

• **20 MISC 000467 Town of Hopedale v. Jon Delli Priscoli Trustee of the One Hundred Forty Realty Trust , et al. RUBIN**

03/25/2024 Event Resulted: Motion scheduled on:

03/25/2024 02:00 PM

Has been: Hearing on motion to vacate dismissal and motion to dismiss held in person. Attorney David Mackey and Sean Grammel appeared on behalf of the Town of Hopedale ("Town"), Attorneys Donald Keavany and Andrew DiCenzo appeared on behalf defendants, and Attorneys Harley Racer and David Lurie appeared on behalf of the intervenors, the Hopedale Citizens (the "Citizens"). In addition to the filings listed in the docket of December 12, 2023, Court is in receipt of (1) Hopedale Citizens' Post-Remand Reply Memorandum in Support of their Motion to Vacate Stipulation of Dismissal; (2) Hopedale's Reply in Support of its Renewed Motion to Vacate Stipulation of Dismissal; (3) Sur-Reply of Grafton & Upton Railroad Company and One Hundred Forty Realty Trust in Opposition to the Town of Hopedale's Motion to Vacate Stipulation of Dismissal; (4) Sur Reply of Grafton & Upton Railroad Company and One Hundred Forty Realty Trust in Opposition to the Intervener-Plaintiffs' Motion to Vacate Stipulation of Dismissal; (5) Amended Verified Complaint of Intervenor-Plaintiffs Elizabeth Reilly and Ten Citizens of Hopedale; (6) Hopedale's Answer to the Amended Verified Complaint of Intervenor-Plaintiffs Elizabeth Reilly and Ten Citizens of Hopedale; (7) Motion of Grafton & Upton Railroad Company and One Hundred Forty Realty Trust to Dismiss Interveners' Amended Verified Complaint pursuant to Mass. R. Civ. P 12(b)(1) and 12(b)(6) and the memorandum, appendix, and statement of facts in support thereof; (8) Hopedale Citizens' Opposition to Motion of Grafton & Upton Railroad Company and One Hundred Realty Trust to Dismiss Interveners' Amended Verified Complaint and the appendix in support thereof; (9) Hopedale Citizens' Response to Statement of Facts in Support of Motion of Grafton & Upton Railroad Company and One Hundred Realty Trust to Dismiss Intervenor's Amended Verified Complaint; (10) Reply of Grafton & Upton Railroad Company and One Hundred Forty Realty Trust in Support of Motion to Dismiss Verified Amended Complaint; and (11) Hopedale Citizens' Sur-Reply in Opposition to Motion of Grafton & Upton Railroad Company and One Hundred Realty Trust to Dismiss Interveners' Amended Complaint.

THE TOWN'S AND CITIZENS' MOTIONS TO VACATE STIPULATION OF DISMISSAL.

Following colloquy, the Town's and Citizen's motions to vacate the stipulation of dismissal are ALLOWED for the reasons stated on the record and as follows:

In January 2022, this court denied a motion by the Town to vacate the Stipulation of Dismissal with prejudice (the "Stipulation"), that had been filed by the Town and the Defendants after they entered into a settlement agreement. At that time, I concluded that exceptional circumstances were not present to warrant vacatur. Since that time, circumstances have changed, and these motions are now before the court after remand from the Appeals Court, as discussed below. Both the Town and the intervenor Citizens seek to vacate the Stipulation.

After the Citizens prevailed (in part) in a related Worcester Superior Court case (Case No. 2185CV00238), the Appeals Court considered an appeal in that case, as well as the Citizens' appeal of this court's denial of their motion to intervene in this case and remanded this matter for further proceedings consistent with the Appeals Court Decision, including consideration of the Citizens' motion to join the Town's motion to vacate the Stipulation. *Reilly v. Hopedale*, 102 Mass App. Ct. 367, 385 (2023) (the "Appeals Court Decision"). Thereafter, with the benefit of guidance from the Appeals Court, on October 13, 2023, I allowed the Citizens' motion to intervene and now consider motions by the Citizens and the Town to vacate the Stipulation, pursuant to Mass. R. Civ P. 60(b)(6).

Rule 60(b) states that a court may relieve a party from a final judgment, order or proceeding in certain enumerated circumstances, the last of which is a catch-all, specifically for "any other reasons justifying relief from the operation of the judgment." Rule 60(b) further states such a motion shall be made within a reasonable time. A motion under Rules 60(b) is addressed to the trial judge's discretion. See Reporter's Notes - 1973, citing *Farmers Cooperative Elevator Assoc. v. Strand*, 382 F.2d. 228 (8th Cir. 1967). The court has the power to vacate judgment whenever such action is appropriate to accomplish justice. *Id.*, citing *Klapprott v. United States*, 335 U.S. 601, 69 S. Ct. 384 (1949) and *Pierra v. Bemuth, Lembueke Co.*, 20 F.R.D11 (S.N.D.Y 1956). In deciding a Rule 60(b)(6) motion, "the judge may consider whether the movant has a 'meritorious claim or defense,' 'whether extraordinary circumstances warrant relief,' and whether granting the motion would affect 'the substantial rights of the parties.'" *Adoption of Yvonne*, 99 Mass. App. Ct. 574, 583-584 (1981), quoting *Parrell v. Keenan*, 289 Mass. 809, 506 (1983); see *Bowers v. Board of Appeals*, 16 Mass. App. Ct. 29, 33 (1983). Further, "[a]lthough the rule 'vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice,'" *Id.*, quoting *Klapprott, supra*, at 615, relief under rule 60(b)(6) requires a showing of "extraordinary circumstances." *Id.* (citations omitted).

As discussed below, after hearing and briefing by the parties, and with the benefit of guidance from the Appeals Court, I conclude that the Appeals Court Decision, together with and affirming the Superior Court Decision constitute compelling and extraordinary circumstances that warrant vacating the Stipulation. As explained in the Appeals Court Decision, the Citizens' right to protect the Superior Court

judgment is independent of the Town, the Citizens having obtained that right through the exercise of their statutory rights as ten or more taxpayers under G. L. c. 40, § 53. "The citizens' entitlement to enforce that favorable judgment did not depend on whether the Town had the authority to stipulate to the dismissal of its own claims in the Land Court. The stipulation of dismissal did not - and could not - extinguish the citizens' claims or judgment under G. L. c. 40, § 53. See *Jarosz v. Palmer*, 436 Mass. 526, 529 (2002) (a stipulation of dismissal with prejudice is not the equivalent of a final judgment on the merits for the purpose of issue preclusion)." *Reilly*, 102 Mass. App. Ct. at 382.

The Appeals Court also provided further observations for the court's consideration on remand. Specifically:

"[W]e recognize the citizens' road to relief in the Land Court case has been made difficult by the fact that the town has not pursued an appeal of the order denying its motion to vacate the stipulation of dismissal. But it is nonetheless important to ensure that events and decisions in the Land Court case not make toothless the judgment and rulings in the Superior Court case, particularly in a matter of public significance such as this one and where the citizens have not been given an opportunity to be heard. On remand, the Land Court judge should keep in mind that the Superior Court has determined some of the substantive issues on the merits, that the citizens are entitled to the benefit of those favorable rulings, that the 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), and that those rulings are entitled to full respect and force. 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. These considerations will come into special play when deciding the citizens' motion to vacate the stipulation of dismissal."

Id. at 385.

I am mindful of this guidance, just as I was when allowing the Citizens' motion to intervene after remand, which is now law of the case." *City Coal Co. of Springfield v. Noonan*, 434 Mass. 709, 712 (2001), citing *Lunn & Sweet Co. v. Wolfman*, 268 Mass. 345, 349 (1929) ("[R]emand instructions became the governing 'law of the case' and should not have been reconsidered by the remand judge"); *Williams v. Bd. of Appeals of Norwell*, 100 Mass. App. Ct. 1102 (2021) (Rule 1:28 unpublished opinion), quoting *City of Coal*, *supra*, at 712. The doctrine of the law of the case provides that, "once a final judgment is entered, the court may not rule differently on 'an issue or a

question of fact or law." Kendall v. Hyannis Restorations, Inc., 81 Mass. App. Ct. 1118 (2012) (Rule 1:28 unpublished opinion), quoting Catalano v. First Essex Savings Bank, 37 Mass. App. Ct. 377, 384, 639 N.E.2d 1113 (1994).

In order to ensure the judgment and rulings in the Superior Court case are given full respect and force, I review those rulings. As quoted in the Appeals Court Decision, the Superior Court judge explained the meaning and consequences of her ruling as follows:

"[A]lthough the terms of the [s]ettlement [a]greement are legal (including the [b]oard's agreement to waive the [o]ption), the [b]oard exceeded its authority when it unilaterally entered into that agreement without [t]own [m]eeting approval of the reduced acquisition. Therefore, the [s]ettlement [a]greement is not effective. The [b]oard might not hold the required [t]own [m]eeting or might fail to obtain enough votes to approve the acquisition. In either case, the [s]ettlement [a]greement would fail to take effect, meaning that the [r]ailroad would retain the land and the [t]own would retain its money and the right to continue attempting to enforce the [o]ption. Until the reduced acquisition is approved by [t]own [m]eeting, the agreement is not effective, and the [t]own may (but is not required to) attempt to enforce the [o]ption."

Reilly, 102 Mass. App. Ct. at 374.

As noted by the Appeals Court, this aspect of the Superior Court judgment was not appealed. *Id.* Thus, the Citizens' right to protect the Superior Court judgment encompasses the conclusion that the settlement agreement was not effective. This is all the more so since town meeting rejected a request to fund the purchase of land as provided in the settlement agreement in March 2022.

As noted above, Rule 60(b)(6) is a residual clause for those unique circumstances which do not fall within Rule 60(b)(1)-(5). It permits a court to set aside a final judgment for "any other reason justifying relief from the operation of the judgment." Mass. R. Civ. P. 60 (b) (6). Relief under Rule 60(b)(6) "requires a showing of 'extraordinary' circumstances." *Bowers v. Board of Appeals*, 16 Mass. App. Ct. at 33, quoting *Ackermann v. United States*, 340 U.S. 193, 202 (1950).

The reasoning of Judge Kass in *Bowers v. Board of Appeals*, 16 Mass. App. Ct. 29 (1983), counsels that the circumstances now before the court are precisely the type of extraordinary circumstances that warrant vacating the Stipulation. In that case, several abutters challenged a proposed sewage dumping system in the town of Marshfield pursuant to Chapter 40A, § 17. The board of selectmen intervened, and the parties entered into a settlement agreement whereby the town would cease using six lot adjoining lots the site of the proposed sewage system as a public parking area. An agreement for judgment documented the agreed upon terms and the court entered judgment in accordance with the agreement. That settlement was not popular among the townsfolk. *Id.* at 31 ("Few events so stir the civic consciousness as the removal of convenient parking.") Several years later, when a newly constituted board of selectmen was elected, they moved to vacate the judgment. In *Bowers*, the Appeals Court vacated the portion of the judgment which prohibited parking on the adjoining six lots pursuant to Rule 60(b)(6) because "the perpetual encumbrance imposed upon the six lots by the then selectmen was an action which they were powerless to take. The power to alienate and dispose of real estate lies with the inhabitants of the town acting at town meeting." *Id.* at 32, citing G. L. c. 40, § 3; *Ballantine v. Falmouth*, 363 Mass. 760, 766 (1973); and *Dennis v. Lighthouse Inn, Inc.*, 6 Mass. App. Ct. 970 (1979).

As Judge Kass explained, "[w]hat makes the instant case exceptional is that a public authority, the selectmen, offered as their part of an agreement for judgment a restriction that they lacked the power to impose." *Id.* at 33. Further:

"Were it otherwise public officials could bind their governmental agencies to unlawful conduct by ready acquiescence in an agreement for judgment and, thus, circumvent the restrictions on their powers. The same officials, or as is the case here, their successors, face the dilemma of acting in excess of their powers or exposing themselves to a judgment of contempt. In those unusual circumstances, resort may be had to rule 60(b)(6)." *Id.* at 34 (citations omitted).

In this context, now that it has been established with finality that the settlement agreement between the Town and the Defendants is ineffective, the Hopedale circumstances are coincident with the exceptional circumstances discussed in *Bowers*. Just like the Board of Selectmen in *Bowers*, here the Town lacked authority to enter into the Settlement Agreement without the ratification of the town meeting. Since the Town's motion to vacate was last before this court, the Appeals Court has affirmed this Superior Court ruling. That ruling is binding on not just the Citizens, but also the Town and the Defendants. *Id.* at 385. The Appeals Court Decision and remand instructions further binds this court as law of the case. These extraordinary circumstances warrant vacating the Stipulation. Doing so is consistent with the guidance of the Appeals Court Decision and will ensure this court "not make toothless the judgment and rulings in the Superior Court case." *Id.*

DEFENDANTS MOTION TO DISMISS THE CITIZENS' AMENDED COMPLAINT.

I now turn to the Defendant's motion to dismiss the Citizens' Amended Complaint. That Amended Complaint includes three counts: (I) a declaratory judgment under C. 231, §§ 1 and 5, to enforce the Superior Ct judgment and vacate the Stipulation of Dismissal in this LC case; (II) a declaratory judgment under C. 231, §§ 1 and 5, to enforce the Superior Ct judgment and enjoin the Defendants from further land clearing of the Forestland; and (III) a declaratory judgment under G.L. c. 231, §§ 1 and 5, to enforce the Superior Ct judgment, and declaring that the Defendants' harm to the Forestland requires a reduction in the G.L. c. 61 purchase price and restoration of the Forestland. The Defendants seek to dismiss that Amended Complaint for lack of standing under Mass. R. Civ. P. 12(b)(1) and for failure to state a claim under which relief can be granted under Mass. R. Civ. P. 12(b)(6).

I concur with the Defendants that the declaratory judgment statute, G.L. c. 231A does not confer standing to pursue relief without an underlying cognizable basis for that relief. See Reilly, 102 Mass. App. Ct. at 379, quoting *Revere v. Massachusetts Gaming Comm'n*, 476 Mass. 591, 607 (2017) ("[T]he citizens have standing under the declaratory judgment statute only if they 'can allege an injury within the area of concern or the statutory or regulatory scheme under which the injurious action occurred.'"). The Appeals Court Decision also makes clear that that the Citizens do not have standing under either Chapter 61, the right of first refusal statute, or under c. 40, § 53. *Id.* at 378-379. The Superior Court dismissed Count II of the Superior Court complaint, which dismissal was affirmed. As stated in the Appeals Court Decision: "Equitable principles do not confer on taxpayers the right to sue 'to restrain cities and towns from carrying out invalid contracts, and performing other similar wrongful acts. Instead, 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." *Id.* at 378 (citations omitted). Among the relief requested by the Citizens in Count II and dismissed was a declaration that that the Defendants be prevented from alienating the Forestland or converting any of it from its current use. However, "[n]one 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." *Id.* Further, "[i]ndividual taxpayers whose land is not subject to G.L. c. 61 have been given no rights under the statutory scheme." *Id.* at 379. That requested relief is akin to that now sought by the Citizens in the Amended Complaint.

However, as the Appeals Court made clear, the Citizens did obtain valuable rights as a result of the Superior Court Judgment. This court is mindful of the Appeals Court's guidance that "it is nonetheless important to ensure that events and decisions in the Land Court case not make toothless the judgment and rulings in the Superior Court Case." *Id.* at 385. I am thus mindful of the favorable Superior Court ruling that the settlement agreement was ineffective and that this ruling is binding on the town, the Defendants and the Citizens. In this context I

consider the three counts of the Amended Complaint, each of which would fail for lack of an underlying cognizable statutory basis were it not for the Superior Court Judgment. Count I seeks declaratory judgment under C. 231, §§ 1 and 5, to enforce the Superior Ct judgment and vacate the Stipulation of Dismissal in this case. The relief sought in Count I has been addressed by today's allowance of the Citizens' and the Town's motions to vacate the stipulation of dismissal. In so allowing the Citizens' motion I give effect to the Appeals Court's instruction that the Citizens' right to protect the Superior Court judgment was obtained through the Citizens independent exercise of their statutory rights as ten or more taxpayers under G. L. c. 40, § 53. This court having today vacated the Stipulation of Dismissal, the Town now stands ready and willing to advance its claim to enforce the G.L. c. 61 right of first refusal. Count I of the Amended Complaint is dismissed as moot. The Town has confirmed its intention to do so.

Counts II and II, however, seek relief beyond that contemplated by the Superior Court Judgment. While I note that the Citizens allege practical concerns that the Forestland has been damaged and that the Chapter 61 price for the Forestland should be reduced because of this alleged damage, I find no basis in the Superior Court Judgment or the Appeals Court Decision to expand the Citizens' rights to relief to encompass that sought by Counts II and III of the Amended Complaint. Accordingly, Counts II and III are dismissed for lack of standing and for failure to state a claim upon which relief can be granted. In the future, it may be that the Town will fall short of protecting its right of first refusal in a way that will satisfy the Citizens. For the moment, however, the right to seek to enforce the right of first refusal lies with the Town, and the Town has indicated that intends to amend its complaint to encompass the types of remedies the Citizens wish to seek. If the Town fails to adequately assert its rights, the Citizens will no doubt seek to intervene again, in which case I will remain mindful of the Appeals Court guidance. The Citizens may also seek post-Judgment relief in the Superior Court case. Those matters are not now before the court, and it is now only speculative that the Citizens participation will be required considering the absence of an independent statutory right for the Citizens to pursue.

CASE MANAGEMENT MATTERS.

Following argument and by April 22, 2024, the Town to file an amended complaint. Status conference scheduled for July 16, 2024, at 10:00 A.M, with parties to file a joint status report on July 9, 2024, to include a proposed scheduling order. Court to consider any filings from the Citizens in the nature of a motion to reconsider. Hon. Diane R. Rubin, Presiding

Counsel notified via email.

03/25/2024 Scheduled

Judge: Rubin, Hon. Diane R.

Event: Status Conference

Date: 07/16/2024 Time: 10:00 AM

03/26/2024 Motion for Leave to File Post-Hearing Memorandum on Issue of Intervenors' Role in this Case Going Forward, filed.

Image

03/26/2024 Opposition of Grafton & Upton Railroad Company and One Hundred Forty Realty Trust to Intervenors' March 26, 2024 Motion for Leave, filed.

Image

03/27/2024 The court will be considering "Motion for Leave to File Post-Hearing Memorandum on Issue of Intervenors' Role in this Case Going Forward" as a Motion for Reconsideration.

03/27/2024 Case reopened.

03/27/2024 Notice of Docket Entry: "Court has now issued its docket entry vacating the stipulation of dismissal and dismissing the Citizens' Amended Complaint, following hearing on March 25, 2024. Immediately prior to issuance of that docket, court received the Citizens' Motion for Leave to File Post-Hearing Memorandum on Issue of Intervenors' Role in this Case Going Forward ("Citizens' Motion for Leave"), as well as Opposition to Intervenors' Motion for Leave. The court will treat the Citizen's Motion for Leave as a motion for reconsideration pursuant to Land Court Rule 9, and sets a deadline of April 12, 2024, for any additional motions to reconsider and/or response to the Citizen's Motion for Leave. Court to decide these reconsideration filings on the papers."

Counsel notified via email.

Judge: Rubin, Hon. Diane R.

Notice of Docket Entry was generated and sent to:

Plaintiff: David Stephen Mackey, Esq. dmackey@andersonkreiger.com

Plaintiff: Sean Grammel, Esq. sgrammel@andersonkreiger.com

Defendant: Donald C Keavany, Jr., Esq. dkeavany@chwmlaw.com

Defendant: Andrew P DiCenzo, Esq. adicenzo@chwmlaw.com

Interested Party: David E Lurie, Esq. dlurie@luriefriedman.com

Interested Party: Harley Clarke Racer, Esq. hracer@luriefriedman.com

Sent On: 03/27/2024 10:32:25