IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA

CASE NO. 2023-CA-005295-O

ASSOCIATION TO PRESERVE

operation of a public school for only African American children is valid and that the release of said restriction pursuant to an eight-year-old court-approved settlement agreement and a more recent deed release is invalid ("Count I"). Moreover, the Plaintiffs, without pleading any facts in support thereof, request this Court restrain the School Board from selling the Hungerford Property or otherwise disposing of same without complying with the Florida Statutes and the 1951 Court-imposed Use Restriction ("Count II"), as defined below.

II. BACKGROUND

Plaintiffs' Complaint sets out the long history of certain real property located in the Town of Eatonville, Florida. Without reciting the entire history, the School Board will focus on those events relevant to this Motion.

In 1951, the School Board acquired the Hungerford School and the Hungerford Property. *See* Compl. ¶4. The acquisition was disputed and eventually approved by the Florida Supreme Court. *See Fenske v. Coddington*, 57 So. 2d 452, 454 (Fla. 1952). *See* Compl. ¶34. During the litigation over the Hungerford Property, the circuit court ordered "[t]hat upon the conveyance of said real property to the Board of Public Instruction of Orange County, Florida, said real property be used as a site for the operation of a public school thereon for negroes with emphasis on the vocational education of negroes and to be known as "Robert Hungerford Industrial School."

In 1974, the School Board sought to sell a portion of the Hungerford Property over objections of the successor trustees of the Hungerford Chapel Trust. *See* Compl. ¶62. After litigating the matter, the circuit court found that the successor trustees of the Hungerford Chapel Trust had no title or interest in the Hungerford Property since the 1951 conveyance of the Property to the School Board. *See* Compl. ¶63. The circuit court authorized the sale and lifted the 1951 Court-imposed Use Restriction for that portion of the Hungerford Property. *See* Compl. ¶64.

In 2010, the Town of Eatonville ("Eatonville") and the School Board agreed to cooperate and work together to remove the 1951 Court-imposed Use Restriction from the Hungerford Property. *See* Compl. ¶¶68-69. In 2011, Eatonville brought an action against the School Board and the Hungerford Chapel Trust to release the 1951 Court-imposed Use Restriction (the "2011 Allen Litigation") because it contended that the Hungerford Property would be better suited for commercial development to increase Eatonville's "ad valorem tax base and to provide health and safety to its citizens." *See* Compl. ¶¶70-75. Eatonville and the Hungerford Chapel Trust executed a joint stipulation for release of the 1951 Court-imposed Use Restriction ("2011 Joint Stipulation"). *See* Compl. ¶86.

In 2015, Eatonville, the Hungerford Chapel Trust and the School Board entered a Joint Stipulation for Settlement that was substantially similar to the 2011 Joint Stipulation ("2015 Settlement") and moved the 2011 Allen Litigation court to approve the Joint Stipulation for Settlement. *See* Compl. ¶¶92-93. The 2011 Allen Litigation court entered an Order Approving Joint Stipulation for Settlement on November 10, 2015. *See* Compl. ¶94.

The parties to the 2011 Allen Litigation entered into a First Amendment to Settlement Agreement in 2016 ("Amended Settlement Agreement"). *See* Compl. ¶97. The Amended Settlement Agreement provided for the School Board to pay the Hungerford Chapel Trust

$1,000,000.00 dollars in exchange for releasing the 1951 Court-imposed Use Restriction. *See* Compl. ¶103. The release of the 1951 Court-imposed Use Restriction contemplated in the 2015 Settlement Agreement and the Amended Settlement Agreement resulted in the sale of a portion of the Hungerford Property to HostDime, LLC for $1,400,000.00. *See* Compl. ¶107.

The School Board entered into two (2) contracts with Eatonville, one in 2010 and a second in 2019 regarding the sale of the Hungerford Property. *See* Compl. ¶¶68 and 125. The 2019 contract provided that the School Board, upon selecting a developer, would sell the land to

While the contract was set to close on October 26, 2022, the School Board extended closing several times while Hungerford Park attempted to obtain the necessary entitlements for its development from Eatonville. *See* Compl. ¶133. However, the Corporation spoke at multiple public hearings and submitted written objections, including the February 7, 2023, final hearing, in opposition to Hungerford Park's development plans. See Compl. ¶¶211-214. Even though Eatonville had requested that the 1951 Court-i

to join indispensable parties and failed to attach documents that are the basis of the purported counts, Plaintiffs' Complaint should be dismissed with prejudice.

III. ARGUMENT

Standard for Motionardsse[illegible]

adverse interest are all before the court by proper process or class representation and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

County of Leon, 643 So. 2d 1112 (Fla 1st DCA 1994). "The interest cannot be conjectural or merely hypothetical." *Id.* "Furthermore, the claim should be brought by, or on behalf of, the real party in interest." *Id.* at 216.

Assuming for arguments sake that the Plaintiffs timely brought an appeal of the School Board's decision to open a school, operate a school, the type of school, the closing of a school, or the operation of an illegally segregated school pursuant to §120.54(2)(a), as set forth below, then Plaintiffs must prove they were substantially affected by the School Board's action to satisfy the threshold of standing. *See* §120.56 Fla. Stat.; S*chool Board of Orange County vs. Blackford*, 369 So. 2d 689 (1979). In *Blackford*, the Florida Supreme Court found that the parents of existing students at a school that were being moved by the School Board due to a school closure did not have standing to challenge the School Board decision. *Id*. Pursuant to §120.56(4), Fla. Stat. " ... (a)ny person substantially affected by an agency's proposed rule has standing to challenge the existing rule." To meet the substantially affected test of §120.54 (4) and §120.56(4), Fla. Stat., "the petitioner must establish: (1) a real and sufficiently immediate injury in fact; and (2) "that the alleged interest is arguably within the zone of interest to be protected or regulated." *See Ward vs. Board of Trustees of Internal Improvement Trust Fund*, et al 651 So. 2d 1236, 1237 (1995) citing *All Risk Corp. of Fla. vs. State, Dept. of Labor & Employment Sec.*, 413 So. 2d 1200 (Fla 1st DCA 1982). Here, a step away from *Blackford*, neither Plaintiff is even alleged to be a parent of a student, and neither could be a current or future student of the School Board as one is a not-for-profit corporation, and one is a septuagenarian residing in Oregon. Further, neither Plaintiff is in the zone of interest of the 1951 Court-imposed Use Restriction and has failed to allege how either has suffered damages as a result of the School Board's alleged failure to comply with the released 1951 Court-imposed Use Restriction or its decision to close the school on the Hungerford Property.

Even assuming Plaintiffs could prove there was a violation of the 1951 Court-imposed Use Restriction, neither can establish a direct injury or meet the requirement of being substantially affected as neither Plaintiff is nor could be a student at the Hungerford Property. Therefore, the Complaint should be dismissed with prejudice for Plaintiffs' lack of standing.

2. <u>Plaintiffs lack standing as a matter of law as they do not have any special injury as required to state a claim against a governmental entity.</u>

Plaintiffs have also failed to allege any facts to establish either Corporation or Hatler's standing to challenge the School Board's actions, including failing to allege either suffered a special injury. The 1951 Court-imposed Use Restriction at issue in Count I of the Complaint is unenforceable, neither Plaintiff is or will be a student at the Hungerford Property, and the statutory procedures relating to disposal of School Board property at issue in Count II of the Complaint applies to all citizens of Orange County, Florida. The only injury Plaintiffs allege are speculative and contingent upon future actions of the School Board as to the Hungerford Property which have not yet occurred. "[T]he Florida Supreme Court has repeatedly held that citizens and taxpayers lack standing to challenge a governmental action unless they demonstrate either a special injury, different from the injuries to other citizens and taxpayers, or unless the claim is based on the violation of a provision of the Constitution that governs the taxing and spending powers." *Solares v. City of Miami*, 166 So. 3d 887, 888 (Fla. 3d DCA 2015) (*citing Sch. Bd. of Volusia Cty. v. Clayton*, 691 So. 2d 1066, 1068 (Fla. 1997); *N. Broward Hosp. Dist. v. Fornes*, 476 So. 2d 154, 155 (Fla. 1985); *Henry L. Doherty & Co. v. Joachim*, 146 Fla. 50, 200 So. 238, 240 (Fla. 1941); *Rickman v. Whitehurst*, 73 Fla. 152, 74 So. 205, 207 (Fla. 1917))**.**

Plaintiff Corporation has alleged no contractual relationship with the School Board, did not allege that it was a party to any prior settlement agreement(s), did not allege it is a Member of the Hungerford Chapel Trust, a trustee, or a trust beneficiary, or allege any special rights to utilize the

Hungerford Property. In two hundred and seventy-seven paragraphs in the Complaint, the Corporation alleges one injury which is as follows:

> *If the Hungerford Property is allowed to be sold in this manner in the future*, without any court scrutiny of the deed, the deed release, and the School Board's failure to comply with its

including but not limited to no active requests for proposals, no bids for sale, no proposed contracts, and no planned public meeting; so, there is no actual controversy based on real facts to support a declaratory action. A declaratory action is not appropriate when there is nothing more than a mere possibility the Hungerford Property may be sold, or disposed of at some point in the future.

As to Count II, unless and until the School Board does act, the statutory and regulatory process that applies to the School Board's disposal of land is not applicable. Section 1013.28, Fla. Stat. (2023) provides that "Subject to the rules of the State Board of Education, a district school board . . . may dispose of land or real property to which the board holds title which is, by resolution of the board, determined to be unnecessary for educational purposes as recommended in an educational plant survey." The State Requirements for Educational Facilities, at Section 1.4(4) provide that " A Board may dispose of any land or other real property by resolution of such Board, if recommended in an educational plan survey and if determined to be unnecessary for educational or ancillary purposes." *State Requirement for Educational Facilities*, Florida Department of Education, November 4, 2014. At some time in the future if the School Board determines that it wishes to accept bids, enter a contract, or otherwise dispose of the Hungerford Property, it must do so through a public hearing process and pursuant to the statutory and regulatory process for disposal of land set forth above. Plaintiffs' allegations as to the School Board's compliance with the process are not ripe because the actions related to a future sale have not yet occurred. In this action, Plaintiffs are seeking a declaratory action based on past actions of the School Board, dating as far back as 2009. A declaratory action is not appropriate to pass judgment or issue an advisory opinion on past actions. Since the termination of the Hungerford Park contract, no disposal process has been initiated by the School Board and as there is no active contract for the sale of the

Hungerford Property, there is no actual controversy relating to the disposal process.

As there is no actual controversy as to either Count I or II, there is no basis for this Court to exercise any jurisdiction under Chapter 86, Florida Statutes and the Complaint should be dismissed with prejudice.

5. Plaintiffs' Complaint is barred by its failure to comply with the appeal deadlines set forth in the Administrative Procedure Act.

Couched as seeking a declaratory judgment that the 1951 Court-imposed Use Restriction is valid and enforceable, Plaintiffs are really asking this Court to require the School Board to open and operate a second school on the Hungerford Property. Any challenge of the requirement to open a school, operate a school, operate an illegal segregated school, or the closing of a school must be pursuant to the Florida Administrative Procedure Act and its attendant deadlines for filing set forth in §120.54(2)(a) Fla. Stat. (2023) as that is the primary agency with jurisdiction as "district school boards are constitutionally and statutorily charged with the operation and control of public K-12 education within their school districts." §1003.02, Fla. Stat. (2023); *Flo-Sun, Inc. v. Kirk,* 783 So. 2d 1029, (Fla. 2001). Circuit Court intervention by declaratory action is generally not proper where an appeal process and remedcess1-12 ( )]TJ-3redeg i p

is barred as a matter of law, fails to state a cause of action, and should be dismissed with prejudice.

C. The 1951 Court-Imposed Use Restriction is Unenforceable.

Plaintiffs have asked the Court to enforce the 1951 Court-imposed Use Restriction:

> That upon the conveyance of said real property to the Board of Public Instruction of Orange County, Florida, said real property be used as a site for the operation of a public school thereon for negroes with emphasis on the vocational education of [N]egroes and to be known as "Robert Hungerford Industrial School" and the personal property as conveyed to said Board shall be used in connection therewith.

The Supreme Court of the United States, in *Shelley v. Kraemer*, 334 U.S. 1 (1948), held "that in granting judicial enforcement of the restrictive agreements in these cases, the States have denied petitioners the equal protection of the laws and that, therefore, the action of the state courts cannot stand." The Court continued "[t]he Constitution confers upon no individual the right to

opening.

Plaintiffs want this Court to rescind the court approved 2015 Settlement and the Amended Settlement Agreement and to nullify the 2022 Deed Release in order to enforce the 1951 Court-imposed Use Restriction. In an action for rescission of a transaction, the parties to the transaction are indispensable. *Fireman's Ins. Co. of Newark, N.J. v. Vento,* 586 So. 2d 89 (Fla. 3d DCA 1991*)*; *Coast Cities Coaches, Inc. v. Whyte,* 130 So. 2d 121 (Fla. 3d DCA 1961). The rights and obligations of the parties to the 2015 Settlement and Amended Settlement Agreement will be

assert the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state.") (emphasis added).

Eatonville, the Hungerford Chapel Trust, and HostDime LLC are indispensable parties and failure to join them requires the Complaint be dismissed.

E. Failure to attach the 2015 Court-Approved Settlement Agreement requires dismissal of the Complaint.

Plaintiffs' Complaint should be dismissed for their failure to attach the document that is the basis of both counts. Rule 1.130(a), Fla.R.Civ.P., provides that "All . . . contracts . . . upon which the action may be brought . . . shall be incorporated in or attached to the pleading. (emphasis added). ". . . [T]he word "shall" . . . is normally meant to be mandatory in nature." *State v. Goode,*

Plaintiffs also fail to state a cause of action for entry of injunctive relief, yet requests the Court enjoin the School Board in its prayer for relief. It is well settled that pleadings must demonstrate a right to a permanent injunction. *Smith v. Bateman Graham, P.A.*, 680 So.2d 497, 499 (Fla. 1st DCA 1996). A complaint for injunctive relief must allege every necessary fact clearly, definitely, and unequivocally and should state something more than conclusions and opinions of Plaintiffs. *See Central & S. Fla Flood Control Dist. V. Scott*, 169 So. 2d 368, 370 (Fla. 2d DCA 1964). A claim for injunctive relief action requires the Plaintiffs to demonstrate: (1) irreparable harm; (2) a clear legal right; (3) an inadequate remedy at law; and (4) consideration of the public interest. *See St. Lucie County vs. Town of St. Lucie Village*, 603 So. 2d 1289, 1292 (Fla. App. 4th DCA 1992) and *Hiles vs. Auto Bahn Federation, Inc.*, 498 So. 2d 997 (Fla App 4th DCA 1986). "Another requirement for injunctive relief of prospective action is that the likelihood of the future conduct occurring must be real and exceedingly probable." *St. Lucie County*, 603 So. 2d 1289, 1292-1293 (Fla. App. 4th DCA 1992) citing *City of Coral Springs vs. Florida National Properties Inc.*, 340 So. 2d 1271 (Fla 4th DCA 1976). "To be subject of an injunction, a prospective injury must be more than a remote possibility; it must be so imminent and probable as reasonably to demand preventive action by the court." *City of Coral Springs*, 340 So. 2d 1271-1272 (Fla 4th DCA 1976). "In other words, the feared injury must be so near and present that the only way to avoid it is through injunctive relief." *St. Lucie County*, 603 So. 2d 1289, 1293. Simply put, Plaintiffs have not alleged facts demonstrating a clear right to the injunctive relief they seek, and the Complaint must be dismissed.

1. Plaintiffs have not shown any irreparable harm.

Plaintiffs have not alleged anywhere in the Complaint that they will suffer irreparable harm. “Irreparable injury will never be found where the injury complained of is ‘doubtful, eventual

or contingent.'" *Jacksonville Elec. Auth. v. Beemik Builders & Construction, Inc.* 487 So. 2d 372, 373 (Fla. 1st DCA 1986). "Mere general allegations of irreparable injury are not sufficient." *Stoner v. Peninsula Zoning Comm'n,*75 So. 2d 831, 832 (Fla. 1954). "[I]t must appear that there is a reasonable probability, not a bare possibility, that a real injury will occur." *Miller v. MacGill,* 297 So. 2d 573, 575 (Fla. 1st DCA 1974).

Plaintiffs fail to assert that there is a reasonable probability that a real injury will occur. As explained herein, Plaintiffs lack standing to bring the Complaint in the first place as they have not, nor could they suffer any injury as it relates to the Hungerford Property.

2. Plaintiffs do not have a clear right to legal relief.

As set forth herein, Plaintiffs lack standing to bring this action thus have no right to relief, the 1951 Court-imposed Use Restriction that Plaintiffs seek to enforce is illegal and unenforceable, and there is no actual controversy to invoke the Court's jurisdiction pursuant to §86.011, Fla. Stat., all as set forth above. Therefore, Plaintiff cannot establish a clear legal right of relief.

3. Plaintiff Has Not Shown an Inadequate Remedy at Law.

It is well-established that injunctive relief will not lie where there is an adequate remedy of law available. *Meritplan Ins. Co. v. Perez,* 963 So. 2d 771, 776 (Fla. 3d DCA 2007). Here, Plaintiffs have failed to assert any actual damage which could not be remedied by law. At best, Plaintiffs state, in a conclusory manner, that the responsible development of the Hungerford Property is key to its historical preservation efforts for the Hungerford Property, which it does not own, and Eatonville as whole.

4. Granting an injunction is not in the public interest.

Injunctive relief may be denied where the injury to the public outweighs any individual right to relief. *Knox v. Dist. Sch. Bd. Of Brevard,* 821 So.2d 311, 314 (Fla. 5th DCA 2002); *see*

also Dragomirecky v. Town of Ponce Inlet, 882 so 2d 495, 497 (Fla. 5th DCA 2004) ("Where the potential injury to the public outweighs an individual's right to relief, the injunction will be denied.")

Plaintiffs failed to plead as to the public interest as to injunctive relief.

Plaintiffs fail to state a cause action for entry of injunctive relief as they fail to allege facts to establish irreparable harm, a clear legal right, an inadequate remedy at law and consideration of the public interest and the Complaint should be dismissed with prejudice.

G. Plaintiffs' Complaint is an Attempt to Intervene in the 2011 Allen Litigation.

As mentioned herein, at no time during the pendency of the 2011 Allen Litigation did Plaintiffs seek to intervene in the matter. Thus, this case appears to be nothing more than Plaintiffs' attempt to end run its failure to intervene in the 2011 Allen Litigation or following the entry of the court's order approving the 2015 Settlement. As such, the Court should consider whether Plaintiffs would be permitted to intervene now, eight years later. Florida recognizes a very narrow exception to allow post-judgment intervention "when to do so would in no way injuriously affect the original litigants and when allowing intervention will further the interests of justice." *Biden* at 636 (*citing Lewis v. Turlington*, 499 So. 2d 905, 907-08 (Fla. 1st DCA 1986).

Biden is similar to this case in that it involved a charitable trust, decades of litigation, stipulations, and judicial modifications of the trust. In 2004, the trustees of the trust at issue filed an action to modify the trust, which resulted in a final judgment modifying the trust including definition of the trust's beneficiaries. While Delaware was not a party to the 2004 litigation, evidence suggested it was well aware of the matter. Eight years after the final judgment, the Delaware Attorney General sought to intervene as an indispensable party and to set aside the final judgment. The First District Court of Appeal found the Delaware Attorney General could not

intervene finding that the original parties to the 2004 litigation would be injured by the intervention and that the interests of justice would not be served. *Id.*

Accordingly, for Plaintiffs to be permitted to intervene in the 2011 Allen Litigation, the

barred from bringing this action. Finally, Plaintiffs failed to join the Town of Eatonville, the Hungerford Chapel Trust, and Host Dime, LLC, all indispensable parties to this action, failed to attach necessary documents, and failed to plead the necessary requirements for an injunction. Given the facts and law set forth above, this Court should grant the School Board's Motion to Dismiss Plaintiffs