

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

1. TARENCE RODGERS,)
)
Plaintiff,)

vs.)

Case No. CIV-20-282-D

1. JUSTICE ALMA WILSON)
SEEWORTH ACADEMY, INC.,)
2. JANET GRIGG, in her individual)
capacity as Director and Board)
Clerk of Justice Alma Wilson)
Seeworth Academy, Inc.,)
3. BARBARA SWINTON, in her)
individual capacity as a Board)
Member of Justice Alma Wilson)
Seeworth Academy, Inc.,)
4. P. KAY FLOYD, in her individual)
capacity as a Board Member of)
Justice Alma Wilson Seeworth)
Academy, Inc.,)
5. PATRICIA KELLEY, in her)
individual capacity as a Board)
Member of Justice Alma Wilson)
Seeworth Academy, Inc.,)
6. BEVERLY PATCHELL in her)
individual capacity as a Board)
Member of Justice Alma Wilson)
Seeworth Academy, Inc.,)
7. JOHN MAYFIELD in his)
individual capacity as a Board)
Member of Justice Alma Wilson)
Seeworth Academy, Inc., and)
8. LEE ANNE WILSON in her)
individual capacity as a Board)
Member of Justice Alma Wilson)
Seeworth Academy, Inc.)

)
)
Defendants.)

**DEFENDANT JUSTICE ALMA WILSON SEEWORTH ACADEMY INC.’S
MOTION TO DISMISS AND MOTION TO JOIN INDISPENSABLE PARTY
OKLAHOMA CITY PUBLIC SCHOOL DISTRICT
WITH SUPPORTING BRIEF AND AUTHORITIES**

COMES NOW the Defendant, Justice Alma Wilson Seeworth Academy Inc. (“Seeworth”), by and through Joe E. White, Jr., Charles C. Weddle III, and Kate C. Thompson of White & Weddle, P.C., and moves this Court to dismiss the claims of Plaintiff for failure to join indispensable parties under Federal Rule of Civil Procedure Rule 19, as authorized by Federal Rule of Civil Procedure 12(b)(7)¹. In support of its Motion to Dismiss, Defendant Seeworth states as follows:

FACTS

1. On June 6, 2019, Oklahoma City Public Schools (“OKCPS”) authorized Andy Evans (“Evans”) of Oklahoma Public Schools Resource Center to act as Seeworth Academy’s Charter School’s closing officer. [See letter from Andy Evans to Seeworth Board Members dated June 11, 2019, attached as Exhibit “1.”] Per the letter from Mr. Evans, “student, financial and business records and the actual property that Seeworth owns are your responsibility and must be transferred to Oklahoma City Public Schools.” *Id.* at ¶2.

2. On June 26, 2019, a quorum of the Board of Directors of Justice Alma Wilson Seeworth Academy (“Board”) held a Special Meeting. [See Justice Alma Wilson Seeworth Academy Minutes of the Board of Directors’ Special Meeting, dated June 26, 2019, at 5:00

¹ At the time of the filing of this Motion to Dismiss, Defendants Janet Grigg, Barbara Swinton, P. Kay Floyd, Patricia Kelley, Beverly Patchell, John Mayfield, and Lee Anne Wilson have not been served with Plaintiff’s Petition [Doc. 1].

p.m., attached as Exhibit “2.”] The Board voted to clarify the Board’s intent to relinquish the charter status of Seeworth Academy to Oklahoma City Public Schools. *Id.* at ¶7.

3. On August 19, 2019, Independent School District No. 89 of Oklahoma County, a/k/a Oklahoma City Public Schools (OKCPS) filed a Motion for Temporary Restraining Order and Petition for Permanent Injunction against Justice Alma Wilson Seeworth Academy. (See *Independent School District No. 89 of Oklahoma County, Oklahoma, a/k/a Oklahoma City Public Schools vs. Justice Alma Wilson Seeworth Academy, a public charter school*, Oklahoma County District Court, Case No. CV-2019-1965). On September 4, 2019, Judge Cindy Truong entered an Agreed Order which found, among other things:

- As of June 30, 2019, Seeworth Academy ceased to exist.
- At a future date but no later than January 1, 2020, any residual funds related to outstanding checks, ACH withdrawals, interest earnings, or other bank adjustments will be transferred to District via cashier’s check(s) and will include bank-generated documentation verifying that all accounts have been zeroed out and are closed.
- Effective immediately, Defendant shall cease any actions, other than as specified in this Order, to encumber or to expend funds...
- ...Defendant shall provide Plaintiff with keys to the facilities in order for Plaintiff to pick up all equipment, including but not limited to busses, computers, and athletic equipment, furniture and records.
- Plaintiff agrees to pay the cost of any closing audit and the special investigative audit as well as any final utility bills incurred on or before September 3, 2019.

[See Agreed Order dated September 4, 2019, attached as Exhibit “3.”]

4. Upon information and belief, the Plaintiff was aware of the dissolution of Seeworth Academy at the time he filed his tort claim on or about July 11, 2019, his EEOC charge on or about July 12, 2019, and at the time he had his counsel proceed with filing this litigation against Seeworth rather than its successor in interest, OKCPS, on March 30, 2020. [See Doc. 1, ¶6]

ARGUMENT AND AUTHORITY

I.

THE OKLAHOMA CITY PUBLIC SCHOOL DISTRICT IS AN INDISPENSABLE PARTY PURSUANT TO FRCP 19 WHO MUST BE JOINED AS THE SUCCESSOR IN INTEREST TO THE NOW DEFUNCT SEEWORTH ACADEMY WHO MUST BE DISMISSED FROM THIS LITIGATION.

Defendant Seeworth seeks this Court's dismissal of this litigation pursuant to FRCP 12(b)(7) which authorizes dismissal of litigation for failure to join a party under FRCP 19. The proponent of a motion to dismiss under 12(b)(7) has the burden of producing evidence showing the nature of the interest possessed by an absent party and that the protection of that interest will be impaired by the absence. *Citizen Band Potawatomi Indian Tribe v. Collier*, 17 F.3d 1292, 1293 (10th Cir. 1994), citing *Ilan-Gat Eng'rs, Ltd. v. Antigua Int'l Bank*, 659 F.2d 234, 242 (D.C.Cir.1981); *Martin v. Local 147, Int'l Bro. of Painters*, 775 F.Supp. 235, 236-37 (N.D.Ill.1991); *Ashley v. American Airlines, Inc.*, 738 F.Supp. 783, 788 (S.D.N.Y.1990). The proponent's burden can be satisfied by providing "affidavits of persons having knowledge of these interests as well as other relevant extra-pleading evidence." *Citizen Band Potawatomi Indian Tribe of Oklahoma v. Collier*, 17 F.3d 1292,

1293 (10th Cir. 1994), citing *Martin*, 775 F.Supp. at 236 (quoting 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* Sec. 1359, at 427 (1990)).

Rule 12(b)(7) authorizes the dismissal of a complaint for “failure to join a party under Rule 19.” See Fed. R. Civ. P. 12(b)(7). FRCP 19(a) provides:

(a) Persons Required to Be Joined if Feasible.

(1) *Required Party*. A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

- (A) in that person’s absence, the court cannot accord complete relief among existing parties; or
- (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person’s absence may:
 - (i) as a practical matter impair or impede the person’s ability to protect the interest; or
 - (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Under Federal Rule of Civil Procedure 19(a), the court must order joinder of a party if (1) in that person’s absence, the court cannot accord complete relief among existing parties; or (2) failure to join would jeopardize a person’s ability to protect himself or expose him to inconsistent adjudications. If joinder is infeasible for some reason, “the court must determine whether, in equity and good conscience, the action should proceed among the

existing parties or should be dismissed.” Fed.R.Civ.P. 19(b). *Thlopthlocco Tribal Town v. Stidham*, 762 F.3d 1226, 1235-1236 (2014)².

Rule 19(b) authorizes dismissal only if a necessary party, as defined by Rule 19(a), cannot be joined and the absent party is determined to be indispensable upon application of the requisite factors. *Meyer Natural Foods, LLC v. Freeman*, 2013 WL 5460823 at 3 (Case No. CIV-12-1329-D, W.D. Okla. 2013), citing *Citizen Potawatomi Nation v. Norton*, 248 F.3d 993, 997 (10th Cir. 2001); *Sac and Fox Nation of Missouri v. Norton*, 240 F.3d 1250, 1258 (10th Cir. 2001); *Davis v. United States*, 192 F.3d 951, 958-59 n.6 (10th Cir. 1999).

Rule 19 provides four factors that a court must balance to make this determination:

- (1) the extent to which a judgment rendered in the person’s absence might prejudice that person or the existing parties;
- (2) the extent to which any prejudice could be lessened or avoided by:
 - (A) protective provisions in the judgment; or
 - (B) shaping the relief; or
 - (C) other measures;
- (3) whether a judgment rendered in the person’s absence would be adequate; and
- (4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

² “If a court determines that a non-party is a required party under Rule 19(a), the court must consider whether ‘in equity and good conscience’ the case should proceed without the absent party or be dismissed. *Sac & Fox Nation of Missouri v. Norton*, 240 F.3d 1250, 1259 (10th Cir. 2001).” *Gray Media, LLC v. Loveworld Ltd.*, 2014 WL 6836342, (No. 14–CV–399–CVE–TLW, N.D. Okla. 2014).

Gray Media, LLC v. Loveworld Ltd., 2014 WL 6836342, 9-10 (No. 14–CV–399–CVE–TLW, N.D. Okla. 2014).

Before considering applicability of the four factors, it is important to recognize that they are not to be applied in any mechanical way. It is important that they be determined in a practical and pragmatic but equitable manner. *Francis Oil & Gas, Inc. v. Exxon Corp.*, 661 F.2d 873, 878 (10th Cir. 1981), citing *Schutten v. Shell Oil Co.*, 421 F.2d 869, 874, 21 A.L.R.Fed. 1, 9 (5th Cir. 1970); *Provident Tradesmens Bank and Trust Co. v. Patterson*, 390 U.S. 102, 88 S.Ct. 733, 19 L.Ed.2d 936 (1968).

Seeworth Academy ceased to exist on June 30, 2019. [Exhibit 3] The sponsoring public school district for Seeworth Academy, OKCPS, dissolved the charter and subsumed Seeworth Academy into its public school district. [*Id.*] OKCPS took possession of the assets and liabilities of Seeworth when it made the decision to terminate its contract with the charter school. [Exhibits 1, 2, 3] The Board of Directors of Seeworth no longer have legal authority to take action to encumber funds or act on behalf of the now defunct Seeworth Charter School. [Exhibit 3] There are no assets left in Seeworth. By court order, Seeworth transferred all assets and liabilities to OKCPS. [*Id.*]

Taking the facts herein and applying them to the required Rule 19 analysis:

(1) The Court cannot provide complete relief to the Plaintiff without OKCPS being joined because it is the successor in interest to the now defunct Seeworth Academy, having assumed all assets, liabilities, files, and responsibilities of the former Seeworth.

(2) Seeworth ceased to exist on June 30, 2019.

(3) Seeworth has been ordered not to take any actions in reference to Seeworth Academy.

(4) OKCPS, by contract, statute, and court order, has subsumed the interests of the former Seeworth Academy.

(5) OKCPS is interested in the outcome of this litigation.

(6) In the absence of Oklahoma City Public Schools as a defendant, the Court cannot accord complete relief among the parties.

(7) Seeworth's Board is powerless to act in reference to this litigation, is judicially dissolved, and has no assets.

(8) OKCPS has possession of all files associated with Seeworth Academy; thus, OKCPS, not Seeworth Academy, has possession of documents that could be used to defend this case and/or respond to Plaintiff's discovery requests.

(9) Disposing of this case without the joinder of OKCPS would impair or impede the Plaintiff's ability to seek relief and leave defunct Seeworth Academy to a substantial risk to incurring multiple obligations because of the failure to join the real party in interest.³

Pursuant to FRCP 19, OKCPS is an indispensable party and the successor in interest to Seeworth Academy. The Court should order the Plaintiff to join OKCPS as an indispensable Defendant and, further, dismiss the litigation against now defunct Seeworth Academy.

³Seeworth has been sued in another case in this District, by the same counsel for the Plaintiff, which has been assigned to this same Court. Seeworth has not yet been served in that case. See CIV-20-387-D.

CONCLUSION

Defendant Justice Alma Wilson Seeworth Academy, Inc. respectfully requests that the Court order the joinder of indispensable party Oklahoma City Public School District. Seeworth Academy further moves that the Court dismiss Plaintiff's suit against Seeworth Academy since it is now defunct, and Oklahoma City Public Schools is its successor in interest as to all of its assets and liabilities, in accordance with Federal Rule of Civil Procedure Rule 19, as authorized by Federal Rule of Civil Procedure 12(b)(7). In the event that Seeworth Academy is not dismissed from this litigation, Seeworth further moves that it be granted additional time to answer or further plead and the Court grant it such further relief as is deemed just and equitable.

Respectfully submitted,

s/ Joe E. White, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of April, 2020, the foregoing was filed with the Clerk of Court using the ECF system and a copy of the same has been served via electronic mail to:

Jana Beth Leonard
Shannon C. Haupt

s/ Joe E. White, Jr.
JOE E. WHITE, JR.