

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: February 21, 2017)

CHARLES MOREAU, ET AL.,

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Plaintiffs,

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v.

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ALLAN M. SHINE, ET AL.,

:

:

Defendants.

:

(Administratively Consolidated)

C.A. No. PB-2010-5615

C.A. No. PC-2010-5672

C.A. No. PB-2010-7394

DECISION

SILVERSTEIN, J. Before the Court are movants’ Mayor Charles Moreau (Mayor) and the members of the Central Falls City Council (City Council)¹—collectively referred to as the Elected Officials—Motions for Entry of Judgment. The Elected Officials request that this Court enter an order of judgment entitling them to indemnification from the State of Rhode Island (State) for their costs, expenses, and attorneys’ fees—including those of the City Council’s attorney, Lawrence L. Goldberg—generated from this lawsuit. The Rhode Island Department of Revenue, on behalf of the State, opposes the Elected Officials’ Motions.

I

Facts and Travel

The facts of this well-traveled case are familiar to this Court. For both the sake of brevity and the purpose of deciding whether to grant or deny the Elected Officials’ Motions, only a brief discussion of the procedural posture of this case is necessary. A far more detailed discussion of

¹ The members are listed as William Benson, Jr., Patrick J. Szlastha, Eunice DeLaHoz, and Richard Aubin.

the facts and travel preceding the matter at bar is provided in prior opinions of the Rhode Island Supreme Court and decisions of this Court. See Shine v. Moreau, 119 A.3d 1, 4-5 (R.I. 2015); Moreau v. Flanders, 15 A.3d 565, 570-73 (R.I. 2011); Pfeiffer v. Moreau, Nos. PB-2010-5615, PB-2010-5672, 2010 WL 4156173 (R.I. Super. Oct. 18, 2010) (Silverstein, J.).

On June 18, 2015, the Rhode Island Supreme Court issued its opinion in Shine v. Moreau, 119 A.3d 1, remanding the case² to this Court. Less than a month later, in early July of 2015, the Mayor moved for entry of final judgment, seeking indemnification for the costs and legal fees he incurred in challenging the constitutionality of the Financial Stability Act, G.L. 1956 §§ 45-9-1 et seq. Shortly thereafter, the City Council followed suit, similarly moving for entry of judgment and incorporating the Mayor's memorandum by reference. However, due to the City of Central Falls' pending issues in the Bankruptcy Court for this district, this Court stayed the proceedings regarding the Motions for Entry of Judgment. In November of 2015, the Bankruptcy Court issued an order resolving those pending issues, freeing this Court to consider the Elected Officials' Motions. Following the Bankruptcy Court's order, the Elected Officials renewed their Motions for Entry of Judgment on June 21, 2016. After receiving memoranda from the Elected Officials and the State and conducting an appropriate hearing, the Court issues this Decision.

The Elected Officials have moved to compel the State to indemnify their costs, expenses, and attorneys' fees resulting from the years-long lawsuit regarding the constitutionality and implementation of the Financial Stability Act, which essentially displaced the Mayor and the City Council in favor of the Receiver. During that time, the Elected Officials served in a mere

² Although our Supreme Court's opinion in Shine dealt with three separate cases, those cases have been administratively consolidated and, for ease of use, the Court refers to them as a single "case."

advisory role to the Receiver, at his discretion. In challenging the Financial Stability Act, the Elected Officials have undoubtedly incurred considerable costs; they now move to recover those costs, including attorneys' fees, from the Receiver who, according to the Elected Officials, is a State official. Thus, the procedural posture of this case is as follows: the Elected Officials have moved for entry of judgment seeking indemnification from the State; the State, through the Department of Revenue, objects.

II

Standard of Review

When a case is remanded from our Supreme Court, this Court is bound to follow the mandates contained in the opinion of the Rhode Island Supreme Court. Pleasant Mgmt., LLC v. Carrasco, 960 A.2d 216, 223 (R.I. 2008). This is known as the “mandate rule”—a rule that the Rhode Island Supreme Court has summarized in this way:

“When a case has been once decided by [the Rhode Island Supreme Court] on appeal, and remanded to the [Superior Court], whatever was before [the Rhode Island Supreme Court], and disposed of by its decree, is considered as finally settled. The [Superior Court] is bound by the decree as the law of the case, and must carry it into execution according to the mandate. That court cannot vary it, or examine it for any other purpose than execution; or give any other or further relief; or review it, even for apparent error, upon any matter decided on appeal; or intermeddle with it, further than to settle so much as has been remanded. . . . But the [Superior Court] may consider and decide any matters left open by the mandate of [the Rhode Island Supreme Court].” Sisto v. Am. Condo. Ass’n, Inc., 140 A.3d 124, 128 (R.I. 2016) (quoting Pleasant Mgmt., LLC, 960 A.2d at 223).

Per the mandate rule, when the Rhode Island Supreme Court issues an opinion, that opinion “speak[s] forthrightly and not by suggestion or innuendo,” meaning that this Court is not free to “read between the lines” of the opinion’s plain language. Pleasant Mgmt., LLC, 960 A.2d at 223 (quoting Fracassa v. Doris, 876 A.2d 506, 509 (R.I. 2005)).

III

Discussion

In accordance with the mandate rule, this Court first turns to the Rhode Island Supreme Court’s opinion in Shine. In Shine, our Supreme Court considered three issues, two of which are pertinent to the Motions presently before this Court:³ (1) whether the Mayor was entitled to indemnification pursuant to § 45-15-16 and Central Falls Code of Ordinances § 2-108;⁴ and (2) “whether Attorney Goldberg, who represented the City Council in these actions, is entitled to be awarded attorneys’ fees.” Shine, 119 A.3d at 11, 16. On the first issue—whether the Mayor should be indemnified—the Rhode Island Supreme Court found in the Mayor’s favor, holding that the Mayor was entitled to indemnification pursuant to § 45-15-16 and § 2-108. Id. at 16. As to the second issue, the Court held that Attorney Goldberg was entitled to attorneys’ fees.⁵ Id. at 19. After considering those issues and reaching those holdings, the Rhode Island Supreme Court mandated that the case “be remanded to [the Superior Court] for: (1) the entry of summary judgment in accordance with this opinion; (2) a determination of the amount of indemnification that the Mayor is entitled to receive; and, (3) the amount of attorneys’ fees that Attorney Goldberg is entitled to receive.” Id.

Here, the Elected Officials rely on that mandate, in conjunction with the Rhode Island Supreme Court’s holding with respect to the Mayor’s indemnification, to argue that both the

³ The Rhode Island Supreme Court also considered a third issue, namely “the issue of whether the Receiver [was] entitled to reimbursement of his attorneys’ fees,” Shine, 119 A.3d at 11. Our Supreme Court concluded that he was not. Id. However, that issue is not relevant to the matter raised in the Elected Officials’ Motions—specifically, whether the Elected Officials are entitled to indemnification from the State.

⁴ For purposes of readability, the Court will interchangeably refer to G.L. 1956 § 45-15-16 as “§ 45-15-16” and Central Falls Code of Ordinances § 2-108 as “§ 2-108,” shedding the statute and ordinance’s full citations.

⁵ Of note, this Court has already entered an order to that effect.

Mayor and the City Council members are entitled to indemnification from the State regarding the costs, expenses, and legal fees arising from this lawsuit. Reading Shine, it is clear that the Mayor is indemnified pursuant to § 45-15-16 and § 2-108. Id. at 16. Furthermore, while our Supreme Court did not specifically address whether the City Council members are entitled to indemnification under § 45-15-16 and § 2-108, it did explain that, “[a]s with the Mayor, it would be contradictory, illogical, and fundamentally unfair for this Court to now hold that the attorneys’ fees incurred to bring such a suit (in the City Council’s official capacity) must be paid out of the personal funds of the individual City Council members.” Id. at 18. Similarly, the Rhode Island Supreme Court stated that “it is our judgment that it was not beyond the pale of the City Council’s official duties for it to challenge the constitutionality of the Financial Stability Act in court.” Id. Based on that language, this Court finds that § 45-15-16 and § 2-108 apply with equal force to the City Council members, entitling them too to indemnification. See id.

What remains unclear, however, is from what entity the Elected Officials—meaning the Mayor and the members of the City Council—may seek indemnity. As noted above, based on their interpretation of the Shine opinion, the Elected Officials claim that the State is on the hook for their expenses. However, the State reaches a contrary conclusion. The State argues that under the Rhode Island Supreme Court’s holding in Shine, § 45-15-16 and § 2-108 compel the City Council, not the State, to indemnify the Elected Officials.

Turning to the text of both the state statute and the city ordinance, § 45-15-16 provides, in pertinent part, that:

“All . . . city councils . . . shall . . . indemnify any and all . . . public employees . . . [and] officials . . . from all loss, cost, expense, and damage, including legal fees and court costs, if any, arising out of any . . . action . . . by reason of any intentional tort or by reason of any alleged error or misstatement or action or omission, or neglect or violation of the rights of any person under any federal or state law, including misfeasance, malfeasance, or nonfeasance . . . if the elected or

appointed . . . official . . . at the time of the intentional tort or act, omission or neglect, was acting within the scope of his or her official duties or employment. The municipality . . . may decline to indemnify any elected or appointed . . . official . . . for any misstatement, error, act, omission, or neglect if it resulted from willful, wanton, or malicious conduct on the part of the . . . official The indemnity shall be provided by the city . . . council . . . on a case by case basis or by ordinance of general application. The ordinance or agreement to indemnify shall include, among other things, the provision of legal counsel at the expense of the city or town and/or the reimbursement for attorneys’ fees and other expenses incurred in connection with the conduct of the defense, including payment of the judgment.” (Emphasis added); see Shine, 119 A.3d at 12 (quoting § 45-15-16).

Furthermore, § 2-108, which our Supreme Court noted “largely mirrors § 45-15-16,” Shine, 119 A.3d at 12, provides, in pertinent part, that:

“The city shall indemnify any and all public employees [and] officials . . . from all loss, cost, expense and damage, including legal fees and court costs, if any, arising out of any . . . action . . . by reason of any intentional tort or by reason of any alleged error or misstatement or action or omission, or neglect or violation of the rights of any person under any federal or state law, including misfeasance, malfeasance or nonfeasance . . . if such employee [or] official . . . at the time of such intentional tort or act, omission or neglect, was acting within the scope of his official duties or employment.” Sec. 2-108 (emphasis added); see Shine, 119 A.3d at 12.

Read together, § 45-15-16 and § 2-108 are clear: the city shall indemnify the Elected Officials. As the Rhode Island Supreme Court concluded in Shine, the Mayor was acting within the scope of his official duties or employment when he brought suit to challenge the constitutionality of the Financial Stability Act. 119 A.3d at 16. And, as noted above, the same is true for the members of the City Council. Therefore, a straightforward reading of Shine, coupled with the plain language of § 45-15-16 and § 2-108, compels this Court to find that the City of Central Falls—not the State—must indemnify the Elected Officials for their costs, expenses, and attorneys’ fees arising from this lawsuit.

In so holding, the Court is aware of the language in Shine that hints at State liability. As our Supreme Court wrote, “under the mandatory language of § 45-15-16 and the City Ordinance

[§ 2-108], the Mayor is entitled to indemnification; the law accords no further discretion to the City Council, or the Receiver acting as the City Council, to refuse indemnification.” Id. However, the Elected Officials overemphasize this language when they assert that it entitles them to indemnification from the State, and not the City of Central Falls. Though the Financial Stability Act relegated the Elected Officials to serving in an advisory capacity, nothing in the Financial Stability Act required the State, through the Receiver, to assume liability for Central Falls’ liabilities or legal expenses.⁶ Even if the Court was persuaded by the argument that the Receiver was a state official who stepped into the shoes of the City Council, the Elected Officials have not pointed to, nor is the Court aware of, any statute or case law mandating the State to assume liability for or indemnify the Elected Officials from their costs, expenses, and legal costs. Even assuming, as the Elected Officials argue, that the present lawsuit was not a suit against the Receiver but rather a suit against the State, converting the lawsuit into one against the State does not, by itself, compel indemnity from the State. Nothing in the language of § 45-15-16 or § 2-108, or in the Financial Stability Act, requires such a result. Rather, Shine, § 45-15-16, and § 2-108 are dispositive: the city, not the State, shall indemnify the Elected Officials.

Consistent with this Court’s duty to follow the mandates of our Supreme Court, see Sisto, 140 A.3d at 128, the Mayor and the City Council “should be indemnified pursuant to § 45-15-16 and the City Ordinance [§ 2-108].” Shine, 119 A.3d at 16. A plain reading of the statute and City Ordinance require the City of Central Falls, not the State, to indemnify the Mayor and the City Council members who brought this lawsuit in their official capacities. See id. Therefore, pursuant to § 45-15-16 and § 2-108, the City of Central Falls must indemnify the Mayor and the

⁶ Moreover, § 45-9-14 states that “[n]othing in this chapter shall be construed to pledge the credit and assets of the state to pay the obligations or indebtedness, including bonded indebtedness, of any municipality[.]”

members of the City Council for their costs, expenses, and attorneys' fees—including those of Attorney Goldberg—arising from this lawsuit. Shine, 119 A.3d at 13 (“The use of the word ‘shall’ makes mandatory the indemnification provided for in the statute and the City Ordinance if the criteria set forth in the statute are met.”) (citation omitted).

IV

Conclusion

Accordingly, the Court denies the Elected Officials' Motions for Entry of Judgment because they are not entitled to indemnification from the State. Should the Elected Officials seek to further pursue indemnification from the City of Central Falls, they may confer with the Court to set an appropriate schedule. Prevailing counsel shall present an appropriate order consistent herewith which shall be settled after due notice to counsel of record.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: Charles Moreau, et al., v. Allan M. Shine, et al.

CASE NOS: PB-2010-5615; PC-2010-5672; PB-2010-7394
Administratively Consolidated

COURT: Providence County Superior Court

DATE DECISION FILED: February 21, 2017

JUSTICE/MAGISTRATE: Silverstein, J.

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