

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA

ARTHUR ALAN WOLK

vs.

NO. 2016-01839

THE SCHOOL DISTRICT OF LOWER MERION

COVER SHEET OF MOVING PARTY

Date of Filing October 16 2020

Moving Party THE SCHOOL DISTRICT OF LOWER MERION

Counsel for Moving Party MICHAEL D KRISTOFKO, Esq., ID: 73148

Document Filed (Specify) MOTION FOR TEMPORARY STAY AND FOR CASE MANAGEMENT CONFERENCE

Matter is: (Appealable) | (Interlocutory)

Discovery Needed: (Yes) | (No)

If applicable, Civil Case Management Order Discovery Deadline: _____

CERTIFICATIONS - Check **ONLY** if appropriate:

 Counsel certify that they have conferred in a good faith effort to resolve the subject discovery dispute. (Required by Local Rule 208.2(e) on motions relating to discovery.)

 Counsel for moving party certifies that the subject **civil motion** is **uncontested** by all parties involved in the case. (If checked, skip Rule to Show Cause section below.)

By: _____
Counsel for Moving Party

RULE TO SHOW CAUSE - Check **ONE** of the Choices Listed Below:

_____ Respondent is directed to show cause why the moving party is not entitled to the relief requested by filing an **answer** in the form of a **written response** at the **Office of the Prothonotary** on or before the _____ day of _____, 20____.

_____ Respondent is directed to show cause, in the form of a **written response**, why the attached Family Court Discovery Motion is not entitled to the relief requested. Rule Returnable and Argument the _____ day of _____, 20____ at **1:00 p.m.** at **321 Swede Street, Norristown, PA.**

_____ Respondent is directed to file a **written response** in conformity with the Pennsylvania Rules of Civil Procedure.

_____ Rule Returnable at time of trial.

By: _____
Court Administrator

ARTHUR ALAN WOLK, PHILIP BROWNDIES	:	MONTGOMERY COUNTY
and CATHERINE MARCHAND,	:	COURT OF COMMON PLEAS
	:	
Plaintiffs for Themselves and All School	:	
Taxpayers to The School District of Lower	:	NO. 2016-01839
Merion,	:	
	:	
v.	:	JURY TRIAL DEMANDED
	:	
THE SCHOOL DISTRICT OF LOWER MERION,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this ____ day of _____ 2020, upon consideration of the School District of Lower Merion Motion For Temporary Stay And For Case Management Conference and the response thereto, if any, it is **HEREBY ORDERED** that said Motion is **GRANTED** and that the Court’s Preliminary Injunction Order dated August 29, 2016 is hereby **STAYED** until further order of this Court. It is **FURTHER ORDERED** that a Case Management Conference is scheduled for _____.

BY THE COURT:

Garrett D. Page J

**Michael D. Kristofco, Esquire
Attorney ID. Nos. 73148
WISLER PEARLSTINE, LLP
460 Norristown Road, Suite 110
Blue Bell PA 19422
Attorneys for Defendant**

ARTHUR ALAN WOLK, PHILIP BROWNDIES and CATHERINE MARCHAND,	:	MONTGOMERY COUNTY
	:	COURT OF COMMON PLEAS
	:	
Plaintiffs for Themselves and All School Taxpayers to The School District of Lower Merion,	:	NO. 2016-01839
	:	
v.	:	
	:	JURY TRIAL DEMANDED
THE SCHOOL DISTRICT OF LOWER MERION,	:	
	:	
Defendant.	:	

SCHOOL DISTRICT OF LOWER MERION MOTION FOR TEMPORARY STAY AND FOR CASE MANAGEMENT CONFERENCE

The School District of Lower Merion, by and through its undersigned counsel, moves for a temporary stay of the effect of the Order of this Court dated August 29, 2016, which will be before the Court when the case is remanded from the Supreme Court, and for a status conference at the Court’s earliest convenience, and in support thereof avers as follows:

Background of the Order for Which the Stay is Sought

1. By statute, the School District is required to adopt a preliminary budget, and a final budget and present them to the public for comment and objections prior to adoption before it can increase taxes beyond the indexed amount. 53 P.S. §§ 6926.312, 6926.312. The timing, form, and content of the budget are set by statute. In December 2015, in accordance with the statute, the District publicly presented a preliminary proposed budget, On February 1, 2016, a week after the January 25, 2016 board meeting at which the Board publicly considered and

approved the preliminary budget for the 2016-2017 school year, Mr. Wolk filed his original complaint in this case.

2. On March 31, 2016, he added additional plaintiffs and filed a 12-count Amended Complaint. The School District filed preliminary objections, which were fully briefed. As required by statute, notice of the final budget was posted on May 22, 2016, advising the public of the statutory adoption date of June 13, 2016. The proposed final budget included two tax amounts that exceeded the index, (for PSERS (i.e., pension contributions) and Special Education), both of which are required to be approved—and were approved—by the Pennsylvania Department of Education. The overall tax increase was 4.44 percent; if the index alone had been applied, the School District would have had only a 2.4 percent increase.

3. The next day, on May 23, the Plaintiffs filed a motion, which was scheduled in the regular course for a preliminary injunction hearing on June 14, 2016, the day after the date on which the final budget was approved.

4. After the hearing, the parties submitted briefs, and the Court issued its opinion and order on August 29, 2016, which stated in pertinent part: “The Lower Merion School District is hereby enjoined from enforcing or collecting a tax increase for fiscal year 2016-17 of over 2.4% more than was in effect for the prior fiscal year. The board of the School District shall, not later than its next scheduled meeting, adopt a resolution revoking the tax increase of 4.44% for fiscal year 2016-17, and enacting a tax that represents an increase of no more than 2.4% greater than the tax in effect for fiscal year 2015-16.” The Court further left “for another day and the appropriate forum” whether there could be rebates, refunds, or credits for taxes already paid.

5. The Rules of Appellate Procedure provide an appeal of right from the grant of a preliminary injunction, and they also provide for an automatic *supersedeas* in cases in which a government unit is taking the appeal. *See* Pa.R.A.P. 311(a)(4); *see also* Pa.R.A.P. 1736.

6. Nonetheless, Mr. Wolk argued to the Pennsylvania Commonwealth Court that the School District should have filed post-trial motions after the preliminary injunction order, and the Commonwealth Court agreed.

7. While the petition for allowance of appeal from that ruling was pending, Mr. Wolk filed a motion for a permanent injunction, and to vacate the automatic *supersedeas* and hold persons in contempt for not complying with the August 2016 order—even though there could be no contempt because the order had been superseded, and even though the case was not with the Court of Common Pleas at the time. It is that motion that this Court addressed in its September 11, 2020 Order Denying Reconsideration and it contemplated setting a hearing to address.

8. That motion, however, was predicated on the procedural posture of the case at the time the Commonwealth Court issued its decision, a posture that changed dramatically when the Supreme Court unanimously reversed the Commonwealth Court in 2018 in *Wolk v. School District of Lower Merion*, 197 A.3d 730, 739 (Pa. 2018), and which made clear, *inter alia*, that the preliminary injunction was immediately appealable and was not a decision on the merits.

9. Accordingly, the August 29, 2016 order has been superseded throughout the appeals process, although the School District has during that period segregated the funds that would be at issue in this case.

10. In the course of its opinion, the Supreme Court disapproved of the procedure that had been followed in this case:

This case obviously manifests a great deal of procedural disorder. For example, it is difficult to apprehend that a judicial officer would undertake to issue a final and permanent injunction while a challenge to the standing of the proponent to seek judicial review remained pending. *Accord* Pa.R.C.P. No. 1028(c)(2) (“The court shall determine promptly all preliminary objections”). We also reject, out of hand, Appellees’ contentions that a complaint and preliminary objections have some sort of cross-cancelling effect relative to finality considerations, and that a petition for an injunction filed in a pending civil action constitutes a legal or equitable proceeding separate and distinct from the case in which the petition has been filed.

Wolk v. School District of Lower Merion, 197 A.3d 730, 739 (Pa. 2018).

11. The Supreme Court remanded the case to the Commonwealth Court, which again affirmed the August 2016 order, and on October 15, 2020, the Pennsylvania Supreme Court denied allowance of appeal. By rule, then, the case will be remanded to this Court and this Court will again have jurisdiction to address the pending preliminary objections and motions (including a prematurely-filed petition for class certification). *See* Pa.R.A.P. 2572.

12. In anticipation of the remand, the Court has set a Case Management Order, but has not scheduled a Case Management Conference, because of the pandemic.

13. Given the Supreme Court’s recognition that the preliminary objections need to be resolved first, the passage of time, and the complex system of laws and regulations that direct what the School District can do and when, the School District respectfully requests that this Court should hold a Case Management Conference, even before the record is remanded, and further requests that the injunction order be stayed pending further order of the Court.

Legal Standard

14. “A trial court possesses broad discretion to grant or deny a stay or place a matter in abeyance.” *In re Penn-Delco Sch. Dist.*, 903 A.2d 600, 607 (Pa. Cmwlth. 2006).

Reasons for Granting the Requested Stay

15. The Supreme Court entrusted this Court with creating order from the procedural disorder. At the least, that will involve resolution of the pending preliminary objections—which may benefit from updated briefing given all that has happened since they were first briefed—and which may moot some or all of the preliminary injunction.

16. The August 29, 2016 order itself recognized that the preliminary objections were pending, and it recognized that some of the relief the Plaintiffs had requested would need to be resolved at another time and in another forum. To the extent that any questions or proposed remedies are dependent upon class certification, that motion cannot be ruled on until the pleadings are closed.

17. Some of the cases on which the Court of Common Pleas relied in entering the Order in 2016 have been construed more recently, and this Court may have additional questions about the administrability of the order that would benefit from further briefing.

18. The School District accordingly asks that the effect of the August 29, 2016 order, be stayed pending this Court’s resolution of preliminary objections and any other matters it deems pertinent to the implementation of the injunction.

WHEREFORE, the School District respectfully requests that this Court GRANT the Motion for a Temporary Stay and for a Case Management Conference.

WISLER PEARLSTINE, LLP

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Date: October 16, 2020

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Attorneys for Defendant**

**ARTHUR ALAN WOLK,
PHILIP BROWNDIES, and
CATHERINE MARCHAND,
Plaintiffs**

v.

**THE SCHOOL DISTRICT OF
LOWER MERION,
Defendant**

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: MONTGOMERY COUNTY, PENNSYLVANIA
:
: NO. 2016-01839
:
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:
:
:
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CERTIFICATE OF SERVICE

I, certify that on October 16, 2020, a true and correct copy of the School District Of Lower Merion Motion For Temporary Stay And For Case Management Conference was served via email and through the ecf system upon:

Arthur Alan Wolk
The Wolk Law Firm
1710-12 Locust Street
Philadelphia, PA 19103
ArthurWolk@airlaw.com

WISLER PEARLSTINE, LLP

**By: _____
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Lower Merion School District***

Date: October 16, 2020