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FILED
Superior Court of California
County of Los Angeles
01/23/2019

Sherri R. Carter, Executive Officer / Clerk of Court
By: Gerald Berni Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

SOUTHERN CALIFORNIA SCHOOL OF THEOLOGY, a California corporation, dba CLAREMONT SCHOOL OF THEOLOGY,

Plaintiff,

v.

CLAREMONT GRADUATE UNIVERSITY, a California corporation; CLAREMONT UNIVERSITY CONSORTIUM; and DOES 1 to 50, inclusive,

Defendants.

AND RELATED CROSS-COMPLAINT.

Case No.: KC068691

Assigned to Hon. Dan Thomas Oki

**[PROPOSED] AMENDED
FINAL JUDGMENT AND
PERMANENT INJUNCTION**

Complaint Filed: August 31, 2016
Trial Date: September 24, 2018

1 This matter came on regularly for a court trial on September 24, 2018 in
2 Department J of the above-entitled Court, the Honorable Dan Thomas Oki, Judge of the
3 Superior Court, presiding. Attorneys Charles M. Clark and Kathryn M. Casey appeared
4 for plaintiff and cross-defendant Southern California School of Theology, a California
5 corporation, doing business as Claremont School of Theology (“CST”). Attorneys W.
6 Allan Edmiston and Matthew R. Kugizaki appeared for defendants and cross-complainants
7 Claremont Graduate University, a California corporation (“CGU”), and The Claremont
8 Colleges, Inc., a California corporation, formerly known as Claremont University
9 Consortium (“Consortium”).¹

10 Pursuant to the Court’s Statement of Decision filed on December 18, 2018,

11 **IT IS ORDERED, ADJUDGED AND DECREED:**

12 On CST’s First Amended Complaint:

13 (1) On the first cause of action for quiet title and the third cause of action for
14 declaratory relief, CST is the owner in fee simple of its approximately 16.4-acre campus
15 property which is the subject of this action (the “Subject Property”). However, the Subject
16 Property is subject to an Educational Use Restriction and a First Right of Refusal, which
17 are enforceable as equitable servitudes. The Educational Use Restriction requires the
18 Subject Property to be used only as a *bona fide* educational institution of collegiate or post-
19 graduate grade. The First Right of Refusal provides that Consortium and its successors in
20 interest can purchase or acquire the Subject Property (or a portion thereof) for a purchase
21 price and other material economic terms that equal the purchase price and other material
22 economic terms set forth in the offer, and upon other terms and conditions as are
23

24 ¹ While this litigation was pending, on or about January 1, 2018, Claremont
25 University Consortium changed its name to The Claremont Colleges, Inc. However,
26 because throughout this litigation the parties have used “Consortium” as the entity’s
27 shorthand name, this judgment uses “Consortium” in the interest of consistency and to
28 avoid confusion. Claremont University Consortium and The Claremont Colleges, Inc. are
one and the same.

1 substantially similar to the other terms and conditions of the offer. The terms and
2 conditions of the First Right of Refusal are further described on pages 5 through 7 of this
3 Judgment.

4 (2) On the second cause of action for quiet title and the fourth cause of action for
5 declaratory relief, CST has failed to establish that the 60-foot strip of land conveyed by the
6 “Grant Deed,” recorded on or about December 12, 1972 (the “1972 Deed”), cannot be
7 valued and sold independently of its remaining property. CST is the owner of the strip of
8 land, but Consortium and its successors in interest have a First Right of Refusal, on the
9 terms contained in the 1972 Deed, in the event CST desires to sell it.

10 (3) On the fifth cause of action for rescission by mutual mistake of fact, CST
11 shall take nothing and CGU and Consortium shall have judgment.

12 (4) On the sixth cause of action for declaratory relief:

- 13 a. The “Agreement between Claremont University Consortium and
14 Southern California School of Theology,” dated as of March 1, 2001
15 (“2001 Agreement”), is binding on the parties.
- 16 b. The power of termination in the “Agreement between Claremont
17 College and Southern California School of Theology,” dated June 5,
18 1957 (“1957 Agreement”), and in the subsequent agreements of the
19 parties expired on January 1, 1988 pursuant to the Marketable Record
20 Title Act (“MRTA”).
- 21 c. The Educational Use Restriction and the Right of First Offer in the
22 1957 Agreement and subsequent agreements of the parties are
23 equitable servitudes enforceable by injunction.
- 24 d. The Educational Use Restriction benefits all of the adjoining
25 Claremont Colleges, as well as Rancho Santa Ana Botanic Garden.
26 The Educational Use Restriction provides that a commercial
27 subdivision or residential development is not allowed on the Subject
28

1 Property, as the Court finds that such use would alter the very nature
2 of this community of educational institutions.

3 e. The calculation contained in the 2001 Agreement for the repurchase
4 of the Subject Property by Consortium constitutes an unreasonable
5 forfeiture and is unenforceable. The Court instead interprets the Right
6 of First Offer as a First Right of Refusal in the event CST chooses to
7 sell or transfer all or a portion of the Subject Property.

8 On CGU's and Consortium's Second Amended Cross-Complaint:

9 (1) On the first cause of action for breach and enforcement of the "Grant Deed,"
10 dated June 5, 1957 (the "1957 Deed"), CGU and Consortium shall take nothing and CST
11 shall have judgment.

12 (2) On the second cause of action for breach and enforcement of the
13 1957 Agreement, CGU and Consortium shall take nothing and CST shall have judgment.

14 (3) On the third cause of action for breach and enforcement of the
15 2001 Agreement, CGU and Consortium shall take nothing and CST shall have judgment.

16 (4) On the fourth cause of action for breach and enforcement of the "Agreement
17 and Grant of Easements" dated as of September 21, 2006 ("2006 Agreement"), CGU and
18 Consortium shall take nothing and CST shall have judgment.

19 (5) On the fifth cause of action for reformation of the 1957 Deed and the
20 agreements of the parties, CGU and Consortium shall take nothing and CST shall have
21 judgment.

22 (6) On the sixth cause of action for promissory/equitable estoppel, CGU and
23 Consortium shall have judgment: CST is equitably estopped from denying the validity of
24 the Educational Use Restriction and the Right of First Offer.

25 (7) On the seventh cause of action for breach and enforcement of the 1972 Deed,
26 CGU and Consortium shall take nothing and CST shall have judgment, except that the
27 First Right of Refusal contained within the 1972 Deed is valid and enforceable.
28

1 (8) On the eighth cause of action for specific performance, CGU and
2 Consortium shall have judgment: CST is ordered to allow Consortium and its successors
3 in interest a First Right of Refusal as described on pages 5 through 7 of this Judgment.

4 (9) On the ninth cause of action for restitution to avoid unjust enrichment, CGU
5 and Consortium shall take nothing and CST shall have judgment.

6 (10) On the tenth cause of action for declaratory relief: Although the Educational
7 Use Restriction and the Right of First Offer in the 1957 Deed, the 1957 Agreement, and
8 the subsequent agreements of the parties have expired pursuant to the MRTA, the
9 Educational Use Restriction is nonetheless enforceable based upon equitable estoppel
10 and/or as an equitable servitude. Similarly, the Right of First Offer remains enforceable,
11 but only as a First Right of Refusal, based upon principles of equitable estoppel and/or as
12 an equitable servitude.

13 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED:**

14 CST and its partners, agents, trustees, officers, representatives, successors, and
15 assigns are permanently enjoined from interfering with CGU's or Consortium's rights in
16 the Educational Use Restriction and First Right of Refusal.

17 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED:**

18 For purposes of this Judgment, the First Right of Refusal operates as follows, with
19 the "First Right of Refusal Beneficiary" being Consortium or its successors in interest:

20 If CST or any successor owner of the Subject Property (other
21 than the First Right of Refusal Beneficiary ("FROR
22 Beneficiary")) (as applicable, the "Owner") shall receive a
23 *bona fide* written offer (together with any applicable
24 counteroffers from Owner, an "Offer") to purchase or acquire
25 the property, or any portion thereof (subject to compliance with
26 the Subdivision Map Act), from a *bona fide* educational
27 institution of collegiate or post-graduate grade (the "Offeror"),
28 and the Owner wishes to accept the Offer, the Owner shall
deliver written notice of Owner's receipt of the Offer,
accompanied by a true and complete copy of the Offer and
reasonable documentary evidence that the Offeror is a *bona fide*
educational institution of collegiate or post-graduate grade

1 (collectively, the “Offer Notice”), to the then-current FROR
2 Beneficiary (the “Recipient”). The Recipient shall have thirty
3 (30) days following the receipt of the Offer Notice (the
4 “Response Period”) to deliver to the Owner its written offer
5 (“Recipient’s Offer”) to purchase or acquire the Subject
6 Property (or Subdivision Map Act-compliant portion thereof
7 that is subject to the Offer) for a purchase price and other
8 material economic terms that equal the purchase price and
9 other material economic terms set forth in the Offer, and upon
10 other terms and conditions as are substantially similar to the
11 other terms and conditions of the Offer; *provided, however*, (a)
12 the Recipient shall have the longer of (i) thirty (30) days after
13 delivery of Recipient’s Offer, and (ii) the applicable period
14 specified in the Offer, to close the transaction, and (b)
15 Recipient shall have the right to consummate the transaction
16 on an “all cash” basis, in lieu of any financing terms set forth
17 in the Offer.

18 If Recipient shall deliver a Recipient’s Offer that satisfies the
19 requirements of the immediately-preceding paragraph,
20 Recipient’s Offer shall constitute a binding agreement (the
21 “Acquisition Agreement”) between Owner and Recipient
22 governing the transaction (and Owner and Recipient shall each
23 promptly execute and deliver to the other the Acquisition
24 Agreement). If Recipient shall fail to deliver a Recipient’s
25 Offer that satisfies the requirements of the immediately-
26 preceding paragraph, then Owner may, following expiration of
27 the Response Period (but not later than the first anniversary of
28 Owner’s delivery to Recipient of the Offer Notice)
consummate its sale or transfer of the Subject Property (or
applicable portion) to the Offeror for not less than the purchase
price and other material economic terms set forth in the Offer
and upon other terms and conditions as are substantially similar
to the other terms and conditions of the Offer. Owner may not
consummate the transaction with the Offeror upon terms and
conditions that do not satisfy the requirements of the
immediately-preceding sentence, unless Owner first delivers to
Recipient a new Offer Notice setting forth such updated terms
and conditions and following the procedures of the First Right
of Refusal with respect to such new Offer Notice.

Any attempted sale or transfer of the Subject Property without
first complying with the terms of this First Right of Refusal
shall be void and of no force or effect. The First Right of

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Refusal shall terminate, and be of no further force or effect, as to any portions of the Subject Property upon acquisition by a FROR Beneficiary of fee title to such portion, but not upon acquisition of any leasehold or other interest in which the Owner retains any reversionary interest.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

CGU and Consortium are the prevailing parties in this action and shall recover from CST their costs in the sum of \$ _____, to be determined hereafter by appropriate proceedings.



Dan T. Oki

Dated: January GH, 2019

Dan Thomas Oki / Judge

HON. DAN THOMAS OKI
Judge of the Superior Court of the
State of California

Respectfully Submitted:

LOEB & LOEB LLP
PAUL ROHRER
W. ALLAN EDMISTON
MATTHEW R. KUGIZAKI

By: *Matthew R. Kugizaki*

Matthew R. Kugizaki
Attorneys for Defendants and Cross-Complainants
Claremont Graduate University and
The Claremont Colleges, Inc.
f/k/a Claremont University Consortium

1 **PROOF OF SERVICE**

2 I, MARIANA NIELSON, the undersigned, declare that:

3 I am employed in the County of Los Angeles, State of California, over the age of
4 18, and not a party to this cause. My business address is 10100 Santa Monica Boulevard,
5 Suite 2200, Los Angeles, CA 90067.

6 On January 18, 2019, I caused true copies of the following document(s):

7 **[PROPOSED] AMENDED FINAL JUDGMENT AND PERMANENT**
8 **INJUNCTION** to be served on the interested parties in this cause as follows:

9 (VIA EMAIL) I caused the transmission of the above-named document(s)
10 to the email address(es) set forth below; and

11 (VIA MESSENGER SERVICE - PERSONAL DELIVERY) by giving
12 the above named documents in a sealed envelope addressed as set forth below to
13 Nationwide Legal, Inc., having its principal place of business in the County of Los
14 Angeles, State of California, located at 1609 James M. Wood Blvd., Los Angeles,
15 California 90015; telephone (213) 249-9999.

16 **M. Alim Malik, Esq.**
17 amlik@jacksontidus.law
18 **Charles M. Clark, Esq.**
19 cclark@jacksontidus.law
20 **JACKSON TIDUS, a Law Corporation**
21 **2030 Main St., Ste. 1200**
22 **Irvine, CA 92614-7256**
23 **Tel: 949-752-8585**

*Attorneys for Plaintiff and Cross-
Defendant Southern California School of
Theology*

24 I certify that I am employed in the office of a member of the bar of this court at
25 whose direction the service was made.

26 I declare under penalty of perjury under the laws of the State of California that the
27 foregoing is true and correct.

28 Executed on January 18, 2019, at Los Angeles, California.



MARIANA NIELSON