

**IN THE COURT OF COMMON PLEAS OF
DAUPHIN COUNTY, PENNSYLVANIA**

MILTON PURCELL, et. al.,	:	CIVIL DIVISION
PLAINTIFFS	:	
	:	NO. 2005-CV-0463-EQ
	:	
v.	:	
	:	AMENDED MOTION FOR
MILTON HERSHEY SCHOOL	:	PRELIMINARY INJUNCTION
ALUMNI ASSOCIATION, JOHN RICE	:	
AND JERRY WATERS,	:	
DEFENDANTS	:	

**DEFENDANTS' ANSWER TO PLAINTIFFS' AMENDED MOTION FOR
PRELIMINARY INJUNCTION**

Defendants, Milton Hershey School Alumni Association (“MHSAA” or the “Association”), John Rice (“Rice”) and Jerry Waters (“Waters”), (collectively referred to as “Defendants”) respond to the Plaintiffs’ Amended Motion for Preliminary Injunction as follows:

1. Denied as legal conclusions and/or as argument requiring no response. To the extent any further response is required, Defendants respond as follows:

Plaintiffs’ action, brought pursuant to 15 Pa.C.S.A. §5793, arises from a series of decisions taken by the Officers and Directors of the Milton Hershey School Alumni Association (MSHAA) during meetings held on November 14, December 19, and December 26, 2004. These decisions, concerning the eligibility and qualification of certain individuals to be voting members of the MHSAA Board, were all fully within the bounds of Pennsylvania law and in compliance with the MSHAA By-Laws (the “Bylaws”). The statutory remedy provided to Plaintiffs under section 5793 alone defeats their claim for a preliminary injunction, as they have an adequate remedy at law.

Plaintiffs' action is constructed on weak legal arguments, in some cases plainly admitted, while nonetheless seeking dramatic preliminary and permanent injunctive relief and affirmative action by this Court, and an abrupt sweeping aside of virtually all of MHSAA's current leadership, in a way that would jarringly disrupt MHSAA's ongoing business. Plaintiffs fail to articulate even a scintilla of the irreparable harm necessary to sustain their injunctive request, but on the contrary, grave harm would be caused to MHSAA if Plaintiffs' requested relief were granted. Greater injury to MHSAA by granting a preliminary injunction and the absence of any showing of irreparable harm are fatal to the relief the Plaintiffs now seek.

Plaintiffs' action is no more than a long-shot effort to complete a powerplay earlier initiated by them, in the hopes of allowing a small, and in some cases financially interested, faction of alumni to seize control of MHSAA's Board, and to thereby radically alter MHSAA's policies in a way that contravenes alumni wishes but brings personal rewards to certain Plaintiffs. Having thus far failed to get their way through rule violations, election misconduct, and rank intimidation and bullying, Plaintiffs now take their exertions to this judicial venue, in the hopes of better luck. That Plaintiffs rejected all reasonable compromise offers while engaging in acts that establish unclean hands, and nonetheless haul MHSAA into court here to resolve publicly disputes that ought to have been resolved internally with discretion and decorum, only underscores the irresponsibility of Plaintiffs, whose very averments in their Complaint are rife with error that more careful review would have revealed prior to filing.

When examined carefully, however, the alleged "misconduct" of the MHSAA Board on which Plaintiffs construct the edifice of their legal claims collapses out from under them, leaving only the question of why these arguments were ever even presented here. Rather than demonstrating that Plaintiffs are likely to prevail on the merits and that irreparable harm will

flow from a denial of their injunctive request, examination of Plaintiffs' claims and their related conduct shows that Plaintiffs' claims are baseless, and that any irreparable harm that might occur here would be only as a result of granting this group the control that they have sought to wrest from MHSAA's duly-elected leaders.

To the extent Plaintiffs seek immediate relief based upon the current Board of Directors taking action pursuant to the Resolution properly adopted at the meeting of December 26, 2004, Defendants specifically aver, and so stipulate, that no action will be taken under this Resolution until, and if still necessary, after resolution of the instant dispute. Defendants aver further, that it should be noted that this Resolution specifically only authorizes action *if and as permitted by applicable law*.

In light of the above, Plaintiffs cannot demonstrate any clear right to relief and their request for preliminary relief must therefore be denied.

2. By way of response, Defendants hereby incorporate their responses to the Plaintiffs' Complaint as though the same were fully set forth herein at length.

3. Denied. By way of response, Defendants hereby incorporate their responses to the Plaintiffs' Complaint as though the same were fully set forth herein at length. By way of further response, Defendants aver that all times material hereto, the seating of Officers and Directors of the Association were done in accordance with the Bylaws of the Association, and not in contravention of them, as the Plaintiffs would now have this Court order.

4. Denied. As more fully described in the Defendants' Answer to the Plaintiffs' Complaint, all of the named Plaintiffs in this paragraph were either seated or denied Officer or Director status in the Association in accord with the Bylaws of the Association. Specifically, Plaintiffs Gaughan and Heath were never elected as Officers of the Association by Directors

entitled to cast votes for officer elections. Plaintiff Purcell was an elected '04 Director, but was not allowed to vote at the November 14, 2004 meeting for 2005 Directors, because his purported election as a 2005 Director was ruled a sham due to flagrant election irregularities. After a proper election was then held prior to the December 19, 2004 meeting, Purcell was elected and permitted to vote at the December 19, 2004, and all subsequent meetings as an '05 Director. Plaintiff Campbell does not possess any right to vote as a Director of the Association, since Campbell, at best, is only an Honorary member of the Association, and as such, under the Association Bylaws, cannot vote as a Director. Plaintiffs Deitrich, Fink, and Dietrich, have not been denied any right to vote, as their claimed status as "Directors Emeritus" is not authorized within the Bylaws, and if authorized, long ago expired before the November 14, 2004 meeting. The Bylaws do not provide for voting rights of Emeritus Directors except in the case of the immediate past president of the Association. All remaining averments in this paragraph are denied.

5. Denied. The current members of the 2005 Board of Directors are constituted as provided for and as elected under the Association's Bylaws, and as such, are the lawfully elected representatives of the Association to represent the members of the Association. It is denied that the current Board of Directors carries out policies inconsistent with the majority of the members of properly selected Directors. To the contrary, it is the Plaintiffs who do not represent the majority of the members or Directors, but instead, are plagued with conflicts of interests, breaches of fiduciary duties, and loyalties to others that are not consistent with the mission statement or business of the Association, illustrated by recent claims to support MHSAA policies they have worked for two years to undermine. All remaining averments are denied.

6. Denied. To the contrary, Plaintiffs cannot be deprived of any status to which they are not entitled. Rather, the granting of an injunction would deprive the current and properly constituted Board of Directors and Association Officers of their status, would change the status quo, and cause great disruption and harm to the Association and its business.

7. Denied. By way of response, Defendants incorporate their response to paragraph 5 as though the same were set forth herein at length.

8. Denied. To the contrary, and for all those reasons set forth in the Defendants answer to the Plaintiffs' Complaint, Plaintiffs have little to no likelihood of success in this matter, unless the Bylaws of the Association and the statutory law of this Commonwealth are rewritten to benefit the Plaintiffs. Further, the Plaintiffs claim to preliminary and permanent relief must be denied because the Plaintiffs claims are barred by the doctrine of "unclean hands". Specifically, Plaintiffs' hands are not clean, as more fully described in the Defendants' answer to Plaintiffs' Complaint, which include at least the following:

- a) Plaintiffs violated MHSAA election rules for at large members with an unauthorized mass mailing to the Alumni Association membership;
- b) Plaintiffs somehow utilized the MHSAA database membership list, a proprietary and valuable asset of MHSAA, without permission of MHSAA, to further their attempted takeover of MHSAA;
- c) Plaintiffs were instrumental in causing Chapters or purported Chapters to fail to hold fair elections or any elections at all for Chapter Representative so as to defeat the will of Chapter members;
- d) Plaintiffs have used threats of financial and physical harm to defendants and other members of the MHSAA Board in an attempt to obtain the relief requested in their Complaint including personally naming Waters and Rice defendants for no reason apparent from their Complaint other than to intimidate;

- e) Plaintiffs coordinated with the Milton Hershey School (“MHS”) on matters adverse to MHSAA’s interests to allow MHS to take punitive actions against MHSAA and to create Alumni dissension, such as causing MHS contractors to sponsor a Hershey-located Homestead Chapter event instead of an MHSAA event, to deny access to the Homestead for MHSAA meetings, to terminate relations with MHSAA and refusing to reinstate them unless certain of Plaintiffs’ demands were met, and to evict MHSAA from MHS Trust property, all in furtherance of their goals to takeover MHSAA.
- f) Plaintiffs counsel acknowledged to a member of the MHSAA Board that the Honorary Chapter was not a proper chapter, but made a contrary claim in the Complaint;
- g) Plaintiffs seek in this action to increase the number of directors over that provided in the Bylaws merely so that they can gain control of MHSAA, and accede to the desires of MHS, which is the employer of two Plaintiffs, and the purchaser or prospective purchaser of goods or services from two other Plaintiffs or their relatives, to render MHSAA powerless to serve its purposes of independence, vigilance toward the Deed of Trust, and structural reform of the MHS Trust through all necessary measures including litigation; and
- h) Plaintiffs are in many cases hopelessly burdened with conflicts that compromise their ability to exercise their fiduciary duty, whereas the non-plaintiff directors have no such conflicts.

9. Denied. To the contrary, if an injunction is granted, great and immediate harm will come to the Association. The current business being pursued by the Association, which would be disrupted by the issuance of an injunction against the Association, includes the following:

- (a) MHSAA is successfully organizing, together with the MHS, the upcoming Alumni Senior Fellowship Dinner, an annual event held for the Milton Hershey School senior class.
- (b) MHSAA is in the midst of sending out its latest newsletter, recently completed, while planning a special edition to announce the recent appellate victory so important to virtually all alumni other than Plaintiffs.
- (c) MHSAA is currently organizing its largest annual fundraiser, the Heritage Golf tournament, scheduled for May 20, 2005.

- (d) MHSAA is working with the Philadelphia Chapter in organizing that Chapter's annual golf tournament, scheduled for the end of April.
- (e) MHSAA is in the process of an ongoing effort to help a critically ill alumna and her severely disabled child.
- (f) MHSAA is continuing to operate the Association's website, the electronic town square for alumni from all generations.
- (g) MHSAA is expanding its Young Graduate Committee outreach and related Young Graduates' website, under the leadership of Chris Ortiz.
- (h) MHSAA is expanding an outreach program to alumni in crisis, under the leadership of Director Dr. Chuck Hill, the New York Chapter Representative.
- (i) MHSAA is preparing to defend its landmark Commonwealth Court ruling against challenge by the OAG and MHS at the Pennsylvania State Supreme Court.

Moreover, while Plaintiffs have summarily pled irreparable harm, they have not set forth any specific instances of irreparable harm to support the granting of an injunction, let alone one on a preliminary basis.

There is nothing irreparable that would occur if the duly-elected 2005 Board, as determined by the Association, is allowed to conduct business. The Association conducts annual elections of four at large members, which will occur again in September 2005. Officers are reelected in November of each year for the following year. Any supposed will of the majority will express itself in this next cycle of elections. Moreover, absent this litigation, eight of the Plaintiffs (as well as Francine Serafin, whose support Plaintiffs claim they have) are current voting members of the 2005 MHSAA Board, seven of whom will be on the 2006 MHSAA Board and eligible to vote for the next slate of officers. All remaining averment are denied.

10. Denied. The statutory provision under which Plaintiffs have filed this action, 15 Pa. C.S.A. §5793, provide Plaintiffs an adequate and orderly legal remedy for redress of their alleged claims.

11. Denied. In fact, expedited consideration of the Plaintiffs' request for preliminary relief has not been granted and no irreparable harm as alleged by the Plaintiffs has occurred, thus demonstrating that the need for immediate relief is not only unnecessary, but also not legally warranted.

Respectfully submitted,

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