

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HOWARD McMORRIS; MONA DAVIDS;
ELIZABETH COOKSEY; CHRISTIAN KOLLER;
MATTHEW KOLLER; MARK D. HAFFNER;
MYMOENA DAVIDS; CHARLES GOLDBERG;
JOSEPH G. BECK; JONATHAN RYAN SLAWSON;
PALMER HAFNER,

DOCKET NO: 17-cv-4611

Plaintiffs,

vs.

RIDER UNIVERSITY,

Defendant.

PLAINTIFFS' FURTHER STATEMENT AS TO STATUS OF THE ACTION

As the Court requested, Plaintiffs are communicating their position on voluntary withdrawal of the complaints without prejudice.

Since the filing of the complaints in this matter, an action on related grounds has been commenced in the Chancery Division in New Jersey by the Princeton Theological Seminary (Docket No. Mer-C-18-18). Subsequently, on June 21, 2018, information was released by Defendant as to certain (but not all) details of the proposed sale. Such events had not taken place at the time of the filing of the complaints in this Court or as of the time of the briefing on the pending motion to dismiss on standing grounds.

On September 6, 2018 the McMorris plaintiffs (and others) filed their own action in the Chancery Division to be heard along with the Seminary's action (the new proceeding is filed under Docket No. MER-C-69-18).

As a result of these post-complaint events, including the facts now known as to the proposed sale that does not - in Plaintiffs' understanding - comport with the reasonable intent of the grantor and subsequent donors of Westminster Choir College (or under the terms of the 1935 Trust that gave rise to the school in Princeton), plaintiffs believe that the gravamen of the action rests on these cy pres and related grounds now being litigated in the Chancery Division action. Accordingly, plaintiffs believe that the issues in this Court, while still relevant, must be litigated under the authority of the Chancery Division that has the exclusive responsibility under New Jersey law for equity, charities and trust matters.

In addition, the Chinese buyer, Beijing Kaiwen Education Technology Co. Ltd, and its acquisition division Westminster Choir College Acquisition Corporation, are now named as defendants in the Plaintiffs' Chancery filing; these entities are now necessary parties since they have been identified as the actual buyers but they do not conduct business of any kind in New York and are susceptible of jurisdiction *only* in New Jersey, further reason why the matter should now be heard in the Chancery Division.

Notably, no adjudication on the merits, or any issue, has yet taken place in this proceeding and no discovery has taken place. Since the parties are now litigating in New Jersey on related, if not identical issues, that center upon the more traditional cy pres

questions that can only be litigated in the Chancery Division, and involve necessary parties not susceptible of jurisdiction in this District, all plaintiffs agree that the pending Complaints in this Court should be voluntarily withdrawn without prejudice and that all matters be litigated in the Chancery proceeding.

The undersigned counsel has authority from Eric Vaughn-Flam, Esq. to communicate his agreement with the foregoing on behalf of his particular clients.

Accordingly, counsel for all plaintiffs will agree to voluntarily withdraw the complaints without prejudice and litigate any such issues in the Chancery Division proceeding. To the extent the Court does not believe it can authorize withdrawal without prejudice, plaintiffs request leave to file a motion seeking such relief and demonstrating the basis for such relief.

Undersigned counsel is on trial on October 3, 2018, a matter continued from last week, and will be at a funeral on October 4 or 5 that he must attend, the date still to be determined. If the Court believes a status conference is still necessary, it is respectfully requested that the conference be re-scheduled with these matters in mind.

Plaintiffs' counsel express their appreciation to the Court for its courtesies to the parties and the thoughtful manner in which the Court has allowed opportunity for the facts to develop before proceeding to the merits.

Respectfully submitted,

S/Bruce I. Afran, Counsel for the
McMorris Plaintiffs and on behalf of
Mr. Vaughn-Flam