

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

TRIAL COURT OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO: MICV2014-07158

K.G. NARAYANA, J.V. KRISHNA, SANJAY
KAUL, MAHA NANGEGADDA, and
R. SREEDHAR,
Plaintiffs,

v.

NEW ENGLAND HINDU TEMPLE, INC.
Defendant

DEFENDANT'S MEMORANDUM OF LAW IN OPPOSITION TO
PLAINTIFFS' MOTION FOR INJUNCTIVE RELIEF

INTRODUCTION

The defendant, the New England Hindu Temple, Inc. ("NEHTI") hereby submits this memorandum of law in opposition to plaintiffs' motion for injunctive relief. The plaintiffs' motion, filed nearly four months after the April 27, 2014 NEHTI Board of Trustees election ("April 27, 2014 NEHTI election") is asking that this Honorable Court "declare" the April 27, 2014 NEHTI election "null and void" and order NEHTI to conduct a new election. In support of their motion, plaintiffs offer nothing more than an unverified complaint that vaguely alleges, without particularity, certain facts that plaintiffs assert constitute a single count of fraud. As set forth more fully below, the Court should deny plaintiffs' motion for the following reasons: First, plaintiffs have failed to demonstrate a likelihood of success on the merits because they have not offered any admissible evidence to support their claims other than the factual assertions and representations of counsel contained in their un-verified complaint. On the other hand, as set forth in the sworn affidavits of the NEHTI Chairman and Election Officer, the April 27, 2014 NEHTI election was properly conducted in full compliance with the governing NEHTI By-Laws.

Second, plaintiffs have not, nor can they, establish that they will suffer irreparable harm. Notwithstanding the glaring deficiencies of plaintiffs' motion, the unverified complaint contains no allegations that the plaintiffs suffered, or will suffer, any harm. Indeed, to the extent plaintiffs wish to serve as trustees, they are free to run at the next annual General Body meeting. In contrast, NEHTI has demonstrated through the affidavit of its Chairman that if the Court were to "declare" the April 2014 election null and void and order a new election, NEHTI will suffer irreparable harm, including risking the loss of an estimated 2.5 to 3 million dollar expansion project in which NEHTI and its board members have planned for over ten years. This expansion project, which includes the proposed construction of an approximately 14,000 square foot addition to NEHTI's existing building, required NEHTI to obtain the necessary permits, approvals and easements to connect to the public sewer system in the neighboring town of Framingham. The easement agreements and contracts that are currently in place require NEHTI to complete its connection to the town of Framingham public sewer system before the end of 2014. The project and related easement/sewer connection work has cost NEHTI over Two Hundred Fifty Thousand Dollars (\$250,000.00), required NEHTI to retain an Architect, and, if the court were to declare the April 27, 2014 NEHTI election null and void, NEHTI will suffer irreparable harm including the loss of monies it has expended to date, inability to raise funds, and being precluded from completing the town of Framingham sewer connections before the end of the year resulting in NEHTI being unable to complete this project.

FACTUAL BACKGROUND

NEHTI was incorporated in the Commonwealth of Massachusetts on July 21, 1978, under the provisions of Massachusetts General Laws Chapter 180, for the purpose of providing a common place of worship for those who subscribe to the Hindu Religion. *See, Affidavit of Ranjini Ramaswamy, Chairman of NEHTI, attached hereto as "Exhibit A."* The current address

of NEHTI is 117 Waverly Street in Ashland, Massachusetts and NEHTI has over 10,000 devotees. *Exhibit A.* The Members of NEHTI ratified its current By-laws on May 31, 2002. *Exhibit A.* According to Article VII of the NEHTI By-Laws, “Members of the Board of Trustees shall be elected at the Annual General Body Meeting pursuant to the provisions of this Article.” *See Exhibit A; see also, Affidavit of Selva Sayeekumar, NEHTI Election Officer, attached hereto as “Exhibit B.”* At least two weeks before the April 27, 2014 Annual General Body Meeting, the paper ballots were properly prepared and mailed to the NEHTI members eligible to vote in full compliance with the NEHTI By-Laws. *Exhibit B.* On April 27, 2014, NEHTI conducted its Annual General Body Meeting in full compliance with the NEHTI By-Laws and properly elected its Board of Trustees. *Exhibits A and B.*

NEHTI and its board members have planned for an estimated 2.5 to 3 million dollar expansion project for over ten years that includes the proposed construction of an approximately 14,000 square foot addition to the temple’s existing building (the “NEHTI expansion project”) in order to meet the growing needs of the NEHTI devotees. *Exhibit A.* The NEHTI expansion project has required NEHTI to, among other things, hire contractors, architects and other professionals and obtain the necessary permits and approvals from the town of Framingham. *Exhibit A.* Additionally, the NEHTI expansion project requires NEHTI to connect to the town of Framingham’s public sewer system and in order to do so; NEHTI had to obtain the necessary easements from abutting landowners. *Exhibit A.* The easements agreements that are in place mandate that NEHTI complete the town of Framingham sewer connections before the end of this year. *Exhibit A.* For the planned NEHTI expansion project, NEHTI has so far spent approximately Two Hundred Fifty Thousand Dollars (\$250,000.00), retained an Architect, and, since the April 27, 2014 NEHTI election, NEHTI and its board members have met with abutting land owners, town officials and contractors in order to secure the necessary approvals. *Exhibit A.* If the court were to declare the April 2014 election null and void and order a new election,

NEHTI would suffer irreparable harm, including the possible loss of the NEHTI expansion project (and associated costs incurred to date), because the easement agreements require that the connections to the town of Framingham be completed before the end of this year. *Exhibit A*.

Plaintiffs, as alleged in their unverified complaint, are residents of the Commonwealth of Massachusetts that have filed this action asking that the NEHTI 2014 election should be declared null and void and a new election ordered. NEHTI denies the plaintiffs' baseless and unsubstantiated vague allegations that NEHTI's actions constitute fraud. *Exhibits A and B*.

ARGUMENT

In order to prevail on their request for preliminary injunctive relief, the Plaintiffs bear the burden of demonstrating a likelihood of success on the merits, that they will suffer irreparable harm if the injunctive relief they seek is not granted and that the harm they would suffer should injunctive relief not be granted outweighs the harm that the defendant would suffer should they be enjoined. Packaging Industries Group, Inc. v. Cheney, 380 Mass. 609, 616-617 (1980).

A. Plaintiffs Are Unable to Demonstrate a Likelihood of Success on the Merits.

Plaintiffs are unable to demonstrate a likelihood of success on the merits because they have not offered any admissible evidence to support their claims other than the factual assertions and representations of counsel contained in their unverified complaint. When considering whether or not to grant a motion for preliminary injunction, Courts consider properly prepared affidavits or a verified complaint. Alexander & Alexander, Inc. v. Danahy, 21 Mass App. Ct. 488, 493-94 (1986). "Factual assertions and representations of counsel which are not contained in affidavits have no force." French v. Vandkjaer, 14 Mass. App. Ct. 980 (1982) (rescript). Here, plaintiffs

offer nothing more than their unverified complaint that vaguely alleges, without particularity, certain facts that plaintiffs assert constitute a single count of fraud. The unverified complaint is subject to dismissal under Rule 9(b) of the Massachusetts Rules of Civil Procedure as it does not contain the necessary elements of particularity including allegations pertaining to the content of any fraudulent statement, who made the statement and when and where it was made, the facility of the statement; the defendant's knowledge of the falsity, that the statement was made to induce the plaintiffs' reliance; the materiality of the statement; and the plaintiffs' reliance thereon.

Friedman v. Jablonski, 371 Mass. 482, 488-89 (1976); Mass. R. Civ. P. 9(b).

Plaintiffs have not presented any evidence to dispute the affidavits of the NEHTI Chairman and Election Officer that state that on April 27, 2014, NEHTI conducted its Annual General Body Meeting in full compliance with the NEHTI By-Laws and properly elected its Board of Trustees. *Exhibits A and B*. NEHTI denies plaintiffs' unsubstantiated and vague allegations set forth in their unverified complaint that NEHTI's actions constitute fraud. *Exhibits A and B*. Therefore, plaintiffs' motion for injunctive relief should be denied. "The process of applying for temporary or preliminary injunctive relief demands full and complete honesty and precision." The Boston Select Group, Inc. v. Ristaino, 5 Mass. L. Rptr. No. 18, 414 (Middlesex Superior Court, May 3, 1996).

B. Plaintiffs Have Not Shown They Will Suffer Any Harm.

As set forth above, plaintiffs' motion, filed nearly four months after the April 27, 2014 election, has not demonstrated they will suffer irreparable harm because they have not offered any admissible evidence to support their claims other than the factual assertions and representations of counsel contained in their unverified complaint. French v. Vandkjaer, 14 Mass. App. Ct. 980 (1982) (rescript) ("factual assertions and representations of counsel which

are not contained in affidavits have no force). Here, plaintiffs offer nothing more than their unverified complaint that vaguely alleges, without particularity, certain facts that plaintiffs assert constitute a single count of fraud, with no claim that they suffered any harm. Friedman v. Jablonski, 371 Mass. 482, 488-89 (1976); Mass. R. Civ. P. 9(b). ”). Notwithstanding the glaring deficiencies of plaintiffs’ motion, the unverified complaint contains no allegations that the plaintiffs suffered, or will suffer, any harm. Indeed, to the extent plaintiffs wish to serve as trustees, they are free to run at the next annual General Body meeting. Accordingly, plaintiffs’ motion for injunctive relief should be denied.

Furthermore, if the court were to “declare” the April 2014 election null and void and order a new election, NEHTI would suffer irreparable harm, including the possible loss of the estimated 2.5 to 3 million dollar NEHTI expansion project (and associated costs incurred to date). *Exhibit A*. NEHTI and its board members have planned for an expansion project for over ten years that includes the proposed construction of an approximately 14,000 square foot addition to the temple’s existing building in order to meet the growing needs of the NEHTI devotees. *Exhibit A*. The NEHTI expansion project has required NEHTI to, among other things, hire contractors, architects and other professionals and obtain the necessary permits and approvals from the town of Framingham. *Exhibit A*. Additionally, the NEHTI expansion project requires NEHTI to connect to the town of Framingham’s public sewer system and in order to do so; NEHTI was required to obtain the necessary easements from abutting landowners. *Exhibit A*. The easements agreements that are in place mandate that NEHTI complete the town of Framingham sewer connections before the end of this year. *Exhibit A*. For the planned NEHTI expansion project, NEHTI has so far spent approximately Two Hundred Fifty Thousand Dollars (\$250,000.00) and, since the April 2014 election, NEHTI and its board members have met with abutting land owners, town officials and contractors and have obtained necessary approvals. *Exhibit A*. NEHTI has also contracted with an Architectural firm to finalize plans and designs for the

construction project. As set forth above, if the Court were to order NEHTI to redo its April 2014 election, NEHTI would suffer irreparable harm including the possible loss of the NEHTI expansion project and associated costs.

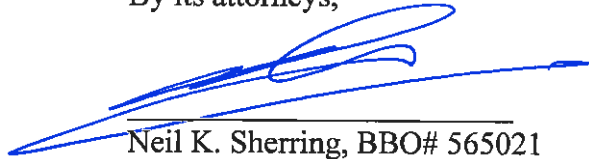
Therefore, plaintiffs' motion for injunctive relief should be denied. The Boston Select Group, Inc. v. Ristaino, 5 Mass. L. Rptr. No. 18, 414 (Middlesex Superior Court, May 3, 1996).

CONCLUSION

For the foregoing reasons, the Defendant, New England Hindu Temple, Inc., respectfully request that this Honorable Court deny Plaintiffs Motion for Injunctive Relief.

Respectfully submitted,

NEW ENGLAND HINDU TEMPLE, INC.
By its attorneys,



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Louis J. Dakoyannis, BBO# 558838
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CERTIFICATE OF SERVICE

I, Neil K. Sherring, counsel for the above-named Defendant, hereby certify that on this 18th day of September, 2014, a copy of the foregoing, Defendant's Memorandum in Opposition to Plaintiffs' Motion for Injunctive Relief, was served, by hand (with an electronic email copy), on:

Sanjay Sankaran, Esq
800 Turnpike Street, Suite 300
North Andover, MA 01845

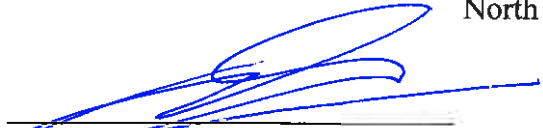

Neil K. Sherring, Esquire

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

TRIAL COURT OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO: 20147158

K.G. NARAYANA, J.V. KRISHNA, SANJAY
KAUL, MAHA NANGEGADDA, and
R. SREEDHAR,
Plaintiffs,

v.

NEW ENGLAND HINDU TEMPLE, INC.
Defendant

AFFIDAVIT OF RANJINI RAMASWAMY

I, Ranjini Ramaswamy, do hereby depose and state as follows:

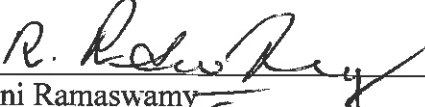
1. I am Chairman of the New England Hindu Temple, Inc. ("NEHTI").
2. NEHTI was incorporated in the Commonwealth of Massachusetts on July 21, 1978, under the provisions of Massachusetts General Laws Chapter 180, for the purpose of providing a common place of worship for those who subscribe to the Hindu Religion.
3. The current address of NEHTI is 117 Waverly Street in Ashland, Massachusetts.
4. The Members of NEHTI ratified its current By-laws on May 31, 2002.
5. According to Article VII of the NEHTI By-Laws, "Members of the Board of Trustees shall be elected at the Annual General Body Meeting pursuant to the provisions of this Article."
6. On April 27, 2014, NEHTI conducted its Annual General Body Meeting in full compliance with the NEHTI By-Laws and properly elected its Board of Trustees.
7. NEHTI and its board members have planned for an estimated 2.5 to 3 million dollar expansion project for over ten years that includes the proposed construction of an

approximately 14,000 square foot addition to the temple's existing building (the "NEHTI expansion project") in order to meet the growing needs of the NEHTI devotees. The NEHTI expansion project has required NEHTI to, among other things, hire contractors, architects and other professionals and obtain the necessary permits and approvals from the town of Framingham. Additionally, the NEHTI expansion project requires NEHTI to connect to the town of Framingham's public sewer system and in order to do so, NEHTI had to obtain the necessary easements from abutting landowners. The easements agreements that are in place provide that the mandate that NEHTI complete the town of Framingham sewer connections before the end of this year. For the planned NEHTI expansion project, NEHTI has so far spent approximately Two Hundred Fifty Thousand Dollars (\$250,000.00) and, since the April 27, 2014 NEHTI election, NEHTI has and its board members have met with abutting land owners, town officials and others to obtain the necessary approvals. NEHTI has also contracted with an Architectural firm to finalize plans and designs for the expansion project.

8. If the court were to declare the April 27, 2014 election null and void and order a new election, NEHTI would suffer irreparable harm, including the possible loss of the NEHTI expansion project (and associated costs incurred to date), because the easement agreements require that the connections to the town of Framingham be completed before the end of this year.
9. NEHTI denies the plaintiffs' baseless and unsubstantiated vague allegations of their complaint that NEHTI's actions constitute fraud.

The foregoing statements are made under the pains and penalties of perjury, this 17th day of September, 2014.

The foregoing statements are made under the pains and penalties of perjury, this 17th day of September, 2014.



Ranjini Ramaswamy
Chairman, New England Hindu Temple, Inc.

EXHIBIT B

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

TRIAL COURT OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO: 20147158

K.G. NARAYANA, J.V. KRISHNA, SANJAY KAUL,
MAHA NANGEGADDA, and
R. SREEDHAR,
Plaintiffs,

v.

NEW ENGLAND HINDU TEMPLE, INC.
Defendant

AFFIDAVIT OF SELVA SAYEEKUMAR

I, Selva Sayeekumar, do hereby depose and state as follows:

1. I am the Election Officer of the New England Hindu Temple, Inc. ("NEHTT").
2. According to Article VII of the NEHTI By-Laws, "Members of the Board of Trustees shall be elected at the Annual General Body Meeting pursuant to the provisions of this Article."
3. At least two weeks before the April 27 2014 Annual General Body Meeting, the paper ballots were properly prepared and mailed to the NEHTI members eligible to vote in full compliance with the NEHTI By-Laws.
4. On April 27, 2014, NEHTI conducted its Annual General Body Meeting in full compliance with the NEHTI By-Laws and properly elected its Board of Trustees.
5. NEHTI denies the plaintiffs' baseless and unsubstantiated vague allegations in their Complaint that NEHTI's actions constitute fraud.

The foregoing statements are made under the pains and penalties of perjury, this __7th__ day of September, 2014.


Selva Sayeekumar
Election Officer, New England Hindu Temple, Inc.