

LITIGATION FOR THE LAYMAN – CHAPTER EIGHT

“THIS IS A TEST”

From the outset of these summaries of Rho’s litigation with the college, the primary purpose has been to sweep away the technical procedural aspects of litigation so the brothers of Rho and other friends of Greek life at Lafayette could understand what was going on. Well, this will be a test for me as a writer to convey recent developments and for you as a reader for follow along.

Are you ready?! (Oh, yea!)

As covered in Chapter 7, following the October meeting of the Board of Trustees and the apparent failure of the Board to act on our Plan of Return, Rho filed a Complaint which in most respects tracked the allegations of the Complaint filed last spring. Once a complaint is filed, the defendant can respond with an answer which responds paragraph by paragraph to the allegations in the complaint. Or, the defendant can file “Preliminary Objections” (PO’s) which basically say that: (1) everything stated in the complaint is true and any disputed issues are construed against the defendant and (2) the plaintiff (here, Rho) is not entitled to ANY relief, under ANY set of facts or ANY theory of law. It is what lawyers refer to as a “demurrer” - “I agree with everything you say, but you’re still not entitled to any relief or in modern parlance, “Yea, you’re right, but so what!” This is a nearly-impossible standard to meet and therefore it is very unusual for the court to grant a defendant’s PO’s and dismiss the complaint.

Here, the college filed PO’s to Rho’s Complaint, just as it did last spring. You will recall that the court dismissed the college’s PO’s on its own even before we had a chance to respond. But, what if the college’s PO’s are incorrect under the court’s procedural rules? What is the plaintiff to do? Well, you guessed it – the plaintiff files its PO’s, objecting to the defendant’s PO’s. Talk about being “POed!” Sorry.

So where are we and how did we get there? Under the rules of the court, PO’s cannot inject new facts, but that is exactly what the college’s PO’s did. For example,

- the college alleges that there was no potential harm to Vallamont (forever?) since it did not plan to use the house this spring (what is the basis for the college knowing no harm will ever come in the future?);
- at the time Rho filed its Complaint, we were aware that the college didn’t intend to use Vallamont this spring (there is no authority – source – to support this statement)

Since the college’s PO’s violated the court’s procedural rules, Rho filed PO’s on that basis. (We also asserted that there are disagreements over the facts that had been alleged and that was a second basis for the court to dismiss the college’s PO’s.) That’s were things now stand. Basically, the court has two options. First, it could grant the college’s PO’s and dismiss our Complaint. That seems unlikely. Second, the court can agree with us, that the college’s PO’s are improper, grant our PO’s, dismiss the college’s PO’s and order the college to file its Answer to our Complaint – typically within twenty (20) days of the Order.

Are you still with me? Yes? You passed!

Stay tuned.

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