

IN THE SUPREME COURT

Action No. 10 SSC 002)	
)	
Adam J. Horowitz, Leah Josephson,)	
Christopher B. Lane, Chelsea Cook)	MOTION TO
PLAINTIFFS)	DISMISS
)	
Versus)	
)	
Hogan Medlin and Andrew Phillips,)	
DEFENDANTS)	

The Defendants move to dismiss the case in accordance with Title III, Section 523, which states that:

Before trial of an action, a party may file a motion to dismiss the claim based on failures of the opposing party to comply with the requirements of this Title or any Sections or provisions under its authority, or if justice requires.

After a careful review of email correspondence between Chief Justice Womack and Kevin Whitfield, the Defendants asserts that the Court has given two rulings that (i) are incompatible with one another and (ii) place undue hardship on, and prejudice the outcome against, the Defendants. These rulings were conflicting answers as to how absences of explicit standards in Title III should be resolved.

Elections Board Chair Phillips emailed Chief Justice Womack with a question regarding the ability to motion for a time extension on the submission of briefs. While Title III discusses the procedures to extend the time to submit an answer in Section 507, it is silent on the matter of extending time for briefs. Section 507 states that:

If the defendant is required to file an answer to a complaint and he/she fails to file an answer in the time directed, the Chief Justice of the Student Body may grant him/her an extension of time in which to file the answer if the Chief Justice determines that there were circumstances beyond the control of the defendant justifying the delay and the extension of time will not result in injury to the rights and remedies of the plaintiff.

In response to Chair Phillips' email, Chief Justice Womack said:

There is no explicit procedure in the Code regarding briefs. Thus, use the procedure for requesting extensions for an answer for requesting extensions for a brief.

The Defendants subsequently filed a motion, requesting that:

[T]he deadline for the submission of motions be moved to Friday, February 11th at 12 p.m. Additionally, the Defense moves that the deadline for the submission of briefs be moved to Saturday, February 12th at 12 p.m. for all parties in 10 SSC 02.

Unfortunately, those motions were not reviewed until *after* the deadline in question had elapsed. The Defense, however, submitted its brief and motion in a timely fashion in order to avoid any issues; the Plaintiffs did not. After the deadline had passed, the Court granted the motions to extend the deadline *ex post facto*. This, in turn, allowed for the Plaintiffs to review the Defendants' brief in detail and craft their response to specifically address the Defendants' Answer. Furthermore, the order granting their request to amend their complaint has allowed them to sidestep the issues raised in our original motion to dismiss.

On February 11, Kevin Whitfield asked Chief Justice Womack about the ability to motion to quash, a motion not explicitly listed in Title III. In her response to that email, she responded that:

This issue is not at the discretion of the Court. III S.G.C. Sections 521-525 explicitly state the types of Motions that may be submitted to the Court-- a listing from which a Motion to quash is absent. As such, a Motion to quash is unavailable to all parties. For the Court to allow the submission of such a Motion when Student Congress has explicitly listed the Motions authorized differs from the Court simply deciding a procedural matter as to the timing of the presentation of an already lawful filing-- the former scenario resulting in judicial law-making while the latter scenario does not.

This second ruling states that the Court is not entitled to entertain motions that lack explicit basis. As such, both the Defendant's and the Plaintiff's motion to extend the deadline for the submission of briefs are invalid, as is the order granting those motions. In retrospect, then, the only papers that were submitted before the deadline had expired were the (a) the Complaint, (b) the Answer, (c) the Defendants' Motion to Dismiss and (d) Defendants' Brief.

The two aforementioned rulings are consistent only with respect to the undue hardship placed on the Defendants of this case. The rulings have allowed the opposing parties to submit ill-conceived papers, use the Defendants' responses to

identify weaknesses in said papers, and subsequently submit reworked papers in an attempt to overcome deficiencies in their initial filing. In other words, the Plaintiffs have repeatedly used the efforts of the Defendants as a crutch.

If the motion to extend the deadline for briefs and motions is invalid, it logically follows that any papers received after the deadline are equally invalid. The Motion to Amend the Complaint was granted *after* the deadline. So, if motions to extend the deadline for briefs and other motions are unauthorized, as the Court's second ruling suggests, *and* the Plaintiff's Motion to Amend the Complaint was submitted after the deadline had passed, then that motion was invalid.

The prejudicial outcomes of these rulings is best evidenced in the Court's Order Granting the Amendment to the Complaint, in which Chief Justice Womack states:

At first glance, it appears that granting Plaintiffs' motion to amend their Complaint could potentially cause prejudice or undue hardship to Defendants -- by depriving them of what appears on its face to be a likely successful motion to dismiss -- in order to allow Plaintiffs to cure a defect brought on by their own careless drafting.

It is suggested here that, had the Plaintiffs' not filed an amended Complaint, the Defendants' Motion to Dismiss was "a likely successful motion to dismiss." Stated in this way, the issue appears to be much more than a matter of convenience. Furthermore, as the rulings enact no similar hardship on the Plaintiffs, but rather prevent it, the results are more accurately identified as prejudicial. In fact, there could perhaps be no *more* prejudicial outcome than being deprived of what was "a likely successful motion to dismiss."

Therefore, as allowed under Title III, Section 523, the Defendants move to dismiss the claim. The Defendants have suffered undue hardship and prejudice in this action, primarily as a result of mutually exclusive interpretations of Title III, both of which ruled against the interests of the Defense. While Chief Justice Womack suggests otherwise, the denial of "a likely successful motion to dismiss" cannot be viewed as anything other than prejudicial. Given the procedural hurdles that have been repeatedly placed against the Defendants, justice requires that this claim, which only fetters the interests of the student body, be dismissed.

In the event the Court denies this Motion to Dismiss and merely rules to disregard documents submitted after the original deadline of 5pm on February 10th, the Defense requests that the Court set a time for a pretrial hearing in order to review the merits of the Defendants' original Motion to Dismiss.

I do affirm that I have read in full the foregoing motion and that the allegations contained therein are true to the best of my knowledge and belief.

Kevin Whitfield

Counsel for the Defense
146 East Longview Street
Chapel Hill, NC 27516
kmwhitfield@gmail.com
(252) 367.1177

Filed this the 11th day of February, 2011, at 4:45p.m.