UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CRATON LIDDELL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	**No. 4:72CV100-SNL**
	)	
THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, MISSOURI, et al.,	)	
	)	
Defendants.	)	

ORDER

IT IS HEREBY ORDERED in accordance with an accompanying Memorandum Opinion that plaintiffs' motion for Temporary Restraining Order to Obtain Specific Performance of Settlement Agreement is **DENIED**.

IT IS FURTHER ORDERED that this case is set for hearing as to whether or not a preliminary and/or permanent injunction should issue on Monday, July 21, 2003 at 9:00 a.m. in Courtroom 3 of the United States Courthouse, 111 S. Tenth Street, St. Louis, Missouri.

Dated this 8th day of July, 2003.

SENIOR UNITED STATES DISTRICT JUDGE

#303

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CRATON LIDDELL, et al.,	)	
	)	
Plaintiffs,	)	
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vs.	)	**No. 4:72CV100-SNL**
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THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, MISSOURI, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

Plaintiffs' motion for Temporary Restraining Order to Obtain Specific Performance of Settlement Agreement is now before the Court. The United States has joined plaintiffs' motion and the City Board of Education (City Board) and the State of Missouri (State) have responded to plaintiffs' motion. Plaintiffs have also filed supplemental memorandum in support of their motion, and the matter is at issue.

The City of St. Louis school desegregation case began in 1972 and continued to February 23, 1999 when the parties filed a settlement agreement. Following a fairness hearing, the Court approved the settlement on March 12, 1999 and the case was resolved [L(266)99].

Section 22.B provides for remedies in the event of breach of the agreement. Section 22.B.3 provides:

> "3. In the event of a dispute between the State of Missouri or State and City Board defendants and the plaintiffs (including the United States) the plaintiffs may seek to compel specific performance of the terms of this agreement in federal court,

but plaintiffs' rights in any such claim shall be limited to such a claim for specific performance, and the parties agree that shall be the only purpose and basis for any further action by this Court after the Court's approval of this agreement. The parties hereby agree to waive and dismiss all rights to any further relief from this Court."

In the motion, plaintiffs "move this Court to order specific performance" by way of "a temporary restraining order." Plaintiffs request the Court to prohibit the City Board "from expending any funds received from the State pursuant to Section 10 of the Settlement Agreement for purposes other than those specified in the Agreement, and specifically directing the City Board to refrain from using any such funds to pay for the operating expenses of the St. Louis Public Schools . . . between July 1, 2003 and October 1, 2003."

Plaintiffs also request "a preliminary and permanent injunction; (a) barring the City Board and the State defendants from expending (or authorizing the expenditure of) any funds collected or earmarked under the Settlement Agreement for any purpose other than those intended and designated by the Agreement, . . . "

Finally, plaintiffs request that if any Section 10 funds have been spent for operating purposes before the Court disposes of the motion of plaintiffs that the Court direct the City Board immediately to repay such funds to the Section 10 account.

Section 10 of the Settlement Agreement provides that:

"10. CAPITAL NEEDS - Beginning July 1, 1999 and each July 1 thereafter the State shall pay to the City Board the following sums for

construction and site acquisition costs to accommodate any reasonably anticipated net enrollment increase caused by any reduction or elimination of the voluntary transfer plan:

July 1, 1999	$28.5 million	July 1, 2005	$13 million
July 1, 2000	$25 million	July 1, 2006	$12 million
July 1, 2001	$20 million	July 1, 2007	$11 million
July 1, 2002	$20 million	July 1, 2008	$10 million
July 1, 2003	$16.5 million	July 1, 2009	$ 9 million
July 1, 2004	$15 million		

These payments shall be made by the State each July 1 into a separate account established by the City Board. All interest will accrue to the benefit of the City Board. These payments shall not be considered desegregation payments.

Newly constructed schools will be built in conformity with area standards for school construction. If unused and unobligated funds remain four years after the last student terminates participation in the interdistrict transfer program, the parties shall discuss the use of these funds, including but not limited to reversion of those funds to the State."

The parties do not dispute that the State has made payments into the separate account (Capital Account) since July 1, 1999 according to the schedule set out in Paragraph 10 of the Settlement Agreement. The last payment was made July 1, 2003 in the sum of $16.5 million dollars. In a telephone conference with counsel on July 3, 2003, counsel for the City Board indicated that there was approximately $7 million dollars remaining in the Capital Account before the payment of July 3, 2003. With that payment, the total sum would be $23.5 million dollars in the Capital Account.

Plaintiffs assert that the Capital Account is restricted under Paragraph 10 of the Settlement Agreement "for construction and site acquisition costs."

Plaintiffs further allege that the City Board intends to borrow from the Capital Account such sums as may be required for operating expenses to keep the schools in business. Plaintiffs state that this type of transaction would violate Paragraph 10 of the Settlement Agreement and therefore, as stated, the City Board should be prevented from using the Capital Account for any purpose other than "for construction and site acquisition costs."

In the dialogue between the Court and counsel at the July 3, 2003 telephone conference, counsel for the City Board stated that the City Board was having financial problems and intended to borrow funds from the Capital Account to use for operating expenses. It was indicated that a payroll for City Board employees, including teachers' salaries, was to go into effect July 3, 2003, by direct deposit to employee personal accounts, and all operating expenses through that day would approximate $6 - $7 million dollars. The City Board intended to borrow that sum July 3, 2003 from the Capital Account in order to meet those payrolls.

In the City Board's response to plaintiffs' motion, it was stated that the former Superintendent of St. Louis Public Schools anticipated the closing of six schools and a current management team has projected the closing of perhaps 12 schools before the opening of the school year beginning in late August or September of 2003. Also in the response, the City Board suggested that there were 16,500 students in summer school and that much of the summer work of many school employees involves the regular business of planning for the new school year.

Attached to the memorandum supporting plaintiffs' motion is a copy of a letter from the Attorney General of the State of Missouri to the City Board dated July 2, 2003 which plaintiffs feel

supports their position. The letter is signed by an Assistant Attorney General and by the President of the City Board. The "letter agreement" is in the nature of a limited forebearance agreement. In the letter, the State indicates it has been informed by the City Board that the Board is considering using Section 10 funds to pay operating expenses of the St. Louis public schools. The suggestion is that the funds will be repaid to the capital account. The letter states that "the Board does not believe that use of the funds in this manner violates the Settlement Agreement or any provision of law." In response, the State indicates that it does not concede that Section 10 funds can be used for operating expenses, but that on acceptance of the Agreement by the City Board, the State will forebear any litigation against the City Board for its anticipated use of such Section 10 funds, provided that the Section 10 funds are repaid by October 1, 2003, and the possibility of negotiation on a repayment schedule over a period of years.

The Court recognizes that there has not been an evidentiary hearing, and that the statements of counsel for all of the parties, orally and in writing, as set out herein, are statements only. Obviously, some of the statistics are not in controversy.

The City Board asserts that it has the right to utilize its funds for school purposes, and that the anticipated borrowing from the Capital Account with such funds to be used to pay operating costs is not in violation of the Settlement Agreement.

The Settlement Agreement is a contract made and entered into in the State of Missouri and is to be implemented in the State. Other than the United States, all of the parties to the Agreement are Missouri citizens or entities. No one has suggested a contrary finding, so the Court will determine that where appropriate, Missouri law should govern.

Under Missouri law a contract must be enforced as written and according to the plain meaning of the words in the contract when it is clear and unambiguous. An ambiguity exists when a contract is susceptible to more than one reasonable interpretation. Farmland Industries v. Frazier-Parrott Commodities, 111 F.3d 588, 590 (8th Cir. 1997); *see,* Contract Freighters, Inc. v. J.B. Hunt Transport, Inc., 245 F.3d 660, 663 (8th Cir. 2001); Transit Casualty Company v. Selective Insurance Company of the Southeast, 137 F.3d 540, 545 (8th Cir. 1998).

The Court finds the Settlement Agreement is clear and unambiguous and interprets it as written and according to the plain meaning of the words in the Agreement.

The Court finds that under Section 10 of the Settlement Agreement payments made by the State to the City Board are to be used "for construction and site acquisition costs." After careful examination of the Settlement Agreement as a whole the Court cannot find any provision that authorizes the City Board to borrow funds from the Capital Account to be used for other legitimate school purposes, or a prohibition against such borrowing.

As this Court only has jurisdiction to consider a "claim for specific performance," Sett. Agr. § 22B.3, the request for a temporary restraining order, or preliminary injunction, to obtain specific performance is the narrow issue presented by plaintiffs' motion.

The Court examines four factors to guide the analysis of preliminary injunction requests.

> "(1) The threat of irreparable harm to the movant;
>
> (2) The state of the balance between this harm and the injury granting the injunction will inflict on other parties litigant;
>
> (3) The probability that movant will succeed on the merits; and
>
> (4) The public interest."

Dataphase Sys., Inc. v. C.L. Sys., Inc., 640 F.2d 109, 114 (8th Cir. 1981) (en banc); *see,* United Healthcare Ins. Co. v. Advancepcs, 316 F.3d 737, 739 (8th Cir. 2002); Heartland Academy Community Church, et al. v. Michael Waddle, et al., 2003 WL 21505778 (8th Cir. Mo., 2003). "Following Dataphase, this Court has repeatedly emphasized the importance of a showing of irreparable harm." Caballo Coal Co. v. Indiana Michigan Power Co., 305 F.3d 796, 800 (8th Cir. 2002).[1]

Although no one of the four Dataphase factors is determinative, the threat of irreparable harm deserves substantial consideration. There appears to be no controversy that the City Board is in severe financial straits which apparently is the core problem for many boards of education throughout Missouri and elsewhere. Nonetheless, the City Board should continue to receive funding for the operation of its schools in the same way as it always has.[2]

Part of this funding will continue with the State's fulfillment of its obligation under the Settlement Agreement for capital needs of the City Board. Seventy million dollars will be paid to the City Board by the State for capital needs from July 1, 2004 through July 1, 2009. The July 1, 2004 payment will be $15 million dollars.

The money that the City Board intends to borrow from the capital account to be utilized for operating expenses is a loan. While there is no evidence before the Court as to how the City Board will obtain funds to repay the loan, the legal obligation to do so will remain. In the interim, it does

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[1] The parties do not dispute the need to consider the four Dataphase factors in determining whether or not a temporary restraining order, or preliminary injunction, should issue.

[2] The Court assumes that public school educational funding comes from both state and federal sources, as well as some local taxation, as well as grants and other sources of revenue.

not appear that the capital account will be jeopardized. First, without any further evidence before the Court, there is no indication that funds are presently needed from the capital account for construction and site acquisition costs for new schools. The purpose for setting up the capital account was to have funds with which to build new schools in the event there would be a reduction or elimination of the voluntary transfer plan, in that students currently being transferred to county schools would ultimately be returning to schools under the control of the City Board, thereby creating a need for additional physical facilities. Without further evidence, the Court assumes the inter-district transfer plan is in operation and that the population of the city schools is not increasing. In fact, the suggestion is made that the City Board soon will be closing several schools.

Plaintiffs also assert that the funds made available to the City Board under the terms of the Settlement Agreement were designed to remedy serious constitutional violations including the district's maintenance of separate schools for African-American students. They state that if the capital funds are used for any purpose other than designated, the members of the plaintiffs' class would be irreparably harmed. This argument flies in the face of the specific provisions of the Settlement Agreement. After enumerating the payments to be made by the State to the City Board for "construction and site acquisition costs" in Paragraph 10, it is provided further than "These payments shall not be considered desegregation payments." If the payment by the State to the City Board for construction and site acquisition costs are not considered desegregation payments, there is no relationship to the capital fund and no threat of irreparable harm to the members of the plaintiffs' class.

The Court finds, therefore, that plaintiffs have failed to sustain their burden of proving irreparable harm.

Next, the Court is not convinced that plaintiffs have proved that they are likely to prevail on the merits.[3] As stated earlier, the Court finds that the Capital Account is restricted "for construction and site acquisition costs." Plaintiffs bear the burden of establishing the probability that they will succeed on the merits in that the Settlement Agreement prevents the City Board from borrowing from the Capital Account in order that the borrowed funds may be used for legitimate City Board purposes. In order for the plaintiffs to succeed on the merits, they must be able to prove that the City Board has violated the provisions or a provision of the Settlement Agreement. The Court finds that there is no prohibition in the Settlement Agreement preventing the City Board from borrowing capital funds. The fact that capital funds are earmarked for capital purposes does not prevent the fund from being used for legitimate borrowing purposes. Although the law is scarce in considering this issue, this Court finds that it should not infer a prohibition that does not exist. Kansas City Power & Light v. Ford Motor Credit Co., 995 F.2d 1422, 1428 (8th Cir. 1993) (where the parties' agreement either expressly addresses a matter or is intentionally silent on the matter, a court should not imply a duty that the contract does not contain.)

Plaintiffs, at this stage, are unable to convince the Court that the City Board is violating the Settlement Agreement by borrowing from a restricted fund. To reiterate, although there is no provision in the Settlement Agreement authorizing the right of the City Board to borrow restricted funds to be used for a legitimate school purpose, there is also no prohibition against doing so. Accordingly, the Court is unable to infer such a prohibition.

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[3] Although the Court will assume jurisdiction in this matter as pointed out by the City Board, there may be some question as plaintiffs have not complied with Rule 3, Fed.R.Civ.P. That rule provides that "A civil action is commenced by filing a complaint with the court." No complaint has been filed here, simply a motion for a temporary restraining order, and for injunctive relief.

The Court feels that it must also find, in determining whether plaintiffs are likely to succeed on the merits, if the funds the City Board intends to borrow are being used for a legitimate purpose. Missouri law provides that "The following funds are created for the accounting of all school monies: teachers' fund, incidental fund, free textbook fund, capital projects fund and debt service fund." V.A.M.S., § 165.011.1. Section 165.011.2 provides that "A school district may borrow from one of the following funds: teachers' fund, incidental fund or capital projects fund, as necessary to meet obligations in another of those funds; provided that the full amount is repaid to the lending fund within the same fiscal year." Accordingly, in a normal public school situation, a school district can borrow from its capital projects fund in order to meet obligations in another fund. While this statute does not address a school desegregation settlement agreement as to capital funds, it certainly suggests that it is lawful for school districts as set out in the statute to borrow from capital accounts. Obviously, the use of borrowed funds for school operating costs is a legitimate school expenditure.

Plaintiffs maintain that the forebearance agreement, entered into between the State and the City Board is tantamount to an admission that plaintiffs will succeed on the merits. This Court takes a different view. It appears to the Court that if the so-called "letter agreement" dated July 2, 2003 is in existence, fully executed, that it is what it says it is, and that is a "limited forebearance from litigation," it would appear that the Agreement is simply one in which each party is attempting to protect its own flank. Such agreements are not uncommon, and are protective devices only. In any event, it is this Court that must decide which party may have the upper hand in the outcome of the current litigation, and the Court believes on the information now before it that the plaintiffs do not have that advantage. For the foregoing reasons, the Court finds that plaintiffs have not sustained their burden in showing that in all probability, they will succeed on the merits.

As to the public interest factor, there are legitimate points of view from plaintiffs' perspective as well as that of the City Board's. This 27-year old case, at the time of the Settlement Agreement, affected all aspects of life in the greater St. Louis area. The public, in approving a sales tax increase for funding purposes, the Missouri Legislature in resolving financial portions of the agreement, and the parties as a whole were involved in establishing equality of education for all young people in the area. As the Court found in approving the Settlement Agreement, it was in the best interest of all persons and entities for the Agreement to be approved and implemented. It would certainly have a disastrous affect if the City Board could not borrow from unused funds for the purpose of implementing financially the day-to-day operation of the schools. The public interest would be far more prejudiced by issuing the temporary restraining order than by denying it.

Closely related to the other considerations is the state of the balance between the threat of irreparable harm to plaintiffs and the injury that granting the temporary restraining order would inflict on other parties-litigant. This Court is not in a position to comment on the apparent fiscal problems of the City Board, yet it would be extraordinarily unfortunate if the summer programs would be required to be terminated because of lack of funding, and if there was not sufficient capital in which to plan for the upcoming school year when there are untapped funds in a capital account. The Court finds that a potential injury that could occur if the temporary restraining order is granted would be much greater than the potential harm inflicted on the plaintiffs if the City Board is allowed to borrow money from the Capital Account.

The Court, therefore, finds that the motion for temporary restraining order should be denied and the matter should be set for a hearing as to whether a preliminary or permanent injunction should issue.

Dated this 8th day of July, 2003.

SENIOR UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT -- EASTERN MISSOURI
INTERNAL RECORD KEEPING

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4:72cv100 Liddell vs Board of Education

28:1343 Violation of Civil Rights

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