

STATE OF MAINE
YORK, ss.

SUPERIOR COURT
Civil Action
Docket No. CV-22-007

REGIONAL SCHOOL UNIT 21,)
)
Plaintiff,)
)
v.)
)
TOWN OF KENNEBUNK,)
)
Defendant,)
)
and)
)
TOWN OF ARUNDEL and TOWN OF)
KENNEBUNKPORT,)
)
Parties-in-Interest)

**ORDER DENYING PLAINTIFF'S
REQUEST FOR A TEMPORARY
RESTRAINING ORDER**

Regional School Unit 21 ("RSU 21") filed a complaint on January 10, 2022, requesting that the court enter judgment pursuant to 14 M.R.S. § 5951, *et. seq.*, declaring, among other things, that RSU 21 School Board Directors are not legally subject to the town's recall procedures in the Kennebunk Charter, Article VII. The complaint also requests that the court enjoin the Town of Kennebunk from conducting the recall election of one RSU 21 board director now scheduled for a special town meeting in late March as well as from continuing to proceed with the current recall procedures leading up to that meeting. A motion for preliminary injunction was filed with the complaint. As of January 31, 2022, Defendant Town of Kennebunk ("Town") and Parties-in-Interest Town of Kennebunkport and Town of Arundel have all been served and filed answers.

On Friday January 28, 2022, counsel for Plaintiff requested an emergency hearing on its request for a temporary restraining order pursuant to M.R. Civ. P. 65(a) after the Town notified the school board director that if he does not resign by February 2nd the Town would commence the recall process. A non-testimonial hearing on the request was held Wednesday, February 2, 2022, via Zoom. Russell B. Pierce, Jr., Esq., appeared for RSU 21. Natalie L. Burns, Esq., appeared for the Town of Kennebunk. Timothy S. Murphy, Esq., appeared for the Town of Kennebunkport. Thomas Danylik, Esq., appeared for the Town of Arundel.

A party seeking injunctive relief bears the burden of demonstrating that (1) it will suffer irreparable injury if the injunction is not granted; (2) such injury outweighs any harm that may result from granting the injunction; (3) there is a likelihood of succeeding on the merits of the claim(s); and (4) the public interest will not be adversely affected. *Ingraham v. Univ. of Maine at Orono*, 441 A.2d 691, 693 (Me. 1982); *see also Windham Land Trust v. Jeffords*, 2009 ME 29, ¶ 41, 967 A.2d 690. The court balances these factors to determine whether injunctive relief is warranted in the unique circumstances of each case, *Windham Land Trust*, 2009 ME 29, ¶ 41. However, if the moving party fails to demonstrate any one of the four *Ingraham* factors, injunctive relief will be denied. *Bangor Historic Track, Inc. v. Dep't of Agric., Food & Rural Res.*, 2003 ME 140 ¶ 10, 837 A.2d 129.

Plaintiff has failed at this point and on this record to demonstrate “irreparable injury,” the first factor referenced above. Proof of irreparable injury—that is, injury for which there is no adequate remedy at law—is a prerequisite for injunctive relief; and in the context of a request for a temporary restraining order the moving party must present such proof by affidavit or verified complaint. *Town of Charleston v. Sch. Adm. Dist. No. 68*, 2002 ME 95, ¶¶

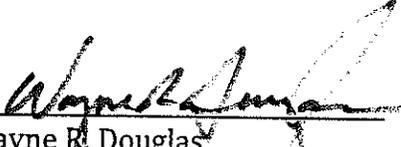
6-7, 798 A.1d 1102. The record before the court contains no supported facts establishing that RSU 21 will be irreparably harmed if the recall process is not enjoined. *See Town of Charleston*, 2002 ME 95, ¶¶ 6-7 (temporary restraining order issued after hearing vacated because the motion did not contain factual record supported by affidavits or verified complaint establishing immediate and irreparable injury, loss, or damage to the moving party).

The plaintiff in this case is RSU 21 itself—not the individual board director who is the subject of the recall. The impact on RSU 21 of the commencement of the recall process which it seeks to enjoin is purely speculative. Moreover, it was confirmed at hearing that if the RSU 21 board director in question chooses not to resign within the five-day period noticed, he may still choose to resign at any point prior to the recall vote in late March.

Accordingly, the request for a temporary restraining order is denied. With agreement of the parties, it is further ordered that final hearing in this matter will be held on March 2, 2022, at 1:00 pm via Zoom. Counsel shall submit a stipulated record and supplemental legal memoranda by Friday February 18, 2022, and reply memoranda by Friday February 25, 2022. The clerk shall send notice with the Zoom link by email and may enter this Order Denying Plaintiff's Request for Temporary Restraining Order on the docket by reference pursuant to M.R. Civ. P. 79(a).

SO ORDERED

Dated: February 3, 2022


Wayne R. Douglas
Justice, Superior Court

ENTERED ON THE DOCKET ON: 2/3/2022