

Conversation with Elyse Kirschner 1/23/12 re calculation of the annual art rental payment:

Calculation has been based on the S/T AFR rate that would be paid on a demand note with the thesis that the trust can demand the art back at any time.

There is, however, some concern that the \$\$ paid in recent years given the extremely low short term rate environment, especially 2011 and 2012, is too little. Carlyn & Elyse have several other clients with substantial art holdings and similar rental agreements. There is no "market" to check for an 'appropriate' rental rate. Several clients also pay the S/T AFR, a couple pay 4% which was set sometime in history. They happen also to have 2 clients currently in the midst of an IRS audit. The rental agreements were some of the documents the auditor requested. The IRS has been very, very slow in process but when these audits are finished Elyse promised to give me feedback/advice based on that experience.

Eileen Alexanderson

From: Kirschner, Elyse [REDACTED]
Sent: Wednesday, November 03, 2010 11:46 AM
To: Eileen Alexanderson
Subject: art rent

*per Elyse
che to get updated appraisal
every other year*

Dear Eileen:

It's coming close to the time to calculate the art rental payments under the art loan agreements between Leon and the 1992/1988 trusts. The rent needs to be paid on 12/31, based on values as of November 30th. Are you working on getting updates values for the art?

Thanks.

Elyse

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Elyse G. Kirschner
Partner

Weil, Gotshal & Manges LLP
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[REDACTED] Direct
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Eileen Alexanderson

From: Kirschner, Elyse [REDACTED]
Sent: Thursday, June 03, 2010 11:32 AM
To: Eileen Alexanderson
Cc: McCaffrey, Carlyn
Subject: RE: art rent

It was calculated using the AFR (applicable federal rate) in effect in December 2009 for demand loans (i.e., the short-term AFR for December, .69%). This is what the art loan agreement Leon signed a few years ago says. There is no standard approach for the calculation of these types of rental payments. We could have drafted the art loan agreement to say that we should use the section 7520 rate in effect. For December 2009 this was 3.2%. If we had used the 7520 rate, the rental payment to the 1992 Trusts would have been \$1.45 million instead of the \$313,000 figure.

How we proceed depends on what Leon wants. On the one hand, from an estate planning perspective it's better for Leon to pay more rent. On the other hand, given Leon's cash flow considerations it may be better to leave the rent the way it is. We could amend the art loan agreement if Leon would rather pay rent based on the 7520 rate.

Elyse G. Kirschner, Esq.
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* * *

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From: Eileen Alexanderson [mailto:[REDACTED]]
Sent: Thursday, June 03, 2010 10:40 AM
To: Kirschner, Elyse
Subject: art rent

Elyse, after you left, I spent some time cleaning up some old items with Leon-one of which was the art rent. He questioned the \$ amt of \$313,605 because of the 4% number that you had mentioned. How was this rent calculated?

Eileen Alexanderson
 Black Family Partners, L.P.
 c/o Apollo Management
 9 W 57th Street
 New York, NY 10019
 phone: [REDACTED]
 email: [REDACTED]

6/11/2010

EFTA01128269

Eileen Alexanderson

From: Kirschner, Elyse [redacted]
Sent: Tuesday, May 11, 2010 3:15 PM
To: Eileen Alexanderson
Subject: RE: Black Art

Yes, but I still think the separate payments need to be made. In other words, the 1988 trusts and the 1992 trusts still must pay the cost to insure the paintings held by them, and then Leon must (1) pay rent to the trusts and (2) reimburse the premiums. It's a pain to move the money back and forth, but technically that's how it should be done.

Elyse G. Kirschner, Esq.
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From: Eileen Alexanderson [mailto:[redacted]]
Sent: Tuesday, May 11, 2010 11:24 AM
To: Kirschner, Elyse
Subject: RE: Black Art

Thanks Elyse, question for you though- Going back to the dialog last week re insurance premiums and the need for the Trusts to reimburse Leon for what he paid. If I am reading this correctly, the loan agreement says the borrower shall reimburse the Lenders (or the trusts) for insurance paid. Isn't this a net wash then?

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9 W 57th Street
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From: Kirschner, Elyse [mailto:elyse.kirschner@weil.com]
Sent: Tuesday, May 11, 2010 11:01 AM
To: Eileen Alexanderson
Subject: RE: Black Art

Hi Eileen:

Here are the art rental documents for the 1988 trusts. Please let me know if you have any questions.

Elyse

6/11/2010

Elyse G. Kirschner, Esq.
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6/11/2010

EFTA01128271

Eileen Alexanderson

From: Kirschner, Elyse [REDACTED]
Sent: Friday, May 07, 2010 1:00 PM
To: Eileen Alexanderson
Subject: RE: BlackArt Insurance

I think this is fine.

Elyse G. Kirschner, Esq.
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* * *

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From: Eileen Alexanderson [mailto:[REDACTED]]
Sent: Friday, May 07, 2010 11:03 AM
To: Kirschner, Elyse
Subject: BlackArt Insurance

Elyse, upon thinking through this, it seems so cumbersome for Haber to send 9 invoices which I will then have to request checks from JP Morgan. I think the following works better, let me know if it's ok Haber is waiting for me to instruct him.

“As per Jeffrey Haber, insurance purchased every year is not bought on the based of most recent appraisal or historical call but on Leon’s estimate of the current value which he interpolates from the most recent appraisal and his market knowledge. Every May, Leon indicates to Jeffrey how much insurance he wants to purchase. For the sake of practicality (ie. avoiding Haber having to issue 9 bills) Eileen will prorate the bill between Leon & Debra and the various Trusts by applying the cost per million of the annual insurance to the estimated value of the works held by the trusts. Simultaneous with Leon’s payment of the premiums, I will make transfers from the trusts to reimburse Leon.”

Also, when you send over the loan agreement instrument transmitting payment of rent for the 1988 Trusts, please send me the worksheets that supported the rent due for both the 1988 and 1992 Trusts so I have it in my file and can explain if Leon asks. I will try to get these turned around next week.

Eileen Alexanderson
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email: [REDACTED]

6/11/2010

Eileen Alexanderson

From: Kirschner, Elyse [REDACTED]
Sent: Thursday, May 06, 2010 4:04 PM
To: Eileen Alexanderson
Subject: RE: art insurance premiums

The trusts are going to be reimbursing Leon (plus interest) for premiums he paid on their behalf, correct? If the 2009 payment was made in May 2009, use .76%.

Elyse G. Kirschner, Esq.
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From: Eileen Alexanderson [mailto:[REDACTED]]
Sent: Thursday, May 06, 2010 3:30 PM
To: Kirschner, Elyse
Subject: art insurance premiums

I've gotten the art premium issue sorted out. What interest rate do I use for the one year of interest due on last year's premiums we are just reimbursing now? Thanks

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6/11/2010

EFTA01128273

Eileen Alexanderson

From: Eileen Alexanderson
Sent: Friday, March 05, 2010 2:55 PM
To: 'Kirschner, Elyse'
Subject: Black Art
Attachments: US_ACTIVE_2009 Art Rental Payment to 1992 Trusts_43265799_1.DOC; Artwork Spreadsheet_23479187_3.XLS; Leon Black to do Items re_Art_#1554876.DOC

Hi Elyse, I hope to be sitting down with Leon to have him sign off on some of our open items. I have the attached Art loan agreement which cites \$313,605 to be transferred as rent for 2009. I just want to make sure my understanding of the history on this whole issue is correct. First, around the time I got here you had directed some transfers to be made to reflect insurance premiums paid by Leon that should have been paid by the trusts (attached memo). In that spreadsheet, though, there was a calculation of rent which it looks like was done based on invoice prices for the various pieces. Was any rent payment ever made? Your email below makes reference to obtaining art values for previous years to calculate rent which makes me think the answer to my question is no. If so, and we need to pay historical rent could we work update your spreadsheet to figure rent through the end of 2008? (since looking at the spreads sheets it looks like all those calculations were done through May 2007) The idea of getting year by year values is just not practical. The recent appraisal was the first in quite some time. As I indicated in a conversation we had a while ago, Melanie had been paying the annual insurance premium in one lump payment. I have to push to get a breakdown and have the appropriate premiums paid from the trusts. But I assume I should be looking to do the same for premiums June '07 thru Dec '09. Am I correct? It looks like Melanie pays the premiums in May every year so I will try to get in front of it for this year and going forward. Thanks, it will be good to get past this issue.

Eileen Alexanderson

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From: Kirschner, Elyse [mailto:[REDACTED]]
Sent: Wednesday, January 27, 2010 4:45 PM
To: Eileen Alexanderson
Subject: 1992 trusts

Dear Eileen:

Attached for signature is an instrument in connection with Leon's payment of rent to the 1992 trusts in connection with the art loan. Once this is signed, we should see if we can obtain art values for previous years in order to calculate rent payments for those years.

Please let me know if you have any questions.

Elyse

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* * *

3/5/2010

EFTA01128274

exempt from the claims of your creditors. We would like to discuss this insurance option with you further.

Black 2006 Family Trust

The Black 2006 Family Trust Agreement (the "2006 Family Trust Agreement") includes provisions requiring that all operating income earned with respect to Apollo interests held in the Black 2006 Family Trust (the "2006 Family Trust") be distributed to you. As we have discussed, this provision likely will cause the assets in the 2006 Family Trust to be included in your gross estate under a provision of the Internal Revenue Code that requires inclusion of all transferred assets if the transferor has retained (for a period that does not end before his death) the right to receive the income from the transferred assets.

When we met with you and Debra in March, we discussed ways to deal with this potential estate tax problem. We outlined with two possible solutions. First, the independent trustees could amend the 2006 Family Trust Agreement to eliminate your right (or a portion of your right) to the income from the 2006 Family Trust. Second, you could sell your right to receive the Apollo operating income generated inside the 2006 Family Trust to the Black Family 1997 Family Trust (the "1997 Family Trust") in exchange for an annuity to be paid to you each year by the 1997 Family Trust. Duff & Phelps was engaged several months ago to estimate the value of this income stream payable to you from the 2006 Family Trust. This appraisal is necessary in order for us to evaluate the proposal and, if you decide to go forward with it, to complete the paperwork necessary to document this transaction. Eileen and Elyse recently spoke with representatives of Duff & Phelps, who have confirmed that they will be finalizing this appraisal shortly.

Wills and Revocable Trust Agreements

Several months ago we prepared and sent you draft Wills and revocable trust agreements for you and Debra. Your existing Will, executed in 1997, no longer reflects your current testamentary intent. Please let us know if you have any questions or comments about these drafts. One of the outstanding issues in connection with these documents is the choice of a corporate trustee after the death of the survivor of you and Debra. Eileen and Elyse have interviewed representatives from Bessemer Trust Company, Wilmington Trust Company and JP Morgan Private Bank to get information from them about the services they provide, and are ready to discuss these choices with you.

Amendment of Trust Agreements

Several months ago we prepared and sent you draft amendments to the 2006 Family Trust Agreement and the 1997 Family Trust Agreement. These amendments, if made by the independent trustees serving under these trust agreements, would change the provisions of the separate trusts for your children that will be set up after the death of you and Debra. Specifically, once the trust agreements are amended each child will have two separate trusts, one over which he or she will have effective control (to hold 25% of his or her share of the assets set aside for him or her) and one over which a corporate trustee to be selected by you will have control (to hold 75% of his or her share of the assets set aside for him or her). At our meeting in March, we discussed some possible additional changes to these trust agreements. If these amendments seem appropriate to you, we will discuss them with the independent trustees.

Marital Trust for Debra

When we met in March, we discussed the possibility of your transferring assets to a marital trust for Debra. At the time, you decided that you would transfer \$50 million worth of art that you would identify to this marital trust. Creating the marital trust will provide Debra

with an asset base of her own. An incidental benefit of the creation and funding of this trust is the protection it should provide against claims of your creditors in the unlikely event that such claims should arise. We prepared a draft of a marital trust agreement several months ago and sent it over to you for your review.

Art Held in 1992 Trusts

As we discussed at our meeting back in March, you should be paying rent to the 1992 trusts in connection with the art owned by those trusts that is used by you. The payment of rent should prevent the art from being included in your gross estate for estate tax purposes at your death. It will also enable you to pass additional assets to your children free of transfer tax. In order to calculate the amount of rent payable for both past and current usage, we need to have current valuations for the art held by these trusts. Please send us copies of any recent art appraisals you have so that we can do these calculations and prepare the appropriate documents.

* * * * *

We would like to set up a time to meet with you, Debra and Eileen to discuss these issues further and continue the estate planning work we have already done. We will call your office to make an appointment.

CSMcC/EGK

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