

SUPERIOR COURT
Washington Unit
65 State Street
Montpelier VT 05602
802-828-2091
www.vermontjudiciary.org



CIVIL DIVISION
Case No. 24-CV-02574

Remake Goddard Alliance v. Goddard College Corporation

Order on Motion for Temporary Injunctive Relief

On an emergency, *ex parte* basis, Plaintiff Remake Goddard Alliance, dubbing itself as an “*ad hoc*” group of individuals, seeks to enjoin what it alleges is an impending sale of Goddard College in Plainfield, Vermont. The complaint is signed only by one individual, Mr. Frederick Sawyer, with a “*pro se*” indication.

An injunction, particularly an *ex parte* one, is an “extraordinary remedy,” and the Plaintiff bears the burden of showing that his right to such relief is clear and that the Court should not allow the opposing party a chance to respond prior to affording the requested relief. *See* Vt. R. Civ. P. 65; *Comm. to Save the Bishop’s House v. Medical Center Hosp. of Vt.*, 136 Vt. 213, 218 (1978); *Blast v. Fisher*, No. 07-CV-0567, 2007 WL 2815754, at *2 (Sept. 20, 2007 W.D.N.Y); *see also Okemo Mountain, Inc. v. Town of Ludlow*, 171 Vt. 201, 212 (2000) (discussing preliminary injunctions). Plaintiff’s complaint fails to set forth sufficient facts and precedents to establish that it is clearly entitled to injunctive relief on a preliminary, *ex parte* basis.

As an initial hurdle to relief, Plaintiff appears to be some form of unincorporated association.¹ “An ‘unincorporated association’ is a voluntary group of persons, without a charter, formed by mutual consent for the purpose of promoting a common enterprise or prosecuting a common objective.” 7 C.J.S. Associations § 1; *see also Daniels v. Elks Club of Hartford*, 2012 VT 55, ¶ 44, 192 Vt. 114, 138 (noting that “an unincorporated association, as regards its rights and liabilities, is fundamentally a large partnership” (citation omitted)). In Vermont, when certain conditions are met, an unincorporated association can sue in its own name. 12 V.S.A. § 814; *see* Vt. R. Civ. P. 23.2 (procedural protections for members of unincorporated association similar to class action lawsuits); 7C Mary Kay Kane, *et*

¹ The complaint describes Remake Goddard Alliance, the captioned Plaintiff in this case, as “an alliance of dedicated and all-volunteer Goddard community members.” The complaint further alleges that the Alliance has “formed a Vermont nonprofit corporation, Remake Goddard, Inc.” To be clear, the captioned Plaintiff is the unincorporated Alliance, not the corporation.

al. Fed. Prac. & Proc. Civ. § 1861 (3d ed.) (discussing procedural complications with suits by and against unincorporated associations under the analogous federal rule).

To the extent that Mr. Sawyer is purporting to be a representative member of Plaintiff, the complaint itself does not establish that he is so situated as to “fairly and adequately protect the interests of the association and its members.” Vt. R. Civ. P. 23.2.

Moreover, Mr. Sawyer signed the complaint *pro se* and does not purport to be a licensed attorney. Organizational parties generally must be represented by licensed attorneys. As the Vermont Supreme Court has explained:

The primary purpose of the “lawyer-representation rule” is the protection of the public, not the creation of any private advantage for attorneys. Courts have generally refused to permit nonattorneys to represent organizations because they do not have the ethical responsibilities of attorneys and are not subject to the disciplinary control of the courts. The lawyer-representation rule also ensures that the courts have control over the management and administration of cases. . . . “[T]he conduct of litigation by a nonlawyer creates unusual burdens not only for the party he represents but as well for his adversaries and the court. The lay litigant frequently brings pleadings that are awkwardly drafted, motions that are inarticulately presented, proceedings that are needlessly multiplicative.” Courts have also refused to allow representation by nonlawyers who did not have the legal ability to present their case.

Vermont Agency of Nat. Res. v. Upper Valley Reg’l Landfill Corp., 159 Vt. 454, 454–56 (1992) (citations omitted). That decision also describes the standards by which a court may make findings to exempt an organizational party from the lawyer-representation rule and permit it to be represented by a lay person. *Id.* That has not happened in this case, however.

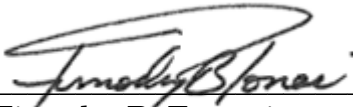
Another unsettled area of concern is whether this group would have standing under any of its legal theories to challenge the alleged sale at issue.

Additionally, the complaint raises a concern over an alleged sale to a third party. That person or entity is not named as a party in this case but is likely a “necessary party,” needed for the just adjudication of this lawsuit. *See* Vt. R. Civ. P. 19(a) (explaining that absent party is needed when absence will prevent complete relief, impair absent party’s rights, or risk creating inconsistent obligations).

At all events, as noted above, the legal and factual claims set out in the complaint and motion simply fail to establish a clear basis for emergency injunctive relief without affording the Defendant an opportunity to be heard.

The emergency motion is denied. The Plaintiff shall serve the complaint per Vt. R. Civ. P. 4. The Court will set a prompt status conference regarding the claim for preliminary injunctive relief and the issues cited above upon receipt of proof of service.

Electronically signed on Wednesday, July 3, 2024, per V.R.E.F. 9(d).



Timothy B. Tomasi
Superior Court Judge