

CONSERVE COMMUNITY LLC, et al.,

Plaintiffs,

v.

Case No. 09-CV-54

CONSERVE SCHOOL
CORPORATION, et al.,

Defendants
Cross-Claim Defendants,

THE CULVER EDUCATIONAL FOUNDATION,

Defendant-Intervenor
Cross-Claim Plaintiff
Counterclaimant.

J.B. VAN HOLLEN, in his capacity as the
Attorney General of the State of Wisconsin,

Plaintiff-Intervenor
Counter-Defendant,

v.

CONSERVE SCHOOL CORPORATION,
CONSERVE SCHOOL TRUST, JOHN C.
CALHOUN, MICHAEL X. CRONIN, RONALD
V. KAZMAR, CHRISTOPHER ROGERS, MICHAEL
J. SULLIVAN, and CULVER EDUCATIONAL
FOUNDATION,

Defendants.

AMENDED COMPLAINT OF THE ATTORNEY GENERAL

Comes now plaintiff, Attorney General J.B. Van Hollen, and as for his complaint against the above-named defendants, alleges and shows to the Court as follows:

1. J.B. Van Hollen is the Attorney General of the State of Wisconsin. As such, he is charged with the supervision of non-stock corporations that exceed or abuse the authority conferred upon them by law. *See Wis. Stat. § 181.1430(1)*. He is also charged with the supervision of charitable trusts holding property for charitable purposes in this State. *See Wis. Stat. § 701.10*.

2. Defendant Conserve School Corporation (“the Corporation”) is a non-stock corporation created under chapter 181 of the Wisconsin Statutes. The specific purposes for which the Corporation is organized include the operation of a school for grades ranging from the seventh to the twelfth grades during the regular academic year, and to give students a general or college preparatory education. Upon information and belief, the Corporation holds assets of approximately \$70 million, including \$60 million in real property and \$10 million in investments or liquid assets.

3. The Corporation currently operates the Conserve School, a private college preparatory school in Land O’ Lakes, Vilas County, Wisconsin. Upon information and belief, 50 percent or more of the Conserve School’s student body comes from the State of Wisconsin. Many students enrolled in the Conserve School, including many of the students from Wisconsin, receive substantial scholarship aid from the Corporation.

4. Traditionally, the Corporation has been funded through the Conserve School Trust (the "Trust"). The Trust is a testamentary trust established pursuant to the Second Restatement of the James R. Lowenstine Trust dated August 17, 1981 ("Lowenstine Trust Document"). The purpose of the Trust is to defray the costs incurred in the operation of the Conserve School on a site owned by the Trust in Land O'Lakes, Wisconsin. The Corporation was created pursuant to Article VI, § V of the Lowenstine Trust Document.

5. Upon information and belief, the Trust holds assets of approximately \$190 million, including \$150 million of stock in Central Steel and Wire Company ("the Company"), a Delaware corporation. The stock owned by the Trust represents a majority ownership interest in the Company.

6. Defendant John F. Calhoun is a director of the Corporation and trustee of the Trust.

7. Defendant Michael X. Cronin is a director of the Corporation and a trustee of the Trust.

8. Defendant Ronald V. Kazmar is a director of the Corporation and trustee of the Trust.

9. Defendant Christopher Rogers is a director of the Corporation and trustee of the Trust.

10. Defendant Michael J. Sullivan is a director of the Corporation and trustee of the Trust.

11. Calhoun, Cronin, Kazmar, Rogers, and Sullivan are hereinafter referred to as the “individual defendants.” Upon information and belief, the individual defendants are, in addition to being directors, the sole members of the Corporation.

12. Culver Educational Foundation (“Foundation”) is an Indiana not-for-profit corporation that supports the Culver Academies in Culver, Indiana.

13. The individual defendants comprise a majority of the board of directors of the Company and, as employees and/or directors, receive compensation from the Company.

14. Under the terms of Lowenstine Trust Document, depending on financial conditions, the trustees of the Trust are expressly authorized to sell shares of Central Steel and Wire to pay for the operation of Conserve School.

15. Under the terms of the Lowenstine Trust Document, the income of and some principal from the Trust are available are be paid to the Conserve School for its operation.

16. Since September 2002, the Corporation has operated the Conserve School as a four-year, college preparatory school using funding from the Trust.

17. In January 2009, the Corporation, acting at the direction of the individual defendants, notified parents of enrolled students that Conserve School would cease operation as a four-year, college preparatory school. Instead, it would operate as a “semester away” type of program for students regularly enrolled in other schools.

18. The individual defendants’ view that Conserve School may be operated solely as a “semester away” program is contrary to the terms of the Trust.

19. Upon information and belief, the Corporation decided to make the change from a four-year, college preparatory school to a "semester away" program after the Trust and the individual defendants indicated that they intend to reduce funding to the Corporation because of a decrease in dividends from the Central Steel and Wire Company stock owned by the Trust.

20. Upon information and belief, the individual defendants, in their capacity as trustees, made the decision to reduce funding to the Corporation in order to avoid selling the Trust's Central Steel and Wire Company stock because, in part, such a sale may lead to the loss of majority control of the Company by the Trust. A loss of a majority interest by the Trust would, among other things, put the individual defendants in a situation in which their employment by the Company, and/or their directorship, might be placed in jeopardy. In the alternative, the decision to reduce funding was made under circumstances where personal interests of the individual defendants were in actual or potential conflict with their interests as trustees, and as directors of the Corporation.

21. The competing and conflicting interests of the individual defendants as directors of the Corporation, trustees of the Trust, and employees and directors of the Company, have rendered them incapable of exercising independent judgment as to the affairs of the Corporation in matters effecting the Trust and the Company.

22. Had the Corporation been governed by an independent board of directors, owing undivided loyalty to the Corporation, and acting with reasonable diligence, it would have retained independent legal counsel to evaluate and, in all likelihood, challenge the

decision by the Trust and the individual defendants to reduce funding to the Corporation rather than sell a portion of Company stock.

23. Had the Corporation been governed by an independent board of directors, owing undivided loyalty to the Corporation, and acting with reasonable diligence, it would have engaged in reasonable efforts to obtain alternative funding for the Conserve School so that its continued operations were not solely dependant on gifts from the Trust and the economic performance of the Company.

24. The individual defendants, despite the clear and irreconcilable conflicts of interest among their various roles, did not seek independent legal counsel for the Corporation and chose not to challenge the Trust's decision to reduce funding, despite the fact that their inaction will likely result in significant harm to the Corporation, possibly including a loss of any future funding from the Trust and the possibility that the Corporation will be unable to accomplish the primary purposes of its incorporation.

25. Moreover, upon information and belief, the individual defendants have failed to take reasonable efforts to obtain alternative funding for the Conserve School so that its continued operations would not depend solely on gifts from the Trust and the economic performance of the Company

26. The Corporation and the Trust have obtained recognition of tax-exempt status from the United States Internal Revenue Service pursuant to applications filed in 1998.

27. For purposes of federal income tax, the tax-exempt status of the Corporation and the Trust is expressly conditioned on a number of factors, including

representations (a) that the Conserve School would be operated as a full-curriculum, college preparatory high school with regularly enrolled students; (b) that Trust assets would be used exclusively for the operation of such a school; (c) that the Trust is “supporting organization” rather than a “private foundation” for purposes of federal income tax laws, such that it is not subject to the requirement imposed on “private foundations” to pay out 5% of asset value per year in charitable grants; and (d) that the Trust and the Corporation are, and will continue to be, separate and distinct organizations under federal and state tax law to the extent required to maintain the Trust’s status as a “supporting organization.”

28. The tax-exempt status under federal law has resulted in tax benefits to the Corporation, under Wisconsin law, that otherwise would not have been available.

29. The conduct of the individual defendants, as alleged herein, is destroying, has destroyed, and/or threatens to destroy the tax-exempt status of the Corporation under federal and state laws.

30. The conduct of the individual defendants is destroying, has destroyed, and/or threatens to destroy the tax-exempt status of the Trust, such that its assets may be significantly depleted by tax obligations to the extent that continued operation of the Conserve School is in jeopardy.

31. The actions and inaction by the individual defendants have also led to a lawsuit against the Corporation that threatens the ongoing operations of the Conserve School and the Corporation’s rights as the primary beneficiary of the Trust.

32. As set forth more fully in Culver Educational Foundation's April 24, 2009, Amended Cross-Claim and Counterclaim for Declaratory Relief and Damages, the Foundation has alleged that the Trust's refusal to take steps necessary to provide sufficient funds to allow the continued operation of the Conserve School as a four-year college preparatory school, materially violates the terms of the Lowenstine Trust Document, such that the corpus and income of the Trust should accrue to the benefit of the Culver Military Academy pursuant to the alternative beneficiary provisions of the Lowenstine Trust Document.

33. Although substantial interests of the Corporation are at stake due to Foundation's claims, and although the interests of the individual defendants are in direct conflict with the interests of the Corporation, the Corporation has not retained separate and independent legal counsel to defend the action brought by the Foundation or to assert a position on whether the terms of the Lowenstine Trust Document have been violated.

FIRST CAUSE OF ACTION

(Enforcement of a charitable trust under Wis. Stat. §§ 701.10)

34. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 33 above.

35. The Trust is a charitable trust under Wis. Stat. § 701.10.

36. Under Wis. Stat. § 701.10, the Attorney General has the power to enforce charitable trusts, including the power to remove trustees.

37. The individual defendants' view that Conserve School may be operated solely as a "semester away" program is contrary to the terms of the Lowenstine Trust Document.

38. However, to activate the alternative beneficiary provisions of the Lowenstine Trust Document, as alleged by the Foundation, the Lowenstine Trust Document requires the trustees to make a determination that "it is legally impossible or otherwise impractical" to operate the Conserve School. The trustees have never made such a determination.

39. Even if the trustees were deemed to have made a determination that "it is legally impossible or otherwise impractical" to operate the Conserve School as contemplated by the Lowenstine Trust Document, that determination would be subject to judicial review.

40. Upon information and belief, no reasonable trustee could determine that that "it is legally impossible or otherwise impractical" to operate the Conserve School under the circumstances facing the trustees, including the assets available from the Trust.

41. This action is brought to enforce the terms of the Lowenstine Trust Document. As set forth further below, the Plaintiff requests a declaratory judgment that: (1) the individual defendants' view that Conserve School may be operated as a "semester away" program is contrary to the terms of the Lowenstine Trust Document; and (2) the actions of the trustees to date have not triggered the contingent beneficiary provisions of the Lowenstine Trust Document.

SECOND CAUSE OF ACTION

(Declaratory Judgment)

42. Plaintiff realleges and reincorporates the allegations in paragraphs 1 to 41, above.

43. As a result of the foregoing, there exists an actual, ripe and justiciable controversy regarding (1) whether the individual defendants' view that Conserve School may be operated solely as a "semester away" program is contrary to the terms of the Lowenstine Trust Document; and (2) whether the actions of the individual defendants to date have triggered the Foundation's alternative beneficiary rights under the Lowenstine Trust Document.

44. Plaintiff requests a declaratory judgment finding that: (1) the individual defendants' view that Conserve School may be operated solely as a "semester away" program is contrary to the terms of the Lowenstine Trust Document; and (2) the actions of the individual defendants to date have not triggered the Foundation's alternative beneficiary rights under the Lowenstine Trust Document.

THIRD CAUSE OF ACTION

(for Permanent Injunction)

45. Plaintiff realleges and reincorporates the allegations in paragraphs 1 to 44, above.

46. If the individual defendants, the Corporation, and the Trust operate Conserve School solely as a "semester away" program, the intent of the settlor will be frustrated. Further, the termination of Conserve School as a full-curriculum, four-year,

college preparatory school would result in the loss of valuable educational opportunities for Wisconsin residents, the loss of jobs in Vilas County, the loss of significant economic benefit to the Land O' Lakes area, and the loss of assets, that, at the present time, are dedicated solely to the Wisconsin-based Conserve School.

47. Such harm is irreparable and could not be remedied through an award of damages or other legal relief.

48. The Plaintiff asks that the court issue a permanent injunction prohibiting the defendants from operating Conserve School solely as a "semester away" program and requiring all reasonable actions necessary to continue the operation of Conserve School in a manner consistent with its prior operation as a four-year, full-curriculum college preparatory institution.

FOURTH CAUSE OF ACTION

(Involuntary Dissolution, or Relief Short of Dissolution, and
Appointment of a Custodian)

49. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 48 above.

50. The individual defendants, as directors of the Corporation, owe the Corporation a fiduciary duty of loyalty, fairness and independence in the conduct of the Corporation's business, and due care and diligence in the use and preservation of the rights, property and assets of the Corporation. By failing to take reasonable steps to protect the rights of the Conserve School under the Trust, the individual defendants have violated their fiduciary duties to the Corporation.

51. Because the actions, inaction and decisions of the individual defendants, as directors of the Corporation, are irreconcilably tainted by material conflicts of interest, they have failed to promote the best interests of the Corporation and have failed to operate the Corporation in a manner that is consistent with the primary purposes for which the Corporation was created under Wisconsin law.

52. By failing to act in the best interests of the Corporation, by failing to obtain independent legal advice and representation, by failing to oppose the decision of the trustees as inconsistent with the terms of the Lowenstine Trust Document, and by acting to further the personal interests of the directors of the Corporation, thus endangering the rights of the Conserve School under the Trust, the Corporation, acting through the individual defendants, has failed to abide by its corporate purposes and has otherwise exceeded or abused the authority conferred upon it by law.

53. By failing to act a manner necessary to preserve tax benefits available to the Corporation and the Trust, thus endangering the rights and interests of the Conserve School, the Corporation, acting through the individual defendants, has exceeded or abused the authority conferred upon it by law.

54. Based on the allegations of this Complaint, Wis. Stat. § 181.1430(1), which empowers the Attorney General to seek dissolution of a non-stock corporation if it exceeds or abuses the authority conferred upon it by law, authorizes this action for judicial dissolution.

55. In a proceeding brought under Wis. Stat. § 181.1430, the court is required to consider whether there are reasonable alternatives to dissolution. Pursuant to this

provision, the Attorney General asks this court to exercise its authority to take such steps short of complete dissolution as are necessary to insure that the Corporation is managed and operated by individuals who can make decisions based solely on the best interests of the Corporation without an irreconcilable conflict of interest and to preserve the tax-exempt status of the Corporation and the Trust under applicable law. In particular, the Attorney General asks that the court take such steps as are necessary to ensure that the Corporation is managed and operated by individuals who will pursue the primary purposes of the Corporation as set forth in its articles of incorporation and will seek and pursue the best interests of the Corporation, even if those interests might be adverse to the Trust, the Company, and/or the individual defendants.

56. In an action for judicial dissolution, as alleged in this Complaint, the court may appoint a custodian to manage some or all of the affairs of the Corporation during the pendency of the action. *See* Wis. Stat. § 181.1432(1). As regards the Corporation, a court-appointed custodian could be authorized to retain independent legal counsel to defend the Culver Lawsuit, evaluate the rights of the Corporation as a beneficiary under the Trust, appear in the present action pending before this court, and take such other action as is necessary to insure that the Corporation is managed and operated in accordance with its primary purposes and the corporate charter conferred by Wisconsin law. A custodian may also be authorized to evaluate the financial condition of the Corporation and to petition the court, if necessary, for construction of the terms of the Lowenstine Trust Document.

57. The Attorney General therefore asks the court to appoint a custodian during the pendency of this action to ensure that the interests and rights of the Corporation are fully protected consistent with Wisconsin law, federal tax law, the Corporation's primary corporate purposes, and the terms of the Lowenstine Trust Document.

WHEREFORE, the plaintiff prays for relief, as follows:

1. An order enforcing the terms of the Lowenstine Trust Document.
2. A declaratory judgment finding that: (1) the individual defendants' view that Conserve School may be operated solely as a "semester away" program is contrary to the terms of the Trust; and (2) the actions of the Trustees to date have not triggered the Foundation's rights under the alternative beneficiary provisions of the Lowenstine Trust Document.
3. A permanent injunction prohibiting the individual defendants, the Corporation, and the Trust from operating Conserve School solely as a "semester away" program.
4. An order pursuant to Wis. Stat. § 181.1430, imposing such reasonable alternatives to complete dissolution as are necessary to insure that Conserve School Corporation (a) does not exceed or abuse the authority conferred upon it; (b) is managed and operated by individuals who can make decisions based solely on the best interests of the Corporation and will pursue the primary purposes of the Corporation as set forth in its articles of incorporation; (c) does not lose the value of the benefits available to it as a tax-

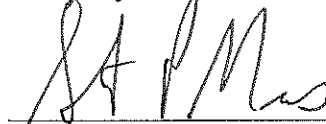
exempt organization or the benefits available to it by reason of the Trust's tax-exempt status.

5. Appointment of a custodian to manage the affairs of the Corporation under Wis. Stat. § 181.1430.

6. Such further relief as the Court deems just and equitable, as provided by law.

Dated this 1st day of May, 2009.

J.B. VAN HOLLEN
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