

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss

Docket No. ES09E0094QC

ALEXANDER B.C. MULHOLLAND, JR.,)
PETER FOOTE, DONALD WHISTON, JAMES)
FOLEY, ELIZABETH KILCOYNE, PATRICK)
J. MCNALLY, and INGRID MILES, 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.

MOTION TO INTERVENE

Pursuant to Rule 24(a) of the Massachusetts Rules of Civil Procedure, Douglas J. DeAngelis hereby respectfully moves for leave to intervene as a party defendant in this action. In support of this motion, Mr. DeAngelis states the following:

1. The Feoffees of the Grammar School in the Town of Ipswich seek in their complaint to deviate from the terms of the so-called Grammar School Trust, pursuant to which the Feoffees shall maintain the land in Ipswich known as “Little Neck” for the benefit of the Ipswich Public Schools. Also pursuant to the terms of the Trust, Little Neck cannot be sold or wasted.

2. On January 27, 2011, Mr. DeAngelis filed an amicus brief in opposition to the Feoffees’ motion for partial summary judgment, in which the Feoffees sought authority to sell

Little Neck for the gross sales price of \$29,150,000. Mr. DeAngelis and the hundreds of individuals in the “Beneficiary Group” he represented were (and are) opposed to the proposed sale of Little Neck for the reasons outlined in the amicus brief.

3. Mr. DeAngelis has not previously moved to intervene because his and the Beneficiary Group’s interest – i.e., opposition to any decision regarding the sale of Little Neck before governance issues within the Feoffees are fixed – was arguably being adequately represented by the Ipswich School Committee and the Attorney General. Indeed, the School Committee has counterclaimed to change the structure of the Feoffees, citing their alleged maladministration of the Trust without any public accountability.

4. In an e-mail to Mr. DeAngelis dated as recently as November 15, 2011, the Chairman of the School Committee reiterated the School Committee’s position as follows: “There wont [sic] be any settlements that involve sale in any respect.” (Emphasis added.)

5. To the extent the School Committee and the Attorney General are now in support of the sale of Little Neck by the current Feoffees, however, and have agreed in principle to such a sale and to abandon the argument that reasonable deviation from the terms of the Trust would be impermissible, the interest of Mr. DeAngelis and the Beneficiary Group is no longer being adequately represented. In fact, there would be a direct conflict of interest.¹

6. Even if the existing parties are in agreement as to the fair market value of Little Neck, such an agreement would not answer the question of whether reasonable deviation would be permissible in the first place. And without any party to oppose reasonable deviation, the

¹ On information and belief, the 180° change in the School Committee’s position occurred at an Emergency Executive Session on Saturday, December 17, 2011. This session was not open to the public, and no notice of it was given until Friday, December 16, 2011.

question could never be fully or appropriately answered in an adversarial proceeding if intervention were denied.

7. Rule 24(a) provides for intervention by right “when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.”

8. Mr. DeAngelis has a right to intervene pursuant to Rule 24(a). First, for example, as a resident of Ipswich whose son is eligible to enter the Ipswich school system next year, Mr. DeAngelis has 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. As such, Mr. DeAngelis and many others like him have an interest in ensuring that Little Neck is actually maintained in the Trust for the benefit of the Ipswich Public Schools, or 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 an opportunity to voice their concerns publicly. If intervention were denied, his ability to protect that interest would be impaired or impeded. Second, as addressed above, to the extent the School Committee and the Attorney General are now in favor of Little Neck’s sale by the current Feoffees, his interest is no longer being adequately represented.

9. In Massachusetts Federation of Teachers v. School Committee of Chelsea, 409 Mass. 203 (1991), a group of Chelsea parents sought to intervene as defendants in a suit brought by a group of teachers' unions, teachers, and Chelsea citizens against the Chelsea school committee. The parents described their interest in the litigation as "finding a solution to the well-documented inadequacies of the current public school system in Chelsea which will provide improved educational opportunities for the students in the system," supporting the right of the

school committee to enter into educational reform, and maintaining public oversight of the project. Id. at 208. The trial court denied the parents' motion to intervene pursuant to Rule 24(a), and the Supreme Judicial Court affirmed the denial on direct appellate review, holding that the record did not reflect that any of these interests was adverse to the interests of the school committee or the committee's ultimate goal in the litigation. Id. "Although the school committee members may be motivated by somewhat different concerns in pursuing this goal, a different motive in pursuing the same ultimate goal does not constitute inadequate representation, as long as the party demonstrates the intent to litigate vigorously." Id. (emphasis added).

10. Here, in contrast, Mr. DeAngelis' goal for Little Neck to be maintained in the Trust for the benefit of the Ipswich Public Schools is now different from that of the School Committee and the Attorney General. His goal is now diametrically opposed to that of the School Committee and the Attorney General, who no longer intend to litigate at all, let alone vigorously.

11. In short, intervention by right should be granted because Mr. DeAngelis' "objectives in the litigation differ from those of the school committee." See id. at 207. Where the School Committee and the Attorney General are proposing a dismissal of the litigation, and where dismissal would defeat the objectives of Mr. DeAngelis, intervention by right must be granted.

WHEREFORE, Mr. DeAngelis respectfully requests that this Honorable Court:

- A. Allow Mr. DeAngelis and others applicants with a similar interest thirty (30) days to file a full memorandum in support of this motion to intervene;
- B. Grant the motion to intervene pursuant to Rule 24(a);

C. Suspend the trial to allow Mr. DeAngelis and other interveners a reasonable opportunity to prepare for trial; and

D. Grant such other and further relief as is just and appropriate.

Respectfully submitted,

DOUGLAS J. DeANGELIS,
By his attorneys,

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Dated: December 20, 2011

CERTIFICATE OF SERVICE

I, Mark E. Swirbalus, hereby certify that on this 20th day of December, 2011, I served a copy of the foregoing by hand upon counsel of record.

Mark E. Swirbalus