

**The State of New Hampshire  
Superior Court  
Hillsborough - North**

ABBOT MARK COOPER

V.

BOARD OF TRUSTEES OF SAINT ANSELM COLLEGE

No. 216-2019-CV-01068

**ORDER ON DEFENDANT'S MOTION TO MAINTAIN STATUS QUO**

The petitioner, Abbot Mark Cooper, filed this lawsuit challenging the authority of the defendant to adopt bylaws for Saint Anselm College without the approval of the Benedictine monks. The defendant, the Board of Trustees of Saint Anselm College (hereinafter the "Board of Trustees"), moved to disqualify Wadleigh, Starr & Peters, PLLC from representing Abbot Cooper. This Court granted that motion on February 19, 2020. (Doc. 27). Abbot Cooper then appealed that ruling to the New Hampshire Supreme Court, which docketed the case on April 29, 2020. (Doc. 42). In the meantime, the Board of Trustees filed a Motion for A Status Quo Order on April 8, 2020 (Doc. 37). Abbot Cooper and the Attorney General's Director of Charitable Trusts, who was an intervenor in this matter, filed partial objections (Docs. 39, 44). The Board of Trustees then filed a reply to both of those pleadings. (Docs. 41, 46).

The Board of Trustees' motion seeks the following relief:

- a. Toll the running of the non-Monk Trustees' terms of office as follows:
  - A. At the conclusion of this case, Trustees with terms expiring in 2020 ("Class I Trustees") shall have 11 months added to their term, which is equal to the amount of unexpired time of their term when the Petition was filed on November 26, 2019;

- B. Trustees with terms expiring in 2021 (“Class II Trustees”) shall have 23 months added to their term, which is equal to the amount of unexpired time of their term when the Petition was filed on November 26, 2019;
  - C. Trustees with terms expiring in 2022 (“Class I Trustees”) shall have 35 months added to their term, which is equal to the amount of unexpired time of their term when the Petition was filed on November 26, 2019.
- b. Bind the Petitioner, and by extension the members of Saint Anselm Abbey (the “Monk Members”), from purporting to act on behalf of the College Corporation by, among other things, amending the bylaws, unless agreed to by the Parties; and
  - c. Bind the Board not to take action beyond managing the day-to-day affairs of the College Corporation, including amending the bylaws, unless agreed to by the Parties.

(Doc. 37 ¶ 6).

Abbot Cooper and the Director of Charitable Trusts do not object to the requests for relief (b) and (c), insofar as both sides would be precluded from attempting to amend the bylaws while this litigation is pending. (Doc. 39 ¶ 1; Doc. 44 at ¶ 17). Abbot Cooper objects to requests (b) and (c) to the extent it would preclude other actions on behalf of the College Corporation because the relief is too vague and would preclude the operation of the bylaws in ways that are not in dispute in this litigation. (Doc. 44 ¶¶ 18-19). Abbot Cooper and the Director of Charitable Trusts also object to extending the terms of Board members as set for in the request (a)(A) to (C).

As noted, this litigation involves a dispute about who has final authority to approve bylaw amendments governing the College Corporation. Abbot Cooper contends that the original legislative charter granted authority over bylaw changes to the ecclesiastical members of the Order of Saint Benedict of New Hampshire (the “Monk Members”). The Board of Trustees takes the position that RSA 292:6, which

was enacted by the legislature much after the original charter, vested final authority over the bylaws in the Board of Trustees.

This dispute came to a head when the Board of Trustees proposed bylaw amendments in August 2019, which, among other changes, purported to limit the Monk Members authority to approve bylaw changes. Complaint (Doc. 1) ¶ 29; see also Objection To Respondent's Motion To Disqualify Petitioner's Counsel (Doc. 15) Ex. E, Art. XX (Aug. 6, 2019 bylaw amendments proposed by the Board of Trustees). When the Monk Members rejected the Board's proposed bylaw amendments, the Board of Trustees voted in October 2019, to adopt the amendments over the objection of the Monk Members pursuant to RSA 292:6. Doc. 1 ¶¶ 36-39; Doc. 31 ¶¶ 36-39. This litigation then ensued.

As noted above, the Board of Trustees has asked the Court to exercise equitable authority to issue a "status quo order." In effect, the Board is requesting the Court to extend the term of members of the Board of Trustees whose terms are set to expire. In order to understand this motion, it is important to describe the composition of the Board of Trustees.

As a threshold matter, the parties dispute which version of the bylaws should govern the operation of the College Corporation while this litigation is pending. Both sides agree that, in 2009, bylaws were adopted by the Monk Members that substantially restructured the organization of the College Corporation. Amendments to those bylaws could be adopted upon a recommendation of 2/3 of the Board of Trustees and the approval of 2/3 of the Monk Members or by 2/3 of the Monk Members on their own initiative after consultation with the Board of Trustees. See Doc. 1 Ex. E (hereinafter "2009 Bylaws") Art. XX, §§ 2, 4. Apparently there were

amendments to those bylaws between 2009 and 2017. See Doc. 1 Ex. G (noting that bylaws had been amended in 2015 and 2017). The Court does not have those amended bylaws before it. The parties dispute whether amendments in May 2019 were properly adopted. See Respondent's Reply To Petitioner's Partial Objection To Respondent's Motion For Entry Of A Status Quo Order (Doc. 46) ¶ 34. The Monk Members adopted additional bylaw amendments by a 2/3 vote on their own initiative on October 29, 2019. Id. Thus, the last bylaw amendments both sides appear to agree were properly adopted were dated February 6, 2017. Doc. 1 Ex. G. Nonetheless, for purposes of deciding the present motion, the composition of the Board of Trustees has not materially changed between the 2009 and October 29, 2019 bylaw amendments. Compare Doc. 1 Ex. G Art. XI with Doc. 1 Ex. I Art. XI; see also Doc. 1 ¶ 49; Doc. 1 Ex. I (hereinafter "2019 Bylaws"); Doc. 46 ¶ 34. Thus, the Court will rely on the October 29, 2019 bylaw amendments for purposes of this order.

The Board of Trustees consists up to 39 members. 2019 Bylaws Art. XI. The membership is comprise of (1) the Chairman of the Monk Members, who is also President of the College Corporation, (2) up to six Monk Members (hereinafter "Monk Member Trustees"); and (3) up to 32 trustees who are not ecclesiastical members of Saint Anselm Abby (hereinafter "non-Monk Trustees"). Id. Art. XI §§ 1-3. The Monk Member Trustees serve three-year terms without term limits. Id. § 2. The non-Monk Trustees also serve three-year terms but are limited to three consecutive terms. Id. § 3. The bylaws do not set a minimum number of trustees who must be appointed before the Board of Trustees is empowered to conduct the business of the College Corporation. Id. Art. X, Art. XIII.

The Board of Trustees currently consists of 30 non-Monk Trustees and 7 Monk Trustees (including the Chairman of the Monk Members). See Memorandum Of Law In Support Of Respondent's Motion For Entry Of A Status Quo Order (hereinafter "Resp. Memo of Law") Ex. A (hereinafter "Catino Aff.") ¶ 13. In October 2020, the terms of fourteen non-Monk Trustees are set to expire. Catino Aff. ¶ 14. Nine of those trustees are not eligible for reappointment because of the term limits set in the bylaws. Id. The term-limited trustees include the Chair, the Vice Chair, the Secretary, and the Treasurer of the Board of Trustees. Id. The terms of additional non-Monk Trustees are set to expire in October 2021 and October 2022. Id. Some of these trustees likewise will not be eligible for reappointment. Id.

The Board of Trustees seek an order of this Court extend the terms of the trustees whose terms are set to expire, including those members subject to term limits, during the pendency of this litigation. The Board of Trustees argues that this relief is necessary in order to allow the Board of Trustees to effectively govern the College Corporation during the COVID-19 pandemic crisis and the accreditation process currently underway with the New England Commission of Higher Education ("NECHE"). Resp. Memo of Law at 2. Abbot Cooper and the Director of Charitable Trusts both object to extending the term of trustees that are set to expire under the existing bylaws.

The parties dispute what standard this Court should apply in determining whether to grant the Board's request for equitable relief. The Board argues that this Court has broad equitable powers to issue a status quo order. Resp. Memo of Law at 7. Abbot Cooper and the Director of Charitable Trusts both contend that this Court must apply the preliminary injunction standard. The Court does not need to

resolve this dispute because it does not believe that equitable relief in any form is warranted at this stage of the litigation. Even under the broadest articulation of the Court's equitable authority, "[t]he propriety of affording equitable relief in a particular case rests in the sound discretion of the Trial Court to be exercised according to the circumstances and exigencies of the case. The consequences of granting relief should be balanced against the need for it." Crocker v. Coll. of Advanced Sci., 110 N.H. 384, 388 (1970). "[A] court's decision to grant equitable relief is not unlimited and must be supported by the facts and law; that is, a judge may not impose conditions or grant relief that in his or her individual opinion would work substantial justice between the parties without regard to precedents and established principles." 27A AM. JUR. 2d Equity § 2 (May 2020 update). Indeed, the law cited by the Board of Trustees in support of its status quo order looks very much like the well-established preliminary injunction standard. Compare Salamone v. Gorman, No. CIV.A. 9870-VCN, 2014 WL 3905598, at \*2 (Del. Ch. July 31, 2014) ("The Court may enter a status quo order after a demonstration: 1) that the order will avoid imminent irreparable harm; 2) [of] a reasonable likelihood of success on the merits; and 3) that the harm to plaintiffs outweighs the harm to defendants." (quotation omitted)) with DuPont v. Nashua Police Dep't, 167 N.H. 429, 434 (2015) (noting that preliminary injunction "is a provisional remedy that preserves the status quo pending a final determination of the case on the merits.") and N.H. Dep't of Environmental Servs. v. Mottolo, 155 N.H. 57, 63 (2007) ("[a]n injunction should not issue unless there is an immediate danger of irreparable harm to the party seeking injunctive relief, and there is no adequate remedy at law. Also, a party seeking an injunction must show that it would likely succeed on the merits. It is within the trial

court's sound discretion to grant an injunction after consideration of the facts and established principles of equity.") (citations omitted).

The Board of Trustees has characterized its request as an effort to maintain the status quo. In fact, that is not what the Board is asking for. Rather, the Board is asking the Court to suspend the operation of the length of the terms of trustees and the term limits of those trustees. That state of affairs has never existed for the College Corporation. Nor would that state of affairs exist even if the Board of Trustees ultimately prevails in this litigation. Indeed, as the Board concedes in its Answer to the Complaint, even under the proposed bylaw changes supported by the Board of Trustees, the Trustees would still be subject to term limits. (Doc. 31 ¶ 38).<sup>1</sup>

This case does not present a situation where the Court must intervene to select corporate leadership because the corporation cannot govern itself due to a deadlock on the board of trustees. See, e.g., Salamone, 2014 WL 3905598, at \*3 (granting status quo order in light of corporate board deadlock). Nor is this a situation where the current board cannot govern with authority because a question of the legitimacy of the sitting members. Id. (noting a status quo order is appropriate because of "the risk that routinely occurs in these scenarios in which a new board may function until the summary proceeding is resolved, only to be

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<sup>1</sup> The Board of Trustees skirts the issue of the effect of its August 2019 proposed bylaw amendments on the term of trustees. Compare Doc. 1 ¶ 38 with Doc. 31 ¶ 38. The Board asserts that "all non-Member Trustees are subject to term limits." (Doc. 31 ¶ 38). That is true insofar as it goes. However, the August 2019 proposed bylaw amendments would extend the term of non-Monk Trustees who are also appointed as officers of the Board of Trustees. (Doc. 15, Ex. E Art. XII, § 2). Trustees who are elected officers of the Board could serve up to 15 years, whereas all other trustees are term-limited after nine years. Nonetheless, five of the nine trustees whose terms expire in October 2020 would be term-limited even under the Board's August 2019 bylaw amendments. The motion for status quo order, however, would extend the service of even these five term-limited trustees.

determined to have been unlawfully empowered”). In other words, this is not a dispute about whether certain officers or trustees had authority to act on behalf of the corporation because of a question about whether those individuals were properly appointed or removed from power. See, e.g., Feeley v. NHAOCG, LLC, No. CIV.A. 7304-VCL, 2012 WL 966944, at \*5 (Del. Ch. Mar. 20, 2012) (recognizing that Delaware statutes empower courts to determine who has properly been appointed a manager of a corporation); Pharmalytica Servs., LLC v. Agno Pharm., LLC, No. CIV.A. 3343-VCN, 2008 WL 2721742, at \*3 (Del. Ch. July 9, 2008). The relief sought by the Board of Trustees in this case is truly extraordinary. The Board has not cited a single case in which a court extended the term of a member of the board of directors beyond that authorized in the bylaws of the corporation.

There is no question in the case at bar that members of the current Board of Trustees were properly appointed and have authority to make decisions on behalf of the College Corporation. The terms of 14 Trustees will expire in October 2020. Nothing prevents reappointment of five of those Trustees who are not subject to term limits. See 2019 Bylaws Art. XI, § 4 (nomination of Trustees must be made by the Committee of Trusteeship and approved by the Board of Trustees). More importantly, however, even if the current corporate dispute prevents the nomination or approval of new trustees, the Board of Trustees would still consist of 16 non-Monk Trustees and 7 Monk Trustees after October 2020. There is no minimum number of trustees required to conduct the business of the College Corporation so long as a quorum of the appointed trustees are present for meetings. See id. Art. XI, § 3 (providing for “no more than 32” non-Monk Members on the Board of Trustess); Art. XIII, § 3 (providing that a majority of the Board of Trustees shall

constitute a quorum and a vote of the majority of the trustees present shall be sufficient to conduct valid business). The Court does not discount the fact that the loss of experienced leadership will make the challenges of navigating the COVID-19 pandemic and the NECHE accreditation process more challenging. But allowing the current trustee terms to expire by operation of the bylaws will not result in irreparable harm. See Mottolo, 155 N.H. at 63. The Board of Trustees will still have the authority to govern the College Corporation and make decisions necessary address these difficult decisions.


The Board of Trustees motion for a status quo order is GRANTED, in part, and DENIED, in part, as follows:

1. Both sides are precluded from attempting to amend the bylaws during the pendency of this litigation.
2. The request to preclude the Monk Members from acting on behalf of the College Corporation more generally is denied. The Chairman of the Monk Members has a number of duties and responsibilities to act on behalf of the College Corporation under the bylaws. Likewise, the Monk Members have a number of Reserved Powers under the bylaws. The Board of Trustees' request to restrict action under these provisions of the bylaws is too vague.
3. The Board's request to preclude the Board from taking "action beyond managing the day-to-day affairs of the College Corporation" would likely interfere with its ability to address the COVID-19 pandemic and the accreditation process. Granting the Board's request for relief in this regard will likely have unforeseen consequences and impede both sides ability to act in ways that are not in dispute in this litigation.

4. Finally, the Board of Trustees' request to extend the length of trustees' terms and the term limits that apply to trustees is denied.

SO ORDERED.

June 15, 2020  
Date

  
N. William Delker  
Presiding Judge

Clerk's Notice of Decision  
Document Sent to Parties  
on 06/17/2020