

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

MILTON PURCELL,	:	
ETHEL CAMPBELL,	:	CIVIL DIVISION
GRAHAM MCINTYRE,	:	
IVAN DIETRICH,	:	NO. 2005-CV-0463-EQ
RALPH FINK,	:	
HARVEY DEITRICH,	:	
GIRARD GAUGHAN,	:	
HARRY HEATH,	:	
ROBERT PATTON,	:	
GERALD LONG,	:	COUNSEL OF RECORD FOR PLAINTIFFS
JUNIOR VIA,	:	
RICHARD MATTIS,	:	Allen C. Warshaw
CHRISTINE COOK, and	:	Pa. I.D. No. 17145
ROBERT HEIST,	:	
	:	KLETT ROONEY LIEBER & SCHORLING
PLAINTIFFS	:	240 N. Third Street, Suite 700
	:	Harrisburg, PA 17101
vs.	:	(717) 231-7700 PHONE
	:	(717) 231-7712 FAX
MILTON HERSHEY SCHOOL	:	
ALUMNI ASSOCIATION,	:	
JOHN RICE, and	:	
JERRY WATERS	:	
	:	
DEFENDANTS	:	

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Pennsylvania Rule of Civil Procedure 1035.2, Plaintiffs move for summary judgment in their favor on the grounds that there is no genuine issue of material fact as to a necessary element of their cause of action or any defense which could be established by further discovery and, based on the undisputed facts, judgment should be entered in their favor. In support of their Motion, Plaintiffs assert the following:

1. Plaintiffs filed this action pursuant to 15 Pa.C.S.A. §5793 in order to seek judicial review of certain actions taken by the Officers and Directors of the Milton Hershey School Alumni Association (“MHSAA”), a Pennsylvania non-profit corporation. Specifically, Plaintiffs sought judicial review of the election of certain Officers and the removal of certain Directors which took place at meetings of the Board of Directors held on November 14, December 19 and December 26, 2004.

2. At those meetings, the two individual Defendants, on behalf of MHSAA, took every possible step, legal and illegal, to preserve their control of the MHSAA Board. When one measure (such as illegally disenfranchising three Chapters) was not sufficient to achieve that end, they invented others, one after another, until they did achieve their goal. Most, if not all, of their actions were illegal and deprived both the members of MHSAA and properly elected or selected members of the Board their right to a vote and a voice in how MHSAA is to be governed.

3. Defendant Milton Hershey School Alumni Association (“MHSAA”) is a non-profit corporation with approximately 5500 members, including Alumni of the Milton Hershey School, as well as honorary and associate members who are not alumni of the school. Heist Aff. Para. 1. The Affidavit of Robert Heist is attached hereto as Exhibit “A.”

4. The other two Defendants are its immediate Past President, John Rice, and its President, Jerry Waters. Heist Aff. Para. 2.

5. Plaintiffs are properly elected members of the Board of Directors of Milton Hershey School Alumni Association and include several properly elected Officers of the Association.

6. Under the By-Laws of MHSAA (the “By-Laws”), not less than one-half of the members of the Board of Directors are to be elected by the membership at annual meetings.

Article III, Section 2.

7. At present and at all relevant times, there were twelve (12) members of the Board of Directors elected by the membership. Heist Aff. Para. 3. There is no dispute about the right of those Directors to serve on the Board.

8. In addition, the By-Laws provide that members of the Association may, with the approval of the Board of Directors, form Chapters which are then to elect a Representative to serve on the Board of Directors by appointment. Article X, Section 1.

9. There are presently eight (8) approved Chapters: Homestead, Honorary, Lancaster, Delaware Valley, Harrisburg, New York, Philadelphia and Washington D.C. Heist Aff. Para. 4.

10. Defendants disallowed the votes of three of those representatives at the Association’s organizational meeting. They subsequently removed one of those representatives from the Board. Heist Aff. Para. 8-9; Plaintiffs’ Hearing Exhibit 2.

11. During the relevant time period, the Board of Directors also included three Emeritus Directors who had always been granted the right to vote on all matters. Article V, Section 2. Heist Aff. Para. 5.

12. The Defendants purported to remove all three of these Directors from the Board and disallow their votes in the contested organizational meeting. Heist Aff. Para.17; Plaintiffs’ Hearing Exhibit 3.

13. Finally, the Board of Directors includes the Officers of the Association, including the President, the Past-President, the Vice-President/President Elect, Treasurer, Secretary and Assistant Secretary/General Counsel. Article V, Section 2.

14. The 2004 organizational meeting of the MHSAA Board of Directors was held on November 14, 2004. Heist Aff. Para. 6; Plaintiffs' Hearing Exhibit 2.

15. Attending that meeting were twenty-six (26) 2004 Board members. Also attending the organizational meeting were the four (4) members elected by the membership to serve on the Board beginning in 2005. Heist Aff. Para. 7; Plaintiffs' Hearing Exhibit 2.

16. Not attending the meeting was Francine Serafin, a Board member who had sought to participate by phone but was not contacted by the presiding officer, Defendant John Rice.

17. Under the By-Laws, only 2005 Board members are permitted to vote for Officers. Article VI, Section 7(a).

18. During the meeting, a question was raised as to whether three of the Chapters had held proper elections to elect their Chapter Representatives. Heist Aff. Para. 8; Plaintiffs' Hearing Exhibit 2.

19. After a discussion, during which the facts were hotly contested, the 2004 Board members voted fifteen (15) to ten (10) to disallow the votes of those three Representatives: Plaintiff Milton Purcell of the Homestead Chapter; Plaintiff Ethel Campbell of the Honorary Chapter; and Plaintiff Graham McIntyre of the Washington D.C. Chapter. Heist Aff. Para. 9; Plaintiffs' Hearing Exhibit 2.

20. After the 2004 Board eliminated those votes, the 2005 Board purported to elect Officers. Heist Aff. Para. 10; Plaintiffs' Hearing Exhibit 2.

21. Chuck Welsh was purportedly elected Vice President/President Elect by a vote of eleven (11) to ten (10). Heist Aff. Para. 11; Plaintiffs' Hearing Exhibit 2. If permitted to vote, Purcell, Campbell, McIntyre and Serafin would have voted against Welsh, and he would not have been elected the Vice President/President Elect.

22. Plaintiff Girard Gaughan was elected Secretary by a vote of eleven (11) to ten (10). Heist Aff. Para. 12; Plaintiffs' Hearing Exhibit 2. If permitted to vote, Purcell, Campbell, McIntyre and Serafin would have voted for Gaughan.

23. Plaintiff Harry Heath was elected Treasurer by a vote of eleven (11) to ten (10). If permitted to vote, Purcell, Campbell, McIntyre and Serafin would have voted for Heath. Heist Aff. Para. 13; Plaintiffs' Hearing Exhibit 2..

24. Prior to electing Plaintiff Gaughan as Secretary, the Board rejected a motion to elect Chris Ortiz as Secretary and James Behren as Treasurer, both by a vote of 11-10. Heist Aff. Para. 14; Plaintiffs' Hearing Exhibit 2. If permitted to vote, Purcell, Campbell, McIntyre and Serafin would have voted against Ortiz and Behren.

25. At the November 14, 2004 meeting, the Board recognized, by a vote of confirmation, the rights of the three Emeritus Directors to vote for the 2005 Officers. As a result, their votes were recognized and included in the elections of 2005 Officers. Heist Aff. Para. 15; Plaintiffs' Hearing Exhibit 2.

26. On December 19, 2004, the Board of Directors held a special meeting. Heist
27. Aff. Para. 16; Plaintiffs' Hearing Exhibit 3.

27. During the meeting, Defendant John Rice simply announced that the votes cast by the Emeritus Directors at the November 14, 2004 organizational meeting were void ab initio because those three members served terms of only one year and their terms had expired. There was no vote on that issue. Heist Aff. Para. 17; Plaintiffs' Hearing Exhibit 3.

28. As a result of that ruling, Plaintiff Gaughan was purportedly replaced by Chris Ortiz as Secretary on the ground that the actual vote on November 14, 2004, after disallowing the votes of the three Emeritus Directors, was ten (10) to eight (8) in favor of Ortiz and ten (10) to eight (8) against Gaughan. Heist Aff. Para. 18; Plaintiffs' Hearing Exhibit 3.

29. Similarly, as a result of that ruling, Plaintiff Heath was purportedly replaced by James Behren as Treasurer on the ground that the actual vote on November 14, 2004, after disallowing the votes of the three Emeritus Directors, was ten (10) to eight (8) in favor of Behren and ten (10) to eight (8) against Heath. Heist Aff. Para. 19; Plaintiffs' Hearing Exhibit 3.

30. By a unanimous vote, the Board adopted motions permitting the Emeritus Directors and the Homestead and Honorary Chapter Representatives to vote in the future because the Homestead Chapter had held a new election and the Honorary Chapter adequately answered the questions raised about the election of its Representative. Heist Aff. Para. 20; Plaintiffs' Hearing Exhibit 3.

31. The Board failed to muster a 2/3 majority to overturn the decisions to disallow their votes and those of the D.C. Chapter for purposes of the organizational votes. Heist Aff. Para. 21; Plaintiffs' Hearing Exhibit 3.

32. Sometime during or after that meeting, John Rice announced that the Honorary Chapter was illegal and could not elect a representative to the Board, notwithstanding the fact that the Honorary Chapter Representatives had been allowed to vote on the Board since at least 2000. No vote was ever taken on that decision. Heist Aff. Para. 22; Plaintiffs' Hearing Exhibit 3.

33. He also declared that the Emeritus Directors had no status and therefore no right to vote under By-laws. There was no vote on that declaration either. Heist Aff. Para. 23; Plaintiffs' Hearing Exhibit 3.

34. The Chapter representatives of the Homestead, Honorary and Washington D.C. Chapters were improperly excluded from voting at the November 14, 2004 meeting.

35. Even if the Board had the power to review and reverse the Chapter elections, the Homestead and Honorary Chapter Representatives should be allowed to vote on June 26, 2005 because the Board restored their right to vote in 2005 at the meeting on December 19, 2005.

36. The Honorary Chapter Representative is entitled to vote on the Board of Directors.

37. The vote of the Honorary Chapter Representative was improperly revoked by Defendants.

38. The Honorary Chapter was approved in May of 1998 with the proviso that “they would have no vote at the Board meeting until the Association By-Laws are clarified.”

Plaintiffs’ Hearing Exhibit 9.

39. Shortly thereafter, Michael Weller, the Executive Director of the Association, drafted an amendment to the By-Laws which he intended to clarify the issue by letting the Honorary Chapter have the right to elect a voting representative to the Board. According to Weller, Honorary Members were intended to be eligible for Board membership, just not as elected Officers. Weller Aff. Para. 4. The Affidavit of Michael Weller is attached hereto as Exhibit “B.”

40. The first amendment Weller prepared provided that “Honorary members have all voting privileges but may not hold Board positions.” Plaintiffs’ Hearing Exhibit 10. Subsequent versions provided that “Honorary members have all voting privileges but may not hold **elected** Board positions.” (Emphasis added). Plaintiffs’ Hearing Exhibits 1, 11, and 12. In either case, Mr. Weller was clear that the intent was to grant the Honorary Chapter a voting Representative on the Board. Weller Aff. Para. 5.

41. That amendment was adopted in 1999 and is part of the current By-Laws. Weller Aff. Para. 6.

42. After the adoption of that amendment, and up until the meeting of November 14, 2005, MHSAA allowed the Honorary Chapter Representatives to participate and vote at all Board meetings subject to any other limitations in the By-laws. Weller Aff. Para. 7.

43. The Emeritus Directors are permitted to vote on the Board of Directors.

44. The vote of the Emeritus Directors was improperly revoked by the Defendants.

45. There has been no successor selected or qualified for the Emeritus Directors, Plaintiffs Harvey Deitrich and Ivan Dietrich. Weller Aff. Para. 8.

46. In the past, since at least 1988, MHSAA has had the Board of Directors select Emeritus Directors. Weller Aff. Para. 9.

47. The Board has never deemed one such Director to be replaced by another. Weller Aff. Para. 10.

48. As recently as 1999, all three Emeritus Directors were listed as members of the Board of Directors. Defendants' Exhibit 1; Weller Aff. Para. 11.

49. Until Rice's "ruling," the Board has never questioned the right of those Directors to participate and vote at Board meetings. Weller Aff. Para. 12.

50. As a result of Defendants' wrongful acts, five Plaintiffs who are members of the MHSAA Board of Directors have wrongfully been deprived of their right to vote on the Board, causing them and those who selected them to serve on the Board, including many of the Plaintiffs, irreparable harm.

51. Defendants will suffer no harm if relief is granted as they will maintain their offices and their right to vote as members of the Board of Directors.

52. Plaintiffs have no adequate remedy at law.

53. Argument is requested. Forty (40) minutes total should be adequate.

54. No discovery is required.

55. The judge assigned to this matter to date is Judge Hoover.

WHEREFORE, Plaintiffs respectfully request that this Court grant summary judgment in their favor and order that Plaintiffs Campbell, Purcell, McIntyre, Dietrich and Deitrich be permitted to vote on the MHSAA Board of Directors until removed or replaced as Directors pursuant to the MHSAA By-Laws.

Respectfully submitted,

KLETT ROONEY LIEBER & SCHORLING
A Professional Corporation

Dated: July 13, 2005

BY: _____

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240 North Third Street, Suite 700
Harrisburg, PA 17101-1503
(717) 231-7718
Counsel for Plaintiffs

**CERTIFICATE OF NON-CONCURRENCE ON
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

I, Allen C. Warshaw, counsel for Plaintiffs, have disclosed the contents of the within Motion for Summary Judgment and proposed Order to counsel for Defendants, Victor P. Stabile, who has advised that Defendants do not concur in the same.

Allen C. Warshaw

CERTIFICATE OF SERVICE

On the 13th day of July, 2005, I, Glenda K. Davidson, a secretary in the law offices of Klett Rooney Lieber & Schorling, hereby certify that I have served this day a true and correct copy of the foregoing **Plaintiffs' Motion for Summary Judgment** in the above case via hand delivery to those persons and addresses indicated below:

Victor P. Stabile, Esquire
Dilworth Paxson
112 Market Street, 8th Floor
Harrisburg, PA 17112

Glenda K. Davidson