

Hellenic Am. Educ. Foun. v Trustees of Athens Coll. in Greece
2015 NY Slip Op 32120(U)
September 1, 2015
Supreme Court, New York County
Docket Number: 603770/2007
Judge: Jeffrey K. Oing
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 48

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HELLENIC AMERICAN EDUCATIONAL
FOUNDATION,

Plaintiff,

Index No. : 603770/2007

-against-

THE TRUSTEES OF ATHENS COLLEGE
IN GREECE, NICHOLAS G. BACOPOULOS,
PETER CANELLOS, ROBERT MCCABE,
ALEXANDROS MICHAS, PETROS
SABATACAKIS, NICHOLAS SAKELLARDIADIS,
VASILIOS SALAPATAS, and PETER ZARCADES,

Defendants.

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THE TRUSTEES OF ATHENS COLLEGE
IN GREECE,

Counterclaimant,

-against-

HELLENIC AMERICAN EDUCATIONAL
FOUNDATION, and THE BOARD OF
DIRECTORS OF THE HELLENIC AMERICAN
EDUCATIONAL FOUNDATION,

Counterclaim-Defendants.

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JEFFREY K. OING, J. :

Defendants, The Trustees of Athens College in Greece,
Nicholas G. Bacopoulos, Peter Canellos, Robert McCabe, Alexandros
Michas, Petros Sabatacakis, Nicholas Sakellardiadis, Vasilios
Salapatas, and Peter Zarcades (collectively referred to as
"defendants"), seek an order compelling plaintiff Hellenic
American Education Fund to comply with defendants' Notice of
Deposition of Spiro N. Pollalis ("Pollalis"), the current

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president of Athens College, and their Request for Production of Documents.

Defendants argue that the discovery sought is relevant to their counterclaims, which allege, inter alia, that plaintiff breached the governing agreement by making unilateral financial, educational and administrative decisions resulting in injury to Athens College's standing and mission. Defendants served the Notice of Deposition on August 5, 2015.

Plaintiff objects, arguing that the additional discovery sought is untimely and not relevant to the subject matter of the dispute. In that regard, it relies on the Appellate Division, First Department's decision in this action, which provides:

Order, Supreme Court, New York County (Barbara R. Kapnick, J.), entered April 9, 2013, which granted plaintiff's motion for partial summary judgment terminating the relationship between the parties and a transfer of certain endowment funds to it and dismissal of defendants' counterclaims, unanimously reversed, on the law, without costs, and the motion denied. Orders, same court and Justice, entered May 21, 2013 and July 19, 2013, which, respectively, pursuant to the April 9, 2013 order, directed that the funds be transferred to plaintiff pursuant to certain conditions, and modified certain of those conditions, unanimously reversed, on the law, without costs, and the matter remanded for further proceedings.

While the relationship of the parties to each other and Athens College is sui generis, we believe that equitable dissolution of the relationship is available upon a showing of deadlock or misfeasance (see generally Partnership Law § 63, Business Corporation Law §§ 1104; 1104-a). However, sharp disputes of fact over the misfeasance and existence of deadlock preclude the granting of summary judgment to either side. As such, the subsequent orders governing escrow of the funds must also be reversed.

(Hellenic Am. Educ. Found. v Trustees of Athens Coll. in Greece, 116 AD3d 453, 453-454 [1st Dept 2014]). Specifically, plaintiff argues that (1) the First Department "made clear that the purpose of remanding the case back to the Supreme Court was to resolve factual issues related to the dissolution of the relationship between the [plaintiff] and the [defendants], and the resulting transfer of the Endowment Fund", (2) that the First Department could not have reinstated defendants' counterclaims because the defendants never appealed the dismissal of their counterclaims, (3) the discovery sought constitutes an improper interference with the internal affairs of an educational institution, and (4) the filing of the note of issue precludes the discovery sought (Feder Correspondence, 8/24/2015).

To begin, notwithstanding plaintiff's argument that the counterclaims could not have been reinstated because defendants did not appeal their dismissal, and given the absence of a reargument motion by plaintiff before the First Department of that determination, the First Department's decision is clear -- the Court reinstated the counterclaims. As such, plaintiff's other argument that the First Department's remand limits the issues to the dissolution of the parties' relationship must also fail.

Plaintiff's third argument fails as well. Plaintiff relies on Sirohi v Lee, 222 AD2d 222 (1st Dept 1995) and Matter of Dalmolen v Elmira Coll., 279 AD2d 979 (3d Dept 2001) for the

proposition that Pollalis' deposition and the production of material relating to lessons and student performance would be improper judicial interference with an educational institution.

Here, defendants' counterclaims allege, inter alia, that plaintiff has violated defendants' contractual rights and breached its fiduciary duties to Athens College. Pollalis' deposition and the production of the requested documents are material and necessary for defendants to prove their counterclaims, and would serve to define the relationship between defendants and Athens College. While judicial second-guessing of the professional judgment of school administrators and educators is not favored (Sitomer v Half Hollow Hills Cent. School Dist., 133 AD2d 748, 749 [2d Dept 1987]), mere discovery, at this stage, on these counterclaims would not amount to displacing the educators' role.

Finally, the discovery sought is not untimely. Plaintiff relies on Philpott ex rel. Philpott v Bernales (196 Misc 2d 117 App Term, 2d Dept 2003]) for the proposition that once the note of issue has been filed, as here, additional discovery requires a demonstration that unusual or unanticipated circumstances have arisen and that discovery is necessary to prevent substantial prejudice (Id. at 118). Plaintiff further argues that "the lack of complete discovery due to the passage of time cannot be considered such a circumstance" (Id.). Reliance on this proposition is unavailing.

Here, defendants allege, inter alia, that plaintiff misused \$1.5 million given by defendants to plaintiff in 2013, two years after the 2011 filing of the note of issue (Flanders Correspondence, 8/19/2015). Thus, given that Pollalis' deposition regarding this issue could not have occurred in 2011, the application for additional discovery is not untimely. Further, Pollalis' deposition and the demanded documents may provide material and necessary testimony and evidence with regard to defendants' counterclaim, and, as such, denying defendants this discovery opportunity now would be prejudicial.

Accordingly, it is hereby

ORDERED that plaintiff shall comply with the Notice of Deposition of Spiro N. Pollalis and Request for Production of Documents. Counsel shall confer with respect to date, time and place for the deposition.

This memorandum opinion constitutes the decision and order of the Court.

Dated: 9/1/15



HON. JEFFREY K. OING, J.S.C.

**JEFFREY K. OING
JUDGE, SUPREME COURT**

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