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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT
DOCKET NO. 2181CV0357

TRUSTEES OF BOSTON COLLEGE

V.

CITY OF NEWTON And the COMMONWEALTH OF MASSACHUSETTS

**DECISION AND ORDER ON PLAINTIFF'S PARTIAL MOTION
FOR SUMMARY JUDGMENT¹**

The plaintiff, Trustees of Boston College ("BC"), in this eminent domain case, seeks summary judgment, pursuant to Mass. R. Civ. P. 56, on counts II (Declaratory Judgment, pursuant to M.G.L. c. 231A)² and III (Declaratory Judgment, pursuant to M.G.L. c. 240 § 11)³ of its first amended complaint (**Paper 22**). After review of the amended complaint, answers filed, the present pleadings, the conveyance history of the Property, the Anti-Aid Amendment and Establishment Clause, relevant case law cited by the parties, the standard by which Rule 56 is applied, and the well-stated arguments of counsel at the hearing held, the motion is **ALLOWED**.

¹ By Order of Chief Justice Heidi Brieger, on May 16, 2024, and pursuant to G.L. c. 211B § 9, Count III of the amended complaint was transferred to the Land Court where was entered as a separate action and authorized this court (Sarrouf, J.) to sit as a Justice of the Land Court Department to preside over this separate action.

² BC seeks a declaration that the 'highly unusual land use covenant (Religious Covenant) that the Metropolitan District Commission ("MDC") imposed on 300 Hammond Pond Parkway (the "Property") when it was conveyed to Congregation Mishkan Tefila (the "Congregation") on July 22, 1954, is no longer valid. (see Amended Complaint).

³ BC seeks a declaration that the Religious Covenant is invalid and unenforceable. M.G.L. c. 240 § 11 states, in part "If the title to land appears of record to be affected by a possible condition, restriction, reservation, stipulation or agreement made or imposed more than thirty years prior to the commencement of the proceedings hereinafter provided for, a person having a freehold estate, vested or contingent, in possession, reversion or remainder, in said land, or in any undivided or any aliquot part thereof, or any interest therein which may become a freehold estate, and any person who has conveyed such estate or any such interest therein with covenants of title or warranty, may file a petition on oath in the land court to determine the validity, or define the nature and extent, of such possible condition or other encumbrance, against any person who might be entitled in any event to enforce it or avail himself thereof."

Property History:

The conveyance history, in this legal quagmire of a case, is vital, so as, to understand the various claims asserted and relief sought. The Property (approximately 22.36 acres) in Newton, Massachusetts, was originally held by the Commonwealth of Massachusetts (“Commonwealth”) through its Metropolitan Park Commission (“MPC”), as part of a confirmatory Order of Taking in January 1917. In 1919 the Massachusetts Legislature abolished the MPC and created the Metropolitan District Commission (“MDC”) in its stead. On July 22, 1954, the Commonwealth, through the MDC, sold/conveyed the Property to the Congregation⁴ with, essentially, deeded use restrictions as to educational and religious purposes. The Congregation developed a portion of the property (approximately 7 acres) by constructing a synagogue, religious school, administrative facilities and paved driveway(s) and parking areas. The Congregation utilized the Property for religious and educational purposes throughout their ownership of same.

On May 20, 2016, the Congregation sold/conveyed the Property to the Trustees of Boston College (“BC”) for \$20,000,000.00, with the same deeded covenants and restrictions. On December 24, 2019, the City of Newton (the “City”) undertook a taking of a portion of the Property (approximately 14.766 acres, constituting the undeveloped portion, for open space and conservation purposes). Thereafter, BC filed the present eminent domain action seeking damages *and* a declaration that the restrictions are unenforceable. The court agrees with BC that the deeded restrictions are unenforceable.

Standard of Review:

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories and admissions, together with affidavits, show that there is no genuine issue as to

⁴ The initial transaction was to the Trustees of the Congregation Mishkan Telifa and then to the Congregation itself.

any material fact and that the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56; *Community Nat'l Bank v. Dawes*, 369 Mass. 550, 553 (1976). The moving party bears the burden of demonstrating affirmatively the absence of a triable issue. *Pederson v. Time, Inc.*, 404 Mass. 14, 16-17 (1989). If the moving party does not bear the burden of proof at trial, it must either submit affirmative evidence negating an essential element of the non-moving party's claim or demonstrate that the non-moving party's evidence is insufficient to establish its claim. *Kourouvacilis v. General Motors Corp.*, 410 Mass. 706, 711 (1991). Mere assertions of the existence of disputed facts without evidentiary support cannot defeat a summary judgment motion. *LaLonde v. Eissner*, 405 Mass. 207, 209 (1989). The court reviews the evidence in the light most favorable to the nonmoving party, but does not weigh evidence, assess credibility, or find facts. *Attorney Gen. v. Bailey*, 386 Mass. 367, 370-371 (1982). Here, the issue before the court is narrow in scope but broad in its complexity.

Deed Restrictions:

BC forwards the argument that the deed restrictions deeded with the Property from the 1954 sale though BC's acquisition are violative of Commonwealth of Massachusetts the Anti-Aid Amendment (See, MA Const. Amend. Art. 18. *See also Caplan v. Town of Acton*, 479 Mass. 69 (2018)), and the Federal Establishment Clause (*See Everson v. Bd. Of Ed. Of Ewing Twp.*, 350 U.S. 1, (1947) and *Kent v. Commissioner of Ed.*, 380 Mass. 235 (1980))⁵. At the hearing held, the Commonwealth, essentially, agreed that the deed restrictions placed upon the sold/conveyed Property in 1954 were violations of the Anti-Aid Amendment and the Federal Establishment Clause. However, the Commonwealth then identified the legal premise that if the deed restrictions were violative of the Anti-Aid Amendment and the Federal Establishment Clause,

⁵ BC also refers to M.G.L. c. 184 § 23B, 28, & 33.

then the Commonwealth lacked the authority required to sell/convey the Property, and therefore the sale/conveyance was a nullity⁶.

All parties have extensively briefed the issues and argued same at the hearing held. The City, quite clearly, believes the deed restrictions are valid, *and* that they have standing to challenge any request by BC to have the Property re-zoned for purposes of valuation in the eminent domain action. The City's brief, as compelling so as to cause much further review than anticipated, coupled with the Commonwealth's affirmative request for relief, therefore, the analysis turns to the Commonwealth's opposition.

Initially, after hearings before this Court (Tabit, J.), the Commonwealth was added as an additional party. The amended verified complaint was answered by the Commonwealth with the following affirmative defenses:

"Without removing any burden from the Plaintiff, the Commonwealth asserts the following defenses based upon its review of material to date.

1. The complaint fails to state claims upon which relief can be granted.
2. The Plaintiff's claims are barred by G.L. c. 184, § 23, 26.
3. The Plaintiff's claims are barred by laches.
4. The Superior Court lacks jurisdiction to hear Count III.
5. The Commonwealth hereby gives notice that it intends to rely upon such other affirmative defenses."

The Commonwealth did not file a counterclaim, seek to add a third-party defendant, or take any other affirmative step(s) to assert their own claim, specifically, that the sale/conveyance was/is a nullity, and that the Property must revert back to the Commonwealth.

The conundrum faced by this Court is not the question of whether the deeded restrictions are legally valid, it becomes the question of what steps, if any, need to be taken to address the issue raised by the Commonwealth. Although briefed by the Commonwealth and BC, there are

⁶ The Commonwealth seeks either, continued enforcement of the deed restrictions, or alternatively, have this court deem the Property sale/conveyance of 1954 void and have title to the Property revert back to the Commonwealth.

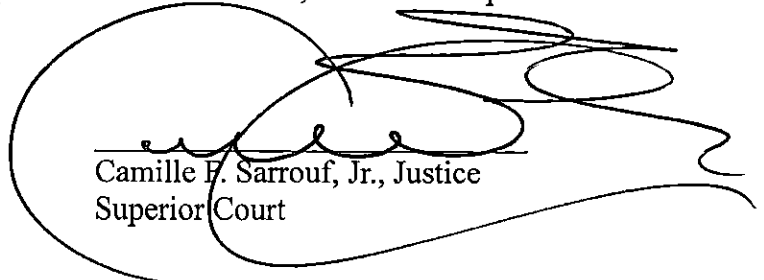
matters related to the deed and ownership of the Property which cannot, and will not, be addressed at the present time. The ultimate question of whether the Commonwealth can claim ownership (in essence, unwind the clock) begs multiple questions and raises a like number of issues, including, but not limited to:

- Are all interested parties presently in the case;
- Have the City and the Commonwealth waived their right(s) to challenge ownership interests;
- Does adverse possession, pursuant M.G.L. c. 231 §31 apply in the present case; and
- How would/could this Court, or other authority 'unwind' the 1954 transaction, the 2016 conveyance, and what, if any, effect would 'unwinding' the transactions have on the 2019 taking by the City; and
- How would/could the monetary transactions be reversed and/or addressed.

Therefore, based upon the foregoing, BC's motion for Summary Judgment as to Counts II and III of their Amended and Verified Complaint is **ALLOWED**, the affirmative action requested by the Commonwealth, in their opposition to BC's motion, is not acted upon.

SO ORDERED.

Dated: July 3, 2025



Camille F. Sarrouf, Jr., Justice
Superior Court