

SUFFOLK, ss.

LAND COURT 2024 OCT -9 P 2: 37
DOCKET NO. 24 MISC 000256

MARTHA MCDONOUGH ET AL,

Plaintiff,

v.

BLUE HILL COMMUNITY CHURCH

Defendant

ATTORNEY GENERAL’S MOTION TO INTERVENE AND TO CONSOLIDATE

Andrea Joy Campbell, as she is the Attorney General of the Commonwealth of Massachusetts (“the AGO”), respectfully moves this Court, pursuant to Rule 24 of the Massachusetts Rules of Civil Procedure, for leave to intervene as a defendant in the above-captioned matter. In addition, the AGO assents to the pending motion filed by Plaintiffs pursuant to Rule 42(a) of the Massachusetts Rules of Civil Procedure to consolidate this case with the related, earlier-filed case *Blue Hill Evangelical Society v. Stetson*, 24 MISC 000177.¹

The grounds for this motion are more fully set forth below. In brief, the AGO meets the requirements for intervention as of right pursuant to Mass. R. Civ. P. 24(a)(1) and G. L. c. 12, §8G, in the exercise of its statutory oversight over public charities in the Commonwealth. In addition, as argued by Plaintiffs in their motion to consolidate, these two cases for declaratory

¹ Plaintiffs in this matter previously moved for consolidation on May 15, 2024. This court ordered consolidation for the purposes of case management alone on May 31, 2024.

judgment pose common questions of law and facts concerning a restriction on a single Property, and consolidation will prevent unnecessary cost and delay.

BACKGROUND

The Blue Hill Community Church (successor to the Blue Hill Evangelical Society) filed an Amended Complaint in this Court asking for a declaratory judgment that a restriction on real property it owns at 10 Hamilton St, Boston, Massachusetts (“10 Hamilton” or the “Property”) be declared unenforceable. MISC 000177, Amended Complaint, ¶11 (“Church’s Complaint”).² The Church’s Complaint alleges that the Property deed contains the following restriction that:

“the premises are conveyed subject to and upon the following conditions: to maintain said premises at all times in such conditions and such manner as shall be suitable for the use of the same as and for a free and public reading room and library; To maintain upon the said premises a free and public reading room to be known as ‘the Phillips Brooks Memorial Reading Room’ and to suffer said premises to be used for no other purpose whatsoever save as aforesaid.”

Amended Complaint, ¶10, 24 MISC 000177. The Church further alleged that “pursuant to M.G. c. 184 § 30, that continuation of the restriction would impede reasonable use of the land for which it is most suitable and would contribute to the deterioration of 10 Hamilton, and is seeking a declaration that the restriction is unenforceable. *Id.*, ¶11.

On May 10, 2024, the Plaintiffs in 24 MISC 000256 filed a separate lawsuit seeking a separate declaratory judgment that a permanent charitable trust was created when Mrs. Ellen Stetson granted the Property to the Blue Hill Evangelical Society and that the Church, as successor to the Blue Hill Evangelical Society, assumed all the benefits and obligations of this

² To date, the heirs of Ellen Stetson have not responded to the complaint or otherwise made any filings in this matter. The AGO notes that G.L. c. 214, sec. 10B provides “[u]pon a petition commenced after the death of the donor for the application *cy pres* to similar public charitable purposes of a gift for a public charitable purpose which has become impossible or impracticable of fulfillment, the court may exercise jurisdiction without requiring that the heirs or next of kin of the donor or others who would be entitled to take upon failure of any charitable gift be joined as parties.” The AGO believes that the deed restriction in this matter is charitable. Since the heirs would not need to be notified in a *cy pres* or deviation matter seeking to modify the charitable restriction, the heirs would not need to be parties were the Court to modify the restriction according to established *cy pres* principles.

charitable trust when the Property was conveyed to the Church in 1991. Complaint, 24 MISC 000256 (“McDonough Complaint”).

The McDonough Complaint includes the full deed for the Property, which includes the following language. *See* Norfolk County Registry of Deeds, Book 791, Page 330-331, Ex. A.1 to the McDonough Complaint.

- The Property is released “unto the said, Blue Hill Evangelical Society, *in trust nevertheless*, for the purposes herein after written...” (emphasis added).
- The Property is given “*forever in trust*” ... “for the use of same for a free and public reading room and library...”. (emphasis added).
- The deed contains the Blue Hill Evangelical Society’s acceptance of the conveyance: “the Blue Hill Evangelical Society hereby accepts the conveyance contained in the foregoing deed according to its terms and covenants for itself, its successors and assigns with the grantor, her heirs and assigns, *well and truly execute and perform the purposes of the trust herein contained.*” (emphasis added).

Id.

Pursuant to G L. c. 12, §8, the AGO has the statutory authority to “enforce the due application of funds given or appropriated to public charities within the Commonwealth and prevent breaches of trust in the administration thereof.”

ARGUMENT

Under Mass. R. Civ. P. 24(a)(1), anyone who makes a timely application shall be permitted to intervene “when a statute of the Commonwealth confers an unconditional right to intervene.” In furtherance of the AGO’s statutory oversight role over public charities, G. L. c.

12, §8G provides that “[t]he Attorney General shall be made a party to all judicial proceedings in which [she] may be interested in the performance of [her] duties under the provisions of Sections 8 to 8 M, inclusive.” As such, the AGO has an unconditional right to intervene in both of these matters. *See also* Mass. R. Civ. P. 24, 1973 Reporter’s Notes (citing G. L. c. 12, §8 as an example of “intervention as a matter of right”). The McDonough Complaint alleges that the Property was given in trust for charitable purposes as a donor-restricted gift. The Church has agreed in previous filings that the AGO has standing to enforce charitable rights. *See* Defendant Blue Hill Community Church’s 12(b)(6) Motion to Dismiss as to All Plaintiffs.

It is prudent for the AGO to be a party in both of these matters given the charitable interests at stake in the Church’s attempt to declare the restriction on the Property unenforceable. As a party, the AGO can ensure that arguments regarding the charitable nature of the deed restriction are before the Court as it considers the Church’s arguments regarding the applicability of G.L. c. 184 § 30 to the Property.

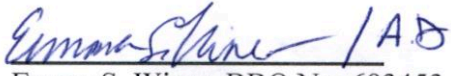
Finally, if the Court grants its motion to intervene, the AGO will respectfully support the pending motion to consolidate these two declaratory judgment lawsuits. 24 MISC 000177 and 24 MISC 000256 contain common questions of fact and law regarding the restrictions on the use of the Property. Consolidation would ensure the efficient and cost-effective resolution of this matter.

CONCLUSION

The AGO respectfully requests that this Court enter an order allowing the AGO to intervene and consolidating the two lawsuits.

Respectfully submitted,

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ATTORNEY GENERAL

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DATED: October 9, 2024

CERTIFICATE OF SERVICE

I, Emma S. Winer, hereby certify that on October 9, 2024, I served a copy of the above upon counsel of record and Plaintiffs, McDonough et al, by electronic service:

Emma S. Winer / A.D.

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