COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

PROBATE & FAMILY COURT
DOCKET NO. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR., et al. AS THEY ARE THE FEOFFEES OF THE GRAMMAR SCHOOL IN THE TOWN OF IPSWICH

Plaintiffs,

v.

ATTORNEY GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS, IPSWICH SCHOOL COMMITTEE, and RICHARD KORB, as he is Superintendent of Schools in the Town of Ipswich,

Defendants.

PLAINTIFFS' OPPOSITION TO MOTION TO INTERVENE

For the reasons set forth herein this Court should deny all relief sought by Douglas J. DeAngelis ("DeAngelis") in his Motion to Intervene, which unverified motion was filed only after the parties to this action reported this case settled.

1. The matter should be denied due to the movant's failure to follow the requirements of Mass.R.Civ.P. 24: "The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought." (emphasis added). The movant has filed no such pleading.

2. "To intervene as matter of right under Mass.R.Civ.P. 24(a)(2), the moving party must: (1) make timely application; (2) claim an interest relating to the property or transaction which is the subject of the action; and (3) be so situated that the disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect that interest." Peabody

Fed'n of Teachers, Local 1289, AFT, AFL-CIO v. Sch. Comm. of Peabody, 28 Mass. App. Ct. 410, 412-13, (1990). DeAngelis meets none of those requirements.

3. DeAngelis' motion to intervene is untimely and should be denied.

> As to timeliness, a motion to intervene made, as here, after entry of final judgment[1] is seldom timely, although in limited circumstances of strong justification, the motion may be allowed. *Motor Club of America Ins. Co. v. McCroskey,* 9 Mass.App.Ct. 185, 187-188, 400 N.E.2d 269 (1980). *McDonnell v. Quirk,* 22 Mass.App.Ct. 126, 132, 491 N.E.2d 646 (1986). *Diaz v. Southern Drilling Corp.,* 427 F.2d 1118, 1125-1126 (5th Cir.), cert. denied, 400 U.S. 878, 91 S.Ct. 118, 27 L.Ed.2d 115 (1970). Among the things to consider are: (1) whether the applicant could have intervened earlier; (2) whether delayed intervention would prejudice the central parties in the action; and (3) the force of the applicant's particular need to intervene. *Ibid.* Smith & Zobel, Rules Practice § 24.4 (1975 & Supp.1989).
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> Peabody Fed'n of Teachers, supra, at 413.

None of those considerations apply here.

4. DeAngelis filed, on January 27, 2011, amicus papers in response to plaintiffs' motion for partial summary judgment in this action. He could have sought, but did not seek, to intervene in this action at that time.[2]

5. The central parties to this action will suffer undue, unfair prejudice if DeAngelis is permitted to intervene at this late date. The instant parties have vigorously litigated this action for over two years. After a view, argument on motions in limine, and two days of trial testimony, all parties agreed that settlement of the instant action was warranted for a variety of reasons, not the least of which was the cost of continued litigation and the loss therefrom to be

[1] As to final judgment in the instant case, all that is left for this Court to do is to enter a judgment incorporating the parties' proposed Agreement for Judgment.

[2] Any claim by DeAngelis that he relied on the e-mail of one School Committee member as justification for his late attempt at intervention is without merit because, among other things, according to the law of the case as enunciated in this Court's rulings on motions in limine, the statement of an individual School Committee member is not binding on the School Committee.

suffered by the Ipswich Public Schools. The settlement resulted from painstaking negotiations and presents a fair and reasonable outcome for the beneficiary. Reopening this action now will cause extensive delay, ultimately cost the beneficiary significant legal fees, and postpone the creation of the condominium, the sale of the condominium units, and the flow of money to the schools from the proposed endowment fund.

6. DeAngelis has no need to intervene, and, moreover, has no legally recognized interest in this action.[3] Here, as in Massachusetts Fed'n of Teachers, AFT, AFL-CIO v. Sch. Comm. of Chelsea, 409 Mass. 203, 208 (1991), wherein intervention was denied to parents of children attending the subject schools, DeAngelis has "point[ed] to no characteristic which distinguishes [him]... from all other parents and children represented by the school committee."

7. DeAngelis' reliance on Massachusetts Fed'n is misplaced. Massachusetts Fed'n involved the actual management and operation of the school system of Chelsea, the very essence of the delivery of educational services. The instant action was a contest over what asset or assets should be held by trustees so as to generate a sufficient gift for the benefit of the Ipswich Public Schools.

8. Fundamental to the Supreme Judicial Court's decision in Massachusetts Fed'n that the school committee adequately represented the parents and students of the Chelsea School System was that "[t]he record before us does not indicate that the school committee is any less dedicated than the parents to the ultimate goal of improving the quality of education in the Chelsea schools while maintaining adequate public oversight." 409 Mass. at 208. Similarly,

[3] It is not without irony that, upon information and belief, DeAngelis' child attends a private school, not a public school in Ipswich; hence the clever phrasing of the motion that DeAngelis' child is "eligible" to attend the Ipswich Public Schools next year. DeAngelis' unverified claim that he relied on "the existence of the Trust and the obligation to maintain Little Neck for the benefit of the schools in deciding to make Ipswich his home" is specious. He purchased his home in Ipswich in May of 2001, during fiscal year 2001, when the Feoffees made, as of that time, one of their largest donations to the schools, $50,000. **(Exhibit 1)** While not an insignificant amount of money, that sum could not reasonably have determined where DeAngelis would reside.

DeAngelis provides no factual record to establish that the Superintendent and School Committee have failed in their duties in the instant case.

9. In Massachusetts Fed'n, the Supreme Judicial Court explained:

> ... in a case where one party is charged by law with representing its own interests and the interests are the same as or similar to the potential intervener's, a compelling showing of inadequate representation must be made. Adequate representation is presumed. See *Morgan v. McDonough*, 726 F.2d 11, 14 (1st Cir.1984); C. Wright & A. Miller, Federal Practice & Procedure: Civil § 1909. Specifically, "[a] school board is normally deemed to represent adequately the interests of parents and children in the district." (Citing cases.) *Morgan, supra* at 14. An applicant for intervention may overcome this presumption and demonstrate inadequate representation if the applicant proves that the school board's interest is adverse to his, or that the school board has colluded with the opposing party or has failed to fulfil its duty of representation.[4] *Morgan, supra* at 14. See *Attorney Gen. v. Brockton Agricultural Soc'y, supra* 390 Mass. at 435, 456 N.E.2d 1130. (emphasis added)
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> Massachusetts Fed'n at 206-07.

10. In the instant action, the would-be intervener has made no such demonstration to overcome the presumption that the Superintendent and School Committee have adequately represented the schools.

11. The School Defendants' adequate representation of all children and parents of children in the Ipswich Public Schools did not end simply because the School Defendants agreed to settle this action. "There is no evidence in the record of collusion or of failure of resolve on the part of the defendants." Massachusetts Fed'n at 209. No one can reasonably suggest that the School Defendants failed to vigorously litigate this action or that they "bow[ed] to pressure from constituent groups other than parents of school children...." Massachusetts Fed'n at 209. Quite to the contrary, the School Defendants withstood enormous outside pressure in settling this

action. On the record in this case, there can be no doubting the good faith of the Superintendent and School Committee.

12. DeAngelis contends that he has an "interest in ensuring... that any decision to sell be made subject to the Massachusetts Open Meeting Law, G.L. c. 30A , §§ 18-25, with citizens like Mr. DeAngelis having the opportunity to voice their concerns publicly." This argument is unavailing and shows an utter lack of understanding of the Open Meeting Law. The School Committee's decision to settle by way of sale was made subject to C. 30A § 21, which section authorizes the School Committee to conduct an executive session to discuss strategy with respect to litigation and to consider the value of real property. The open meeting law does not contemplate that DeAngelis would have an opportunity to comment on the settlement of this action.

13. Finally, and perhaps most importantly, the School Defendants accomplished the very goal of the would-be intervener. In paragraph 3 of his motion to intervene, DeAngelis declared his intent and goal as: "[O]pposition to any decision regarding the sale of Little Neck before governance issues with the Feoffees are fixed." The agreed terms of settlement specifically provide that, before the first condominium unit is sold, the form of the Feoffees will change from one dominated by private persons to one dominated by public officials' appointees.

14. For the reasons set forth above and those reasons set forth in the oppositions of the other parties to this action, the motion to intervene should be denied.

Respectfully submitted,
Alexander B.C. Mulholland, Jr., et al.,
Feoffees of the Grammar School in the
Town of Ipswich
By their attorneys,

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Dated: December ____, 2011

CERTIFICATE OF SERVICE

I, William H. Sheehan III, attorney for the Plaintiffs, hereby certify that I have served a copy of the above document upon all parties or counsel of record, by mailing the same, first class mail, postage prepaid, to the following attorneys:

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December ___, 2011

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