COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS LAND COURT DEPARTMENT OF THE TRIAL COURT

TOWN OF HOPEDALE	)	
	)	
Plaintiff	)	
	)	
ELIZABETH REILLY, ET AL	)	CASE NO.20MISC 00467 (DRR)
	)	
Intervener-Plaintiffs	)	
vs.	)	
	)	
	)	
JON DELLI PRISCOLI and MICHAEL R. MILANOSKI, as Trustees of the ONE HUNDRED FORTY REALTY TRUST and GRAFTON & UPTON RAILROAD COMPANY	)	
	)	
Defendants	)	

OPPOSITION OF GRAFTON & UPTON RAILROAD COMPANY AND ONE HUNDRED FORTY REALTY TRUST TO INTERVENERS' MOTION TO VACATE STIPULATION OF DISMISSAL

Defendants, Grafton & Upton Railroad Company ("G&U") and Jon Delli Priscoli and Michael R. Milanoski, as Trustees of the One Hundred Forty Realty Trust (the "Trust") (collectively, the "G&U Parties"), oppose the Intervener Plaintiffs' ("Interveners" or "Citizens") Mass. R. Civ. P. 60(b)(6) Motion to Vacate the Stipulation of Dismissal which entered on February 10, 2021. The Interveners' motion should be denied because:

1) The Interveners have failed to establish they have standing to assert any meritorious claims in this action.
2) Nothing has changed since the Town of Hopedale ("Town") filed its Motion to Vacate Stipulation of Dismissal with Prejudice on December 30, 2021, which was denied by this Court on January 28, 2022. The Town filed its initial Motion to Vacate asserting

that the judgment that entered in the Superior Court[1] in November 2021, as clarified in December 2021, required vacatur. That Superior Court judgment, as clarified, is unchanged and remains in effect today. Judgment entered on Count I in favor of the Interveners and against the Town only, which was not appealed, and thus not before the Appeals Court in Reilly et al v. Town of Hopedale et al., 102 Mass App. Ct. 367 (2023). Judgment entered on Count II against the Interveners and in favor of the Town and the G&U Parties, which was affirmed. The Superior Court judgment, as clarified in December 2021, has not been modified, or amended.

3) The Interveners rely on a faulty premise – that the Appeals Court in Reilly expanded the scope and breadth of the judgment that entered on Count I of the Superior Court case beyond what was intended by the trial court judge, Justice Goodwin, when Count I was not an issue on appeal and thus, was not modified, amended, restricted and/or expanded by the Appeals Court.

4) The G&U Parties' substantial rights will be prejudiced by vacatur.

For these reasons, the Interveners failed to meet their burden to establish "a significant change either in factual conditions or in law," and that the changes on which the party relies were not "actually . . . anticipated" at the time judgment entered. Bernstein v. Planning Bd. of Wayland, 100 Mass. App. Ct. 1101, 2021 Mass. App. Unpub. LEXIS 515, *8-9 (Rule 23 Decision). The Interveners have failed to meet their heavy burden under Rule 60(b)(6) to establish compelling or extraordinary circumstances warranting vacatur. See DeMarco v. DeMarco, 89 Mass. App. Ct. 618, 621-622 (2016).

[1] Reilly et al v. Town of Hopedale, et al, 2185CV00238D.

ARGUMENT[2]

I. The Interveners Have Failed to Meet Their Heavy Burden Under Mass. R. Civ. P. 60(b)(6).

A. Legal Standard.

Mass. R. Civ. P. 60(b)(6) states that "[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons…(6) any other reason justifying relief from the operation of the judgment." Rule 60(b)(6) is considered a catch-all and applies only where none of sections (b)(1) – (b)(5) of Rule 60 apply. The decision to deny a Rule 60(b)(6) motion is solely within the discretion of the trial Court. Klimas v. Mitrano, 17 Mass. App. Ct. 1004, 1004 (1984).

"Rule 60(b)(6) has an extremely meagre scope and requires the showing of compelling or extraordinary circumstances. Extraordinary circumstances may include evidence of actual fraud, a genuine lack of consent, or a newly-emergent material issue." DeMarco, 89 Mass. App. Ct. at 621-622(internal quotations and citations omitted). Significantly, the Court must consider whether the existence of exceptional circumstances warrant relief from judgment, whether the movant has a meritorious claim, and whether granting relief will affect the substantial rights of the parties. See Mt. Ivy Press, L.P. v. Defonseca, 78 Mass. App. Ct. 340, 346 (2010); Ocean Real Estate Invs. v. Sacco, 97 Mass App. Ct. 1123 (2020)(Rule 23 Decision), quoting, Clamp-All Corp. v. Foresta, 53 Mass. App. Ct. 795, 806 (2002)("It is settled, however, that, in order to obtain such relief pursuant to rule . . . 60 (b) . . . a party must show both a good reason to remove the default and also the existence of meritorious claims or defenses.").

[2] The G&U Parties incorporate herein the Procedural and Factual History set forth in their Opposition to the Town's Renewed Motion to Vacate, contemporaneously filed.

B. The Only Claim Articulated by the Interveners is Not Meritorious Because the Interveners Lack Standing to Assert it.

The Interveners are required to give the Court "reason to believe that vacating the judgment will not be an empty exercise." See Bouret-Echevarria v. Caribbean Aviation Maintenance Corp., 784 F.3d 37, 46 (1st Cir. 2015). Although the claim need not be "ironclad," a purely conclusory argument that a meritorious claim exists "will not suffice to satisfy the precondition to Rule 60(b) relief." Teamsters, Chauffeurs, Warehousemen & Helpers Union, Local No. 59 v. Superline Transp. Co., 953 F.2d 17, 21 (1st Cir. 1992). The Interveners fail to meet this standard because their motion does not even address whether they have a meritorious claim. An examination of the Interveners' Verified Complaint confirms that they do not.

On October 25, 2023, the Interveners filed their Verified Complaint, asserting three counts: Count I – seeking to Vacate Stipulation of Dismissal, Count II – seeking a Preliminary Injunction Against Railroad Defendants From Any Land-Clearing Activities in the Forestland Until Disposition of This Action, and Count III - seeking a Declaratory Judgment. Counts I and II do not assert claims upon which relief may be granted, as they assert remedies, as opposed to stand-alone causes of action. See, Woods v. Wells Fargo Bank, N.A., 733 F.3d 349, 353 (1st Cir. 2013) ("injunctive relief is not a stand-alone cause of action in Massachusetts"); Mullins v. Corcoran, 488 Mass. 275, 286, n. 16 (2021)(same); Baystate Fin. Servs., LLC v. Pinto, Superior Court Docket No. 2084CV02507, 2021 Mass. Super.LEXIS 29, at *7, n.9 ("Dismissal of this claim is appropriate, however because injunctive relief is a remedy and not a substantive cause of action."). [3]

[3] Accordingly, the G&U Parties will be filing a Motion to Dismiss the Interveners' Verified Complaint pursuant to Mass. R. Civ. P. 12(b)(6) on or before November 30, 2023.

To the extent the Interveners bring Count I to "effectuate" the judgment they obtained under Count I of their Superior Court complaint by reopening this case, the claim is not meritorious. It is undisputed that the Interveners lack standing to assert the Town's dismissed c. 61 claim. Reilly, at 377-380. The Interveners do not cite to a single case in which a third party was permitted to vacate a judgment of dismissal on behalf of an unrelated plaintiff, let alone a case where the third party lacked standing to bring the underlying claim. Moreover, vacating the stipulation of dismissal would go well beyond the limits of the Superior Court judgment, which the Interveners obtained pursuant to G.L. c. 40, § 53. Relief under Section 53 is limited to an injunction against the imminent unlawful expenditure of municipal funds. See Reilly, at 378 ("taxpayer plaintiffs must show a statutory foundation for standing apart from G.L.c. 40 §53 in order to challenge a town's entering into a contract or settlement."); see also Spear v. Boston, 345 Mass. 744, 746 (1963) (G.L. c. 40, § 53 does not authorize "the undoing of completed transactions" or a declaration that a contract is invalid). The Superior Court judgment has already been effectuated because it enjoined the Town's purchase under the settlement agreement. The judgment is self-executing and will continue to prevent the Town from purchasing the settlement parcel absent new authorization from Town Meeting.[4] Count I is not meritorious for this additional reason.

With respect to Count III of the Interveners' Verified Complaint, the Appeals Court in Reilly emphatically affirmed the judgment that entered on Count II of the Superior Court case, holding that the Interveners have no standing to seek a declaratory judgment with respect to any

[4] The Interveners apparently intend to vacate the judgment and then remain in the case to ensure that the Town does not enter into an illegal settlement, or acquire the subject land for the wrong price. Hypothetical future controversies are not claims. The Interveners should not be permitted to serve as referees between the Town and G&U Parties.

c. 61 rights that the Town may have possessed, and/or the settlement agreement entered into between the Town and the G&U Parties. The Appeals Court stated in relevant part:

> The citizens assert three theories of standing to pursue a declaration that the settlement agreement is void and unenforceable[...]
>
> It is important at this point to focus on the difference between count I and count II of the Superior Court complaint. In count I, the citizens sought to enjoin the town from expending funds under the settlement agreement because the expenditure had not been authorized at a town meeting. This type of allegation falls easily within the ambit of G. L. c. 40, § 53, as the Superior Court judge determined when she ruled in favor of the citizens on count I.
>
> By contrast, in count II, the citizens sought declarations that the board's waiver of its c. 61 option as part of the settlement agreement was void, that the town's c. 61 rights remain enforceable, that the restructured transaction by which the railroad obtained control of the trust and its beneficial interest triggered the town's option, that all forest land held by the trust be transferred to the town with no easements, and that the railroad be prevented from alienating the forest land or converting any of it from its current use. None of these forms of relief can be characterized as the raising or expenditure of funds or as the incurring of obligations by the town and, accordingly, G. L. c. 40, § 53, did not give the citizens standing to pursue them.
>
> The citizens also claim that the declaratory judgment statute, G. L. c. 231A, § 1, independently gives them standing to pursue the relief they seek in count II. But that statute "does not in and of itself provide the plaintiffs with the 'standing' required to maintain" a taxpayer suit such as this one. *Pratt*, 396 Mass. at 43. Instead, the citizens have standing under the declaratory judgment statute only if they "can allege an injury within the area of concern of the statute or regulatory scheme under which the injurious action has occurred." *Revere* v. *Massachusetts Gaming Comm'n*, 476 Mass. 591, 607, 71 N.E.3d 457 (2017). Thus, fundamentally, the standing inquiry under the declaratory judgment statute depends on whether the citizens are seeking in count II to protect a cognizable interest under either G. L. c. 40, § 53, or G. L. c. 61. As we have already said, they do not have such a cognizable interest under G. L. c. 40, § 53. And so we turn to G. L. c. 61.
>
> General Laws c. 61 reflects a legislative interest in promoting and maintaining forest land, which it seeks to achieve through an incentive structure of reduced taxation on landowners who submit their forest land to regulation under the statute. Although a town's citizens clearly have an interest — as that term is colloquially understood — in the preservation of green space, including forestland, that generalized interest in protecting the environment, as laudable as it is, is not enough to confer standing in the absence of cognizable injury.

> […]
> Individual taxpayers whose land is not subject to G. L. c. 61 have been given no rights under the statutory scheme. Contrast G. L. c. 61, §§ 2, 3 (creating procedures for landowner to challenge land classification and tax assessment).
>
> c. *Standing to pursue mandamus*. The citizens argue that the town's waiver of its option constituted an illegal assignment of the option, and as such they have standing to pursue a mandamus action against the assignment. Setting aside the fact that the citizens did not raise this argument below with respect to count II of the Superior Court complaint and it is accordingly waived, we note that the argument is based on a faulty premise.

Reilly, at 377-380(emphasis supplied).[5]

These rulings by the Appeals Court in Reilly have preclusive effect, and res judicata principles bar the Interveners from relitigating these issues in this Court. See Tuper v. North Adams Ambulance Serv., Inc., 428 Mass. 132, 134 (1998); Heacock v. Heacock, 402 Mass. 21, 23, n. 2 (1988). The Interveners have no standing to "pursue a declaration that the settlement agreement is void and unenforceable," no interest in the subject property, and "no rights under the statutory scheme" of G.L. c. 61. Reilly, at 377-380. Thus, Count III of the Interveners' Verified Complaint does not present a meritorious claim that they can assert in this action.

The Interveners have not asserted any meritorious claims in their Verified Complaint filed in this court. The Interveners Motion to Vacate the Judgment should be denied.

C. The Appeals Court Decision in *Reilly* is Not an Extraordinary Circumstance Because it is Not a Significant Change in Fact or Law.

1. *Reilly* Did Not Change, Alter, Amend, or Issue Any Ruling or Holding on Count I of the Superior Court Judgment.

[5] Indeed, the Interveners do not even claim that there is a controversy between the Interveners and any party. See paragraph 114 of the Verified Complaint asserting that "[t]here exists an actual controversy concerning whether the Town and the Railroad Defendants can enter into a settlement agreement in this action …" [emphasis supplied]. See further, paragraph 116 of the Verified Complaint ("Intervenor-Plaintiffs seek a judicial determination that the Town has effectively exercised its Option and the Town and the Railroad Defendants cannot enter into a settlement agreement in this action….")(emphasis supplied).

The Interveners' sole basis for their motion to vacate the February 2021 judgment is the "ineffective" or "not effective" language used by Superior Court Judge Goodwin in her December 2021 clarification of the Judgment that entered on Count I of the Interveners' Superior Court Complaint.[6] Interveners' Motion, p. 2,3, 5, 6, 7. In doing so, the Interveners continue to overstate the significance of the Appeals Court's quoting verbatim of Judge Goodwin's clarification in its decision. See, Reilly at 374. It is clear from reviewing the Appeals Court decision that Judge Goodwin's "ineffective" or "not effective" language merely was restated in that decision because no separate analysis was performed by the Appeals Court of the judgment that entered on Count I. No separate analysis was conducted by the Appeals Court of the judgment that entered on Count I, because Count I was not before the Court. See, Boston Edison Co. v. Boston Redevelopment Authority, 374 Mass. 37, 42 (1977)("[Plaintiff] did not challenge that ruling in this Court. Consequently, this issue is not before us."); Cady v. Marcella, 49 Mass. App. Ct. 334, 335 (2000)("The [plaintiffs] do not argue against that decision in this appeal, and therefore we do not address that portion of the judgment."). Because the Appeals Court did not address Count I, it issued no ruling affecting Count I, and it is the judgment that Judge Goodwin entered in November 2021 and clarified in December 2021 that represents the law of the Superior Court case today. Commonwealth v. Rand, 363 Mass. 554, 564 (1973)("The correctness of such instructions is not before us. Since there were no objections to them [at the trial court], they constituted the law of the case."); Hughes v. State, 490 A.2d 1034, 1048 (Del. 1985)("The law is clear that rulings made by a trial court and not challenged on appeal become the law of the case.").

[6] The Interveners go even further, by inexplicably claiming that the Appeals Court held that "the Town may renew its efforts to enforce its [c.61] Option." The Appeals Court did no such thing.

Accordingly, the Appeals Court's citation and reference to the judgment that entered on Count I and to language used by Judge Goodwin in her clarification of that judgment does not equate to a ruling, or a holding by the Appeals Court on this portion of the Superior Court judgment. The Appeals Court did not change what Judge Goodwin meant by her use of the "ineffective" or "not effective" language in the December 2021 clarification; what matters is what Judge Goodwin actually meant by her inclusion of this language.

To understand what Judge Goodwin meant when she stated in her clarification that the Settlement Agreement was "ineffective," the parties and this Court have the benefit of transcripts of two hearings that occurred months after she issued her clarification wherein Judge Goodwin was crystalline clear as to the scope of the judgment that entered on Count I, as clarified. First, two months after she issued her clarification, the parties appeared before Judge Goodwin on the Town's Emergency Motion to Extend Injunction Order on February 9, 2022. Judge Goodwin interrupted counsel for the Interveners to specifically contest and reject his contention that the judgment that entered on Count I, as clarified, "effectively rescinded" the settlement agreement by stating, "I don't think I rescinded the agreement, because it wasn't in front of me." Affidavit of Donald C. Keavany, Jr. ("Keavany Aff."), Exhibit 6.

Almost three months later (May 3, 2022), the parties were again in front of Judge Goodwin, this time on the Interveners' Emergency Motion to Preserve Status Quo Pending Appeal. Judge Goodwin explained in her own words the scope of the judgment she entered on Count I, as clarified six months prior in December 2021:

> So I issued this decision back in November essentially finding for … the taxpayers on Count I that the town lacked authority to buy this smaller parcel of land. I found for the Defendants on Count 2 and 3.

Keavany Aff., Exhibit 8, p. 4. Judge Goodwin further clarified the scope of the judgment on Count I when she stated the following at the May 3 hearing:

> So what we have is this Court's decision saying hey town, you can't spend the money to buy less property. And does that mean that the railroad has it all? Has all the land and the town has none?

Id., p. 22. Later, Judge Goodwin asked the parties "What's going to happen if the appeal [of the judgment that entered on Count II] is unsuccessful?" Id., p. 23. Counsel for the Interveners responded by stating:

> I believe that the town under a new board would likely, with the citizens' support, file a third lawsuit to void the settlement agreement for lack of consideration because that issue has not been squarely addressed by any court yet. … I hope we don't have to get there because the Appeals Court will rule that the settlement agreement's waiver was ineffective for one of the various reasons that we've raised. But if we lose, that's what is going to happen."[7] Id., at p. 27.

Finally, in her May 6, 2022 Memorandum of Decision and Order denying the Interveners' Emergency Motion to Preserve Status Quo Pending Appeal, Judge Goodwin again confirmed the limitations of the Judgment on Count I, as clarified in December 2021, when she stated in relevant part that she decided the "first count in favor of the Taxpayers, holding that Hopedale lacked authority to buy the smaller piece of land because the purchase was not approved by City [sic] voters." Keavany Aff., Exhibit 9. Judge Goodwin further stated that:

> the court must decide whether the [Interveners] have a likelihood of succeeding in their challenge to the legality of the Settlement Agreement. Unfortunately, the court's answer to that question is "no."

Id. As confirmed by the Superior Court Judge herself, the judgment on Count I in the Superior Court was not a successful "challenge to the legality of the Settlement Agreement." The judgment that entered on Count I did not invalidate or make ineffective the Settlement

[7] The Interveners did lose their appeal, but instead of filing a third lawsuit to rescind, or otherwise challenge the entire settlement agreement, the Town chose a different strategy – eminent domain.

Agreement between the Town and the G&U Parties. It merely enjoined the Town from spending money to acquire the real property described in the Settlement Agreement absent a new appropriation authorized by Town Meeting. It should go without saying, but if the judgment that entered on Count I invalidated the entire settlement agreement, or declared the entire settlement agreement to be "ineffective," Judge Goodwin would have entered the injunction.[8]

The Interveners have no answer to these clear and unambiguous statements of Judge Goodwin with respect to the judgment that entered on Count I. In fact, the Interveners refuse to acknowledge, or they simply ignore, the transcripts and writings of Judge Goodwin and instead implore this Court to impermissibly find that the Appeals Court modified or amended the judgment that entered on Count I in a manner inconsistent with what Judge Goodwin herself entered, clarified and intended (and inconsistent with the holding in Reilly that the Interveners lacked standing to invalidate the settlement agreement's provisions). The Appeals Court did not touch the judgment on Count I, because it was not appealed; therefore, Judge Goodwin's explanations and characterizations of the judgment control.

2. The Interveners Appealed the Judgment That Entered on Count II in the Superior Court Because the Judgment that Entered on Count I Did Not Declare the Entire Settlement Agreement Ineffective, Rescinded or Otherwise Unenforceable.

If, as the Interveners assert, judgment on Count I declared the entire Settlement Agreement ineffective, there would have been no reason for them to appeal the judgment that entered on Count II. But the Interveners did aggressively pursue an appeal of that judgment that entered on Count II. In fact, at pages 36-38 of their appellate court brief challenging, and

[8] The purpose of the temporary injunction issued under Count I was to maintain the status quo on the property for 60 days to allow the Town time to decide what action to take after being enjoined from purchasing the settlement parcel. Keavany Aff., Exhibit 4. If the purpose of the injunction was to "preserve the forestland" generally, the Superior Court would have made it permanent, or would have extended it on the Interveners' motion. It did not.

seeking reversal of the dismissal of Count II, the Interveners succinctly summarized their challenge to the judgment that entered on that count:

> The Superior Court validated [the Interveners'] standing to [challenge unlawful expenditures by the Town] by entering judgment on Count I against the purchase of the 40 acres absent Town Meeting approval. In its ruling on Count II, the Superior Court found no standing for the [Interveners] to require the Town to seek monetary enforcement of the [c.61] Option but did not address whether the [Interveners] have standing to seek a declaratory judgment that the waiver provision of the Settlement Agreement, or the Settlement Agreement in its entirety, is ineffective and unenforceable….
>
> * * *
>
> [T]he [Interveners] have standing to seek declaratory relief that such illegality renders the entire contract ineffective and invalid.
>
> * * *
>
> The [Interveners] also have standing under G.L.c. 231A to obtain a declaratory judgment that the Settlement Agreement, including the Option waiver, is ineffective, invalid and illegal.

The Interveners concluded their appellate brief as follows:

> For the foregoing reasons, the decision of the Superior Court should be reversed, and a declaratory judgment should enter in favor of the Plaintiffs on Count II that the Settlement Agreement is ineffective, unenforceable and void.

[emphasis supplied]. Keavany Aff., Exhibit 15.

In their Reply Brief filed in the Appeals Court the Interveners continued: "Count II of the [Superior Court] Complaint and the Prayer for Relief specifically requested a declaration that the Town's waiver of the Option under the Settlement Agreement was invalid and unenforceable…. Accordingly, this [Appeals] Court should issue a declaratory judgment that the Settlement Agreement, including the purported waiver of the Option, is ineffective and invalid." (emphasis supplied). Keavany Aff., Exhibit 16, pp. 7-8. The appellate arguments advanced by the Interveners with respect to the judgment that entered on Count II, and the remedy they sought from the Appeals Court on Count II (along with the judgment that entered in the Superior Court,

the clarification issued by Judge Goodwin in December 2021 and Judge Goodwin's statements post-judgment in February 2022 and May 2022) conclusively establish the limits and breadth of the judgment that entered on Count I. Indeed, the Interveners confirmed the limits of the judgment on Count I at the May 3, 2022 hearing before Judge Goodwin (Keavany Aff., Exhibit 8, p.27), and at page 36 of their appellate court brief when they stated that the "Superior Court validated their standing to [challenge unlawful expenditures by the Town] by entering judgment on Count I against the purchase of the 40 acres absent Town Meeting approval." Keavany Aff., Exhibit 15, p. 36.

As stated by the Appeals Court in Bernstein, a party seeking relief based on newly-emergent issues bears the burden of showing "a significant change in either factual conditions or law" and that such changes were not "actually…anticipated" when judgment entered. 100 Mass. App. Ct. 1101, at *8-9, quoting Rufo, 502 U.S. at 384-385. Because the Appeals Court did not amend, revise, limit or expand the judgment on Count I, there has been no "significant change in either factual conditions or law" as a result of that decision. In fact, Reilly did not make any change, never mind a significant change, to the factual conditions or to the law of the Superior Court case. Accordingly, the Reilly decision does not provide or establish a newly-emergent issue because the scope of the judgment that entered on Count I in the Superior Court in November 2021 and clarified in December 2021 remained the same as it was when the Town

filed its Motion to Vacate on December 30, 2021.[9] The Interveners' Motion to Vacate must therefore be denied.[10]

D. Vacating the Judgment Would Prejudice the G&U Parties' Substantial Rights.

The Interveners rely on the Appeals Court's statements that the Superior Court's rulings are entitled to full respect and force and that "the Land Court judge should ensure that her rulings are not inconsistent or unfair in light of rulings that have been made in a sister department of the trial court." Reilly, at 385. But the Interveners are not the only party entitled to the benefit of the Superior Court's rulings. The G&U Parties are entitled to the benefit of the Superior Court's rulings (affirmed in Reilly at 377-380) that the Interveners lacked standing to obtain a declaration that 1) the settlement agreement is void and unenforceable, and 2) the Town's waiver of its c. 61 rights is invalid or unenforceable. The G&U Parties are entitled to the benefit of the Superior Court's characterization of her ruling on Count I that it did not "invalidate the settlement agreement, because it wasn't in front of [her]." Keavany Aff., Exhibit 6, pp.11-12. The G&U Parties are entitled to the benefit of the Appeals Court's rejection of the Interveners' request that they reverse Judge Goodwin and enter a declaratory judgment "on Count II that the Settlement Agreement is ineffective." Reilly, 377-380. It would be unfair and inconsistent, and would prejudice the G&U Parties' substantial rights, for this Court to only recognize those portions of the Superior Court judgment which benefit the Interveners, while ignoring those portions of the Superior Court judgment here which benefit the G&U Parties and which are

[9] Even if the Reilly decision constituted a "significant change in either factual conditions or law," (which it does not) it would not constitute an extraordinary circumstance for purposes of Rule 60(b)(6) because it was not newly emergent. The Town "actually…anticipated" the possibility of the Reilly decision when it filed the stipulation of dismissal because the Interveners' counsel had threatened to bring a lawsuit pursuant to G.L. c. 40, § 53 to enjoin the Town's expenditures under the settlement agreement.

[10] The G&U Parties incorporate Sections V, VI and VIII of their Opposition to the Town's Renewed Motion to Vacate herein.

dispositive of this motion. The Interveners' motion should be denied for this reason. See Parrell v. Keenan, 389 Mass. 809, 815 (1983) (the effect on the parties' substantial rights may be considered on a Rule 60(b) motion).

CONCLUSION

For the reasons set forth herein, the Interveners have no meritorious claims to assert in this action. Purely conclusory arguments that a meritorious claim does exist "will not suffice to satisfy the precondition to Rule 60(b) relief." Further, the Interveners have not established extraordinary circumstances, including the existence of a newly emergent issue. The Interveners Mass. R. Civ. P. 60(b)(6) motion to vacate the judgment must be denied.

GRAFTON & UPTON RAILROAD COMPANY, JON DELLI PRISCOLI, AND MICHAEL MILANOSKI, as Trustees of the ONE HUNDRED FORTY REALTY TRUST

/s/ Andrew P. DiCenzo

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CERTIFICATE OF SERVICE

I hereby certify that this document eFiled on November 17, 2023 will be sent by separate email to all counsel of record.

/s/ Andrew P. DiCenzo