

IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY, PENNSYLVANIA
CIVIL DIVISION

RHO CHAPTER OF THE CHI PHI
FRATERNITY,

Plaintiff/Petitioner,

v.

LAFAYETTE COLLEGE,

Defendant/Respondent.

No.: C-48CV-2011-10433

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COURT OF COMMON PLEAS
CIVIL DIVISION
NORTHAMPTON COUNTY, PA

FILED

**SUPPLEMENTAL MEMORANDUM OF LAW OF THE RHO CHAPTER
OF THE CHI PHI FRATERNITY IN RESPONSE TO THE REPLY
MEMORANDUM FILED BY DEFENDANT, LAFAYETTE COLLEGE**

I. INTRODUCTION

On December 30, 2011, Lafayette College filed a Memorandum of Law in response to the Plaintiff's Preliminary Objections to the College's Preliminary Objections. However, rather than limiting its arguments to the Preliminary Objections of the Plaintiff, the College also included a second part to its Memorandum of Law that is, in essence, a Reply Memorandum of Law without seeking Court approval as required by Local Rule N211(c). Therefore, on Tuesday, January 3, 2012, at the Call of the Argument List, Judge Stephen Baratta granted leave of Court to the Plaintiff to file a Supplemental Memorandum of Law in response to the additional arguments that were raised by the Defendant, Lafayette College. The following Argument solely addresses Part B of the College's Memorandum of Law of December 30, 2011.

II. ARGUMENT

The College continues to inaccurately frame the legal issues before this Court and ignores the many factual and legal issues which remain for adjudication. Chief among the issues not mentioned by the College is continuing dispute caused by the College's refusal to give

possession of the Chi Phi house to Chi Phi this semester, or ever! The College also continues to mischaracterize the relief sought by Chi Phi.

First, Plaintiff's action is not designed or intended to "force" this Court to supplant the decision-making process of the Lafayette College Board of Trustees or force its Board to do anything. As to action or non-action by the Lafayette Board, Chi Phi seeks a determination that it is not a "colony" and does not need to seek "re-colonization". This is so because its Chapter never had its recognition withdrawn by the College, and never had its Charter withdrawn by the Chi Phi National Fraternity, which is the only entity from which a fraternity charter can issue. Since Chi Phi has already been installed as an official Chapter of its national fraternal organization, the College need not and cannot "colonize" Chi Phi. Chi Phi is asking this court to determine whether the College has breached its contractual obligations to Chi Phi, requiring injunctive relief to return possession of the Chi Phi house to Chi Phi. Chi Phi is not seeking in this action to cause the Lafayette Board to do anything. Whatever opportunity they had to review the Chi Phi Plan of Return has expired.

A. **Lafayette College both breached its duties under the 2006 Agreement, as extended by the 2010 Letter Agreement and has further waived any rights by its lack of action.**

Lafayette College was obligated at the end of the 2006 Agreement (thereafter extended one year by the Letter Agreement of 2010 to May 24, 2011), to return Vallamont to Chi Phi. It is a plain and simple obligation set forth in Paragraph 13 of the 2006 Agreement that simply states: "The College shall return the premises to the Rho Chapter at the expiration of this Agreement." This has not occurred.

Moreover, the Agreement provided that the Board of Trustees would then consider the plan of Chi Phi to return undergraduates to campus if such plan were submitted. That review by

the Board, "shall be guided by the fraternity/sorority re-colonization guidelines adopted by the trustee committee on athletics and student affairs on June 21, 1993." (See Paragraph 12 of the 2006 Agreement.) Since recognition was never withdrawn through the College's procedures, as outlined by its President, Daniel Weiss, in 2009 (see Exhibit A attached to the Plaintiff's Brief in Opposition to the College's Preliminary Objections, being letter of August 17, 2009, to Mr. Victor Angeline, III), the 1993 Guidelines remained the only context in which the Board could have exercised its discretion in reviewing Chi Phi's Plan of Return. Yet, through its inaction, even that opportunity has expired. Further, the College has failed to provide any facts as to who exercised what discretion, when or how. Was it the Board of Trustees, the President, the Faculty or someone else? Further, Chi Phi has never received any communication from the Board of Trustees concerning the merit of its Plan of Return.

The Board, despite receiving Chi Phi's plan in March of 2011, deferred any decision at or after its May, 2011 meeting. The continuing lack of action by the Board and the College's continuing refusal to return possession of the Chi Phi house to Chi Phi prompted both the initial suit and this action.

Despite representations made by the College to this Court in September of 2011, that Chi Phi's plan would be acted upon at the October 2011 Board of Trustees Meeting, such action was still not undertaken but deferred for the next three (3) years while, yet, another academic committee would be further studying and making recommendations with regard to Greek life on campus. (See Plaintiff's Complaint, Paragraphs 80-85). Proof that the merits of Chi Phi's plan of return have ever been addressed remains an issue of unresolved fact.

The now expired Letter Agreement of 2010 did not change the terms of the 2006 Agreement. It merely extended the time one year. The Board of Trustees was still obligated to

address Chi Phi's Plan of Return through an exercise of its discretion "as guided by the 1993 Guidelines", which was one of the cornerstones of the 2006 Agreement. Nothing in the Letter Agreement removed the 1993 Guidelines as the operative Guide for the Board of Trustees.

The Board of Trustees has evaded and delayed its duty to act because it is clear that Chi Phi's Plan, as attached to the Complaint, meets or exceeds all of the College's 1993 criteria.

B. The College has waived any rights by its own conduct in breach of the Agreements.

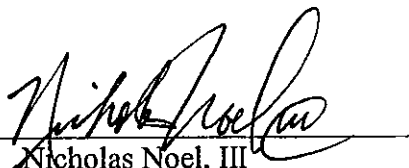
Another significant issue that the Court must address at trial is whether the College has waived its right to review the Plan by its failure to act as promised through both the 2006 and 2010 Agreements. As such, a justiciable issue is presented to the Court as to whether the Defendant has any rights remaining and whether, as a matter of law, Vallamont must be returned to the Rho Chapter of the Chi Phi Fraternity and its undergrads be allowed to return in residence. This is not supplanting the Court's discretion for that of the Board of Trustees; it is a legal finding that the College has no more rights under the Agreements by its own failure to act as promised and required. The Board of Trustees failed to undertake a good faith review, on the merits, of Chi Phi's Plan of Return when submitted to the Board. If it had, we may not be involved in the current litigation.

Rather than return Vallamont and allow Rho Chapter to re-populate, the College refuses to allow Chi Phi to recruit new members, ignores its own rules, flaunts its perceived authority, and refuses to act at all. Despite the recent temporary agreements as to the handling of Vallamont's insurance, security and maintenance the College refuses to relinquish possession of the Chi Phi house and there are serious issues that must be adjudicated at trial as to what rights, if any, still exist with the College. There are a number of issues that need to be resolved from a factual standpoint that prevents Chi Phi's action from being dismissed. The issue as to Rho's

status as an active Chapter of Chi Phi in light of the College's conduct, or lack thereof and in light of the Resolutions passed by Chi Phi's national organization in April, 2005, must be addressed. Further, there are issues of interpretation of the applicable Agreements, whether Rho's recognition was ever withdrawn, whether its Charter was ever withdrawn by the National or declared "inactive" and the reasons why the 1993 Guidelines were agreed as the Guide in reviewing the Chi Phi Plan, among others. All must be determined promptly so that the ongoing damages suffered by Rho, as outlined in the Complaint, are stopped and the Plaintiff allowed to proceed with recruitment of new members without continuing College interference to become the model fraternity that Lafayette College purportedly seeks to have on its campus.

WHEREFORE, the Plaintiff, Rho Chapter of the Chi Phi Fraternity respectfully requests this Honorable Court deny the Preliminary Objections of the Defendant Lafayette College.

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Date: January 9, 2012

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PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing Plaintiff's Supplemental Memorandum of Law of the Rho Chapter of the Chi Phi Fraternity in Response to the Reply Memorandum filed by Defendant, Lafayette College, upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.C.P. 440:

Service by first class mail
Postage Prepaid, Addressed as follows:

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Date: January 9, 2012