

HARRY C. NEEL, MICHAEL JENKINS,  
and LEE CAVANAUGH, Individually and  
Derivatively on Behalf of THE  
STONYCREEK VALLEY  
DEVELOPMENT CORPORATION,  
Plaintiffs,

vs.

DANIEL DIVELY and THE  
STONYCREEK VALLEY  
DEVELOPMENT CORPORATION  
Defendants.

) IN THE COURT OF COMMON PLEAS  
) OF SOMERSET COUNTY,  
) PENNSYLVANIA  
)

NO. 275 CIVIL 2019

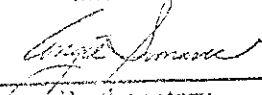
APR 25 2019  
PROthonotary  
SOMERSET, PA

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**DEFENDANT DANIEL DIVELY’S REPLY TO PLAINTIFFS’  
MOTION FOR SPECIAL AND PRELIMINARY INJUNCTION**

**Background**

1. On May 21, 2019, the undersigned received an email from opposing counsel containing a Motion for Special and Preliminary Injunction that was scheduled only two days later on an “emergency basis.”
2. The Motion requests a preliminary injunction to enjoin SVDC from conducting a vote regarding voting rights at an upcoming meeting.
3. The real reason for the Motion has nothing to do with the good of SVDC, its primary function is to stop a vote that may result in two of the Plaintiffs not making it onto the Board of Directors of SVDC.
4. In other words the Motion is based solely on the self-interest of Plaintiffs Jenkins and Neel to make sure that they secure a seat on the SVDC Board of Directors.
5. Currently, there are a total 12,500.00 shares of stock in SVDC. Only 7,800 shares are currently sold.

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correct copy of the original  
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this office.  
  
Prothonotary

6. Michael Jenkins currently owns four hundred (450) shares and is the second highest share holder on the lake behind Brad Musser who owns fourteen hundred (1,400) shares. Several other individuals own approximately 250 each.
7. Currently, the Board of Directors is voted on by the shareholders cumulatively, meaning each share of stock entitles that shareholder to 11 votes. Therefore, Plaintiff Jenkins can vote for himself to get onto the Board of Directors 4,950 times which basically guarantees him a seat on the Board.
8. Interestingly, **for the past 17 years up till this past year, voting for membership on the SVDC Board was done by a raise of hand vote** at the annual meeting.
9. Plaintiff Jenkins only recently moved to the Stoneycreek Lake less than two years ago.
10. Plaintiff Jenkins, after realizing he could gain voting power by buying shares, purchased 450 shares in order to entrench himself in a position of power in SVDC.
11. Plaintiff Lee Cavanaugh owns approximately 50 shares and doesn't even own property on Stoneycreek Lake. Lee Cavanaugh has a personal vendetta against Danial Dively which Defendant Dively believes is his motivation in this suit.
12. Plaintiff Neel wants on the SVDC Board of Director as well, which is his motivation in this suit.
13. Attached hereto is Exhibit A, which contains the nominees for the SVDC Board vote, and highlighted are **Harry Neel and Mike Jenkins's** names.
14. There was already a proposed vote to change voting rights to one lot owner = one vote, and approximately 113 shareholders voted for it, however said approximately 113 shareholders owned approximately 1,900 shares total, and the vote against the change was by 26

shareholders, however said 26 shareholders owned approximately 2,700 shares, so the amendment did not pass.

15. The proposed amendment which the injunction is asking to prevent allows for the PROPERTY OWNERS to have a fair hand in picking the SVDC Board and fair hand in all the decisions being made hereon, as it allows for a one lot = one vote.
16. As it stands now, the By-laws allows for a tyrant shareholder to basically take over the entire SVDC by simply buying shares.
17. SVDC while it is a nonprofit corporation operates a lot like a homeowner's association and as such the proposed amendment would put the power back into the hands of the **HOMEOWNERS not the SHAREHOLDERS**.

#### Argument

18. The preliminary injunction should be denied for three reasons 1) There is no irreparable harm that the injunction will prevent and 2) There is nothing in the Non Profit Corporation Law ("NCL") cited in the Motion that supports granting the injunction.
19. It is well settled that a preliminary injunction is only warranted to halt immediate irreparable harm.
20. In the present case, the injunction is to stop a vote that could easily be undone in the future.
21. Furthermore, the buy-back of the shares of stock would not put SVDC at jeopardy as its assets far outweigh the entire buy back, and many of the shares are being donated back anyway.
22. Furthermore, an election could later be invalidated.
23. Therefore, there is no possibility of irreparable harm.

24. Additionally, the proposed by-law change which the injunction is asking to stop is NOT UNLAWFUL and is in the best interests of SVDC.

25. The Motion relies primarily on 15 Pa.C.S.A. 5751(a)(2).

26. 15 Pa.C.S.A. 5751(a) reads as follows: “§ 5751. Classes and qualifications of membership.

(a) General rule.--Membership in a nonprofit corporation shall be of the classes, and shall be governed by the rules of admission, retention, suspension and expulsion, prescribed in bylaws adopted by the members, except that the rules shall be reasonable, germane to the purpose or purposes of the corporation and equally enforced as to all members of the same class. **Unless otherwise provided by a bylaw adopted by the members:**(1) There shall be one class of members whose voting and other rights and interests shall be equal. (2) If there is only one class of members, the members shall have all the rights of members generally in a nonprofit corporation.” (Emphasis Added).

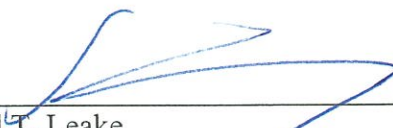
27. Plaintiffs misread that subsection, as it only applies where the bylaws ARE SILENT on the issue of voting rights and member class.

28. At issue here is a BYLAW CHANGE, as such Section 5751(a) is irrelevant.

Based on the foregoing, the relief requested in the Motion for Special Relief and Injunction is unwarranted as irreparable harm cannot be established, and the proposed vote it attempts to halt is lawful, as such said Motion should be denied.

Respectfully Submitted,

Date: May 22, 2019

  
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Supreme Court I.D. # 319455

(Enclosure C)

## Election of the Board of Directors

Nominees:

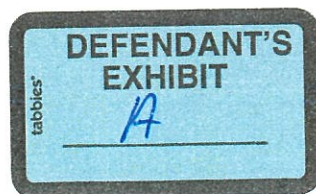
- Brad Meneilly
- Dan Dively
- Derrick St. Clair
- Jack Hershberger
- Jessie Younkin
- John Weir
- Larry Rosage
- Marcia Rogish
- Ben Sheller
- Courtney Smith
- Dave Flamm
- Debbie Keyser
- Diane Lazarowicz
- Harry Neel**
- Julie Fisher
- Ken Lazarowicz
- Lori Blackburn
- Mike Jenkins**
- Paula Keyser-Coughenour
- Pete Mishko
- Shelly Glessner
- Tim Warshel

Please choose 11 names from the nominee list above.

Name: \_\_\_\_\_

Number of Shares owned: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_



CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: DAVID T LEAKE, ESQ

Signature: 

Name: DAVID T LEAKE, ESQ

Attorney No. (if applicable): 319455