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Superior Court - Hampshire
Docket Number 2680CV00038

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COMMONWEALTH OF MASSACHUSETTS

Hampshire, ss.

Superior Court Department
Civil Action No. 2680CV00038

KEVIN HALE,
CATHERINE ROBINSON,
ANTHONY FISHEL,
SIANNA LIEB,
ALAN BERKENWALD,
MIRYAM KABAKOV,
TAMAR SHADUR,
HERMINE ANTLMAN,
LYNN YANIS, and
AVIVA CHILL,

residents and taxpayers of the
City of Northampton,

Plaintiffs,

v.

CITY OF NORTHAMPTON,
NORTHAMPTON CITY COUNCIL,
and GINA-LOUISE SCIARRA,
in her official capacity,

Defendants.

ORAL ARGUMENT REQUESTED

PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION TO VACATE, ALTER, OR AMEND JUDGMENT, AND LEAVE TO AMEND COMPLAINT

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Plaintiffs, by and through their undersigned counsel, hereby reply to Defendants' Opposition ("Opp.") to their Motion to Amend or Alter ("Mot."), to state as follows.

I. Intervening Precedent Materially Changes the Judgment

Defendants themselves concede *Fitzmaurice v. City of Quincy*, No. SJC-13877, 2026 WL 2435594 (Mass. Aug. 20, 2026) is an "intervening decision," Opp. at 3, and that its central holding confirms that § 53 is not confined to specific "spending statutes" but reaches a broader scope of unlawful municipal spending. Opp. at 4. Defendants have thus already recognized that *Fitzmaurice* goes to the exact ground on which the Complaint was dismissed, and the Court should vacate the dismissal and evaluate the Proposed FAC under *Fitzmaurice*'s broader standard.

The Proposed First Amended Complaint ("FAC") alleges concrete municipal expenditures or incurring of obligations on the divestment regime, before and after the Resolution, in violation of § 53 under the *Fitzmaurice* framing. For example, before the Resolution, the City Treasurer audited the City's holdings and reported that, as of January 2025, roughly $71,010 was invested in companies targeted for divestment. FAC ¶¶ 49–51; Ex. A at 2. At the meeting adopting the Resolution, the Mayor stated that the City's investment firm "*has worked* to eliminate our exposure and *is continuing* to work." FAC ¶ 45 (emph. added); *see id.* ¶¶ 44, 46–48, 64. The Resolution then set a two-year divestment schedule, of which one year remains. FAC ¶ 66; Ex. A at 3. The FAC thus goes far beyond the hypothetical expenditures the Court described as wanting. Mem. at 3. The FAC alleges paid hours *already* spent on the divestment itself, including work performed "during compensated working hours, using City-owned systems . . . and portfolio records maintained at City expense." FAC ¶ 53.

Defendants concede that at least some of the challenged municipal conduct occurred, Opp. at 2, arguing only causation, i.e. that the conduct is not traceable to the Resolution, *id.* But the FAC makes clear that Plaintiffs' claims do not rise or fall with the Resolution. The FAC alleges that the

Resolution is only part of the municipal conduct at issue, and that Defendants engaged in unlawful conduct "before, during, and after" its passage. FAC ¶ 26; *see also id.* ¶¶ 3, 64. Whether Defendants are acting in a manner that violates § 53 does not depend on whether a "Resolution," binding or otherwise, was ever passed. *See* G. L. c. 40, § 53. The full scope of the nefarious municipal conduct that has occurred and will occur, and what (if any) is traceable to the Resolution, are factual questions that cannot be resolved on a motion to dismiss. Section 53 asks what public money is spent on, not whether the spending is new or caused by a Resolution; the intentionally broad law reaches expenditures or obligations incurred "for any purpose or object or in any manner" that the City lacks power to pursue. G. L. c. 40, § 53; FAC ¶ 54. Defendants' attempt to confine *Fitzmaurice* to "undisputed, specifically identified" expenditures, Opp. at 3, ignores the FAC's allegations and misstates *Fitzmaurice*'s actual holding, which recognizes that "anticipated . . . costs" are, in certain instances, "sufficient to confer standing." 2026 WL 2435594, at *5 n.11; *see also* FAC ¶ 24.

None of the authorities invoked by Defendants to contest standing apply here. In *Tax Equity*, the contested costs were incidental overhead such as "printing forms." *Tax Equity All. for Mass. v. Commissioner of Revenue*, 423 Mass. 708, 712–13 (1996). Here, the challenged municipal conduct is in direct furtherance of illegal ends, including paid time engaged in unlawfully dismantling City investments, FAC ¶¶ 44–48, 64. Moreover, in *Tax Equity*, the court focused solely on analyzing the associated costs of implementing a law, whereas here Plaintiffs have also alleged unlawful municipal conduct independent of whether it is traceable to the Resolution. *Tax Equity*, 423 Mass. at 712–13; FAC ¶¶ 3, 26, 64. *North* rested on a thin, speculative prediction of future payroll costs. *North v. City Council of Brockton*, 341 Mass. 483, 484 (1960). Here, there is extensive unlawful municipal conduct already confirmed—and conceded to by Defendants—and

further action the Mayor has stated will occur, on a clear two-year schedule, FAC ¶ 66. And *Fuller* denied relief only because the challenged payments were already "wholly executed and completed," *Fuller v. Trustees of Deerfield Acad.*, 252 Mass. 258, 260 (1925), while the program here is ongoing. FAC ¶ 45.

II. The FAC States Substantive Claims

Leave to amend should be freely given, *Wadsworth v. Bos. Gas Co.*, 352 Mass. 86, 88 (1967), and whether a request to amend may be denied as futile is bounded by what the Court actually decided. *See Brown v. Sav. Bank Life Ins. Co.*, 93 Mass. App. Ct. 572, 588 (2018). Here, the Court dismissed solely for lack of standing, Mem. at 3–4, and a dismissal on that jurisdictional basis "is not an adjudication on the merits." *Bevilacqua v. Rodriguez*, 460 Mass. 762, 780 (2011) (reversing dismissal with prejudice when dismissal was only for want of standing); *accord Hladik v. LPL Fin. LLC*, 106 Mass. App. Ct. 592, 595 n. 5 (2026). Where, as here, there is no merits ruling to rely on, it would be a violation of Plaintiffs' due process for the Court to make, for the first time and on an amendment motion, Rule 12(b)(6) rulings that properly belong in a motion to dismiss directed at the FAC. *Wilkins v. Cooper*, 72 Mass. App. Ct. 271, 276–77 (2008).

Moreover, Defendants themselves concede the futility standard requires that the FAC's allegations are taken as true and all reasonable inferences be drawn in Plaintiffs' favor, "even if doubtful in fact." Opp. at 6 (quoting *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 636 (2008)). Indeed, Defendants' primary answer to Plaintiffs' claims is a blanket denial that the challenged conduct occurred because of the Resolution; they do not dispute that the acts occurred. Opp. at 1–2. Instead, every one of Defendants' futility arguments rest on the premise that the Resolution is "non-binding," Opp. at 2, 8, 14, the very argument the Court declined to reach. Mem. at 3 n.4. Yet, Defendants demand the Court make that determination here on a motion to amend. Whether the Resolution is binding is a fact dispute, *see* FAC ¶ 41, that can only be resolved after discovery.

In any event, all of Plaintiffs' claims are properly pled, and in addition to the arguments below, hereby incorporate by reference their briefing opposing Defendants' Motion to Dismiss, Doc No. 12.2.

A. The Resolution conflicts with the Legislature's investment scheme (Counts II and III).

Section 55B requires that municipal funds be invested "at the highest possible rate reasonably available, taking account of safety, liquidity and yield." G. L. c. 44, § 55B; FAC ¶ 71. A local enactment is invalid where "the purpose of the statute cannot be achieved in the face of the local by-law." *Easthampton Sav. Bank v. Springfield*, 470 Mass. 284, 289 (2014) (internal citations and quotations omitted). Defendants' answer is that nothing "necessarily requires the City to violate" those statutes because it could comply with both, Opp. at 9. This is the precise argument the SJC rejected in *Easthampton*, holding an enactment that "alters what the Legislature determined, as a matter of policy" "necessarily 'frustrate[s] the purpose'" of the statute. *Easthampton*, 470 Mass at 290–91. Injecting ideological criteria the Legislature omitted does exactly that, and Defendants are "not free to expand" the statutory criteria. *Connors v. City of Boston*, 430 Mass. 31, 37 (1999).

B. The Resolution directs fiduciaries to invest for non-financial reasons (Count IV).

A municipal fund manager must act as prudent investors. *See* FAC ¶ 71 (citing applicable law); *see also Woodward Sch. for Girls, Inc. v. Quincy*, 469 Mass. 151, 160 (2014) (discussing fiduciary duties in the trustee context stating they must "invest solely in the interest of the beneficiaries"). The FAC alleges the Resolution is being implemented and directs fiduciaries to act for non-financial purposes, subordinating safety, liquidity, diversification, and yield to ideological criteria. FAC ¶¶ 45, 64, 92, 95. Defendants ignore or dispute Plaintiffs' factual allegations and insist that the FAC alleges only a potential future breach, Opp. at 13–14,

demonstrating that, at the very least, whether a breach is ultimately proven is a factual question, not a pleading defect.

C. A government's use of its own funds did not save the law in *Crosby* (Count V).

Crosby forecloses Defendants' argument that where no federal law "explicitly prohibit[s]" an action, a Resolution that governs "the City's own . . . investment decisions" is thereby permitted. Opp. at 10–11. In *Crosby*, the Supreme Court "rejected the argument that a State's . . . scheme . . . escapes preemption because it is an exercise of the State's spending power." *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 366, 373 n.7 & 388 (2000). Nor is an express conflict required for the action to be preempted. *Id.* at 388 ("[T]he existence of conflict cognizable under the Supremacy Clause *does not* depend on express congressional recognition that federal and state law may conflict." (emph. added)). The FAC alleges a "comprehensive federal sanctions regime" whose calibrated pressure the Resolution's own economic pressure would disrupt. FAC ¶¶ 112, 116. This is sufficient to plausibly state a claim, and Count V survives.

D. The vagueness claim rests only on the "non-binding" label (Count VI).

Defendants counter Count VI by again asserting the Resolution is non-binding, Opp. at 14–15, a premise the Court did not adopt, and which itself would not be determinative of the FAC's allegations. The FAC alleges the Resolution "supplies no objective criteria" for its operative terms and is enforced as a de facto directive. FAC ¶¶ 34, 41. That states a claim.

CONCLUSION

For these reasons and those in the Motion to Amend, the Court should grant Plaintiffs' Motion. Alternatively, Plaintiffs have requested limited discovery, Mot. at 7, which the City does not address. Defendants' Opposition confirms factual disputes, which, at the very least, militates discovery, not dismissal.

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Respectfully submitted,

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* admission *pro hac vice* forthcoming