

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. _____

KEITH LOWEY, as trustee of
MUSTANG CREDITORS' TRUST,

Plaintiff,

v.

UNIVERSITY OF MASSACHUSETTS and
BARRY BROWN,

Defendants.

2/7/2022

COMPLAINT FOR INTERPLEADER

Keith Lowey, as trustee of Mustang Creditors' Trust ("Plaintiff" or "Mustang Trust"), hereby files this Interpleader Complaint against Defendants, Barry Brown ("Brown") and the University of Massachusetts (hereinafter "UMASS")(collectively referred to with Brown as "the Defendants") for resolution of an ongoing dispute between the Defendants regarding the distribution of funds currently held by the Mustang Trust for the benefit of the creditors of MIC. The Mustang Trust currently holds \$2,537,000 that were generated following the closure of Mount Ida College ("MIC") and the sale of its campus and other assets to the University of Massachusetts. Both Brown and UMASS assert an entitlement to some or all of the funds held, and, despite numerous attempts to resolve the dispute, the Defendants have not reached an agreed allocation. In order to avoid exposure to multiple liabilities for claims made by the Defendants, Plaintiff is left with no choice but to request judicial intervention. In support of this Interpleader Complaint, Plaintiff alleges as follows:

PARTIES

1. Keith Lowey (“Trustee”) is the trustee of the Mustang Trust, a trust organized under the laws of Massachusetts and established for the benefit of the creditors of MIC in order to effectuate the distribution of the proceeds received in the sale or disposition of MIC’s assets. The Trustee resides in Massachusetts.

2. On information and belief, Defendant Barry Brown, is an individual residing in West Newton, Massachusetts.

3. On information and belief, Defendant University of Massachusetts is a coeducational institution for higher education, with a principal place of business in Massachusetts and multiple campuses throughout the Commonwealth.

PERSONAL JURISDICTION AND VENUE

4. This Court has original jurisdiction over this civil action because there is no reasonable likelihood that recovery will be less than \$50,000, pursuant to M.G.L. c. 212 § 3 and the S.J.C. Standing Order, Amount in Controversy.

5. This Court has personal jurisdiction over the Defendants pursuant to M.G.L. c. 223A §§ 2 and 3 because one or both defendants transact business in Massachusetts and/or maintains a principal place of business or domicile in Massachusetts.

6. This Court is the proper venue pursuant to M.G.L. c. 223 §§ 1 and 8.

THE COMPETING CLAIMS

7. MIC was a not-for-profit college that held accreditations and licenses from state and regional organizations, including the New England Association of Schools and Colleges (n/k/a the New England Counsel of Higher Education) and the Massachusetts Department of Higher Education.

8. UMASS is a state coeducational institution for higher education, with campuses across the Commonwealth.

9. In or around May 2018, MIC and UMASS (including the University of Massachusetts Building Authority) finalized the provisions of an Asset Purchase Agreement (“APA”) pursuant to which UMASS would purchase substantially all of MIC’s assets.

10. Contemporaneously with execution of the APA, on or about May, 18, 2018, MIC executed the Mustang Creditors’ Trust Agreement (the “Trust Agreement”), which agreement formed the Mustang Trust for the benefit of MIC’s creditors.

11. In accordance with the Trust Agreement, the Trustee undertook to be responsible for a number of tasks, including but not limited to: administering and preserving the trust assets; distributing the trust assets to the beneficiaries; preparing and filing any tax returns relating to the trust as may be necessary; and responding to inquiries by beneficiaries.

12. The Trust Agreement further provides that, after all payment obligations to creditors of MIC holding valid claims had been satisfied, the Trustee is to distribute any remaining residual funds to UMASS.

13. The Trustee currently holds a balance of \$2,537,000, to which each of the Defendants assert some right of distribution.

14. Upon information and belief, Defendant Brown, the former President of MIC from July 2015 until closing, alleges that he is contractually entitled to a severance payment in the amount of two times the base salary of his employment with MIC, pursuant to his employment agreement, because his employment ended as a result of MIC’s closure within the first three years of that agreement. Brown further asserts that his payment entitlement constitutes a claim entitled to full payment prior to distribution of the trust residue to UMASS.

15. Upon information and belief, Defendant Brown's base salary in 2018 when MIC closed was \$420,000.

16. Defendant Brown was listed as a beneficiary of the Mustang Trust in the Trust Agreement, and is the sole individual or entity that asserts a claim against MIC whose claim has not been satisfied or disallowed.

17. Defendant UMASS contends that Defendant Brown waived and agreed to release any claim to a contractual severance payment and, therefore, the entirety of the remaining funds held by the Trustee constitutes the trust residue to which UMASS, under the Trust Agreement, is entitled.

18. Brown, UMASS and the Trustee have undertaken discussion regarding the competing claims of Brown and UMASS to the remaining funds held by the Trustee.

19. To the Trustee's knowledge, no agreement has been reached as to UMASS and Brown's respective entitlement, if any, to all or part of the funds held by the Trustee.

20. Both Brown and UMASS have asserted an entitlement to some or all of the funds held by the Trustee, and neither has authorized or agreed to the Trustee's distribution of those funds.

21. Pursuant to Rule 22 of the Massachusetts Rules of Civil Procedure, persons having claims against a plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability.

22. Given that the Defendants have been unable to agree upon the proper distribution of the residual funds that remain in Plaintiff's possession, Plaintiff files this Interpleader Complaint to avoid exposure to multiple liabilities.

COUNT I - INTERPLEADER

23. Plaintiff repeats and re-alleges the allegations set forth in paragraph 1 through 22 of this Interpleader Complaint as if fully stated herein.

24. This action is Plaintiff's only means of protecting himself from potential multiple liabilities for claims made by the Defendants.

25. Plaintiff is willing and prepared to pay the funds to the party designated by this Court as entitled to the funds, but is unable to make such determination and distribute the funds without exposing himself to liability.

26. Absent a judicial determination of the rights and interests of the Defendants, Plaintiff faces the threat of multiple lawsuits being filed against him and incurring personal liability.

27. Plaintiff has no interest in the funds allegedly due to the Defendants and as such is an innocent stakeholder.

28. Plaintiff seeks to have the adverse claimants, Defendant Brown and Defendant UMASS, interplead and resolve their competing claims to the payments and Plaintiff seeks discharge from all further liability as a result of this Court's determination.

29. Plaintiff has been required to engage the law firm of Holland & Knight, LLP to represent it in this action, and is obligated to pay their attorneys a reasonable fee for their services.

RELIEF REQUESTED

Plaintiff seeks a judgment: (1) determining the priority of payment from the trust to Defendant Brown and Defendant UMASS; (2) discharging Plaintiff from all liability arising from this Court's payment determination; (3) awarding Plaintiff the attorney's fees incurred in connection with this matter; and (4) awarding such other and further relief to Plaintiff as this Court deems just and proper.

Respectfully Submitted,

By Plaintiff's attorneys,

/s/ Ian Epperson-Temple
John Monaghan (BBO No. 546454)
Ian Epperson-Temple (BBO No. 699463)
HOLLAND & KNIGHT LLP
10 St. James Avenue
Boston, Massachusetts 02116
(617) 523-2700
john.monaghan@hklaw.com
ian.epperson-temple@hklaw.com

Dated: February 7, 2022.