

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. ESCV2006-02328

WILLIAM M. LONERGAN, et al,)
)
Plaintiffs,)
v.)
)
JAMES W. FOLEY, et al.,)
FEOFFES OF THE GRAMMAR)
SCHOOL IN THE TOWN OF IPSWICH,)
)
Defendants,)
v.)
)
DISTRICT ATTORNEY FOR THE)
ESSEX DISTRICT, et al.,)
)
Additional Defendants)
in Counterclaim.)

FILED
IN THE SUPERIOR COURT
FOR THE COUNTY OF ESSEX

MAY 27 2008

Thomas H. Russell
CLERK

MOTION OF DEFENDANT JAMES W. FOLEY FOR A PROTECTIVE ORDER

Defendant James W. Foley ("Foley"), a Feoffee of the Grammar School in the Town of Ipswich, hereby moves pursuant to Mass.R.Civ.P. 26(c) for a protective order preventing the Plaintiffs from taking the deposition of the Keeper of Records of the Wenham Police Department and obtaining therefrom all employment documents relative to Foley's employment with the Wenham Police Department, all sought by the Plaintiffs pursuant to the Subpoena dated April 16, 2008 and attached hereto as Exhibit 1.

Foley was asked at his deposition in this Action if he had an objection to the Plaintiffs' asking the Wenham Police Department for his personnel file. After initially answering "I don't know", Foley answered "No, no." Having now had an opportunity to consider further the

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11/17/08 This motion is due 11/17/08

Plaintiffs' request, and for the reasons stated herein, Foley objects to Plaintiffs obtaining his said employment file.

In support whereof Foley states as follows:

1. The Defendants/plaintiffs-in-counterclaim Feoffees of the Grammar School in the Town of Ipswich ("Feoffees") are the owners, in trust for the benefit of the Ipswich Public Schools, of lots of land in Little Neck, Ipswich, Massachusetts ("Little Neck"), which lots have been rented to lessees and tenants who have built cottages thereon.

2. This Action relates exclusively to the Feoffees' management of Little Neck. The Plaintiffs themselves described their complaint in a recently served motion for a protective order: "In their Complaint, the Plaintiffs, on behalf of themselves and the Little Neck Residents¹, have alleged- based on several legal theories- that the Feoffees have no legal right unilaterally to impose rents that are unfair and well-above what the fair market would dictate."

3. The Plaintiffs seek by deposition Foley's employment file from his time serving as a member of the Town of Wenham Police Department, a position that is wholly separate and apart from Foley's serving as a Feoffee.

4. Mass.R.Civ.P. 26(b)(1) provides as follows:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action... It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

5. Further, Mass.R.Civ.P. 26(c) provides:

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending ... may make any order which justice requires to protect

¹ The Plaintiffs have filed this action as a class action. No class has been certified. The Feoffees contend that the Action is not suitable for a class action.

a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including, one or more of the following: (1) that the discovery not be had...

6. The Court may issue a protective order where the information sought to be discovered is irrelevant to the Action." Pontes v. New England Power Company, 18 Mass.L.Rep. 183, 2004 Mass.Super.Lexis 340, *5 (Mass.Super. 2004). See Exhibit 2.

7. The Plaintiffs seek documents and information that are wholly unrelated to any of the issues germane to this Action. The proposed deposition is designed solely to harass and annoy Foley.

8. To state that the records sought by deposition are not reasonably calculated to lead to the discovery of admissible evidence in this Action woefully understates the irrelevance of the requested documents and the inappropriateness of the proposed deposition.

Respectfully submitted,
Feoffees of the Grammar School in the
Town of Ipswich
By its attorneys,



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