

MARCH 8, 2021

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CONNECTICUT SUPREME COURT ISSUES IMPORTANT WIN FOR UNIVERSITY IN FRATERNITY DISPUTE

On March 5, 2021, the Connecticut Supreme Court issued a long-awaited decision in favor of Wesleyan University in *Kent Literary Club v. Wesleyan University*. The decision reversed a jury verdict and injunction that a trial court had entered in favor of Delta Kappa Epsilon ("DKE"), a fraternity that Wesleyan had removed from its student housing program in June 2015. Wiggin and Dana attorneys **Aaron Bayer** and **Ben Daniels** successfully represented Wesleyan in the appeal.

The dispute arose in 2014 when, after evaluating longstanding problems with fraternities, Wesleyan adopted a new policy requiring all residential fraternities to become fully co-educational within three years. After extensive negotiations, Wesleyan determined that DKE was not fully committed to the policy and to becoming a co-educational residence and treating women residents equally. Wesleyan therefore terminated its agreement with DKE that allowed the fraternity to house Wesleyan students. DKE sued, claiming that Wesleyan had violated the Connecticut Unfair Trade

Practices Act (CUTPA) and committed common-law torts by singling them out for unfair treatment and misleading them.

The jury returned a \$386,000 verdict for the fraternity. The trial court awarded the plaintiffs \$411,000 in attorney's fees and took the extraordinary step of issuing a mandatory injunction compelling Wesleyan to enter into a new contract allowing DKE to continue housing students. That decision posed significant risks to universities, imperiling their authority to set their own policies, control student housing, and oversee other important aspects of student life.

The Supreme Court's unanimous decision reversed and vacated the injunction entered by the trial court, holding that it "impermissibly expand[ed] the terms of the parties' contractual relationship." The Court recognized that the injunction posed heightened concerns because it bound the University to a "long-term relationship" with DKE when the parties were "at the intersection of an intense, ongoing debate over gender inclusion,

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campus violence, and the role of the residential experience in the higher education mission.”

The Court also reversed the verdicts entered on each of the plaintiffs’ counts because the trial court failed to properly instruct the jury. Among other things, the trial court failed to clarify that the plaintiffs’ claims and possible remedies were substantially limited by the standard contract that DKE signed each year to be part of the student housing program,

which allowed Wesleyan to terminate the contract for any reason on 30 days’ notice. As the Court put it: “Unfortunately for the plaintiffs, the contracts to which they agreed afford them little recourse in the event that Wesleyan decides not to renew DKE’s eligibility for program housing.”

The Court remanded the case for a new trial, with guidance on the proper jury instructions that will be required, should the plaintiffs choose to retry the case.