COMMONWEALTH OF MASSACHUSETTS

LAND COURT DEPARTMENT
OF THE TRIAL COURT

Worcester, SS. Case No. 20 Misc. 000467 (DRR)

TOWN OF HOPEDALE, Plaintiff, ELIZABETH REILLY, CAROL J. HALL, DONALD HALL, HILARY SMITH, DAVID SMITH, MEGAN FLEMING, STEPHANIE A. MCCALLUM, JASON A. BEARD, AMY BEARD, SHANNON W. FLEMMING, and JANICE DOYLE, Intervenor-Plaintiffs v. JON DELLI PRISCOLI and MICHAEL MILANOSKI, as Trustees of the ONE HUNDRED FORTY REALTY TRUST, and GRAFTON & UPTON RAILROAD COMPANY, Defendants.	)

HOPEDALE'S REPLY IN SUPPORT OF ITS RENEWED MOTION TO VACATE STIPULATION OF DISMISSAL

The Appeals Court has provided the parties (and this Court) with significant guidance regarding the pending Motions to Vacate. The Appeals Court instructed this Court that its rulings on remand "not make toothless the judgment and rulings in the Superior Court case," including that the Town "may…attempt to enforce the option" to purchase the forest land under G.L. c. 61. *Reilly v. Town of Hopedale*, 102 Mass. App. Ct. 367, 374, 384 (2023) (citation omitted). "On remand, a trial judge must follow the terms of an appellate court's decision as to matters addressed in that decision." *Williams v. Bd. of Appeals of Norwell*, 100 Mass. App. Ct.

1102, at *2 (2021) (23.0 Decision). The Appeals Court's decision has "become the governing law of the case," *id.*, and a trial judge is "bound to follow the rescript." 41 Mass. Prac. Appellate Proc. § 20:15.

Given the Appeals Court's guidance, the plaintiff Town of Hopedale (the "Town" or "Hopedale") filed its Renewed Motion to Vacate (the "Renewed Motion"), contemporaneous with the Intervenor-Plaintiffs' Motion to Vacate (the "Citizens' Motion"). The defendants Grafton & Upton Railroad Company *et al.* (together, "GURR") never even acknowledge the instructions given by the Appeals Court to this Court on how to consider the motions to vacate, much less square those instructions with the arguments advanced in the Opposition. Denying the motions would in fact give rise precisely to that result the Appeals Court directed this Court to avoid—making "toothless" the Superior Court's judgment that the Town be given the opportunity to enforce its rights under G.L. c. 61. This Could should abide by the Appeals Court decision and grant the motions to vacate.

I. The Appeals Court's decision and instructions are law of the case.

The Appeals Court's ruling and reasoning control the proceedings in this Court. A lower court judge may disagree with an appellate court's reasoning or outcome, "but the judge is bound to follow the rescript" because the "decision and rescript is now the law of the case and controls." 41 Mass. Prac. Appellate Proc. § 20:15. A lower court is "bound to carry out the mandate of the upper court into execution" and cannot consider "the questions which the mandate laid at rest." *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161 (1939); *King v. Driscoll*, 424 Mass. 1, 7-8 (1996) ("The law of the case doctrine reflects this court's reluctance to reconsider questions decided upon an earlier appeal in the same case.").

GURR ignores the relevant language in *Reilly*, but this Court cannot. *See MacDonald v. MacDonald*, 407 Mass. 196, 202-03 (1990) ("Disregard of this court's mandate by a lawyer would be contemptuous; it could hardly be excused when the reckless action emanates from a judicial officer."); *Lunn & Sweet Co. v. Wolfman*, 268 Mass. 345, 349, 167 N.E. 641, 643 (1929) ("It was the law of the case binding absolutely upon every tribunal and magistrate dealing with the cases, except one clothed with power to overrule it and finally declare the law to be otherwise."). A trial judge cannot deviate from the instructions provided by an appellate court in deciding an issue on remand. *See City Coal Co. of Springfield, Inc. v. Noonan*, 434 Mass. 709, 711-12 (2001) (vacating post-remand order and remanding for entry of specific order because trial judge cited case law "arguably contrary" to Appeals Court's "remand instructions"); *Williams*, 100 Mass. App. Ct. at *2-*3 (reversing post-remand order because Land Court "exceed the scope of the judge's authority on remand" by failing to follow the Appeals Court's "instructions" and the "terms" of its written decision).

The Appeals Court did not simply vacate the denial of the motion to intervene (and it is head-scratching that GURR contends so). The Appeals Court explained that the judgment on Count I in the Superior Court included that "the agreement is not effective, and the town may (but is not required to) attempt to enforce the option." *Id.* at 374. The Appeals Court then instructed that it is "important to ensure that events and decisions in the Land Court case not make toothless the judgment and rulings" from the Superior Court. *Reilly*, 102 Mass. App. Ct. at 384. And the Appeals Court has admonished that rulings in this Court should "not [be] inconsistent or unfair" in light of the Superior Court's rulings. *Id.* To that end, the Appeals Court said that the "Land Court should keep in mind [1] that the Superior Court judge has determined some of the substantive issues on the merits, [2] that the citizens are entitled to the

benefit of those favorable rulings, [3] that the rulings are binding on the town, the railroad, and the trust….and [4] that those rulings are entitled to full respect and force." *Id.* (enumeration added). The Appeals Court said these "considerations will come into special play" when deciding the Citizens' motion to vacate and should come into equal play for the Town's Renewed Motion.

The Appeals Court also answered several other questions that have surfaced in this Court previously. For instance, the Appeals Court concluded that GURR's restructuring of the transactions from a purchase of the forest land to a purchase of the beneficial interest in the trust that owned the forest land was apparently done "to prevent the town from exercising the option to which it was entitled" under Chapter 61.[1] *Id.* (emphasis added). The Appeals Court further concluded that GURR's Notice of Intent in the summer of 2020 "clearly conveyed an intent to convert the forest land to another use" and that, "irrespective of any sale," G.L. c. 61 "prohibits the conversion of forest land to residential, industrial, or commercial use without first offering the municipality the right to purchase it." *Id.* at 371. This settles the debate about whether the Town's right of first refusal was triggered in 2020.

The Appeals Court also repeatedly noted that no party appealed from the judgment on Count I in the Superior Court case, under which the Superior Court found that the Settlement Agreement was ineffective. *Reilly*, 102 Mass. App. Ct. at 374, 384. The Appeals Court set out the "relevant chronology":

> On November 4, 2021, the Superior Court judge issued her decision on the parties' cross motions for judgment on the pleadings, ruling in the citizens' favor that 'the board exceeded its authority when it entered into the settlement agreement without

[1] The Superior Court similarly found that GURR's restructuring of the transaction was a "flagrant violation" of state law. Memorandum and Decision on Motion to Preserve Status Quo, Case No. 2185-cv-00238 (the "Status Quo Decision"), at p. 2

> town meeting authorization.' **No one challenges this ruling.** Also never appealed are the Superior Court judge's clarification rulings that **the settlement agreement could not take effect** until approved by a town meeting and that, without such town meeting approval, **the town retained its right to attempt to enforce its option**.

Id. at 380 (emphases added).

GURR attempts to avoid the Appeals Court's recognition of the binding effect of the Superior Court's ruling by cherry picking stray comments and questions by counsel and Judge Goodwin. Opposition at 12-14. First, courts look to written decisions, not questions or off-hand comments at oral argument for a court's ruling. *See Commonwealth v. Spencer*, 465 Mass. 32, 45 (2013) ("We look to the judge's thorough written decisions, made after consideration of the arguments at the hearings and the parties' papers, rather than to the "thinking out loud" type of comments he made while grappling with the scope of the relevant law and seeking comment from counsel in considering different analyses."). Judge Goodwin's written decisions, which were affirmed by the Appeals Court, explain her reasoning. And this Court acknowledged that in the Decision on the Citizen's Post-Remand Motion to Intervene. *See* Decision (Oct. 13, 2023) ("As quoted in the Appeals Court Decision, the Superior Court judge explained the meaning and consequences of her ruling," including that "the agreement is not effective, and the town may (but is not required to) attempt to enforce the option.").

Second, GURR relies on three comments by Judge Goodwin, none of which hold the weight GURR places on them. GURR cites a comment that Judge Goodwin did not rescind the agreement, because it was not in front of her. Opposition at 12. This is beside the point. Hopedale did not file for rescission; Judge Goodwin had already repeatedly ruled that the settlement agreement was beyond the Select Board's authority and was therefore ineffective. Memorandum of Decision and Order on Cross-Motions for Judgment on the Pleadings, Case No.

2185-cv-00238, Dkt. No. 45 (the "MJP Decision"), at 8-9; Memorandum of Decision and Order on Defendant Town of Hopedale's Motion for Clarification, Case No. 2185-cv-00238, Dkt. No. 50 (the "Clarification Decision"), at 2. GURR next cites a comment that "Hopedale lacked authority to buy the smaller piece of land." Opposition at 13. Again, that was the basis on which Judge Goodwin ruled the Settlement Agreement to be ineffective, so her comment does not support GURR's contradictory reading of her written decisions. MJP Decision at 8-9; Clarification Decision at 2. Finally, GURR cites to Judge Goodwin's comments about the Citizens' challenge to the "legality of the Settlement Agreement." Opposition at 13. Judge Goodwin had already decided that the terms of the Settlement Agreement were legal and the Town could agree to them, if it had authority from Town Meeting. MJP Decision at 8-9; Clarification Decision at 2. The Select Board did not have this authority and so the legality of the terms of the Settlement Agreement is irrelevant to this Renewed Motion.

GURR twists itself into knots trying to avoid law of the case. But it cannot twist the rulings from the Superior Court and Appeals Court, both of which clearly provide a basis to vacate the dismissal under Rule 60(b)(6).

II. Extraordinary circumstances should result in vacatur of the dismissal.

Vacating the stipulation of dismissal would align with prior instances where a municipal board attempted to settle a case beyond the scope of its authority. This case is most similar to *Bowers v. Board of Appeals of Marshfield*, 16 Mass. App. Ct. 29 (1983). In *Bowers*, a select board agreed to place an encumbrance on six parking lots to settle a land use lawsuit brought by abutters to a sewage treatment station. *Id.* at 30-31. Four years after the abutters and select board settled and dismissed the case in *Bowers*, a new select board moved under Rule 60(b)(4) to vacate the judgment against it as void. *Id.* at 33. The Appeals Court rejected that argument, but

even though "the selectmen's motion did not invoke it," found that Rule 60(b)(6) "was an appropriate provision under which to consider vacating the judgment." *Id.* What made *Bowers* exceptional is also true here: "a public authority, the selectmen, offered as part of an agreement for judgment a restriction that they lacked the power to impose." *Id.*; *Abrams v. Bd. of Selectmen of Sudbury*, 76 Mass. App. Ct. 1128, at *1 (2010) (1:28) (explaining that a town board agreeing to settle a case beyond its authority "is the sort of extraordinary circumstance that would warrant relief from judgment"). And while the Appeals Court does "not deprecate consent judgments," they noted that "in an agreement for judgment, however, [there is] an element of contract." *Bowers*, 16 Mass. App. Ct. at 33. A party contracting with a public authority, including to settle litigation, "must, at their peril, see to it that those officers or agents are acting within the scope of their authority." *Id.* at 34 (quotation omitted). For these reasons, the Appeals Court reversed the denial of the motion to vacate. *Id.* at 35.

GURR argues that *Bowers* does not apply for a few reasons, none of which holds true. First, GURR argues that the "Appeals Court did not 'affirm' the entirety of the Settlement Agreement is ineffective." Opposition at 15-16. In fact, the Appeals Court specifically recognized the binding force of the Superior Court's judgment, as clarified. *Id.* at 380. This means that, according to the Superior Court and Appeals Court, the settlement agreement is ineffective.

Second, GURR argues that the Town may have agreed to the joint stipulation of dismissal for reasons even if the parties had not reached a settlement. Opposition at 16. GURR cites statements by former Town Counsel, which focus on why the Town attempted to enter into the Settlement Agreement. The Settlement Agreement, of course, required the joint stipulation of dismissal, as the Appeals Court already explained. *Reilly*, 102 Mass. App. Ct. at 373 ("In

broad strokes, the settlement agreement provided that (1) the parties would stipulate to the dismissal with prejudice of the Land Court suit…"). *See, e.g., Abrams*, 76 Mass. App. Ct. 1128, at *2 (agreeing with the trial judge that the "clear intent of the settlement agreement was not merely that this litigation come to an end, but that the APR should cease to have legal effect, in exchange for which the JOC Trust would convey the cemetery parcel to the town"). GURR's claim that the Town would have filed the joint stipulation of dismissal and receive nothing is pure speculation and belied by the record.

Finally, GURR argues that the Rule 60(b)(6) motion in *Bowers* was allowed only for the portion of the judgment that exceeded the town's authority, and therefore the only piece of the Settlement Agreement in this case that should be stricken is the "transfer of the settlement parcel." Opposition at 16. This confuses *Bowers*. The Appeals Court in *Bowers* considered whether the judgment had to be vacated in its entirety under Rule 60(b)(4) because the court lacked jurisdiction to enter the judgment in the first place. 16 Mass. App. Ct. at 31. If the trial court lacked jurisdiction entirely, then the entire judgment (and both parties' concessions) would be vacated as void. The Appeals Court rejected this argument: the trial court had jurisdiction under c. 40A and there were no due process issues, so the judgment was not void. *Id.* But the Appeals Court then found that Rule 60(b)(6) could provide relief to the town, even though the town's prior agreement had "induced a change of position on the part of the plaintiffs," and the sewage treatment station had been built. *Id.* at 35. This proved no obstacle to vacatur though. The Appeals Court in *Bowers* simply stayed the order to allow the select board, if it wished, to return to town meeting to receive the necessary authorization. *Id.*

GURR argues that the Select Board had authority to dismiss the case and so nothing should relieve the Town from that dismissal. Opposition at 8-9. The Select Board in *Bowers*

also had the authority to dismiss its case, but the Appeals Court nonetheless analyzed the case under Rule 60(b)(6) (though the parties had not even briefed it) and vacated the judgment anyway. *Bowers*, 16 Mass. App. Ct. at 35. What mattered in *Bowers*, and what matters here too, is that the Select Board in *Bowers* bargained away something that it had no authority to give and dismissed its case because of that bargain. Just like in *Bowers*, this should result in vacatur under Rule 60(b)(6).

The Appeals Court decision in *Quaranto v. DiCarlo* stands on starkly different footing. 38 Mass. App. Ct. 411 (1995). In *Quaranto*, the parties entered a short stipulation of dismissal and then, a month later, one of the parties sought to vacate it because the parties disputed whether one of them was adhering to the settlement agreement. *Id.* at 411-12. The Appeals Court noted that relief under Rule 60(b)(6) would be "improvidently granted" if "based on understandings" of a settlement agreement "not contained in or referred to—even inferentially—in the agreement for judgment." *Id.* at 412. But this is completely different than the current dispute: the Town is not asking the Court to vacate the stipulation because of GURR's failure to adhere to some term in the Settlement Agreement. The Superior Court and Appeals Court have made clear that the Settlement Agreement is completely ineffective. In *Quaranto*, by contrast, what "the [movants] really want[ed] is not an alteration of the judgment, but enforcement of an underlying settlement agreement which they say paved the way for the judgment." *Id.* at 413. The Town seeks the opposite here: vacatur of the stipulation because the Settlement Agreement is ineffective. The Appeals Court in *Quaranto* was wary of vacatur without the terms of the settlement agreement because the movant there was looking to enforce those terms. Here, the terms of the Settlement Agreement lack any effect and so the analysis in *Quaranto* is inapposite.

This same analysis applies to GURR's arguments about enforcing consent judgments. *See* Opposition at 17. GURR cites *Bernstein*, for instance, which involved a consent judgment. *Bernstein v. Planning Bd. of Wayland*, 100 Mass. App. Ct. 1101, at *4 (July 13, 2021) (23.0 Decision). But as the SJC explained in a case cited by *Bernstein*, a "consent judgment is essentially a settlement agreement that is entered as a judgment." *Thibbits v. Crowley*, 405 Mass. 222, 226 (1989). The terms of the settlement agreement are on the record, enforced by the court. Unilaterally modifying what is essentially a contract between the parties requires the "stringent" standard cited by GURR. Opposition at 17. These concerns are absent here. The parties are not debating about how to modify the terms of the Settlement Agreement. To the contrary, the Settlement Agreement in its entirety is not effective and therefore Hopedale has shown extraordinary circumstances that merit vacatur.

The Town's dismissal of its prior appeal has no effect on this analysis. The Appeals Court acknowledged that the Citizens' path to vacating the judgment would be made "difficult" because the Town dismissed its appeal of the denial of its motion to vacate the stipulation of dismissal. Nonetheless, the Appeals Court then provided its instructions about how to consider that motion to vacate. *Reilly*, 102 Mass. App. Ct. at 385. Nowhere did the Appeals Court suggest the Town's prior dismissal ended the inquiry—quite the opposite. If the Appeals Court had so suggested, it would not have provided the detailed guidance to this Court regarding these motions to vacate.

GURR cites to *Bromfield* and *Reznik* to argue the prior dismissal has some force, but neither case applies here. Both of those cases involved a party moving to vacate under Rule 60(b)(6) because of a purported legal error committed by the trial court. *See Bromfield v. Commonwealth*, 400 Mass. 265, 257 (1987); *Reznik v. Yelton*, Case No. 10-ADMS-10018, 2011

Mass. App. Div. 1, at *5 n.15 (2011). In *Bromfield*, the movants claimed that an appellate decision in a different case, issued long after judgment in their case, meant that the trial court had committed legal error when calculating prejudgment interest. 400 Mass. at 255-56. And in *Reznik*, the Appellate Division found that the movants similarly argued that "if they had only appealed, instead of settling the case, they might have prevailed." 2011 Mass. App. Div. at *5 n.15. These analyses concern legal error, which is not a basis for vacatur under Rule 60(b)(6), and which is not the basis on which Hopedale moves here. Hopedale seeks vacatur because of an extraordinary circumstance that arose after the joint stipulation of dismissal—which does warrant relief under Rule 60(b)(6). *Bowers*, 16 Mass. App. Ct. at 33; *Abrams,* 76 Mass. App. Ct. 1128, at *2.

III. The Town has a meritorious claim under c. 61.

Hopedale's option under Chapter 61 was triggered in 2020 and the Town properly sought to protect and enforce its right of first refusal to buy the forest land. These facts easily meet the test for a "meritorious claim," which is one factor that the Court "may" consider, but is not required to. *See Mt. Ivy Press, L.P.*, 78 Mass. App. Ct. 340, 346 (2010) (citing *Owens v. Mukundi*, 448 Mass. 66, 72 (2006)); *Ungur v. Palestine Liberation Org.*, 599 F.3d 79, 83 (1st Cir. 2010) (explaining that decisions under Rule 60(b)(6) include a "variety of factors," including the merit of a claim or defense, with those factors "neither exclusive nor rigidly applied"). There is no "ironclad rule" requiring a multi-factor analysis and sometimes one consideration "inexorably dictates the results." *Ungar*, 599 F.3d at 86. Hopedale must only establish that it "possesses a potentially meritorious claim" that, "if proven, will bring success in its wake." *Teamsters, Chauffeurs, Warehouseman & Helpers Union, Loc. No. 59 v. Superline Transp. Co.*, 953 F.2d 17, 21 (1st Cir. 1992). Hopedale easily clears this bar.

The Appeals Court repeatedly explained why the Town has a right of first refusal. First, the July 9, 2020 notice "clearly conveyed the railroad's intent to convert the forest land to a use outside the scope of c. 61." *Reilly*, 102 Mass. App. Ct. at 370; *see also id.* at 371 ("[T]he notice clearly conveyed an intent to convert the forest land to another use, thus implicating the town's option…"). Second, the Appeals Court discussed GURR's complicated corporate maneuvers to "prevent the town from exercising the option to which it was entitled," but further explained that, "irrespective of any sale," the statute does not allow the conversion of forest land to any other use "without first offering the municipality the right to purchase it." *Id.* at 371. Hopedale's select board "voted to exercise the town's option, and the town recorded the exercise of its option regarding the forest land" on November 2, 2020. *Id.* at 372 n.12. In other words, GURR intended to move the forest land outside of c. 61 and so Hopedale has a right of first refusal to buy the forest land.

GURR argues that "post-judgment actions" by Hopedale's Board of Assessors undercut the Town's claim. Opposition at 18-19. This is incorrect as a matter of law and has already been squarely decided by the Land Court in *Town of Brimfield v. Caron*, Case No. 06 Misc 331899(KCL), 2010 WL 94280 (Mass. Land. Ct. Jan. 12, 2010) (Long, J.). In *Caron*, the defendant engaged in similarly unlawful maneuvering to frustrate the town's Chapter 61 rights. Along the way, the town's Board of Assessors accepted rollback taxes and the defendant's "release fee" under Chapter 61. *Id.* at *4. The defendant argued these actions waived the town's Chapter 61 rights, an argument the Land Court easily rejected: "any action by the assessors **cannot possibly** constitute a waiver of the town's right of first refusal." *Id.* at *12 (emphasis added). Under G.L. c. 61, § 8, "the right of first refusal and any waiver of that right can only be exercised by the mayor or board of selectmen." *Id.* "Even if the assessors' action of accepting

the roll-back tax could be considered an implicit waiver," the Land Court found that action "cannot bind the town or result in a waiver of its rights" because only "the mayor or board of selectmen control whether the right is exercised." *Id.* The Board of Assessors does not speak for the Town and cannot do anything to impact the Town's Chapter 61 rights—only the Select Board can.

Caron further explains why the Town has a meritorious claim. The Land Court explained in *Caron* that what matters for triggering the right of first refusal is the "date of the sale" and the "buyer's intent" to discontinue the forest use of the land upon acquiring land." *Id.* at *7 (quoting *Sudbury v. Scott*, 439 Mass. 288, 299 (2003)). Here, the Appeals Court has already noted that GURR intended to convert the forest land to non-forest use. *Reilly*, 102 Mass. App. Ct. at 371. Thus, just like in *Caron*, the town's right of first refusal was triggered. *Id.* at *9 ("I find and rule that Mr. Caron intended to use the property 'for residential, industrial or commercial use' and the conveyance of the Forest Parcel to Mr. Caron was thus a sale or conversion triggering the town's right of first refusal pursuant to G.L. c. 61, § 8.").

Similar to this case, the initial notice provided by the defendant to the town in *Caron* "failed to comply with the notice requirements of G.L. c. 61." *Id.* at *10. And while the town in *Caron* acted to preserve and exercise its Chapter 61 rights, the defendant failed to provide a price just for the forest parcel and so the town's "right of first refusal has not yet ripened." *Id.* at *11. This did not mean the defendant in *Caron* could keep the land that he illegally obtained; that would reward unlawful and deceitful behavior and run directly counter to the purpose of Chapter 61. Instead, the Land Court decided to hold a trial on the purchase price for the land. That was particularly necessary because the defendant had "altered the landscape of the Forest Parcel," which "may have diminished the value of the Forest Parcel to the town since it expected to have

an option to purchase forest land that had been protected pursuant to the provisions of G.L. c. 61." *Id.* at *11. Once the trial judge in *Caron* decided how much to lower the price and entered judgment, "the town shall thereafter have 120 days to exercise its rights in accordance with G.L. c. 61." *Id.* at *11.

The Town will seek this same remedy. GURR actively frustrated the Town's Chapter 61 rights through a "flagrant violation" of state law. Status Quo Decision, at p. 2. GURR then clear-cut 100 acres of pristine forest land, gashing the landscape and leaving the forest land denuded. The Town "expected to have an option to purchase forest land that had been protected" by Chapter 61, not land that must be completely reforested at great expense. The Town will seek discovery and a trial to adjust the purchase price downward to account for this unlawful clear cutting.[2]

IV. Vacatur will ensure the parties' substantial rights are properly decided.

GURR ends its Opposition by arguing that vacatur should be denied because allowing it would "prejudice" its substantial rights. Opposition at 19-20. The Superior Court found that GURR engaged in a "flagrant violation" of state law. Status Quo Decision at 2. The Appeals Court noted that GURR, "apparently wishing to prevent the town from exercising the option to which it was entitled," engaged in a complicated series of maneuvers to deny the Town its rights under Chapter 61. *Reilly*, 102 Mass. App. Ct. at 371; *see also* Decision on MJP, at 11 ("[T]his

[2] GURR has also cited preemption under the Interstate Commerce Commission Termination Act ("ICCTA") as a potential impediment to the Town's Chapter 61 rights. For ICCTA to apply, GURR must first show that it rightfully owns the property. *See, e.g.*, *City of Milwaukie-Petition for Decl. Order*, 2013 WL 1221975, at *4 n.14 (S.T.B. Mar. 20, 2013) (rejecting a railroad's argument that it could "appropriate public land at will" without any showing of a rightful state law property interest). But here, the property should have gone from a non-rail carrier (the Trust, who maintained the property as forest land under Chapter 61) to a non-rail carrier (the Town). The property should have never been owned by GURR and so ICCTA preemption does not apply.

court is mindful of the Railroad Defendants' attempt to circumvent the Chapter 61, § 8 process by purporting to acquire only the 'beneficial interest' in the forest land."). GURR may have obtained nominal title to the land, and spent money defending that decision, but it violated state law. The Court should not deny relief under Rule 60(b)(6) to protect GURR's illegal and unlawful actions. This would run directly counter to the purpose of Rule 60(b)(6) to achieve substantial justice. *Rezendes v. Rezendes*, 46 Mass. App. Ct. 438, 440-41 (1999).

Hopedale, by contrast, has a statutory right that has been unlawfully stymied. *See Kniskern v. Melkonian*, 68 Mass. App. Ct. 461, 467 (2007) (a party's evasion of a statute for worker injury disputes "defeats important statutory purposes and gives rise to the extraordinary circumstances justifying relief under rule 60(b)(6)"). Hopedale held up its end of the Chapter 61 bargain, providing a lower tax rate to the property for the years it was managed as forest land. GURR then illegally prevented Hopedale from exercising its right of first refusal and attempted to turn that forest land into an industrial rail yard for its own profit.

In providing its "observations" that "may be helpful on remand," the Appeals Court noted that this Court must not make "toothless" the Superior Court's judgment, *Reilly*, 102 Mass. App. Ct. at 384, that, among other matters, "the town retain[ed] its right to enforce the option." *Id.* at 381. The Appeals Court decision merits vacatur so that the parties can move to addressing the merits of Hopedale's Chapter 61 rights.

Conclusion

For the foregoing reasons, the Town requests that the Court vacate the stipulation of dismissal.

TOWN OF HOPEDALE,

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Certificate of Service

I certify that I served this document on each other party by e-mail to all counsel of record on this 15th day of December, 2023.

/s/ Sean Grammel
Sean Grammel