



The Commonwealth of Massachusetts
SUPREME JUDICIAL COURT
 FOR SUFFOLK COUNTY
 JOHN ADAMS COURTHOUSE

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February 4, 2019

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RE: No. SJ-2018-0572

TOWN OF LITTLETON
 v.
 TOWN OF CONCORD

NOTICE OF DOCKET ENTRY

You are hereby notified that on February 4, 2019, the following was entered on the docket of the above referenced case:

JUDGMENT: Complaint dismissed. (Budd, J.)

Maura S. Doyle, Clerk

To: Thomas J. Harrington, Esquire
 J. Raymond Miyares, Esquire
 Bryan F. Bertram, Esquire
 Eric Reustle, Esquire
 Katherine Elizabeth Stock, Esquire
 Peter F. Durning, Esquire
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RULE 2:21 APPEAL FROM SINGLE JUSTICE DENIAL OF RELIEF ON
INTERLOCUTORY RULING
(Applicable to civil and criminal cases.)

(1) When a single justice denies relief from a challenged interlocutory ruling in the trial court and does not report the denial of relief to the full court, the party denied relief may appeal the single justice's ruling to the full court. Unless the court otherwise orders, the notice of appeal shall be filed with the Clerk of the Supreme Judicial Court for Suffolk County within seven days of the entry of the judgment appealed from. Unless the single justice or the full court orders otherwise, neither the trial nor the interlocutory ruling in the trial court shall be stayed.

(2) The appeal shall be presented to the full court on the papers filed in the single justice session, including any memorandum of decision. Nine copies of the record appendix must be filed in the Office of the Clerk of the Supreme Judicial Court for the Commonwealth within fourteen days after the date on which the appeal is docketed in the full Supreme Judicial Court. The record appendix shall be accompanied by nine (9) copies of a memorandum of not more than ten pages, double-spaced, in which the appellant must set forth the reasons why review of the trial court decision cannot adequately be obtained on appeal from any final adverse judgment in the trial court or by other available means. No response from the prevailing party shall be filed, unless requested by the court.

(3) This rule shall not apply to interlocutory appeals governed by Rule 15 of the Massachusetts Rules of Criminal Procedure.

(4) The full court will consider the appeal on the papers submitted pursuant to this rule, unless it otherwise orders.

If an appeal from a judgment is subject to Supreme Judicial Court Rule 2:21, set forth above, please note that:

1) within seven (7) days of the entry of the judgment, (unless the court otherwise orders), the appealing party must file a notice of appeal with the Clerk of the Supreme Judicial Court for Suffolk County; AND

2) within fourteen (14) days of the date of the filing of the notice of appeal, the appealing party must:

- docket the appeal in the office of the Clerk of the Supreme Judicial Court for the Commonwealth and pay any docket fee required by law; AND

3) within fourteen (14) days of the docketing of the appeal in the Office of the Clerk of the Supreme Judicial Court for the Commonwealth, the appealing party must:

- file nine (9) copies of the memorandum and nine (9) copies of the record appendix with the Clerk of the Supreme Judicial Court for the Commonwealth).

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2018-572

TOWN OF LITTLETON

v.

TOWN OF CONCORD

JUDGMENT

This matter came before the Court, Budd, J., on the town of Littleton's complaint pursuant to St. 1884, c. 201, § 10, asking the court to appoint three commissioners to ascertain "water damages" to be paid to the town of Concord for Littleton's withdrawal of water from Nagog Pond. Littleton also seeks a declaratory judgment regarding the scope and extent of the term "water damages." The 1884 act specifically authorizes Concord to withdraw water from Nagog Pond, which is located in the towns of Littleton and Acton. The act also provides that Littleton and Acton may withdraw water from the pond; that if either of them does so, they shall pay "water damages" to Concord; and that if the parties cannot agree on the amount of damages, said amount shall be determined "by three commissioners to be appointed upon the application of either party by the Supreme Judicial Court." Concord has filed a motion to dismiss on the basis that there is no controversy ripe for adjudication because the town of Littleton has not yet withdrawn any water from the pond and, furthermore, does not yet have a permit to do so.

The towns are also parties to an action in the Land Court, in which Concord seeks a declaration that the Water Management Act, G. L. c. 21G, enacted in 1985, supersedes the 1884 act. Littleton has filed a motion in this court to transfer the Land Court action here and to

consolidate it with this action, which Concord opposes. Littleton has also filed a motion to dismiss in the Land Court for lack of subject matter jurisdiction pursuant to Mass. R. Civ. P. 12 (b) (1). Concord intends to oppose that motion and it appears that a hearing on the motion is currently scheduled for March, 2019. Furthermore, it appears that the parties have agreed that if the Land Court denies the motion to dismiss, the declaratory judgment action in that court will proceed on a motion for summary judgment.

Because the resolution of the Land Court action could render Littleton's complaint in this court moot, I will dismiss the complaint without prejudice. There is no need to appoint commissioners to assess water damages, or even to determine whether there is a controversy here that is ripe for adjudication, unless and until it has been determined in the Land Court litigation that the 1884 act remains viable in light of the Water Management Act. Littleton will be free to refile its complaint in this court, if necessary, after a final adjudication of the Land Court action (or any other action between these parties related to the continued viability of the 1884 act). Littleton will not be prejudiced in any way if the claims it makes here are adjudicated at a later, more appropriate time.

Accordingly, the complaint is dismissed without prejudice.

By the Court, (Budd, J.)

Maura S. Doyle, Clerk

Dated: February 4, 2019