STATE OF VERMONT

SUPERIOR COURT
Franklin Unit

CIVIL DIVISION
Docket No. 34-1-19 Frcv

HUNTINGTON SCHOOL DISTRICT,
Plaintiff / Appellant,

v.

VERMONT STATE BOARD OF EDUCATION,
and
VERMONT AGENCY OF EDUCATION,
and
MOUNT MANSFIELD MODIFIED UNION SCHOOL DISTRICT,
Defendants / Appellees.

PLAINTIFF / APPELLANT'S OPPOSITION TO DEFENDANT MOUNT MANSFIELD MODIFIED UNION SCHOOL DISTRICT'S MOTION FOR RECONSIDERATION OF ORDER GRANTING STAY

NOW COMES Plaintiff / Appellant Huntington School District, by and through its attorneys, Tarrant, Gillies & Richardson, LLP, and opposes Defendant / Appellee Mount Mansfield Modified Union School District's motion for reconsideration of order granting stay. In support, Plaintiff / Appellant submits the following memorandum of law.

Memorandum of Law

On February 8, 2019, this Court granted the Vermont State Board of Education, Vermont Agency of Education ("the State Defendants"), and Huntington School District's ("Huntington's") joint motion to stay. Mount Mansfield Modified Union School District ("Mount Mansfield") now asks the Court to reconsider that decision. While recognizing that the Court has stayed this matter, Huntington is compelled to briefly respond to Mount Mansfield's request.

First, the request must be put into context. The stay that is now in place is advantageous

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to everyone because it puts the case on hold and allows all parties—Mount Mansfield, the State Defendants, and Huntington—to conserve resources and maintain the status quo. As long as no merger vote is warned, the case remains on hold and none of the parties has to do anything further. The stay also puts the next move fully in Mount Mansfield's control. If Mount Mansfield does not hold a merger vote by July 1, 2019, then none of the parties in this lawsuit will have to do anything further and the case will become moot. Alternatively, if—and only if—Mount Mansfield decides to vote to unilaterally force Huntington to merge, against the repeatedly expressed will of Huntington voters, the lawsuit will start back up.

In either case, while the stay is in place the Court might make decisions in the two other Act 46 lawsuits which could help resolve some or all of the legal disputes raised in this case.

Second, while Mount Mansfield claims that it is prejudiced and will suffer hardship if it remains in the case, these allegations do not meet the legal standard for prejudice or hardship. See *Hermitage Inn Real Estate Holding Co., LLC v. Extreme Contracting, LLC*, 2017 VT 44, ¶ 41, 205 Vt. 93, 170 A.3d 604 (holding that having to bear normal litigation expenses does not amount to prejudice when considering whether to overturn default judgment); *In re Mahar Conditional Use Permit*, 2018 VT 20, ¶ 22, 183 A.3d 1136 (in reference to reopening an appeal period, noting that "[p]rejudice to another party 'means some adverse consequence other than the cost of having to oppose the appeal and encounter the risk of reversal, consequences that are present in every appeal'" (quoting Reporters Notes to F.R.A.P. 4) (internal quotations and alterations omitted)). Furthermore, as set out above, the stay actually benefits Mount Mansfield by allowing it to effectively do nothing, to conserve resources, and to decide whether the litigation will continue in the future. Keeping the stay in place and withholding judgment on the motion to dismiss is the most efficient and cost-effective way for this case to proceed.

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Third, Huntington would be prejudiced if the stay is lifted or Mount Mansfield dismissed. As set out in Huntington's opposition to Mount Mansfield's motion to dismiss, a merger vote is sufficiently imminent to make this matter ripe; that vote will harm Huntington; and Mount Mansfield's involvement is necessary to resolve the legal issues. Mount Mansfield's suggestion—that the Court should dismiss it from the lawsuit, and then have Huntington repeat the service protocols of the Rules of Civil Procedure to bring Mount Mansfield back into the case if Mount Mansfield warns a vote—would only create more work and cost for all parties, including Mount Mansfield. This would also prejudice Huntington because the Court would have no jurisdiction over Mount Mansfield in the period of time after Mount Mansfield is dismissed and before it is brought back in. In that time Mount Mansfield could warn and hold a vote without the Court being able to weigh in on whether Mount Mansfield should be permitted to do so in light of Huntington's arguments that such a vote would be illegal.

Fourth, it is puzzling that Mount Mansfield would not want to participate in resolving questions related to how merger would be implemented—for example, whether or how the 2014 Articles of Agreement, which have a number of lapsed or outdated provisions, would govern the new merged district. From a practical perspective, Mount Mansfield would presumably want to participate in untangling some of the practical questions regarding how a merger would be implemented.

Fifth, and finally, Mount Mansfield could extract itself from this case, and bring the case to an end altogether, by simply committing to not hold a merger vote. In the meantime, as long as it declines to do so and chooses instead to hold out the threat of forcing Huntington to merge, Mount Mansfield must remain in the case.

For these reasons, the Court should deny Mount Mansfield's motion for reconsideration.

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Dated this 15th day of February, 2019 at Montpelier, Vermont.

HUNTINGTON SCHOOL DISTRICT

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