

Cause No. 2009-550,359

MIKE LEACH

§

IN THE

99th

VS.

§

DISTRICT COURT

§

TEXAS TECH UNIVERSITY

§

LUBBOCK COUNTY, TEXAS

§

FILED FOR RECORD
DISTRICT CLERK LUBBOCK CO.
BY Barbara Lucas
2009 DEC 29 PM 2:52
DEPUTY

**MIKE LEACH'S MOTION FOR TEMPORARY
RESTRAINING ORDER AND TEMPORARY INJUNCTION**

A. Discovery Control Plan

1. Mike Leach intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.

B. Parties

2. Plaintiff is Mike Leach, the head football coach at Texas Tech University.
3. Defendant is Texas Tech University.

C. Jurisdiction

4. The court has jurisdiction over the lawsuit under Texas Civil Practice & Remedies Code Section 65.023.

D. Venue

5. Venue is proper in Lubbock County, Texas. Specifically, venue is allowed in this county because all or a substantial part of the events or omissions occurred in this county. Tex. Civ. Prac. & Rem. Code §15.002(a)(1). Venue is mandatory in this county because of Texas Civil Practice & Remedies Code Section 65.023 which states that a writ of injunction against a party who is a resident of this state shall be tried in a district court or county court in the county in which the party is domiciled.

E. Facts

6. Mike Leach files this motion without any intention to violate any provision of his contract. It is with great regret in the face of duress being confronted without any due process that it has become essential that it be filed.

7. On December 28, 2009, Mike Leach received the following letter from Defendant:



“Dear Coach Leach:

We recently received a complaint from a player and his parents regarding your treatment of him after an injury, and we have undertaken an investigation of that complaint. We consider this a serious matter. Until the investigation is complete, you are suspended from all duties as Head Football Coach effective immediately.

Sincerely,
Gerald Myers
Athletics Director

Guy Bailey
President”

See Exhibit A, December 28, 2009 Texas Tech University Letter to Mike Leach.

Mike Leach has been accused by “a player and his parents” of mistreating one of the football players at Texas Tech. There has been absolutely no evidence presented that Mike Leach committed any act which harmed or caused any risk to his player or that he otherwise violated any university rules or standards. Craig James, an ESPN sports analyst and rumored potential political candidate, has apparently fueled this controversy to retaliate against Mike Leach for his displeasure with the extent of his son’s role on Texas Tech University’s football team.

Without any explanation about what Mike Leach did wrong, without even naming the individual(s) who have accused Mike Leach of wrongdoing, and with absolutely no process regarding the allegations, it is unjust and unconscionable for Defendant to suspend Mike Leach so as to prevent him from coaching his team just days before the Alamo Bowl. There is no legal grounds for the suspension and no provision in Mike Leach’s contract authorizing it.

F. Count 1 – Breach of Contract

8. Defendant has breached its contract with Mike Leach by suspending Mike Leach without any process or contractual basis.
9. In pertinent part, the contract states:

Breach of such rules and standards, whether willful or through negligence, may be subject to disciplinary action and penalties ranging from termination, public or private reprimand to monetary fines or adjustments in compensation or adjustments in the term of this contract as determined by the President following consultation and review with the Director of Intercollegiate Athletics.

See Exhibit B, Employment Contract, State of Texas, County of Lubbock at Page 5,

Section IV.

Defendant has not terminated, reprimanded, or fined Mike Leach, nor has it adjusted the term of Mike Leach's contract. He has simply been suspended without any process or contractual basis.

G. Application for Temporary Restraining Order

8. Mike Leach seeks that this Court enter an order restraining Texas Tech University from suspending Mike Leach from coaching the football team.

9. It is probable Mike Leach will recover from Defendant after trial on the merits because Mike Leach has not committed any wrongdoing, he has not been informed of any rules or standards he has violated, and his contract does not provide for suspension even if Defendant had shown a violation of a rule or standard, which it has not.

10. If Mike Leach's application is not granted, harm is imminent because Mike Leach will be unable to coach his football team in practice prior to the Alamo Bowl and during the Alamo Bowl.

11. The harm that will result if the temporary restraining order is not issued is irreparable the Alamo Bowl will be played on January 2, 2009 and preparation is needed immediately. Not only will Mike Leach suffer personally due to his contract provisions and with regard to compensation(*see Exhibit B at page 4*), but his reputation and record will also be harmed as well as the reputation of his team, the football program, and the university.

12. Mike Leach has no adequate remedy at law because damages are incalculable.

13. There is not enough time to serve notice on the Defendant and to hold a hearing on the application.

14. Mike Leach is willing to post bond.

H. Request for Temporary Injunction

15. Mike Leach asks the court to set his application for temporary injunction for a hearing and, after the hearing, issue a temporary injunction against Defendant.

I. Affidavits

16. Mike Leach's affidavit that proves the allegations in the application for injunctive relief are attached as *Exhibit C, Affidavit of Mike Leach* and is incorporated by reference.

J. Demand for Jury

17. Mike Leach demands a jury trial and tenders the appropriate fee.

L. Prayer

18. For these reasons, Mike Leach asks that Defendant be cited to appear and answer and, on final trial, that Mike Leach have judgment against Defendant for:

- a. Temporary injunctive relief.
- b. Actual damages within the jurisdictional limits of this court.
- c. Attorney fees.
- d. Prejudgment and post-judgment interest as allowed by law.
- e. Costs of suit.
- f. All other relief, in law and in equity, to which Mike Leach may be entitled.

Respectfully Submitted,



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ATTORNEY FOR MIKE LEACH

EXHIBIT A

December 28, 2009 Texas Tech University Letter to Mike Leach



TEXAS TECH UNIVERSITY

Office of the President

December 28, 2009

Mike Leach
Head Football Coach
Texas Tech University
Lubbock, TX

Dear Coach Leach:

We recently received a complaint from a player and his parents regarding your treatment of him after an injury, and we have undertaken an investigation of that complaint. We consider this a serious matter. Until the investigation is complete, you are suspended from all duties as Head Football Coach effective immediately.

Sincerely,

A handwritten signature in cursive script that reads "Gerald Myers".

Gerald Myers
Athletics Director

A handwritten signature in cursive script that reads "Guy Bailey".

Guy Bailey
President