

CONSERVE COMMUNITY
LLC, JULIE LEIZERMAN,
PATRICIA LINS, LAWRENCE
SUTTER, ALICE AND
TIMOTHY ACKMERAN,
JUELY K. AND TIMOTHY J.
BARTHOLOMEW, JOAN
KRULL, KENNETH ALAN
BUSSART, BORBERT COME
BOURGEOIS AND SHARON
KYLE BOURGEOIS, MARY
HERMES, AND SHARA WEITZ
LAMMER,

Plaintiffs,

ATTORNEY GENERAL J.B. VAN HOLLEN
and CULVER EDUCATIONAL FOUNDATION,

Intervening Plaintiffs,

v.

Case No. 09 CV 54

CONSERVE SCHOOL
CORPORATION, CONSERVE
SCHOOL TRUST, C. DANIEL
BLYTHE, JOHN F. CALHOUN,
MICHAEL J. SULLIVAN,
RONALD V. KAZMAR,
MICHAEL X. CRONIN, JAMES
RINN, STEFAN ANDERSON,
AND JOHN DOES 1-5,

Defendants.

ANSWER OF THE ATTORNEY GENERAL
TO CROSS-COMPLAINT OF CULVER EDUCATIONAL FOUNDATION

NOW COMES the plaintiff/cross-defendant, Attorney General J.B. Van Hollen, by his attorneys, Assistant Attorneys General Steven P. Means, Charlotte Gibson, and Ann M. Peacock, and answers plaintiff Culver Educational Foundation's cross-complaint, as follows:

1. Answering paragraph 1, this paragraph seeks to characterize the “Amended Cross-Claim and Counterclaim for Declaratory Relief and Damages” (referred to herein as “Amended Cross-Claim”) and, as such, does not require a response.

2. Answering paragraph 2, this paragraph seeks to characterize the Amended Cross-Claim and, as such, does not require a response.

3. Answering paragraph 3, admit, upon information and belief.

4. Answering paragraph 4, admit.

5. Answering paragraph 5, admit.

6. Answering paragraph 6, admit.

7. Answering paragraph 7, the Attorney General lacks knowledge and information to admit or deny allegations regarding Lowenstine’s residence at the time of his death, but admits the remainder of the allegations.

8. Answering paragraph 8, the Attorney General lacks knowledge and information to admit or deny allegations regarding Lowenstine’s residence at the time of his death, but admits the remainder of the allegations.

9. Answering paragraph 9, admit.

10. The Attorney General lacks knowledge and information sufficient to deny the allegations of paragraph 10.

11. Answering paragraph 11, the Attorney General denies any characterization of the Trust Instrument as the document speaks for itself.

12. Answering paragraph 12, the Attorney General denies any characterization of the Trust Instrument as the document speaks for itself.

13. Answering paragraph 13, the Attorney General denies any characterization of the Trust Instrument as the document speaks for itself.

14. Answering paragraph 14, the Attorney General denies any characterization of the Trust Instrument as the document speaks for itself.

15. Answering paragraph 15, the Attorney General admits that the quoted language appears in the Trust Instrument but denies any characterization of the Trust Instrument as the document speaks for itself.

16. Answering paragraph 16, the Attorney General admits that the quoted language appears in the Trust Instrument but denies any characterization of the Trust Instrument as the document speaks for itself.

17. Answering paragraph 17, the Attorney General denies any characterization of the Trust Instrument as the document speaks for itself, and lacks knowledge and information regarding the remainder of the allegations in the paragraph.

18. Answering paragraph 18, admit.

19. Answering paragraph 19, admit, upon information and belief.

20. Answering paragraph 20, admit.

21. Answering paragraph 21, the Attorney General admits that the quoted language appears in the documents cited but denies any characterization of the referenced documents as the document speaks for themselves.

22. Answering paragraph 22, the final sentence of paragraph 22 is not a factual allegation but is, instead, argument and characterization. As such, no response is required to that sentence. The remainder of paragraph 22 is admitted.

23. Answering paragraph 23, admit, upon information and belief.

24. Answering paragraph 24, the Attorney General admits that the Trust Instrument contemplates a full-curriculum college preparatory school in which students are generally enrolled for an entire academic year in courses leading toward a high school diploma. However, the Attorney General denies that the Trustees have decided to “close the Conserve School,” and denies the allegation that the specific clauses referenced by the Foundation can be read in isolation from other provisions of the Trust Instrument. Finally, the Attorney General denies that any actions or decisions of the Trustees, to date, trigger the Foundation’s rights under the Trust Instrument.

COUNT 1: DECLARATORY JUDGMENT

25. Answering paragraph 25, assert that paragraph 25 does not contain factual allegations and therefore requires no response.

26. The Attorney General’s responses to paragraphs 1 through 25 are realleged in response to paragraph 26.

27. Answering paragraph 27, the Attorney General refers to and hereby incorporates his response to paragraph 24, above.

28. Answering paragraph 28, the Attorney General lacks knowledge and information sufficient to admit or deny whether the Trustees have characterized their decision as one to close the Conserve School, but admits that the Trustees dispute the Foundation's claim that the alternative beneficiary provisions have been triggered.

29. Answering paragraph 29, admit that a ripe and justiciable controversy exists on the issues stated, but deny the remainder of paragraph 29.

COUNT II: BREACH OF FIDUCIARY DUTY I

30. Answering paragraph 30, admit that declaratory judgment is appropriate but deny that the Foundation is entitled to the declarations designated (b) and (c).

31. The Attorney General's responses to paragraphs 1 through 25 are realleged in response to paragraph 31.

32. Answering paragraph 32, the Attorney General admits that the Trustees owed fiduciary duties to the beneficiaries of the Trust Instrument, including certain duties to beneficiaries under the alternative distribution plan. However, allegations as to the extent and nature of those duties presents an issue of law and, as such, no response to those allegations is required.

33. Answering paragraph 33, the Attorney General admits that the Trustees owed fiduciary duties to the beneficiaries of the Trust Instrument, including certain duties to beneficiaries under the alternative distribution plan. However, allegations as to the extent and nature of those duties presents an issue of law and, as such, no response to those allegations is required.

34. Answering paragraph 34, the Attorney General lacks knowledge and information sufficient to admit or deny whether the Trustees breached the duties allegedly owed to the Foundation. However, the Attorney General denies any allegation that the Trustees were obligated to implement the alternative distribution plan and denies that the Foundation has any rights arising from the use of trust assets for the benefit of the Conserve School.

35. The Attorney General lacks knowledge and information sufficient to admit or deny the allegations of paragraph 35.

COUNT III: BREACH OF TRUST

36. The Attorney General denies that the Foundation is entitled to the relief requested in paragraph 36.

37. The Attorney General's responses to paragraphs 1 through 25 are realleged in response to paragraph 37.

38. Answering paragraph 38, the Attorney General lacks knowledge and information sufficient to admit or deny whether the Trustees breached the duties allegedly owed to the Foundation.

39. Answering paragraph 39, the Attorney General denies that the Foundation is entitled to a distribution of Trust assets under Article VI, Paragraph 5 of the Trust Instrument.

COUNT IV: BREACH OF FIDUCIARY DUTY II

40. Answering paragraph 40, the Attorney General lacks knowledge and information sufficient to admit or deny allegations regarding damage suffered by the

Foundation. Further, allegations regarding damages allegedly owed by the Trustees are not directed to the Attorney General and therefore require no response.

41. The Attorney General's responses to paragraphs 1 through 25 are realleged in response to paragraph 41.

42. Answering paragraph 42, the Attorney General admits that the Trustees owed fiduciary duties to the beneficiaries of the Trust Instrument. The Attorney General denies any characterization of the Trust Instrument as the document speaks for itself. Finally, allegations as to the extent and nature of the duties owed presents an issue of law and, as such, no response to those allegations is required.

43. Answering paragraph 43, the Attorney General admits that the Trustees owed fiduciary duties to the beneficiaries of the Trust Instrument, including certain duties to beneficiaries under the contingent distribution plan. However, allegations as to the extent and nature of those duties presents an issue of law and, as such, no response to those allegations is required.

44. The Attorney General lacks knowledge and information sufficient to admit or deny the allegations of paragraph 44.

45. Answering paragraph 45, the Attorney General lacks knowledge and information sufficient to admit or deny the allegations.

46. Answering paragraph 46, the Attorney General lacks knowledge and information sufficient to admit or deny the allegations.

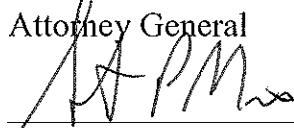
47. Answering paragraph 47, admit.

PRAYER FOR RELIEF

48. Answering the prayer for relief, the Attorney General denies that the Foundation is entitled to the relief sought in paragraphs B. through H. Regarding paragraph A, the Attorney General denies that the trustees have "closed" the Conserve School, but admit that the Court should conclude that operation of the Conserve School as a semester away program is inconsistent with the Trust Instrument.

Dated this 5th day of May, 2009.

J.B. VAN HOLLEN
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