

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION**

ALUMNI ASSOCIATION OF BETA THETA	:	AUGUST TERM, 2001
CHAPTER OF SIGMA PI FRATERNITY	:	
	:	
Plaintiff	:	No. 3615
	:	
v.	:	COMMERCE CASE MANAGEMENT
	:	PROGRAM
DREXEL UNIVERSITY,	:	
	:	
Defendant	:	Control Nos. 061167, 070389, 070862
	:	071271, 072551

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**ORDER and MEMORANDUM**

AND NOW, this 3rd day of JANUARY, 2003, upon consideration of Defendant, Drexel University's ("Drexel") Motion for Judgment on the Pleadings, Drexel's Motion for Summary Judgment, Plaintiff, Alumni Assoc. of Beta Theta Chapter of Sigma Pi Fraternity's ("Sigma Pi"), Motion to Amend Complaint, Sigma Pi's Amended Motion to Amend Complaint, Sigma Pi's Petition for Extraordinary Relief, the pertinent responses thereto, oral argument, and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED that:

- 1) Drexel's Motion for Judgment on the Pleadings is GRANTED and Judgment is entered in favor of Defendant and against Plaintiff;
- 2) Drexel's Motion for Summary Judgment, Sigma Pi's Motion to Amend Complaint, Amended Motion to Amend Complaint, and Sigma Pi's Petition for Extraordinary Relief are DENIED as moot.

BY THE COURT:

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**OPINION**

Defendant, Drexel University (“Drexel”) has filed a Motion for Judgment on the Pleadings, and a Motion for Summary Judgment. Plaintiff, Alumni Association of Beta Theta Chapter of Sigma Pi Fraternity (“Sigma Pi”) has filed a Motion to Amend Complaint, an Amended Motion to Amend Complaint, and a Petition for Extraordinary Relief. For the reasons discussed below, Defendant’s Motion for Judgment on the Pleadings is **granted**, the parties remaining Motions and the Petition for Extraordinary Relief are **denied** as moot, and the Plaintiff’s case is **dismissed** accordingly.

**BACKGROUND**

In 1952, Drexel, and the Alumni Corporation of Alpha Tau Chapter of Tau Kappa Epsilon Fraternity (“TKE”), entered into an agreement (the “Deed”) in which TKE conveyed, to Drexel, the property located at 210 North 34th Street, Philadelphia, PA (the “Property”). Under the terms of the Deed, Drexel’s use of the Property was restricted to “dormitory purposes.” In the

event that Drexel ceased using the Property as a “dormitory,” the Property was to revert to Sigma

Pi. The conveyance specifically provides that:

So long as the same shall be used for dormitory purposes by the party of the second part, its successors and assigns. In the event the party of the second part, its successors or assigns shall cease to use the same for dormitory purposes, then the above premises herein conveyed shall vest in the Alumni Association of the Beta Theta Chapter of Sigma Pi Fraternity of the United States, a Pennsylvania Corporation, in fee.

Pl.’s Resp. Mot. Judg. Plead. at 2; Ex. A.

From 1952 to 1999, Sigma Pi maintained and occupied the Property. On June 21, 1990, the parties entered into a “Release Agreement” in which, for valuable consideration, Sigma Pi released its interest in a portion of the Property and the Property was subdivided into two parcels: 1) Parcel “A” for continued use as a dormitory; and 2) Parcel “B” for use as a parking lot (the “Release Agreement”). Compl. Ex. B. Approximately nine years later, in August 1999, Drexel evicted Sigma Pi, alleging that Sigma Pi’s use of the Property violated numerous health and safety codes. Def. Mot. Sum. Judg. at 4. During the next two years, Drexel renovated the Property and in August 2001, University students began using the Property as a dormitory.

Now before this Court are Drexel’s Motion for Judgment on the Pleadings, Drexel’s Motion for Summary Judgment, Sigma Pi’s Motion to Amend Complaint and Amended Motion to Amend Complaint, Sigma Pi’s Motion for Extraordinary Relief, the parties’ responses, as well as the respective memoranda.

### DISCUSSION

#### **I. Judgment on the Pleadings is Appropriate Because The Rule Against Perpetuities Void’s Sigma Pi’s Interest.**

Pursuant to Rule 1034 of the Pennsylvania Rules of Civil Procedure, a party may move for

judgment on the pleadings after the pleadings have closed as long as the party does not unreasonably delay the trial. When reviewing a motion for judgment on the pleadings, the court will accept as true all well pleaded facts of the non-moving party, and only those facts specifically admitted by the non-moving party shall be considered against him. Mellon Bank v. National Union Ins. Co. of Pittsburgh, 768 A.2d 865, 868 (Pa. Super. 2001). However, neither party will be deemed to have admitted conclusions of law. Id. See also, Flamer v. New Jersey Transit Corp., 414 Pa. Super. 350, 355, 607 A.2d 260, 262 (1992)(stating that “while a trial court cannot accept the conclusions of law of either party when ruling on a motion for judgment on the pleadings, it is certainly free to reach those same conclusions independently.”)(citations omitted).

In ruling on a motion for judgment on the pleadings, the court may consider the pleadings, such as the complaint, answer, reply to new matter and any documents or exhibits. Kelly v. Nationwide Ins. Co., 414 Pa. Super. 6, 10, 606 A.2d 470, 471 (1992). The court may grant such a motion where “on the facts averred, the law says with certainty that no recovery is possible.” Lindstrom v. City of Corry, 763 A.2d 394, 396 (Pa. 2000).

In its motion, Drexel argues that judgment should be granted in its favor because Sigma Pi’s interest in the Property is void by operation of the Rule Against Perpetuities. Drexel contends that Sigma Pi received its contingent interest in the property on December 30, 1952 and that its interest did not vest within the statutory twenty one (21) year period. Def. Mot. Judg. Plead. at 3.

Pennsylvania’s Rule Against Perpetuities is codified at 20 Pa. C.S.A. §6104, which provides, in pertinent part, that:

no interest shall be void as a perpetuity except . . . [u]pon the expiration of the period allowed by the common law rule against perpetuities as measured by actual rather than possible events, any

interest not then vested and any interest in members of a class the membership of which is then subject to increase shall be void.

Following this rule, Pennsylvania courts will wait until the statutory period of years have passed before making a determination whether the interest in land is void by operation of the Rule Against Perpetuities. The statute also provides an exemption for “interests which would not have been subject to the common law rule against perpetuities.” 20 Pa. C.S.A. §6104(b)(1).

Drexel argues that Sigma Pi’s interest in the Property was a “shifting executory interest” and therefore subject to the Rule Against Perpetuities. According to Drexel, Sigma Pi’s interest is void because more than twenty one (21) years have passed from the date of bequest without the vesting of Sigma Pi’s interest. Sigma Pi concedes that its interest is subject to the Rule the Rule Against Perpetuities, but asks this Court to ignore the original deed and instead consider the Release Agreement as the starting point for the statutory vesting period. Sigma Pi provides no law to support its claim that the vesting period should begin in 1990 instead of 1952.

Under Pennsylvania law, interests that are granted to a third party upon the occurrence of some future event are subject to the Rule Against Perpetuities. Estate of Pruner, 400 Pa. 629 (1960). In Pruner, the Pennsylvania Supreme Court reviewed the terms of a trust that provided the testators’ niece with a reversionary interest in property devised to the Boroughs of Tyrone and Bellefonte (the “Boroughs”) for the charitable purpose of providing a home for orphans. The trust agreement provided in pertinent part that “[s]hould there be any Reasons [sic] why the Borough of Tyrone and the Borough of Bellefonte Cannot Carry [sic] out the provisions of this will then the property for said Home is bequeathed to my niece Sallie M. Hayes.” Id. at 632. Although the Boroughs initially fulfilled the testators’ intent of providing a home for orphans, approximately forty-five (45) years later, the homes were no longer in operation. Id. at 633.

Relying on the Restatement of Property, the Supreme Court held that the future interest of the niece was invalid because it violated the rule against perpetuities.<sup>1</sup> Id. at 640. The Supreme Court stated that “[i]rrespective of the exact name given to this future interest,<sup>2</sup> all authorities agree that this executory devise (and bequest) over to Sally M. Hayes,--unlike a reversion, or the possibility of reverter following a base for or a fee simple determinable--is subject to the Rule Against Perpetuities.” Id. The Supreme Court further held that the “real and personal property which the testator gave, devised and bequeathed first to the Boroughs and then to Sally [sic] M. Hayes, revert back to the estate of the testator by operation of law with the same force and effect as if there had been no gift over to the testator’s niece. . .” Id. at 640-41. Since the Boroughs failed to fulfill the charitable purpose, the property reverted to the testator’s heirs and the Supreme Court remanded the case to Orphans Court for distribution.

In the instant case, Sigma Pi’s future interest is a shifting executory interest subject to the rule against perpetuities. First, the Deed specifically contains a limiting condition that Drexel is to hold the Property in fee so long as it is used for dormitory purposes. Compl. Ex. B. Second, upon the occurrence of a future event, in this case Drexel’s ceasing to use the Property for

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<sup>1</sup> The Court found the following analogous illustration in the Restatement of Property persuasive, “A, owning Blackacre in fee simple absolute, makes an otherwise effective devise of Blackacre ‘to the B Church Corporation, in fee simple, to be held by it so long as said land shall be devoted to the support of the Christian religion, and when said real estate shall be diverted from such uses then Blackacre shall become the property of C in fee simple.’ The attempted executory interest in favor of C fails because of the rule against perpetuities. The estate of B Corporation is specifically subject to a special limitation. Upon the failure to use the real estate for the designated purpose the estate of the B Church Corporation ends and A’s possibility of reverter takes effect in possession.” Pruner, 400 Pa. 629, 640 citing Restatement of Property, Ch. 16 §229, Illustration 8, p. 951 (emphasis added).

<sup>2</sup> The Pruner Court, citing Real Property treatises, stated that the future interest at issue has been “described as ‘an executory devise,’ or ‘a shifting executory devise,’ or ‘a conditional limitation.’” Pruner, 400 Pa. 629, 639.

dormitory purposes, the Property is to revert to Sigma Pi, not to the grantor TKE. Id. Given that Sigma Pi is not the grantor, or a successor in interest to TKE, Sigma Pi's future interest is correctly classified as a shifting executory interest.<sup>3</sup> See Pruner, 400 Pa. 629, 642. Moreover, because a corporation cannot be a life in being,<sup>4</sup> the statutory period for the rule against perpetuities is limited to twenty one (21) years from the date of the bequest. See 20 Pa. C.S.A. §6104(c). Therefore, this Court finds, as a matter of law, that the Deed is controlling and Sigma Pi's statutory vesting period under the Rule Against Perpetuities runs from 1952 to 1973. Id. Drexel's continued use of the Property as a dormitory during the statutory vesting period means that Sigma Pi's interest was not triggered with in the vesting period and, as a matter of law, its interest in the Property became void in 1973. Therefore, this Court finds that Sigma Pi has no interest in the Property and Drexel's Motion for Judgment on the Pleadings is granted.

## **II. The Parties Remaining Motions are Denied as Moot.**

Because this Court is granting Drexel's Motion for Judgment on the Pleadings on the grounds that the Rule Against Perpetuities voids Sigma Pi's interest in the Property, Drexel's Motion for Summary Judgment, Sigma Pi's Motion to Amend Complaint, Amended Motion to Amend Complaint, and Motion for Extraordinary Relief are denied as moot.

## **CONCLUSION**

For the reasons stated above, this Court finds that Plaintiff's interest in the Property is void against the Rule Against Perpetuities. Accordingly, this Court is granting the Defendant's

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<sup>3</sup> Had the Deed provided that the Property, upon the happening of a future event, reverted to TKE--the grantor, or its successors, heirs or devisees then the "interest" would be correctly classified as a fee simple subject to condition subsequent and not be subject to the rule against perpetuities. See Central Delaware County Authority v. Greyhound Co., 527 Pa. 47 (1990).

<sup>4</sup> See Comment (i) §1.3 Restatement (Second) Property.

Motion for Judgment on the Pleadings, and entering judgment in favor of the Defendant and against the Plaintiff. Additionally, this Court is denying the parties remaining motions as moot. The Court will issue an contemporaneous Order consistent with this Opinion.

BY THE COURT:

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*GENE D. COHEN, J.*

DATED: January 3, 2003