



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE DELAWARE PUBLIC)
SCHOOLS LITIGATION) C.A. No. 2018-0029-VCL
) COUNTY TRACK
)

STIPULATION AND [PROPOSED] ORDER

Plaintiffs Delawareans for Educational Opportunity and NAACP Delaware Conference of Branches (“Original Plaintiffs”), Defendant Michael R. Smith in his capacity as Chief Financial Officer of New Castle County (“Defendant”) and New Castle County (“County”) hereby stipulate and agree as follows:

Stipulation

THE PARTIES STIPULATE AND AGREE AS FOLLOWS:

A. In order to comply with the true value statute, 9 *Del. C.* §8306(a), and the tax uniformity clause, Del. Const. art. VIII, §1, County will complete a general reassessment of all real property in the County and cause the reassessed values to be placed on the assessment roll used to issue property tax bills in fiscal year 2024 (*i.e.* July 1, 2023) (the “Completion Date”).

B. County may seek Original Plaintiffs’ approval of an extension of the Completion Date if the County has exercised its best efforts to complete the reassessment process by the Completion Date and has failed to do so for reasons beyond their control, which approval will not be unreasonably withheld.

C. Original Plaintiffs may seek to enforce this Stipulation and Order before this Court if the County fails to undertake good faith efforts to complete a general reassessment by the Completion Date. In any such proceeding, the Defendant and County consent to an expedited proceeding before this Court. For the avoidance of doubt, Original Plaintiffs need not wait until the Completion Date to bring a motion to enforce this Stipulation and Order.

D. Original Plaintiffs, Defendant and County wish to avoid piecemeal appeals. Accordingly, Defendant and County will not seek entry of an order pursuant to Delaware Chancery Rule 54(b) to appeal the Court's May 8, 2020 opinion [D.I. 334] (the "Liability Opinion") regarding Defendant's liability in the County Track of this litigation. Original Plaintiffs will not assert that any order in this litigation was a final appealable order until entry of a stipulation or an order regarding the remedy applicable to Kent County and Sussex County or entry of an order regarding any application for attorneys' fees filed by Original Plaintiffs, whichever occurs later. *See Wellington Homes, Inc. v. State of Del.*, 2006 WL 373547, at *1 (Del. Feb. 15, 2006).

E. Defendant and County do not admit liability to Original Plaintiffs as found by the Court in the Liability Opinion. It is the intention of the Defendant and County to address *only* the pending remedy portion of the above-captioned litigation through this Stipulation. Defendant and County do not waive their continued denial

of liability to Original Plaintiffs or Defendant's right to appeal the Liability Opinion in a manner consistent with Paragraph D of this Stipulation. In entering into this Stipulation, Defendant and County are relying upon the Delaware Supreme Court's decision in *Sarkis v. Harsco Corporation*, 332 A.2d 156, 158 (Del. 1975). *See also Demby v. Wilm. Hous. Auth.*, 2003 WL 22939713, at *3-4 (Del. Ct. Comm. Pl. Oct. 2, 2003). If the Delaware Supreme Court should find *Sarkis* inapplicable, Original Plaintiffs will not oppose an application by Defendant and County for relief under Chancery Court Rule 60 to allow Defendant to appeal the Liability Opinion.

Order

THE COURT HEREBY ORDERS AS FOLLOWS:

1. As to Original Plaintiffs and Defendant, the hearing regarding the remedy in the County Track of this litigation scheduled for March 29 and 30, 2021 [*see* D.I. 390] is unnecessary as the parties have stipulated to a resolution that does not require a hearing at this time. For the avoidance of doubt, Defendant and County are not consenting to entry of an order or judgment regarding the remedy in this litigation.

2. After final orders are entered in this matter, the Court retains jurisdiction to enforce the obligation of County and Defendant to complete a general reassessment in accordance with the terms set forth in the Stipulation set forth above.

3. Starting September 30, 2021 and continuing until reassessment is completed, the County shall submit a written progress report to Original Plaintiffs on or before each March 31, June 30, September 30, and December 31 occurring during the aforementioned time period.

4. Original Plaintiffs shall file any application seeking attorneys' fees or costs from Defendant no later than twenty-one (21) days following entry of any stipulation or order resolving the issue of the remedy regarding Kent County or Sussex County, whichever occurs later. Failure to timely file such application as set forth in this Order shall be deemed a waiver of any request for attorneys' fees and costs from Defendant and County.

[Signature Page Follows]

Dated: January 26, 2021

**ACLU FOUNDATION OF
DELAWARE, INC.**

/s/ Karen Lantz

Karen Lantz (No. 4801)
1000 West 10th Street, Suite 706
Wilmington, DE 19801
Telephone: (302) 654-5326 x103
Email: klantz@aclu-de.org

-and-

**COMMUNITY LEGAL AID
SOCIETY, INC.**

/s/ Richard H. Morse

Richard H. Morse (No. 531)
100 West 10th Street, Suite 801
Telephone: (302) 575-0662
Email: rmorse@declasi.org

*Attorneys for Plaintiffs Delawareans for
Educational Opportunity and NAACP
Delaware Conference of Branches*

**NEW CASTLE COUNTY LAW
DEPARTMENT**

/s/ Nicholas J. Brannick

Mary A. Jacobson (No. 3508)
Adam J. Singer (No. 2472)
Nicholas J. Brannick (No. 5721)
87 Reads Way
New Castle, DE 19720-1648
Telephone: (302) 395-5139
Email:

mary.jacobson@newcastlede.gov
adam.singer@newcastlede.gov
nicholas.brannick@newcastlede.gov

*Counsel Defendant Michael R. Smith,
Chief Financial Officer of New Castle
County and New Castle County*

SO ORDERED this _____ day of _____, 2021.

Vice Chancellor J. Travis Laster