

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF LOUISIANA

UNITED HOUMA NATION, INC.	*	CIVIL ACTION
<i>Plaintiff</i>	*	
	*	
v.	*	NO. 2:21-cv-00439
	*	
TERREBONNE PARISH SCHOOL BOARD,	*	
PHILLIP MARTIN, GREGORY HARDING	*	
& WALTER GUIDRY	*	MAGISTRATE JUDGE:
<i>Defendants</i>	*	MICHAEL NORTH

MEMORANDUM IN SUPPORT OF PLAINTIFF’S MOTION
FOR PRELIMINARY INJUNCTION AND EXPEDITED HEARING

INTRODUCTION

This Memorandum of Law is submitted in support of the United Houma Nation, Inc.’s motion pursuant to FRCP 65 for the issuance of a preliminary injunction against defendants Terrebonne Parish School Board, Philip Martin, Gregory Harding, and Walter Guidry, and their agents, family members or anyone acting in cooperation with the defendants, to restrain and enjoin them from selling, leasing, encumbering, demolishing, renovating, defacing, harming or altering in any way the Daigleville School located at 8542 East Main Street in Houma, Louisiana, or any of its contents, until the trial on the merits has concluded.

FACTS

The Terrebonne Parish School Board sold a former all-Indian school and National Historic Landmark for half the appraised value in a pre-arranged sale to Walter Guidry on February 1, 2020, without notice to the Indian tribe stewarding the School in violation of the Fourteenth

Amendment due process clause and for an illicit and immoral purpose. (Daigleville Sale, Daigleville Appraisal).

The Daigleville Sale was the first of two transactions that together unconstitutionally, gratuitously netted defendant Walter Guidry \$290,000 in equity, which asset rightfully belongs to the people of Terrebonne Parish. (Daigleville Sale; Daigleville Appraisal; Little Caillou Elementary Sale; Little Caillou Elementary Appraisal).

The Daigleville School is important to the history and culture of the United Houma Nation, Inc. because the former all-Indian high school is where the first Native Americans to graduate from high school in Terrebonne Parish attended and graduated in 1962, one hundred and forty (140) years after the Terrebonne Parish School Board was first created.

The Daigleville School was listed on the National Register of Historic Places for architecture, ethnic heritage and its association to the education of Native youth on October 21, 2020, after the plaintiff partnered with historic preservationist Jacob Foreman on the application and presentation to the Louisiana State Office of Historic Preservation, and that Office recommended the federal government list the School on the National Register. (Affidavit of Jacob Foreman). On May 12, 2020, the State of Louisiana invited the School Board to take part in the presentation, but Philip Martin chose not to attend and not to send a representative. (State of Louisiana May 12, 2020 letter).

Subsequent to the sale, defendant Walter Guidry began removing boxes from the structures on the property and ripping out blackboards and other items inside the School to be hauled away by the trash collector. (Discarded Items From Inside Daigleville School Photo).

The United Houma Nation, Inc. and tribal members still have movable property in the building for which it seeks protection.

The plaintiff requests a preliminary injunction that will protect the building, the cultural remains inside and outside and the movable property of the plaintiff converted with the sale during the pendency of this suit.

The plaintiff requests a temporary restraining order issue immediately for protection of its property interests between the time of filing this motion and the time the court rules on the motion.

LAW

To be entitled to a preliminary injunction, a movant must establish (1) a likelihood of success on the merits; (2) a substantial threat of irreparable injury; (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted; and (4) that the grant of an injunction will not disserve the public interest. *Sells v. Livingston*, 750 F.3d 478 (5th Cir.2014) (citing *Janvey*, 647 F.3d at 595).

I. The plaintiff is likely to succeed on the merits of its claims.

The plaintiff's Complaint states numerous federal and state law claims and that the plaintiff is entitled to a declaratory judgment establishing that the act of sale transferring ownership of the Daigleville School is invalid and unconstitutional, all of which will be proven at the trial on the merits following discovery.

Even prior to discovery, there is sufficient evidence to show that the plaintiff will likely succeed on the merits of its (a) federal law claim brought under 42 U.S.C. 1983 and the Fourteenth

Amendment; and on its (b) state law claim brought under La. Const. art. VII § 14, and its possessory action, which the plaintiff contends together will obviate (c) the requested declaratory judgment.

(a) Plaintiff will likely succeed in its federal law claim under 42 U.S.C. 1983 and the Fourteenth Amendment because the defendants provided no notice to the tribe.

The Due Process Clause provides "nor shall any state deprive a person of life, liberty or property without due process of law." In order to state a cause of action for violation of the Due Process Clause under 42 USC, Section 1983, the plaintiff must show that they have asserted a recognized "liberty or property" interest within the purview of the Fourteenth Amendment, and that they were intentionally or recklessly deprived of that interest, even temporarily, under color of state law, *Daniels v. Williams*, 474 U.S. 327 (1986); *Davidson v. Cannon*, 474 U.S. 344 (1986); *Brantley v. Surles*, 718 F.2d 1354 (5th Cir.1983).

The plaintiff's Complaint asserts three (3) independent property interests divested by the illegal sale of the Daigleville School that are within the purview of the Fourteenth Amendment. Firstly, the plaintiff is a party to a current, valid Cooperative Endeavor Agreement with the Terrebonne Parish School Board. The Agreement was renewed automatically for a second fiveyear term on May 5, 2020, and extends to May 5, 2025. (Cooperative Endeavor Agreement). If the School Board believed the tribe had lost its legal right to occupy the property, it was required to give notice to the tribe prior to infringement upon the tribe's property rights pursuant to La. C.C.P. art. 4702.

Secondly, the federally mandated Master Plan of the Louisiana State Historic Preservation Office specifically states that the United Houma Nation, Inc., along with the other Indian tribes in the state, has a vested interest in property that contains the tribe's cultural remains. The Master

Plan was created to advance the policies of the federal government regarding historic preservation pursuant to the National Historic Preservation Act. (LSHPO Master Plan).

Thirdly, the United Houma Nation, Inc. and former Principal Chief Thomas and Noreen Dardar have movable property inside the School that was converted with the illegal sale. (Affidavit of Thomas Dardar; Affidavit of Noreen Dardar; Equipment and Supplies for Ongoing Repairs inside the Daigleville School on Feb. 1, 2021).

The Terrebonne Parish School Board has intentionally and recklessly divested the United Houma Nation, Inc. of its property rights by selling the Daigleville School and its contents without notice to the tribe as a means of accomplishing a prearranged, illegal and unconstitutional sale. As a result, the plaintiff has been denied use of its movable property inside the building, and of use and enjoyment of the building as well as destruction of the tribe's cultural remains. The destruction is reasonably expected to continue during the pendency of the suit absent a preliminary injunction from this Honorable Court.

There are two components of the due process clause of the Fourteenth Amendment: procedural and substantive.

Procedural Due Process

Before taking an official act that might divest a person of property rights, local officials are required to provide notice to those whose rights will be divested. *Martin v. Memorial Hosp. at Gulfport*, 130 F.3d 1143 (5th Cir. 1997). If the person whose rights will be divested takes no action once noticed, we may assume he is indifferent or acquiesces in the local officials' act.

However, if the person whose rights will be divested opposes the noticed act, for whatever reason, sufficient notice (or procedural due process) gives him the opportunity to be heard by seeking judicial intervention, potentially enjoining the noticed act. *Id.* All justification defendants may present for taking official state action that divested the plaintiff of its property rights are required to be brought before a court of law in answer to a property right owner's petition filed in response to notice. This is the proper procedural process due every person. *Id.*

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *Milliken v. Meyer*, 311 U.S. 457 (1940); *Grannis v. Ordean*, 234 U.S. 385 (1914); *Priest v. Board of Trustees of Town of Las Vegas*, 232 U.S. 604 (1914); *Roller v. Holly*, 176 U.S. 398 (1900). The notice must be of such nature as reasonably to convey the required information, *Grannis v. Ordean*, supra, and it must afford a reasonable time for those interested to make their appearance, *Roller*, supra.; *Goodrich v. Ferris*, 214 U.S. 71 (1909).

The constitutional violation of procedural due process actionable under § 1983 is complete when the State fails to provide due process. To determine whether a constitutional violation has occurred, it is necessary to ask what process the State provided, and whether it was constitutionally adequate under the circumstances. *Coggin v. Longview Independent School Dist.*, 337 F.3d 459 (5th Cir. 2003).

The School Board provided no process to the United Houma Nation, Inc. regarding its sale of the Daigleville School.

This failure is especially egregious considering the circumstances: (1) The School Board had a Cooperative Endeavor Agreement with the United Houma Nation, Inc., and its automatic renewal had been thoroughly discussed as a material consideration prior to signing of the Agreement. (Cooperative Endeavor Agreement); (2) If the School Board believed the Agreement had expired or that the plaintiff was in breach of the Agreement for any reason, its remedy is in La. C.C.P. 4702. (3) the plaintiff provided verbal notice to the School Board of its intent to continue its stewardship of the School on May 29, 2020 in response to a phone call from the School Board on May 28, 2020. (UHN Phone log May 2020); (4) the plaintiff provided written notice of its intent to continue its stewardship of the School on June 10, 2020 (UHN letter June 2020); (5) the Louisiana State Historic Preservation Office Master Plan states that the United Houma Nation, Inc. along with other Indian tribes, has a vested interest in the property that contains its cultural remains. (LSHPO Master Plan); (6) the State of Louisiana gave notice to the School Board that the School was being considered for the National Register of Historic Places on May 12, 2020. (State of Louisiana May 12, 2020 letter). The School Board was invited to attend the presentation to the State Historic Preservation Office in furtherance of the application for listing on the National Register and chose not to attend. (State of Louisiana May 12, 2020 letter); (7) Remains of the first classrooms of the first Indian high school graduates in Terrebonne Parish, including the chalkboards, and other significant, archaeological, cultural remains were still preserved inside the School when the School Board sold the building to Walter Guidry for half the market value on February 1, 2021. (Daigleville Interior Photo 2019); (8) The United Houma Nation, Inc. and tribal members still have movable property inside the building. (Affidavit of Thomas Dardar, Affidavit of Noreen Dardar; Equipment and Supplies for ongoing repairs inside Daigleville School on Feb. 1, 2021); and (9) The Terrebonne Parish School Board receives federal funds meant to teach Indian

children (<http://tpsd-la.schoolloop.com/TitleVI>). It is heinous for the school system to acquire these federal funds on the basis of Indian students' heritage while also demonstrating a conscious willingness to erase a primary symbol of the educational disparity of Indian youth historically by the Terrebonne Parish School Board.

Under the circumstances, the School Board's failure to provide notice to the United Houma Nation, Inc. that the Daigleville School could be purchased by the tribe or that the School would be sold, divesting the tribe of its property rights was inadequate to satisfy the procedural due process requirements of the Fourteenth Amendment.

Substantive Due Process

The substantive component of the Due Process Clause protects a person's property interests against certain government actions regardless of the fairness of the procedures used to implement them. *Collins v. City of Harker Heights*, 509 U.S. 115 (1992). The acts and omissions of government officials acting in their official capacities violate substantive due process requirements of the Fourteenth Amendment when, if proven, they rise to "a degree of outrageousness and a magnitude of potential or actual harm that is truly conscience shocking." *Morris v. Dearborne*, 181 F.3d 657 (5th Cir. 1999); *Uhlrig v. Harder*, 64 F.3d 567 (10th Cir. 1995).

The Terrebonne Parish School Board voted to sell Daigleville School on October 6, 2020. (School Board Minutes October 6, 2020). On the same day, School Board Superintendent Philip Martin signed a resolution allowing Gregory Harding to sell the property to Walter Guidry in a prearranged cash sale. (Daigleville Sale, Resolution Page). The School Board listed the property with a real estate agent and broker on January 12, 2021. It sold the Daigleville School and two small adjoining properties to Walter Guidry for 51% of the total minimum prices in the real estate

agency agreements. (LaRussa Agreement 8542 East Main; Daigleville Sale; Daigleville Appraisal).

A prearranged sale of a former all-Indian high school listed on the National Historic Register for its association to the education of Native youth by an elected School Board for half the appraised value without notice to the Indian tribe stewarding the building with cultural remains inside that are subsequently destroyed, is outrageous.

The magnitude of potential harm and actual harm that will befall the National Historic Landmark, the tribe and ultimately the public if the defendants' destructive actions are not restrained is truly shocking to the conscience. Therefore, the acts and omissions of the coconspirators violated the plaintiff's substantive due process rights under the Fourteenth Amendment and the plaintiff is likely to succeed on its federal claim brought under 42 U.S.C. 1983.

- (b) The plaintiff will likely succeed on its state law claim brought under La. Const. art. VII, Sec. 14, because public property was sold beneath fair market value.

Louisiana Constitution article VII, Section 14 states:

“Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.”

Louisiana Constitution article VII, Section 14 “is violated when public funds or property are gratuitously alienated.” *Board of Directors of the Industrial Development Board of the City of Gonzales, Louisiana, Inc. v. All Taxpayers, Property Owners, Citizens of the City of Gonzales*, et al., 938 So. 2d 11 (La. 2006).

On February 1, 2021, the Terrebonne Parish School Board sold the Daigleville School

and two adjacent properties with a combined minimum price of \$225,000 for \$115,000, or 51% of minimum price. (LaRussa Agreement 8542 East Main; LaRussa Agreement 109 Myrtle; LaRussa Agreement 1703 Furman).

The sale of the Daigleville School was listed with a real estate broker, but a minimum sale price was not a condition of the sale as statutorily required. The School Board only performed one appraisal, and the sale was not sufficiently advertised to the public. The resolution to sell the Daigleville School to Walter Guidry does not contain a minimum price. (Daigleville Sale). The School Board's adopted policy and procedure employed to sell the Daigleville School violates La. Const. art. VII § 14, and is therefore unconstitutional.

Twenty-four (24) days after the defendants sold the Daigleville School for 51% of the appraised value, the same officials sold Little Caillou Elementary, located at 5756 Highway 56, Chauvin, Louisiana 70344, to defendant Walter Guidry for 37% of the appraised value. Little Caillou Elementary School appraised for \$244,000, and was sold to Walter Guidry for \$90,000, on February 25, 2021, according to documents filed with the Terrebonne Parish Clerk of Court. (Little Caillou Elementary Sale; Little Caillou Elementary Appraisal).

The total 30-day net profit in property equity for defendant Walter Guidry from the two unconstitutional sales of public property is \$294,000 -- the difference between the appraised values of the properties and the amount the defendant paid for them. This is precisely the gratuitous transfer Louisiana Constitution art. VII § 14 prohibits, and the plaintiff is likely to succeed on its state law constitutional claim.

Because of the unconstitutionality of the act of sale, the plaintiff is likely to be successful on its state law possessory action under La. C.C.P. art. 3655. In Louisiana, injunctive relief is available to a plaintiff in a possessory action, during the pendency thereof "to protect or restore possession of immovable property or of a real right therein". La. C.C.P art. 3663.

Because the plaintiff will likely succeed on its federal and state law claims, the plaintiff contends that the Court's findings as to those claims and others will result in a judgment declaring the act of sale of the Daigleville School invalid and unconstitutional.

II. The plaintiff faces a substantial threat of irreparable injury if the actions of the defendants are not restrained.

To satisfy this prong of the preliminary injunction test, the movant must show that it is "likely to suffer irreparable harm," that is, harm for which there is no adequate remedy at law. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008).

Some of the remains of the apparatus used to teach the first Native American high school graduates in Terrebonne Parish have already been removed from the Daigleville School by defendant Walter Guidry or his agents acting on his behalf.

Tribal citizens witnessed boxes in a pile of trash on the property. (Cultural remains discarded Photo 1, Feb. 2021). That pile of trash included the blackboards used to teach the first Indian high school graduates in Terrebonne Parish. (Cultural remains discarded Photo 2, Feb. 2021). Upon information and belief, other cultural remains are still contained within the building, and the building itself is connected to the tribe's history and culture.

In addition, the plaintiff and tribal members have movable property in the building that has been converted with the sale for which they seek protection. (Affidavit of Thomas Dardar, Affidavit of Noreen Dardar, Equipment and Supplies inside the Daigleville School on Feb. 1, 2021).

Remains from the National Historic Landmark and the movable property of the tribe and tribal members will continue to be removed and destroyed absent an order from this Honorable Court.

III. The irreparable injury if the injunction is denied outweighs any harm that will result if the injunction is granted.

If the injunction is granted, defendant Walter Guidry's renovations will be delayed. In contrast, a denial of the plaintiff's motion for an injunction will result in the destruction of irreplaceable cultural remains in a building listed on the National Register of Historic Places for its association to the education of Native youth. United Houma Nation, Inc. Tribal Archivist Kathleen Bergeron has experience with the preservation efforts of the United States government and opines:

"It is important to note that the Daigleville site is unique not only as one of few Indian Schools in Louisiana on the National Register, but also that the site is not located on tribal land. Additionally, it is important to note that considering the age of the building, the preservation of the interior integrity—original materials, classroom divisions, black boards, heating fixtures, etc. is a rare treasure. Tribally, citizens who attended the school are still able to recollect exact spots of where their desks were, who their teachers were, etc. Culturally, it will be important to gather these stories in the place for preservation for future generations to better understand the educational history of the Tribe."

(Kathleen Bergeron Curriculum Vitae, UHN Cultural Resource Report Feb. 2021)) It would be difficult to place a monetary value on the connection of Native Americans to an historic and culturally iconic place connected to the education they fought for in the courts. There is nothing on the market to which it can be compared. There is no legal remedy available to the plaintiff for the irreparable damage that is occurring and will continue to occur if the defendants are not restrained. Therefore, the irreparable injury if the injunction is denied outweighs any harm that will result if the injunction is granted.

IV. Granting the injunction will not disserve the public interest.

According to Section 1 of the National Historic Preservation Act, Pub. L. No. 89-665, as amended by Pub. L. No. 96-515:

... (b) The Congress finds and declares that—

- (1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;
- (2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;
- (3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;
- (4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans; . . .

La. R.S. 41:1601 states:

It is hereby declared to be the public policy of the state of Louisiana to protect and preserve prehistoric and historic properties, artifacts, treasure troves, and objects of antiquity which have historical value or which are of interest to the public, including but not limited to abandoned prehistoric or historic settlements, sites, properties, sunken or abandoned ships, or other objects, or any part thereof relating to the history, government, and culture of the state.

The public interest is served by the granting of a preliminary injunction that enjoins the currently ongoing destruction of the cultural remains of Indian tribes. The Daigleville School is on the National Register of Historic Places for its association to the education of Native youth. As stewards of the Daigleville School, the United Houma Nation, Inc. respectfully asks this Honorable Court for protection of the Daigleville School, and thus its history and culture, and for its movable property within the building.

A preliminary injunction is appropriately issued against Walter Guidry because he is destroying cultural remains. A preliminary injunction is appropriately issued against the Terrebonne Parish School Board, Philip Martin and Gregory Harding. The Daigleville Sale is invalid; thus, the School Board remains in control of the public property, and its officials have shown that their interest in the School is to discard it.

V. CONCLUSION

A preliminary injunction should issue because:

1. Plaintiff will likely succeed on the merits of its claim;
2. Plaintiff will suffer irreparable losses and harm if the injunction does not issue;
3. The losses, threatened losses and harm to the Plaintiff if the injunction does not issue outweighs any harm created by delaying the defendant's renovation plans.
4. Granting of an injunction serves the public interest.

RESPECTFULLY SUBMITTED,
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s/Michael J. Billiot
MICHAEL J. BILLIOT, Bar Roll No. 30223

CERTIFICATION

I hereby certify that I have delivered a copy of this motion to defendants Terrebonne Parish School Board, Philip Martin and Gregory Harding today, March 9, 2021, through their attorney Stand Duval by hand delivery. I have also sent a copy of this motion along with all of the exhibits to Walter Guidry at 882 Crochetville Road, Montegut, Louisiana 70377.

s/Michael J. Billiot