to weigh in on a purely legal issue.

Nor does Smithers v St. Luke's-Roosevelt Hospital Ctr. (281 AD2d 127 [1st Dept 2001]), upon which movants also rely, support their contention that intervention is appropriate here. That case involved the question of donor standing where the donor had no reversionary interest. The court permitted the fiduciary of the donor's estate to intervene to enforce the terms of a charitable

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[13] Movants also cite cases outside this jurisdiction to support their position that the Attorney General failed to carry out his duties in this matter and thus intervention is appropriate. However, none of these cases involved a matter even remotely similar to the one here and therefore none offers any assistance to movants in this regard.

gift to a hospital for the purpose of establishing an alcohol treatment center. Significantly, the donor's intent was not in issue. Rather, the case concerned whether the donor's undisputed intent was actually being effectuated. Further, the fiduciary was not conferred standing as the champion of the class of beneficiaries who would benefit from the treatment center. Instead, the court found that the donor's fiduciary was in a better position than the Attorney General to enforce the terms of the donor's gift. The court specifically noted that "the general rule barring beneficiaries from suing charitable corporations has no application to [the fiduciary]" (Smithers, 281 AD2d at 138).

Here, the fact that the Attorney General ultimately took a position with which movants disagree does not demonstrate that he failed to fulfill his obligations. Nor does it demonstrate that he thereby had a conflict preventing him from carrying out his role. This is not to disregard the reply affidavit of William Josephson, a former head of the New York Attorney General's Charities Bureau, who offers "evidence as an expert in support" of the instant motions. However, for the reasons stated above, his reliance on Matter of Martin and Smithers is misplaced in a proceeding of this nature. Similarly, his contention that the Attorney General failed to construe the terms of the trust "thoroughly or correctly" is without merit. Such position appears to be premised solely upon Mr. Josephson's conclusion that Mrs. Helmsley's intent, as gleaned

from the trust instrument, does not give the trustees absolute discretion to make charitable grants, but rather, requires them to give "special emphasis" to dog charities. Nor do we agree with Mr. Josephson that the Attorney General failed to carry out his duties because he did not discuss the issues raised in the petition with dog welfare charities before submitting his response to the trustees' petition. Similarly, it cannot be said that, for purposes of the trustees' proceeding for "advice and direction", it was one of the Attorney General's duties to seek some accommodation between dog welfare charities and the trustees.

In this regard, a case that movants do not cite, Stout v Christie, Manson & Woods International, Inc. (246 AD2d 346 [1st Dept 1998]), is instructive. There, a Supreme Court Justice sua sponte appointed an independent counsel to represent the ultimate beneficiaries of the Maplethorp Foundation. The Appellate Division, First Department, reversed, finding that the court "exceeded its statutory authority in appointing an independent counsel to represent the Foundation's potential beneficiaries" (Id., at 346, citing Matter of May, 213 AD2d 838 [3d Dept 1995]). This was so even though the court sympathized with the "court's frustration concerning the apparent conflict of interest underlying the individual plaintiff's pursuit of this potentially protracted litigation in his capacity as the executor of the estate, as well as concerning the failure of the Attorney General's Office to take

a more active role in protecting the Foundation ...." (Id.). The Stout decision is, if anything, more fatal to a would-be intervenor's position because here, unlike in that case, there has been no demonstrated failure on the part of the Attorney General to carry out his duties.

The clear (and self-serving) implication of many of movants' arguments is that the court could not adequately evaluate the construction issue because it did not have the benefit of movants' participation in the proceeding. But movants do not (and cannot) deny that all of the relevant documents were before the court, and construction is to a Surrogate a familiar exercise.

Based upon the foregoing, movants' motion to intervene under CPLR § 1012(a)(2) is denied. Similarly, their motion for permissive intervention under CPLR § 1013 is denied in the court's discretion since, as established above, the Attorney General is the appropriate representative for unnamed potential charitable beneficiaries of the trust under EPTL § 8-1.1(f)(see Matter of May, 213 AD2d 838, supra).[14]

Finally, we address briefly movants' contention that this court lacked jurisdiction to render the Decision. First, the argument

[14] Petitioner's also argued that their participation in the proceeding is required under the rules governing the joinder of parties (CPLR § 1001[a] and CPLR § 1003). As a consequence of the above, movants arguments in this regard fail as well.

that the court lacked jurisdiction because dog welfare charities were not a party to the proceeding fails for the reasons stated above. Second, movants' argument that the underlying proceeding brought by the trustees' pursuant to SCPA § 2107 did not raise a genuine dispute between the parties not only is conjecture but also ignores the nature of the proceeding and the fact that the Surrogate's Court exercises "full and complete general jurisdiction in law and in equity to administer justice in all matters relating to estates [which includes trusts under SCPA § 103] and the affairs of decedents" (SCPA § 201[3]; see also N.Y. Const. Art. VI 12(d); Matter of Piccione, 57 NY2d 278 [1982]).

Moreover, even assuming for argument's sake that the trustees should not have proceeded for "advice and direction" under SCPA § 2107, but rather, should have sought a construction of the trust agreement under SCPA § 1420, this fact would not render the court without jurisdiction over all necessary parties. The parties over whom jurisdiction must be obtained are identical in both proceedings (compare SCPA § 2107 and SCPA § 2101 with SCPA § 1420). Furthermore, a petitioner's choice of remedy is not binding given the court's broad discretion to convert proceedings under SCPA § 202 to address issues more appropriately. Here, regardless of how the proceeding was styled, the Decision makes clear that the court examined the documents at issue and determined the grantor's

intent from the language therein, which is what the trustees requested and which is a remedy the court has jurisdiction to give.

Based upon the foregoing, the motions to intervene are denied in their entirety. This decision constitutes the order of the court.

S U R R O G A T E

Dated: April 15, 2011