



toothless the judgment and rulings in the Superior Court case,” particularly where this case bears “public significance.” *Id.* Because the Superior Court has already decided “some of the substantive issues on the merits,” the Land Court should ensure that its rulings “are not inconsistent or unfair” with those of “a sister department of the trial court.” *Id.*

The Appeals Court then concluded its analysis by expanding these observations beyond the motion to intervene, to include the motion to vacate: “These considerations will come into special play when deciding the citizens’ motion to vacate the stipulation of dismissal.” *Id.*; *see also id.* (remanding the case for “proceedings consistent with this opinion, including consideration of the citizens’ motion to join the town’s motion to vacate the stipulation of dismissal”). This broader focus pairs with the Appeals Court’s earlier summary of the Superior Court’s ruling, which decided that the Town “retain[ed] its money and the right to continue attempting to enforce the option,” such that the Town “may (but is not required to) attempt to enforce the option.” *Id.* at 374. The Appeals Court noted that no party “appealed from this aspect of the judgment” by the Superior Court, *id.*, and so these “rulings are binding on the town, the railroad, and the trust (all of whom were parties in the Superior Court case and have not appealed).” *Id.* at 385.

Given the Appeals Court’s guidance on this issue, the Citizens should be allowed to intervene. *See, e.g., Johnson Turf and Golf Mgmt. v. City of Beverly*, 60 Mass. App. Ct. 386, 392-93 (2004) (reversing denial of a post-judgment request for intervention where third party had independent rights to protect and municipality may have entered contract outside statutory limits). The Citizens would then be allowed to participate in the case fully to protect the interests they won in the Superior Court. *See Frostar Corp. v. Malloy*, 77 Mass. App. Ct. 705, 706 (2010) (vacating judgment and remanding for a new trial because of improper denial of motion to

intervene); *McDonnell v. Quirk*, 22 Mass. App. Ct. 126, 133-34 (1986) (vacating agreement for judgment after improper denial of intervention by party with interest in the real property at issue).

The Appeals Court explicitly noted that its “observations” ran to both this motion to intervene and a subsequent motion to vacate. *Reilly*, 102 Mass. App. Ct. at 385. If this Court grants the Citizens’ motion to intervene, and then their motion to vacate the stipulation of dismissal, then the original parties to that stipulation are returned to their place *ex ante*. In other words, the case proceeds like the stipulation of dismissal never existed. *See Abo State v. Gonzales*, 215 Fed. App’x 134, 137 (3d Cir. 2007) (“It is axiomatic that where a court, in the discharge of its judicial functions, vacates an order previously entered, the legal status is the same as if the order had never existed.” (citations omitted)). That is the effect of vacating the stipulation, whether that vacatur is achieved through motion by the Citizens or the Town. And if that vacatur is granted, the Citizens would join the case going forward and, presumably, seek to enforce the judgment they received from Superior Court and effectuate the special “considerations” outlined by the Appeals Court.

### **Conclusion**

For these reasons, the Court should grant the Citizens’ Motion for Leave to Intervene.

TOWN OF HOPEDALE,

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**Certificate of Service**

I certify that I served this document on each other party by email, to all counsel of record on this 31st day of August, 2023.

*/s/ Sean Grammel*

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