

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.*

**ANSWER AND COUNTERCLAIM  
OF THE APPLICANTS FOR INTERVENTION**

Pursuant to Rule 24(c) of the Massachusetts Rules of Civil Procedure, Douglas J. DeAngelis, Catherine T.J. Howe, Jacqueline Phypers and Jonathan Phypers, individually and on behalf of their minor children (the “Interveners”), respond as follows to the numbered paragraphs of Plaintiffs’ First Amended Complaint for Deviation Pursuant to G.L. c. 214, § 10B (the “Amended Complaint”) dated December 17, 2009:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.

5. This paragraph contains a description of the action to which no response is required.

6. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

7. Admitted as to the first sentence of this paragraph. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

8. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

9. The Interveners neither admit nor deny Plaintiffs' characterization of Chapter 26 of the Province Laws of 1755-56, which speaks for itself. The remainder of this paragraph states a legal conclusion to which no response is required.

10. This paragraph states legal conclusions to which no response is required.

11. This paragraph states legal conclusions to which no response is required.

12. The Interveners neither admit nor deny Plaintiffs' characterization of Chapter 26 of the Province Laws of 1755-56, which speaks for itself.

13. The Interveners neither admit nor deny Plaintiffs' characterization of Chapter 5 of the Province Laws of 1765-66, which speaks for itself.

14. The Interveners neither admit nor deny Plaintiffs' characterization of Chapter 54 of the Acts of 1786, which speaks for itself.

15. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

16. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

17. This paragraph states legal conclusions to which no response is required.

18. Admitted.

19. Admitted.

20. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

21. Admitted.

22. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

23. Admitted as to the rent-increase proposed by Plaintiffs, and admitted as to the lease offered to the tenants. No response is required to the legal conclusion that Plaintiffs acted consistent with their fiduciary obligations. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

24. The Interveners neither admit nor deny Plaintiffs' characterization of Exhibits E and F, which speaks for themselves. The remainder of this paragraph states legal conclusions to which no response is required.

25. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

26. Admitted that some Little Neck residents have not signed the lease and that the Superior Court Action was initiated and is pending. The Interveners are without knowledge or

information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

27. The Interveners neither admit nor deny Plaintiffs' characterization of the stipulation filed in the Superior Court Action, which speaks for itself. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

28. Admitted that no distributions have been received by the Ipswich Public Schools. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

29. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

30. This paragraph states legal conclusions to which no response is required. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

31. Denied as of the date of the Amended Complaint.

32. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

33. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

34. This paragraph states legal conclusions to which no response is required.

35. This paragraph states legal conclusions to which no response is required.

36. This paragraph states legal conclusions to which no response is required.

37. This paragraph states legal conclusions to which no response is required.

38. This paragraph states legal conclusions to which no response is required.

39. This paragraph states legal conclusions to which no response is required.

40. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

41. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

42. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

43. This paragraph states legal conclusions to which no response is required.

44. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

45. The Interveners are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

WHEREFORE, the Interveners, individually and on behalf of their minor children, respectfully request that this Honorable Court:

A. Dismiss the Amended Complaint and Plaintiffs' request for deviation pursuant to G.L. c. 214, § 10B;

B. Grant the Interveners their reasonable costs and legal fees; and

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

#### AFFIRMATIVE DEFENSES

1. The Amended Complaint does not set forth a specific sale proposal.

2. The Amended Complaint fails to state a claim on which relief can be granted.

The Interveners reserve their right to add to their affirmative defenses.

### COUNTERCLAIM

1. Applicant for Intervention Douglas J. DeAngelis is an individual residing at 28 Turkey Shore Road, Ipswich, Massachusetts. He has a minor child who is eligible to attend the Ipswich Public Schools in 2012-13.

2. Applicant for Intervention Catherine T.J. Rowe is an individual residing at 21 Turkey Shore Road, Ipswich, Massachusetts. She has two minor children who attend the Ipswich Public Schools.

3. Applicants for Intervention Jacqueline and Jonathan Phypers are individuals residing at 444 Main Street, Rowley, Massachusetts. They have two minor children who attend the Ipswich Public Schools.

4. The Interveners repeat and fully incorporate herein the Counterclaim dated December 30, 2009, as filed by Defendants Ipswich School Committee and Ipswich Superintendent of Schools (the "School Defendants"), seeking an order removing the Plaintiffs and modernizing the governance and administrative structure for carrying out the Trust that was created by William Paine to benefit the Ipswich Public Schools.

5. The requested removal and modernization of the governance and administrative structure for carrying out the Trust is necessary before any decision is made regarding the sale of Little Neck, to the extent such a sale were even permissible under the doctrine of reasonable deviation.

6. Prior to December 20, 2011, the Interveners believed – had been led to believe – that the School Defendants were (a) opposed to Plaintiff's request for reasonable deviation of the Trust and the proposed sale of Little Neck, and (b) advocating for the removal of the Plaintiffs and the modernization of the governance and administrative structure for carrying out the Trust.

7. On December 20, 2011, the School Defendants announced an agreement with Plaintiffs under which Plaintiffs would be permitted to sell Little Neck and thereafter, or in connection therewith, the governance and administrative structure for carrying out the Trust would be altered.

8. As of December 20, 2011, the interest of the Interveners in this matter is not adequately represented by the School Defendants.

WHEREFORE, the Interveners, individually and on behalf of their minor children, respectfully request that this Honorable Court:

- A. Dismiss Plaintiffs' request for reasonable deviation of the Trust;
- B. Order the removal of the existing Plaintiffs with Feoffees appointed by Ipswich governmental bodies, as summarized in Exhibit A to the School Defendants' Counterclaim and set forth in the proposed Trust Administrative Order attached as Exhibit B to the School Defendants' Counterclaim;
- C. Order full distribution to the Ipswich Public Schools from the funds of the Trust of all shortfalls resulting from Plaintiffs' failure to provide distributions to the Ipswich Public Schools commensurate with fair-market rents;
- D. Grant the Interveners their reasonable costs and legal fees; and
- E. Grant such other and further relief as is just and appropriate.

DOUGLAS J. DeANGELIS, CATHERINE  
T.J. HOWE, JACQUELINE PHYPERS, and  
JONATHAN PHYPERS, individually and on  
behalf of their minor children,

By their attorneys,



Mark E. Swirbalus, BBO #631650

DAY PITNEY LLP

One International Place

Boston, MA 02110

Tel: (617) 345-4600

Fax: (617) 345-4745

meswirbalus@daypitney.com

Dated: December 27, 2011

**CERTIFICATE OF SERVICE**

I, Mark E. Swirbalus, hereby certify that on this 27th day of December, 2011, I served a copy of the foregoing by electronic and first-class mail upon counsel of record.



Mark E. Swirbalus