

IN THE STUDENT SUPREME COURT)
)
)
Action No. 09 SSC 007)
)
Taylor HOLGATE and)
Marc SEELINGER,)
)
PLAINTIFFS) MINUTES
 of
versus) PRE-TRIAL HEARING
)
Peter GILLOOLY,)
in his capacity as Chair)
of the Board of Elections,)
)
DEFENDANT)

A pre-trial hearing was conducted in the above captioned matter at 7:00 PM on February 15, 2010 in Van Hecke-Wettach Hall Room 5052. The minutes of this meeting are set forth herein.

CHIEF JUSTICE HODSON called the hearing to order at 7:01 PM. Present were plaintiffs Holgate and Seelinger, defendant Gillooly, and counsel for the defendant Kris Gould. Additionally, Justices Oppenheimer and Harden were present.

CHIEF JUSTICE HODSON: Before we begin the hearing, I would like to take this opportunity to swear in two justices who are present tonight.

AT WHICH TIME, Justices Kathleen Oppenheimer and Jessica Harden were sworn in to the office of Associate Justice of the Student Supreme Court as provided in III S.G.C. § 208.

CHIEF JUSTICE HODSON: Let's begin the hearing. Good evening to the parties. We are here for a pre-trial hearing in *Holgate and Seelinger v. Gillooly*, case number 09 SSC 007. We will be hearing arguments on the defendant's motion to dismiss, as well as any other motions that may be presented. Are there any other motions? Seeing as there are none, we will continue. Mr. Seelinger, my clerk informs me that you submitted a brief this afternoon. Was defense counsel provided with a copy of that brief?

Mr. SEELINGER: No. Was I supposed to do that?

CHIEF JUSTICE HODSON: Yes. Mr. Gould, do you object to the admission of the brief?

Mr. GOULD: Not if I have a chance to review it first.

CHIEF JUSTICE HODSON: Mr. Seelinger, please provide defense counsel with a hard copy of the brief, then we'll take a short recess to allow Mr. Gould to review the brief.

AT WHICH TIME, Mr. Seelinger provided to Mr. Gould a hard copy of the brief previously filed with the Court, and the Court took a short recess to allow Mr. Gould to review the brief.

CHIEF JUSTICE HODSON: Mr. Gould, do you object to the admission of the brief?

Mr. GOULD: How does the Court plan to use the brief?

CHIEF JUSTICE HODSON: I will treat it as additional factual allegations. The legal arguments, with the exception of B, are consistent with those in the complaint.

Mr. GOULD: Then I have no objection.

CHIEF JUSTICE HODSON: I will allow the defendant to present an argument for their motion to dismiss.

Mr. GOULD: I will keep my remarks short, because I think the motion to dismiss explains itself. First, the complaint failed to cite a section of the code that requires the Board of Elections to call a re-election. They cited § 403(H), which leaves the decision at the Board of Elections' discretion. Second, even if this were to be interpreted as requiring a re-election, they have not alleged violations of the elections code and haven't stated that it could have affected the outcome. We admit that there were some technical difficulties. But in terms of where students are registered under the software, that's an issue with the University Registrar, not the Board of Elections. They haven't alleged that the Board of Elections should have taken or could have taken additional action. Regarding the possibility to vote in different districts, that's a limitation of the elections software.

CHIEF JUSTICE HODSON: Plaintiff's response?

Ms. HOLGATE: The excuse that it's bad software isn't an excuse to use it. It leaves open an opportunity for someone to campaign in the wrong district. I don't believe that the Board of Elections even checks. Do you check?

CHIEF JUSTICE HODSON: You will address all questions and comments to the bench, not opposing counsel. I will take note of your question.

Mr. SEELINGER: The *Daily Tar Heel* reported that approximately 300 students were prevented from voting. I have an affidavit from a student that she was unable to vote using the ballot on Student Central. This was an issue in my congressional district. I feel that it compromised and affected the outcome of the election. The difference between the fourth place winner and the fifth place loser

was two votes in my district. The computer problem affected who won those seats.

Ms. HOLGATE: What they did to alleviate those problems didn't solve the problems. They did not publicize the paper provisional ballots until after the election was over. The Board of Elections did not have a meeting to deal with these problems. Most people will log on, see that they can't vote in the appropriate district, and give up. This increases a barrier to voting and it disenfranchises students.

CHIEF JUSTICE HODSON: I will read the section of the code that you cited. Do you have anything further?

Ms. HOLGATE: No.

Mr. GOULD: I would like to respond that it is an Honor Code violation to vote in the wrong district. The allegation that the meeting was supposed to be held is that the Board of Elections is required to hold a meeting if a re-election was needed. § 403, which was cited, deals with violations of the election law, not technical difficulties. What occurred here were technical difficulties.

CHIEF JUSTICE HODSON: § 403(H) appears in the campaigning article. "The Board of Elections may call for a re-election if a violation occurred and it could have affected the outcome or compromised the integrity of the election. If the Board of Elections feels that a re-election is necessary, they must allow all affected parties the opportunity to present information concerning the decision to hold a re-election." I see in your complaint and your brief that you believe that what happened compromised the integrity of the election. What violation occurred? You need both a violation and a possible change in the outcome.

Ms. HOLGATE: The technical failures are the violations. We can't sue ITS. The Board of Elections is responsible for having a legitimate election and that did not happen.

Mr. SEELINGER: The Board of Elections failed to obtain the letter from ITS required by the Code. If they had obtained the letter, this might not even be an issue.

CHIEF JUSTICE HODSON: It's your view that the word "violation" means more than a campaign violation then? It seems like the way this section is set up, it's referring to campaign violations, like a 14-foot tower in the Pit with narwhals on it.

Ms. HOLGATE: I participated on the Rules and Judiciary Committee on Student Congress and tried to make the laws more clear. The fact is that they are not clear. What is clear in this case is that the Board of Elections failed to act.

CHIEF JUSTICE HODSON: I have a question for Mr. Gillooly. We've used the same election software for at least seven years. Who buys the election software, the Board of Elections or ITS?

Mr. GOULD: ITS. The Board of Elections has no responsibility in the software. The Board creates the ballots and reads the results, but does not own or operate the software. It did not purchase the software.

CHIEF JUSTICE HODSON: I have another question for Mr. Gillooly. Are you familiar with § 511?

Mr. GILLOOLY: Yes.

CHIEF JUSTICE HODSON: Did you make a determination under § 511 regarding these technical difficulties? We've seen a few statements from you in the press.

Mr. GILLOOLY: I discussed it with my board and we did not deem the problem to be impactful enough on the election overall to warrant a new election.

CHIEF JUSTICE HODSON: Are there any further arguments from either party?

Mr. GOULD: The letter that Mr. Seelinger was referencing goes to the security of the voting software, not whether or not people are at the proper addresses. The letter would not have affected what happened here today. Additionally, the letter is not relevant under § 403(H).

Ms. HOLGATE: The Board of Elections' failure to obtain the letter shows a pattern of incompetence and a series of technical violations of the elections laws.

CHIEF JUSTICE HODSON: Ms. Holgate, how many votes did you lose by?

Ms. HOLGATE: Twenty-five.

CHIEF JUSTICE HODSON: I will take a five minute recess to consider the motion further.

AT WHICH TIME, THE HEARING RECESSED FOR EIGHT MINUTES.

CHIEF JUSTICE HODSON: We'll reconvene the hearing now. I have a decision. I think that twenty-five votes and two votes are a slim margin of victory for your opponents. I hope that ITS is able to resolve some of the issues. Mr. Gillooly, I will remind you that in this Court, every race is treated as a separate election. When considering your obligations, you will need to think about each race as being a separate election. In some races where three hundred people couldn't vote, this could make a big difference. All that said, I will grant the defendant's motion to dismiss. I read § 403(H) as relating

to campaign violations, and the plaintiffs are alleging a technical problem. I realize that this seems unfair, but there is a section of the Code that covers this problem, which is § 511. That section governs technical difficulties. In the past, I have been somewhat lenient in recognizing that students don't have a great deal of familiarity with the code, but I've found that it is unjust for the Court or for me to become your advocate. Unfortunately, the motion to dismiss is granted. **This case is dismissed.** I will have an order out to the parties soon.

AT WHICH TIME, THE HEARING WAS ADJOURNED.

I certify that the above minutes are a true and accurate representation of the pre-trial hearing in *Holgate and Seelinger v. Gillooly*.

/s/ Michael R. Gordon
Michael R. Gordon
Chief Clerk
University of North Carolina at Chapel Hill Student Supreme Court