

Christopher, Hays, Wojcik & Mavricos, LLP

STUART A. HAMMER
ARTHUR J. GIACOMARRA
DONALD C. KEAVANY, JR.
MARVIN S. SILVER
CHRISTOPHER R. MITCHELL
ANDREW P. DICENZO
JOHN E. SHIELDS

ATTORNEYS AT LAW
370 MAIN STREET, SUITE 970
WORCESTER, MASSACHUSETTS 01608
TELEPHONE (508) 792-2800
FAX (508) 792-5224
www.chwmllaw.com

Of Counsel
CHRISTOPHER CHRISTOPHER
DAVID A. WOJCIK
JOHN A. MAVRICOS

WILLIAM W. HAYS - Retired
WILLIAM C. PERRIN, JR. 1947-
1987

January 14, 2022

By First Class Mail

Honorable Paula M. Carey
Chief Justice of the Trial Court
Executive Office of the Trial Court
One Pemberton Square
Boston, MA 02108

RE: Opposition to Request for Interdepartmental Judicial Assignment and Transfer of Town of Hopedale v. Jon Delli Priscoli et al, Land Court No. 20-MISC-000467 to Superior Court for Consolidation Reilly, et al vs. Town of Hopedale, et al, No. WOCV 2185CV00238D

Honorable Chief Justice Carey:

Pursuant to Trial Court Rule XII(2), I write on behalf of the Grafton and Upton Railroad Company and Jon Delli Priscoli and Michael Milanoski, Trustees of the One Hundred Forty Realty Trust (the "G&U Defendants") in opposition to the January 13, 2022 Request for Interdepartmental Transfer submitted by Attorney Harley C. Racer on behalf of the "Citizen Plaintiffs" of the Town of Hopedale. The Citizen Plaintiffs are not parties to the Land Court Action and have no standing to be parties to the Land Court Action. Their transfer and consolidation request is nothing more than an effort to litigate claims belonging only to the Town of Hopedale. The requested transfer and consolidation would not serve any of the purposes set forth in Rule XII(1) and should be denied.

Consolidation would not "*promote speedy disposition of cases, reduce duplication of hearings and promote judicial economy when each pending action will require a hearing or trial*" because both the Land Court Action and the Citizen Action have been reduced to final judgment. Trial Court Rule XII(1). These cases are not pending. The chance of a trial in either case is virtually nil, as it would require post-judgment or appellate practice, which if successful would be followed by the standard pretrial discovery and motion practice before any trial. Currently only the Land Court Action has a pending substantive motion: the Town's Mass. R. Civ. P. 60(b) motion to vacate the stipulation of dismissal with prejudice which it agreed to execute and docket on February 10, 2021. The only motion pending in the Citizen Action is the Town's request to extend the Superior Court's post-judgment enjoining the G&U Defendants from clearing land until the Land Court

decides the Town's Rule 60(b) motion.¹ Other than this one motion meant to benefit the Land Court Action, there is no additional motion practice anticipated in the Citizen Action. The only claims in that case have been reduced to judgment. In short, the Citizen Action is over, and there is no reason to consolidate it with any other action.

Consolidation would not “*afford complete and permanent relief which might not be obtained unless the actions are consolidated for hearing and heard by one judge.*” Trial Court Rule XII(1). As stated above, both cases have reached a final judgment. The Land Court Action, in which the Town sought to enforce a purported G.L. c. 61 right of first refusal to purchase forestland owned by the G&U Defendants, was dismissed with prejudice pursuant to the Settlement Agreement between the Town and the G&U Defendants. The Citizen Plaintiffs brought the Citizen Action in response to the Settlement Agreement. The only claim the Citizen Plaintiffs brought against the G&U Defendants, Count II, was dismissed because the Citizen Plaintiffs do not have standing to recover or enforce a G.L. c. 61 claim belonging to the Town.² The Citizen Plaintiffs obtained a judgment (copy attached) on Count I of their Complaint seeking to enjoin the Town from utilizing funds appropriated at an October 2020 Town Meeting to purchase 65 acres of land from the G&U Defendants. Count I of the judgment has not been appealed.³ It is complete and permanent relief – at no point in the future can the Town use its October 2020 appropriation to purchase land from the G&U Defendants. Should the Town's effort to reopen the dismissed Land Court Action fail, the Town may choose to seek a new appropriation, or it may choose not to purchase the land.

The only dispute that remains is whether the Superior Court's judgment enjoining the Town from using the October 2020 appropriation to purchase land pursuant to the Settlement Agreement has the effect of invalidating the entire Settlement Agreement and, if so, whether the Town can revive its dismissed, waived and released claim in the Land Court Action to enforce its purported G.L. c. 61 option. On this issue, the Citizen Plaintiffs repeatedly mischaracterize the language, scope, and effect of the Superior Court's decisions in the Citizen Action. They write that the Superior Court “permanently enjoin[ed] the execution of the Settlement Agreement without Town Meeting authorization...” Transfer Request, p. 2. This is demonstrably false. The judgment – which the Citizen Plaintiffs notably did not attach to their request – did not “enjoin the execution of the Settlement Agreement.” It enjoined the Town “from purchasing land as set forth in the Settlement Agreement.” See Judgment (emphasis added). Nothing prevents the Town from seeking a new

¹ Although the G&U Defendants object to the Superior Court injunction on jurisdictional grounds, they intend to represent to the Land Court that they will agree to maintain the status quo and take no action on the disputed property through February 14, 2022 to allow the Land Court time to decide the Town's pending Rule 60(b) motion.

² Count III made the curious claim that the Town had already acquired the forestland and breached an obligation to protect it as parklands. The Superior Court dismissed this claim on the grounds that “the Town never acquired the 130 acres of forest land in the first instance, much less dedicated as parkland pursuant to art. 97.” Memorandum and Order, p. 11.

³ The Citizen Plaintiffs filed a Notice of Appeal of the dismissal of Count II, but there is no indication they will be able to demonstrate any basis for standing on this claim.

appropriation to purchase the land as set forth in the Settlement Agreement. Moreover, the Settlement Agreement was fully executed almost one month before the Citizen Plaintiffs filed their action and seven months before judgment entered. The Citizen Plaintiffs also misrepresent the Superior Court's Memorandum and Order as "findings of fact and law that are now law of the case and must be respected." *Id.* Judge Goodwin did not make "findings of fact" – she decided the Citizen Action in response to motions and cross-motions for judgment on the pleadings pursuant to Mass. R. Civ. P. 12(c). And the determination of the Citizen Action is not the "law of the case" of the Land Court Action, which is a different case involving a dispute between different parties. Finally, the Superior Court did not "order that the Settlement Agreement is ineffective" as the Citizen Plaintiffs claim at page 3 of their request. Such language does not appear in any order or judgment of the Superior Court. It appears only in dicta. The Superior Court did not rule that the Settlement Agreement is ineffective, and could not have, because the only parties to the Settlement Agreement, the G&U Defendants and the Town, never sought such a ruling. Nor did the Citizen Plaintiffs, who only sought to enjoin spending, and have no standing to invalidate an agreement to which they are not parties.

In any event, whether the Superior Court's judgment enjoining the funding of the Town's land acquisition invalidates the Settlement Agreement is a dispute between the Town and the G&U Defendants. The Citizen Plaintiffs are not parties to the Settlement Agreement and have no standing to seek to invalidate the Settlement Agreement. *See, e.g., Hapgood v. Town of Southbridge*, 11 Mass. L. Rep. 632 (Mass. Super. Ct. June 1, 2000) ("The Superior Court does not have general equity jurisdiction to entertain a suit by individual taxpayers to restrain cities and towns from carrying out invalid contracts and performing other similar wrongful acts."). If the Town succeeds in reopening the Land Court Action –which the G&U Defendants are vigorously contesting – the only remaining dispute would be the Town's effort to enforce its G.L. c. 61 option to purchase the forestland. The Citizen Plaintiffs would have no role in this dispute, either.⁴ The Superior Court held that the Citizen Plaintiffs lack standing to enforce the Town's G.L. c. 61 option rights. It is the Board of Selectmen, and only the Board of Selectmen who have the authority to exercise, not exercise, or waive any first refusal option rights under G.L.c. 61. In short, there is no remaining dispute in which the Citizen Plaintiffs have standing to participate. Plaintiffs cannot claim standing simply as members of the general public, since one "zealous in the enforcement of law but without private interest" is not an aggrieved person. *Abdow v. Massachusetts Bay Transp. Authority*, 33 Mass. L. Rep. 126 (2015) (citations omitted).

Consolidation would not "*effectuate a proposed settlement of one case through the filing of a subsequent action in another court department.*" Trial Court Rule XII(1). Indeed, the Citizen Plaintiffs brought the Citizen Action for the express purpose of enjoining the expenditure of funds they asserted was not appropriately authorized by Town Meeting to fund a component of a Settlement Agreement negotiated between the Town and the G&U Defendants with the assistance of a retired Land Court Justice serving as a mediator. The Citizen Plaintiffs oppose any settlement between the Town and the G&U Defendants. They have released statements through social media demanding that the Town's Select Board "acquire the entire property now, no more delays." Their

⁴ The Citizen Plaintiffs' citation to *Daly v. McCarthy* is misplaced, because unlike the Citizen Plaintiffs, the plaintiffs in that case sought consolidation of live claims which they had standing to bring.

Honorable Paula M. Carey
January 14, 2022
Page 4 of 4

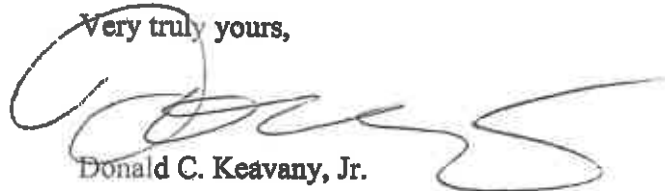
transfer request asserts that “litigation will continue.” The Citizen Plaintiffs will never consent to a settlement of the underlying dispute. To the extent that the Town wants to seek to undo a Settlement Agreement it has repeatedly asserted is fair, equitable and a necessary compromise in the face of an uncertain result in the Land Court Action, it is free to attempt to do so. However, the Citizen Plaintiffs have no role in such an attempt because they lack standing.

Finally, there is no “*other reason, consistent with the speedy and efficient dispatch of judicial business, why the cases should be assigned to and heard by one judge.*” Trial Court Rule XII(1). Once again, the Citizen Action is over. Respectfully, Judge Goodwin does not have “deep familiarity with the issues in dispute” (Transfer Request, p. 3) in the Land Court Action because the issue in dispute in the Land Court Action – the Town’s ability to enforce a G.L. c. 61 option – was not before her. Although the Citizen Plaintiffs attempted to enforce a G.L. c. 61 option, Judge Goodwin dismissed this claim for lack of standing on the G&U Defendants’ and Town’s Rule 12 motions and never reached the merits. A dispute over a G.L. c. 61 option is within the expertise of the Land Court. The Land Court also has an interest in the finality of its own judgments. The Land Court Action should not be transferred.

The Citizen Plaintiffs’ request is not made for any the purposes set forth in Trial Court Rule XII. Rather, is an impermissible attempt to litigate claims they do not have standing to bring, and to bring those claims in what they perceive to be a more favorable forum. Their request should be denied.



Thank you for your consideration of this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Donald C. Keavany, Jr.', written over a circular stamp or seal.

Donald C. Keavany, Jr.

cc: Hon. Heide E. Brieger
Chief Justice of the Superior Court Department
Hon. Gordon H. Piper
Chief Justice of the Land Court Department
Hon. Diane Rubin *(By Email)*
Justice of the Land Court
Hon. Karen Goodwin *(By Email)*
Justice of the Superior Court
Peter Durning, Esq. *(By Email)*
Brian Riley, Esq. *(By Email)*
David E. Lurie, Esq. *(By Email)*
Harley C. Racer, Esq. *(By Email)*
Andrew P. DiCenzo, Esq. *(By Email)*

JUDGMENT ON THE PLEADINGS		Trial Court of Massachusetts The Superior Court 
DOCKET NUMBER	2185CV00238	Dennis P. McManus, Clerk of Courts
CASE NAME	Relly, Elizabeth et al vs. Town of Hopedale et al	COURT NAME & ADDRESS Worcester County Superior Court 225 Main Street Worcester, MA 01608
<p>This action came before the Court, Hon. Karen Goodwin, presiding, upon a motion for judgment on the pleadings,</p> <p>After hearing or consideration thereof;</p> <div style="text-align: right; font-size: 2em; margin-top: 20px;">46*</div> <p>It is ORDERED AND ADJUDGED:</p> <p>Judgment to enter for the Plaintiffs on Count I, enjoining the Board of Selectmen and The Town of Hopedale from purchasing land as set forth in the Settlement Agreement and the Railroad Defendants are enjoined for 60 days from the date of this Judgment from carrying out any work on the contested forest land. Counts II and III are hereby dismissed.</p>		
DATE JUDGMENT ENTERED	11/10/2021	CLERK OF COURTS/ASST. CLERK X 

Date/Time Printed: 11-10-2021 11:20:54

SCV117: 07/2018

Entered and Copies Mailed 11/10/21