



GRANTED

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE DELAWARE PUBLIC SCHOOLS LITIGATION))))	C.A. No. 2018-0029-VCL COUNTY TRACK
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STIPULATION AND [PROPOSED] ORDER

Plaintiffs Delawareans for Educational Opportunity and NAACP Delaware Conference of Branches (“Original Plaintiffs”) and Defendant Susan Durham, in her capacity as Director of Finance of Kent County (“Defendant”) and acting with full authority to bind Kent 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 2025 (*i.e.* July 1, 2024) (the “Completion Date”).

B. Defendant 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 and Defendant wish to avoid piecemeal appeals. Accordingly, Defendant 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 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 does not admit liability to Original Plaintiffs as found by the Court in the Liability Opinion. It is the intention of the Defendant to address *only* the pending remedy portion of the above-captioned litigation through this Stipulation. Defendant does not waive her 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 is relying upon the Delaware Superior Court's decision in *Sarkis v. Harsco Corporation*, 332 A.2d 156, 158 (Del. Super. 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 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 is 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, Defendant 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 Sussex County. 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.

5. If Defendant no longer serves as Director of Finance of Kent County, this Stipulation and Order shall bind her successors.

Dated: February 24, 2021

[Signature Page Follows]

Dated: February 24, 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*

**SCHMITTINGER AND
RODRIGUEZ, P.A.**

/s/ Gary E. Junge

Craig T. Eliassen (No. 2276)
Gary E. Junge (No. 6169)
414 South State Street
P.O. Box 497
Dover, DE 19903-0497
Telephone: (302) 674-0140
E-mail: celiassen@schmittrod.com
gjunge@schmittrod.com

*Attorneys for Defendant Susan Durham,
Chief Financial Officer of Kent County*

SO ORDERED this _____ day of _____, 2021.

Vice Chancellor J. Travis Laster

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: J Travis Laster

File & Serve

Transaction ID: 66368011

Current Date: Feb 24, 2021

Case Number: 2018-0029-JTL

Case Name: CONF ORD ON COUNTY/STATE TRACKS - COUNTY TRACK STAYED - IN RE
Delaware Public Schools Litigation

Court Authorizer: J Travis Laster

Court Authorizer

Comments:

I appreciate the parties' efforts in addressing the remedial dimension of the case.

/s/ Judge J Travis Laster