

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

TWO RIVERS PUBLIC CHARTER
SCHOOL,

Plaintiff,

v.

ROBERT WEILER, JR., et. al.

Defendants.

Civil Action No. 2015 CA 009512 B
Calendar 7
Judge Jeanette Clark

Next Event:
Mediation
November 9 – December 9, 2016

**PLAINTIFF TWO RIVERS PUBLIC CHARTER SCHOOL'S
MOTION TO CONDUCT LIMITED DISCOVERY**

Plaintiff Two Rivers Public Charter School respectfully moves this Court for leave to take limited discovery of Jonathan Darnel to permit plaintiff to identify John Doe 1. Specifically, plaintiff requests that Mr. Darnel be required to answer a single interrogatory: "9. Please provide John Doe 1's full name and address." To support its motion, plaintiff states :

1. On December 9, 2015, plaintiffs brought this action in the District of Columbia Superior Court seeking to enjoin defendants and others from, *inter alia*, entering school property, blocking the students' safe passage to school, focused picketing of Two Rivers' students, and using signs larger than 11" x 17" in the presence of students under twelve years of age. Verified Compl. at 25-28.

2. On April 29, 2016, after a full hearing on defendants' motions to dismiss, the Court granted in part and denied in part defendants' motions to dismiss: (1) dismissing the Two Rivers Board of Trustees as a plaintiff, and

(2) denying the special motions to dismiss. The Court reviewed each of plaintiffs' claims and the relief sought and concluded that plaintiff was "likely to succeed on the merits." Apr. 29, 2016 Hearing Tr. ("Apr. 29 Tr.") at 78:17-25.

3. On May 24, 2016, plaintiff served a set of discovery on Jonathan Darnel containing several interrogatories, requests for production, and requests for admission. A copy of plaintiff's discovery is attached hereto as Ex. A. Included in this discovery is an interrogatory requesting Mr. Darnel to "provide John Doe 1's full name and address."

4. On June 14, 2016, prior to receiving defendant's discovery responses, the Court entered a stay of discovery pending resolution of defendants' request to pursue an interlocutory appeal.

5. On June 17, 2016, the D.C. Court of Appeals issued an order holding defendants' appeals in abeyance pending resolution of *Competitive Enterprises Institute, et al. v. Michael E. Mann*, Case No. 14-CV-101, which was argued in November 2014 but has not been decided.

6. Although plaintiff has conducted an investigation to learn the identity of John Doe 1, plaintiff has been unable to learn his full name or address.

7. In a video of the protests on November 16, 2015, plaintiff believes that Mr. Darnel refers to John Doe 1 as "Javier." See Notice of Pls.' Pre-Marked Exhibits for the Apr. 29, 2016 Hearing in Response to the Court's Order to Prepare for Motion Hearing, Pls.' Ex. 10 (IMG_6366.MOV).

8. Requiring Mr. Darnel to answer a single interrogatory would impose a negligible burden on him while permitting plaintiff to perfect service on John Doe 1 and make him a part of these proceedings.

9. Doing so is especially important given the indefinite stay while the Court of Appeals decides in 14-CV-101, which was argued in November 2014 and has been pending for approximately 19 months at this time.

10. Given the likelihood that John Doe 1 will have relevant and discoverable information; the longer he goes unidentified the greater the prejudice to plaintiff as there is more potential for spoliation of evidence.

11. Defendants' request for an interlocutory appeal does not deprive the trial court of jurisdiction to manage issues in the underlying case that are unrelated to the issue on appeal such as the identification of John Doe 1. *Aurell v. Furst*, 539 A.2d 1081 (D.C. 1988); *see also In re S.C.M.*, 653 A.2d 398, 402-03 (D.C. 1995) (*quoting* 9 J. MOORE, MOORE'S FEDERAL PRACTICE, § 203.11, at 3-53 (1994) ("The application of the general rule is limited to situations in which the order appealed from disposes of the case in its entirety. '[I]f an appeal is taken from a judgment which does not finally determine the entire action, the appeal does not prevent the [trial] court from proceeding with matters not involved in the appeal.'")).

12. The undersigned contacted counsel for Defendant Darnel under Rule 12-I of the D.C. Superior Court Rules of Civil Procedure on July 5, 2016, and Defendant Darnel did not consent to the relief sought in this motion.

Conclusion

Plaintiff asks this court grant the relief requested and permit plaintiff to served limited discovery on Defendant Jonathan Darnel.

July 11, 2016

Respectfully submitted,

/s/Michael L. Murphy

Michael L. Murphy (DC 480163)

Ora N. Nwabueze (DC 483256)

Cary Joshi (admitted pro hac
vice)

BAILEY GLASSER LLP

1054 31st Street NW, Suite 230

Washington, DC 20007

T: (202) 463-2101

F: (202) 463-2103

mmurphy@baileyglasser.com

onwabueze@baileyglasser.com

cjoshi@baileyglasser.com

Benjamin L. Bailey (DC 1019079)

BAILEY GLASSER LLP

209 Capitol Street

Charleston, West Virginia 25301

T: (304) 345-6555

F: (304) 342-1110

bbailey@baileyglasser.com

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Plaintiff's Two Rivers Public Charter School Motion to Take Limited Discovery was served upon the following:

Alexander C. Vincent, Esq.
**SHULMAN, ROGERWS, GANDAL,
PORDY & ECKER, P.A.**
12505 Park Potomac Avenue, 6th Floor
Potomac, Maryland 20854-6803
T: 301.255-0549
F: 301.230-2891
avincent@shulmanrogers.com

Thomas Brejcha, Esq.
Peter Breen, Esq.
THOMAS MORE SOCIETY
19 S. LaSalle Street, Suite 603
Chicago, Illinois 60603
T: 312.782.1680
F: 312.782.1887
tbrejcha@thomasmoresociety.org
pbreen@thomasmoresociety.org

Stephen M. Crampton, Esq.
THOMAS MORE SOCIETY
P.O. Box 4506
Tupelo, Mississippi 38803
T: 662.255.9439
F: 662.841.9646
smcrampton@hotmail.com

Michael J. DePrino, Esq.
THOMAS MORE SOCIETY
778 Choate Avenue
Hamden, Connecticut 06518
T: 203.893.9393
F: 203.281.1496
michaeldeprino@gmail.com

Counsel for Defendant Ruby Nicdao

Matthew D. Staver, Esq.
Horatio G. Mihet, Esq.
Roger K. Gannam, Esq.
LIBERTY COUNSEL
P.O. Box 540774
Orlando, Florida 32854
T: 407.875.1776
F: 407.875.0770
court@lc.org
hmihet@lc.org
rgannam@lc.org

Counsel for Defendant Larry Cirignano

Robert Weiler, Jr.
1910 Leland Avenue, Apt. D
Middle River, MD 21220
weilerrobertjr@gmail.com

Defendant, pro se
(by agreement of the parties)

John R. Garza, Esq.
GARZA LAW FIRM, P.A.
17 W. Jefferson Street, Suite 100
Rockville, Maryland 20850
T: 301.340.8200
F: 301.761.4309
jgarza@garzanet.com

Counsel for Defendant Jonathan Darnel

by e-mail via the Court's electronic filing system, this 11th day of July, 2016.

A copy was served by first-class mail, postage prepaid, upon

Alexandra Snyder, Esq.
LIFE LEGAL DEFENSE FOUNDATION
P.O. Box 2105
Napa, California 94558
T: 707.224.6675
F: 707.224.6676

Defendant Lauren Handy
200 Luna Park Drive, Apt. 108
Alexandria, Virginia 22305
(last known address)

*Counsel for Defendant Jonathan Darnel
(contact information not listed in motion)*

this 11th day of July, 2016.

/s/Michael L. Murphy
Michael L. Murphy (DC 480163)
Bailey & Glasser LLP
1054 31st Street, NW, Suite 230
Washington, D.C. 20007