STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

[Filed: April 14, 2017]

GIRARD BOUCHARD, in his capacity as President of the Board of Directors of the Central Coventry Fire District, Plaintiff,	:	
v.	:	**C.A. No. KB-2012-1150**
CENTRAL COVENTRY FIRE DISTRICT, Defendant.	:	

DECISION

STERN, J. The Central Coventry Fire District (CCFD) asks this Court to make declarations as to CCFD's rights under certain collective bargaining agreements (CBAs) and whether taxes may be levied against the residents of the fire district to fund validly executed CBAs. CCFD argues that the CBAs are not binding on CCFD and that the taxpayers of the fire district are not required to fund the CBAs, either through a levy of taxes or by a line item in the annual budget. The firefighters of CCFD (the Firefighters), through their union, Local 3372 (the Union), object to CCFD's requested declarations, maintaining that the CBAs are valid and the taxpayers are obligated to fund said CBAs. Jurisdiction is pursuant to G.L. 1956 §§ 8-2-13 and 9-30-1.

I

Facts[1] and Travel

CCFD, created by legislative charter in 1959, is a quasi-governmental entity that provides fire suppression and emergency services to inhabitants of Coventry who reside within its

[1] The Court does not rule on the validity of the below facts, but recites them to provide context to the procedural travel of the instant matter and the declaratory action before the Court.

designated fire district. First Am. Compl. ¶ 1. In 2012, Girard Bouchard (Bouchard), the then-president of CCFD's Board of Directors (the Board), recognized that CCFD faced a financial crisis and filed a petition for receivership on October 15, 2012. See id. at ¶ 9. The next day, the Court appointed a temporary Special Master, who was subsequently affirmed as permanent Special Master on November 13, 2012 pursuant to an "Order Appointing Permanent Special Master" (the Order) issued by the Court. Id. at ¶ 10. The Order imposed a stay upon all of CCFD's creditors, prevented the filing of new lawsuits, the continuation of existing lawsuits, or any collection activities against CCFD. See First Am. Compl., Ex. 3, ¶ 13.

The receivership proceeding moved forward until it was halted in May 2014 when the General Assembly amended the Fiscal Stability Act, G.L. 1956 §§ 45-9-1 et seq., to include fire districts (the Amendment). The Amendment prevented CCFD from "be[ing] placed into, or made subject to, either voluntarily or involuntarily, a state judicial receivership proceeding." Sec. 45-9-13. However, under the Fiscal Stability Act, the Director of Revenue (DOR) had the ability to appoint a fiscal overseer or receiver to an insolvent fire district. See §§ 45-9-3, 45-9-7, 45-9-8. The DOR exercised such right under the Fiscal Stability Act and appointed Steven P. Hartford, Esq. receiver of CCFD (Receiver Hartford). First Am. Compl. ¶ 14. Subsequently, on December 23, 2014, Receiver Hartford filed a Chapter 9 Bankruptcy Petition (the Bankruptcy Petition), placing CCFD into bankruptcy. Id. at ¶ 15. Shortly thereafter, on or about January 5, 2015, Mark A. Pfeiffer (Receiver Pfeiffer) was appointed successor receiver for CCFD. See id. at ¶ 14.

In the Bankruptcy Court, Receiver Pfeiffer filed a motion to reject (Motion to Reject) the existing collective bargaining agreement between CCFD and the Union. Id. at ¶ 17. Prior to the hearing on the Motion to Reject, the Receiver and Union negotiated two CBAs: (1) CCFD CBA

FY 2015 (2015 CBA), and (2) CCFD CBA FY 2015-2020 (2015-2020 CBA). See id. at ¶ 18; see also First Am. Compl., Exs. 5, 6. The 2015 CBA was to be effective from April 19, 2015 through August 31, 2015, and the 2015-2020 CBA was to be effective from September 1, 2015 through August 31, 2020.[2] See First Am. Compl. ¶ 18; see also First Am. Compl., Exs. 5, 6. Receiver Pfeiffer filed a motion to approve the 2015 CBA and the 2015-2020 CBA, but the Bankruptcy Court scheduled the approval of the two CBAs contemporaneous with approval and confirmation of the five-year plan of adjustment (the Five-Year Plan). However, the Five-Year Plan was never approved or confirmed because on September 17, 2015, the DOR submitted a letter to Receiver Pfeiffer informing him that the receivership was to terminate on September 30, 2015. See First Am. Compl., Ex. 7. Accordingly, on September 18, 2015, Receiver Pfeiffer filed a motion to dismiss the Bankruptcy Petition, which was granted.

On October 9, 2015, CCFD filed a motion to amend its petition for receivership to include three counts for declaratory relief. The three counts posed the following questions: (1) What is the obligation of the Board of Directors as to the terms of either of the two CBAs negotiated between the Union and Receiver Pfeiffer?[3] (2) Must the taxpayers of CCFD's district

[2] By its terms, the 2015 CBA has expired.

[3] This question has since been revised, and CCFD now asks this Court to determine the validity of the CBAs entered into by the Union and Receiver Pfeiffer. As originally phrased, the first requested declaration did not present a justiciable issue. See Providence Teachers Union v. Napolitano, 690 A.2d 855, 856 (R.I. 1997) (stating that applicability of a challenged charter provision to the plaintiffs seeking declaratory relief was a necessary prerequisite to the formation of an actual controversy). Accordingly, CCFD in its Memorandum of Law in Support of CCFD's Request for Declaratory Relief rephrased its requested declaration to "The two CBAs negotiated between the Union and the State Receiver are not binding on CCFD" and, in Part A, argued only the CBAs were invalid. Likewise, the Union, in Part IIA of its Memorandum of Law in Support of Local 3372's Response to Defendant's Request for Declaratory Relief, argued only that the CBAs were binding. Neither party addressed what the Board's obligations would be with respect to the CBAs. Accordingly, this Court within its discretion addresses the rephrased version of CCFD's requested declaration so as to "terminate the uncertainty or controversy giving rise to the proceeding." Sec. 9-30-6; see infra Part III.

fund, through the raising of taxes, CBAs entered into by the Board? and (3) Do the taxpayers of CCFD's district have a right, pursuant to the Charter, to determine the method of how fire suppression and emergency services are provided by CCFD?

Upon the matter's return to the Superior Court, this Court was tasked with determining whether any orders or motions—pending or otherwise—made or filed prior to the Amendment and removal to the Bankruptcy Court were valid or enforceable. In interpreting the Fiscal Stability Act, this Court found the statute to be a limitation on the Superior Court's jurisdiction, excluding the application of receivership laws to fire districts. Bouchard v. Cent. Coventry Fire Dist., No. PC20135097, 2015 WL 7871277, at *3 (R.I. Super. Nov. 25, 2015). However, this Court held that such exclusion of receivership laws would not prevent the matter from moving forward under the Court's other forms of jurisdiction—either at law or in equity—pursuant to § 8-2-13 or § 8-2-14. Id. at *6.

The Court held a hearing on CCFD's declaratory judgment action on March 14, 2016, during which counsel for CCFD and the Union presented arguments on the aforementioned three questions. The Court reserved judgment at the conclusion of the hearing. Subsequently, the parties requested that the Court not issue a Decision on this matter, pending further negotiations between the parties. However, in December 2016, the parties asked that this Court issue a Decision on the requested declarations. The Court has since issued a Bench Decision, declining to declare the rights of the taxpayers under the Charter on standing grounds.

II

Standard of Review

The Uniform Declaratory Judgments Act, §§ 9-30-1 et seq., grants a court the power to "declare rights, status, and other legal relations" of litigants. Sec. 9-30-1. Specifically,

> "[a]ny person interested under a deed, will, written contract, or other writings constituting a contract . . . may have determined any question of construction or validity arising under the instrument . . . and obtain a declaration of rights, status, or other legal relations thereunder." Sec. 9-30-2.[4]

A declaratory judgment "is neither an action at law nor a suit in equity but a novel statutory proceeding." Newport Amusement Co. v. Maher, 92 R.I. 51, 53, 166 A.2d 216, 217 (1960). The purpose and intention of a declaratory judgment action is to "allow the trial justice to facilitate the termination of controversies." Bradford Assocs. v. R.I. Div. of Purchases, 772 A.2d 485, 489 (R.I. 2001). Accordingly, the Uniform Declaratory Judgments Act "confers broad discretion upon the trial justice as to whether he or she should grant declaratory relief." Cruz v. Wausau Ins., 866 A.2d 1237, 1240 (R.I. 2005); see also § 9-30-6; Woonsocket Teachers' Guild Local Union 951, AFT v. Woonsocket Sch. Comm., 694 A.2d 727, 729 (R.I. 1997); Lombardi v. Goodyear Loan Co., 549 A.2d 1025, 1027 (R.I. 1988). Despite such grant of discretion, our Supreme Court has cautioned that "[a] declaratory-judgment action may not be used 'for the determination of abstract questions or the rendering of advisory opinions,' nor does it 'license litigants to fish in judicial ponds for legal advice.'" Sullivan v. Chafee, 703 A.2d 748, 751 (R.I. 1997) (first quoting Lamb v. Perry, 101 R.I. 538, 542, 225 A.2d 521, 523 (1967); next quoting Goodyear Loan Co. v. Little, 107 R.I. 629, 631, 269 A.2d 542, 543 (1970)).

[4] A "person" under the Uniform Declaratory Judgments Act is defined as "any person, partnership, joint stock company, unincorporated association, or society, or municipal or other corporation of any character whatsoever." Sec. 9-30-13.

III

Analysis

A

Whether the CBAs are Valid

The Board and CCFD first ask this Court to declare the rights, duties, status and obligations of the Board under the two CBAs negotiated by Receiver Pfeiffer and the Union. Specifically, CCFD requests a declaration that the Board is not required to comply with the terms of either of the CBAs negotiated and executed between Receiver Pfeiffer and the Union because they are both void by operation of law. In support, CCFD argues that although Receiver Pfeiffer entered into the two CBAs under the aegis of authority granted to him under the Fiscal Stability Act, the requirements under § 45-9-9 were not met. In response, the Union contends that the negotiated and executed CBAs are valid and binding on the Board for several reasons: (1) Receiver Pfeiffer entered into the CBAs under a valid grant of statutory authority; (2) Receiver Pfeiffer and Director Sullivan complied with the requirements of § 45-9-9; and (3) the CBAs did not need to be approved by the Bankruptcy Court.

1

Power of Receiver Pfeiffer under the Fiscal Stability Act

Under the Fiscal Stability Act, receivers may be appointed by the DOR in the event that he or she, "in consultation with the auditor general, [determines] that a . . . fire district is facing a fiscal emergency and that circumstances do not allow for appointment of a fiscal overseer or a budget commission prior to the appointment of a receiver . . . ." Sec. 45-9-8. The period of a receiver's appointment under the Fiscal Stability Act falls within the discretion of the DOR. Sec.

45-9-7(a). The DOR may also, "without cause, remove the receiver and appoint a successor, or terminate the receivership" at any time. Id.

Once appointed, the receiver has extensive power. See § 45-9-7(b); see also §§ 45-9-18, 45-9-20.[5] At the same time, our Supreme Court has explained that "[a]lthough the powers of the receiver are broad and sweeping, they nonetheless are contained and channeled . . . ." Moreau v. Flanders, 15 A.3d 565, 577 (R.I. 2011). The powers granted to a receiver appointed under § 45-9-7 can be more precisely described as follows:

> "(1) All powers of the fiscal overseer and budget commission under §§ 45-9-2 and 45-9-6. Such powers shall remain through the period of any receivership;
> "(2) The power to exercise any function or power of any municipal or fire district officer or employee, board, authority or commission, whether elected or otherwise relating to or impacting the fiscal stability of the city, town, or fire district including, without limitation, school and zoning matters; and
> "(3) The power to file a petition in the name of the city, town, or fire district under Chapter 9 of Title 11 of the United States Code, and to act on the city's, town's, or fire district's behalf in any such proceeding." Sec. 45-9-7(b).

By incorporation, the receiver also has the power to "[r]eview all proposed contracts and obligations." See §§ 45-9-3(d)(6), 45-9-7(b). In addition, the receiver has the power to approve collective bargaining agreements entered into by a fire district. See § 45-9-9. Under § 45-9-9,

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[5] Under § 45-9-18,

> "[t]he receiver shall [also] be entitled to exercise all powers under the general laws, this chapter, the state constitution, any special act, any charter provision or ordinance that any elected official or any body of the city, town, or fire district may exercise, acting separately or jointly; provided, however, that with respect to any such exercise of powers by the receiver, the elected officials or the body shall not rescind, nor take any action contrary to, such action by the receiver so long as the receivership continues to exist."

"In the event a receiver is appointed pursuant to the provisions of this chapter, powers of the fire district governing body or powers of the city or town council exercisable by resolution or ordinance shall be exercised by order of the receiver." Sec. 45-9-20.

> "No collective bargaining agreement shall be approved . . . unless the . . . receiver has participated in the negotiation of the collective bargaining agreement and provides written certification to the director of revenue that after an evaluation of all pertinent financial information reasonably available, the city's, town's, or fire district's financial resources and revenues are, and will continue to be, adequate to support such collective bargaining agreement without a detrimental impact on the provision of municipal or fire district services."

Accordingly, if a fire district is placed into receivership pursuant to the Fiscal Stability Act, the Receiver of that fire district may enter into CBAs if the Receiver: (1) participates in the negotiation of the CBA; and (2) provides written certification to the DOR that the fire district's financial resources will be sufficient to satisfy the terms of the collective bargaining agreement without any detrimental impact to the provision of fire services. Sec. 45-9-9.

In this instance, it is clear Receiver Pfeiffer satisfied the prerequisites under § 45-9-9 by participating in the negotiation of both CBAs with the Union and providing the necessary written certification to the DOR. The Union contends that both Receiver Pfeiffer and Director Sullivan were directly involved in the negotiation of the CBAs at issue. Indeed, both CBAs bear the signature of Receiver Pfeiffer. See First Am. Compl., Ex. 5 at 67; First Am. Compl., Ex. 6 at 67. There is no evidence submitted by the Board or CCFD to contradict the Union's contention that Receiver Pfeiffer and Director Sullivan actively participated in negotiating the 2015 CBA and the 2015-2020 CBA. In addition, it is clear that Receiver Pfeiffer sent Director Sullivan the required certification on April 28, 2015, thus satisfying the second and last requirement under § 45-9-9. See Letter from Receiver Pfeiffer to Director David M. Sullivan (Apr. 28, 2015). Accordingly, the Court is satisfied that Receiver Pfeiffer had the ability and power to, under the Fiscal Stability Act, enter into the CBAs.

2

Approval by Bankruptcy Court

CCFD next contends that the CBAs executed by Receiver Pfeiffer are not valid or otherwise enforceable because approval of the CBAs—negotiated during the pendency of the Chapter 9 case—was required by the Bankruptcy Court.[6] The Union argues in response that the CBAs are valid because Bankruptcy Court approval of the CBAs was not necessary.

In determining whether Receiver Pfeiffer was required to seek approval from the Bankruptcy Court prior to entering into the CBAs, this Court turns to the relevant provisions of the Bankruptcy Code in Chapter 9 cases. See United States v. Ron Pair Enters., Inc., 489 U.S. 235, 241 (1989); see also In re City of Cent. Falls, R.I., Case No. 11-13105-FJB, 2015 WL 12991580, at *16 (Bankr. D.R.I. Nov. 13, 2015) ("By authorizing a filing [of a petition for relief under chapter 9], the [debtor] is deemed to accept [C]hapter 9 as a whole." (citing United States v. Bekins, 304 U.S. 27, 53 (1938))). Excepting the "rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters," the plain meaning of the Bankruptcy Code is conclusive. See Ron Pair Enters., Inc., 489 U.S. at 242.

The provisions of the Bankruptcy Code applicable to cases brought under Chapter 9 make it clear that municipal debtors retain substantial control over their property and operations during the pendency of their Chapter 9 case. For example, unlike Chapter 11, Chapter 9 does not incorporate § 363. See 11 U.S.C. § 901(a). Accordingly, a Chapter 9 municipal debtor is not required to seek approval from the Bankruptcy Code prior to using, selling, or leasing its property, even when it is outside the ordinary course of business. In addition, a Chapter 9

[6] Notably absent from CCFD's Memorandum of Law in Support of CCFD's Request for Declaratory Relief is any citation supporting such contention.

municipal debtor is not required to obtain court approval prior to retaining and paying professionals whether inside or outside the ordinary course of business. See Mark A. Cody, Creditor's Rights in Chapter 9 Bankruptcy, in Representing Creditors in Chapter 9 Municipal Bankruptcy: Leading Lawyers on Navigating the Chapter 9 Filing Process, Counseling Municipalities, and Analyzing Recent Trends and Cases, available at 2014 WL 4785319, at *7 (2014). "Therefore, as a general matter, a Chapter 9 debtor will not file retention or fee applications with the court." Id.

Moreover, the powers of a Bankruptcy Court under a Chapter 9 case are significantly curtailed by § 904, which provides:

> "Notwithstanding any power of the court, unless the debtor consents or the plan so provides, the court may not, by any stay, order, or decree, in the case or otherwise, interfere with--
>
> "(1) any of the political or governmental powers of the debtor;
>
> "(2) any of the property or revenues of the debtor; or
>
> "(3) the debtor's use or enjoyment of any income-producing property."

Section 904 has been described as "a keystone in the constitutional arch between federal bankruptcy power and state sovereignty." In re City of Stockton, Cal., 486 B.R. 194, 198 (Bankr. E.D. Cal. 2013). "By virtue of § 904, a debtor in chapter 9 retains title to, possession of, and complete control over its property and its operations, and is not restricted in its ability to sell, use, or lease its property." In re Valley Health Sys., 429 B.R. 692, 714 (Bankr. C.D. Cal. 2010). Thus, under § 904, a "bankruptcy court cannot prevent a chapter 9 debtor from spending its money for any reason, even foolishly or in a manner that disadvantages other creditors, unless the municipality consents to such judicial oversight." In re City of Stockton, Cal., 486 B.R. at 198. In other words, § 904 negates the need for a municipal debtor to seek court approval in settling claims of creditors in the ordinary course of business. See id. at 196-99. Similarly, Rule

9019(a) of the Federal Rules of Bankruptcy Procedure does not mandate—but rather makes it optional for—municipal debtors to seek approval of the court in order to review or approve a compromise or settlement. See In re Novak, 383 B.R. 660, 668-69 (Bankr. W.D. Mich. 2008). Thus, it is apparent that the Bankruptcy Court provides minimal supervision over a municipal debtor under Chapter 9.[7]

That is not to say that the Bankruptcy Court is completely hands-off in all aspects of a Chapter 9 case; to the contrary, the § 365 executory contract provisions apply in chapter 9 bankruptcy cases. See 11 U.S.C. § 901(a); Moran v. City of Cent. Falls, 475 B.R. 323, 332 n.11 (D.R.I. 2012). Section 365(a) provides: "(a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." "This language by its terms includes all executory contracts except those expressly exempted . . . ." N.L.R.B. v.

[7] The Union also cites to 11 U.S.C. § 903 to provide support for the proposition that the Bankruptcy Court's power in this case was limited. Section 903 states:

> "This chapter does not limit or impair the power of a State to control, by legislation or otherwise, a municipality of or in such State in the exercise of the political or governmental powers of such municipality, including expenditures for such exercise, but--
>
> > "(1) a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition; and
> >
> > "(2) a judgment entered under such a law may not bind a creditor that does not consent to such composition."

However, section 903 "is not and has not been construed as a substantive limit on the other provisions of chapter 9." In re City of Cent. Falls, R.I., 2015 WL 12991580, at *16. Rather, "[t]he history of Chapter 9 reflects concern on the part of Congress not to overstep the boundary between legislation necessary for municipalities to reorganize and the rights of states to control the functions of municipalities. This boundary has not always been easy to define. Section 903 is a specific directive to [B]ankruptcy [C]ourts to proceed cautiously when approaching this line." In re Cty. of Orange, 179 B.R. 177, 183 (Bankr. C.D. Cal. 1995). Thus, this Court need not address the Union's argument as it pertains to § 903 because such argument results from a misinterpretation of the statute's language.

Bildisco & Bildisco, 465 U.S. 513, 521-22 (1984).[8] This Court is mindful that Bankruptcy Courts have long classified collective bargaining agreements as executory contracts. See In re City of Cent. Falls, R.I., 468 B.R. at 45; see also Bildisco & Bildisco, 465 U.S. at 521-22; In re Brada Miller Freight Sys., Inc., 702 F.2d 890, 893 (11th Cir. 1983); In re Gray Truck Line Co., 34 B.R. 174, 177 (Bankr. M.D. Fla. 1983).

Significantly, however, in Chapter 11 cases—which provide significantly less freedom to a debtor than cases brought under Chapter 9—"[s]ection 365 . . . does not apply to post-petition contracts negotiated by a trustee or a debtor-in-possession on behalf of the bankruptcy estate." In re IML Freight, Inc., 37 B.R. 556, 558-59 (Bankr. D. Utah 1984). "Such decisions fall within the trustee's or debtor-in-possession's discretion to make decisions in the ordinary course of business." Id. at 559.

In consideration of the principles articulated above, this Court concludes that the CBAs entered into by Receiver Pfeiffer are not invalidated on the basis that Bankruptcy Court approval was not obtained. Given that Chapter 9 municipal debtors are less constrained by the Bankruptcy Court than Chapter 11 debtors, this Court cannot come to the determination—absent a specific provision of the Bankruptcy Code—that an approval process that is not required in

[8] "The Bankruptcy Code provides little guidance on the meaning of 'executory contract' within the context of the governing statutory provision." In re Boutiette, 168 B.R. 474, 480 (Bankr. D. Mass. 1994). "The legislative history, however, provides that the term 'generally includes contracts on which performance remains due to some extent on both sides.'" Id. (citing H.R.Rep. No. 595, 95th Cong., 1st Sess. 347 (1977); S.Rep. No. 989, 95th Cong., 2d Sess. 58 (1978)); see Moran, 475 B.R. at 332; In re City of Cent. Falls, R.I., 468 B.R. 36, 45-46 (Bankr. D.R.I. 2012). In light of this legislative finding, Bankruptcy Courts have employed the definition of "executory contract" as "[a] contract under which the obligations of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other." In re Boutiette, 168 B.R. at 480; see Parkview Adventist Med. Ctr. v. U.S., on behalf of Dep't of Health & Human Servs., 842 F.3d 757, 763 n.12 (1st Cir. 2016); In re City of Cent. Falls, R.I., 468 B.R. at 45 n.14.

Chapter 11 cases is required in a Chapter 9 case. See Ron Pair Enters., Inc., 489 U.S. at 242. In other words, CCFD as a Chapter 9 municipal debtor did not need to seek Bankruptcy Court approval prior to entering into the post-petition CBAs. The fact that the CBAs were not explicitly approved by the Bankruptcy Court is of no moment because Bankruptcy Court approval was not required; a conclusion to the contrary would contravene the intent of Chapter 9. See id. (stating that the wording of the Bankruptcy Code is conclusive in all instances other than when it would contradict the intent of the drafter).

Accordingly, because Receiver Pfeiffer acted within his authority under the Fiscal Stability Act and followed the necessary procedures outlined therein for entering into the CBAs, the Court declares the CBAs entered into by Receiver Pfeiffer and the Union are valid and binding on CCFD.

B

Taxpayers' Annual Budget Funding CBAs

CCFD next claims that it is entitled to a declaration to the effect that the taxpayers of CCFD are not required by the Charter to fund, through the raising of taxes, otherwise valid CBAs entered into by the Board. By extension, CCFD also argues that the Board is limited in its authority to execute CBAs expanding the course of more than one year. The Union responds that a municipality, including a quasi-municipality corporation such as CCFD, is required to fund a duly executed CBA, even if it exceeds one year—the term of a CCFD board member. See Charter § 3(b).

As an initial matter, this Court emphasizes that it may not determine whether a tax levy is necessary to fund the CBAs. Section 7 of the Charter vests the "power to order . . . taxes and provide for the assessing and collecting of the same" in the qualified voters—i.e., taxpayers—of

CCFD. This Court in its most recent Bench Decision declined to declare the rights of the taxpayers on standing grounds, and must decline to do so again for the same reason with regards to CCFD's requested relief here. See Singleton v. Wulff, 428 U.S. 106, 113-14 (1976); Bowen v. Mollis, 945 A.2d 314, 317 (R.I. 2008).[9] However, this Court exercises its discretion to address the remaining arguments of the parties as they pertain to whether the taxpayers of CCFD are required to fund the CBAs via avenues other than the taxing authority delineated in the Charter. See § 9-30-6.

The Court first addresses CCFD's broad assertion that the common law limits the ability of government officials to enter into contracts for terms longer than their terms in office. Indeed, while it is a well-established common law principle that contracts entered into by government officials that tie the hands of subsequent officials are void, such a common law rule is limited to instances "involving the performance of a governmental function . . . ." R.I. Student Loan Auth.

[9] To briefly summarize, this Court in its most recent Bench Decision found the absence of taxpayers to this lawsuit fatal to CCFD's requested declaratory relief. It is fundamental that "[w]hen confronted with a request for declaratory relief, the first order of business for the trial justice is to determine whether a party has standing to sue." Bowen, 945 A.2d at 317. "When called upon to decide the issue of standing, a trial justice must determine whether, if the allegations are proven, the plaintiff has sustained an injury and has alleged a personal stake in the outcome of the litigation." Id. "The requisite standing to prosecute a claim for relief exists when the plaintiff has alleged that 'the challenged action has caused him injury in fact, economic or otherwise[.]'" Id. (quoting R.I. Ophthalmological Soc'y v. Cannon, 113 R.I. 16, 22, 317 A.2d 124, 128 (1974)). Such injury has been described as "an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent, not 'conjectural' or 'hypothetical.'" Pontbriand v. Sundlun, 699 A.2d 856, 862 (R.I. 1997) (quoting Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992)). In applying these principles, our Supreme Court has tended to prohibit "third party standing," which prevents parties to a suit from asserting the rights of parties not before the Court. See Mruk v. Mortg. Elec. Registration Sys., Inc., 82 A.3d 527, 535 (R.I. 2013) (third parties to contracts do not have standing to challenge the contract); Moreau, 15 A.3d at 585 (third party standing in the purview of the constitutionality of a statute). When a party to a lawsuit asserts the rights of a non-party, the Supreme Court of the United States has similarly cautioned courts to refrain from resolving the controversy. See Singleton, 428 U.S. at 113-14 (reasoning that the holders of the rights are their "most effective advocates"). Accordingly, because Section 7 of the Charter granted the taxing authority only to non-parties, this Court concluded that CCFD did not have a direct, cognizable injury.

v. NELS, Inc., 550 A.2d 624, 626 (R.I. 1988); Vieira v. Jamestown Bridge Comm'n, 91 R.I. 350, 163 A.2d 18 (1960); Parent v. Woonsocket Housing Auth., 87 R.I. 444, 143 A.2d 146 (1958); see, e.g., Mercado v. City of Providence, 770 A.2d 445, 447 (R.I. 2001) ("[A] municipality's statutory obligation to maintain its highways and bridges constitutes a governmental function.").[10] Municipalities have been found to be exercising governmental functions when such municipalities entered into lease agreements for the use of property exclusively for fire protection and rescue services. See Buckhout v. City of Newport, 68 R.I. 280, 285, 27 A.2d 317, 320 (1942); Flynn v. King, 433 A.2d 172, 175 (R.I. 1981) ("Fire protection is a governmental function that 'substantially affects' every resident and property owner."); Nunes v. Town of Bristol, 102 R.I. 729, 734, 232 A.2d 775, 778 (1967) ("[A] municipality when engaged in the construction or expansion of a fire station, is performing in a governmental capacity."); see also Chopmist Hill Fire Dep't v. Town of Scituate, 780 F. Supp. 2d 179, 187 (D.R.I. 2011). In addition, when a town or municipality enters into an employment contract so as to carry out a governmental function, the entrance into the contract is also considered a governmental function. See Parent, 87 R.I. at 449, 143 A.2d at 148. As such, this Court determines that when a municipality enters into a collective bargaining agreement with its firefighters, it is exercising a governmental function and ordinarily—under the common law—the contract cannot extend beyond the terms of the government officials.

[10] As an aside, it is a contrasting common law principle that "if the contract merely involves a proprietary function of a governmental body, its validity is upheld and may bind successors for as long a period as is necessary to accomplish the contract's goal." R.I. Student Loan Auth., 550 A.2d at 626. "[I]n Rhode Island a proprietary function is one 'not so intertwined with governing that the government is obligated to perform it only by its own agents or employees.'" Id. at 627 (quoting Lepore v. R.I. Pub. Transit Auth., 524 A.2d 574, 575 (R.I. 1987)); see, e.g., Xavier v. Cianci, 479 A.2d 1179, 1182 (R.I. 1984) ("[S]treet sweeping is a proprietary function that may be performed by either the government or a private contractor.").

However, CCFD's reliance on the common law is misplaced in this particular instance. The Court is mindful that the common law limitation on the terms of governmental contracts is not absolute and it does not apply in all situations. Specifically, "[t]he common law governs the rights and obligations of citizens in Rhode Island unless that law has been modified by the General Assembly." Traugott v. Petit, 122 R.I. 60, 63, 404 A.2d 77, 79 (1979) (emphasis added); see also Providence Rubber Co. v. Goodyear, 76 U.S. 788, 791 (1869). In this instance, the Court concludes that the common law limitation on the duration of contracts entered into by government officials is derogated by the Firefighters' Arbitration Act, which provides in part:

> "It shall be the obligation of the city or town, acting through its corporate authorities, to meet and confer in good faith with the representative or representatives of the bargaining agent within ten (10) days after receipt of written notice from the bargaining agent of the request for a meeting for collective bargaining purposes. This obligation shall include the duty to cause any agreement resulting from the negotiations to be reduced to a written contract, provided that no contract shall exceed the term of one year, unless a longer period is agreed upon in writing by the corporate authorities and the bargaining agents, but in no event shall the contract exceed the term of three (3) years unless a budget commission or a receiver has been appointed for a municipality or fire district pursuant to chapter 9 of title 45, or if a municipality has a locally administered pension plan in 'critical status' and is required to submit a funding improvement plan pursuant to § 45-65-6(2). In either case, the contract shall not exceed the term of five (5) years. An unfair labor practice charge may be complained of by either the employer's representative or the bargaining agent to the state labor relations board which shall deal with the complaint in the manner provided in chapter 7 of this title." Sec. 28-9.1-6 (emphasis added).[11]

[11] Under § 28-9.1-3(1),

> "'Corporate authorities' means the proper officials within any city or town whose duty or duties it is to establish the wages, salaries, rates of pay, hours, working conditions, and other terms and conditions of employment of fire fighters, whether they are the mayor, city manager, town manager, town administrator, city council, town council, director of personnel, personnel board or

As our Supreme Court has stated recently, when an Act of the General Assembly derogates the common law, the Court must "strictly construe its language." O'Connell v. Walmsley, No. 2016-58-Appeal, No. 2016-59-Appeal, slip-op. at 7, 2017 WL 1154712, at *4 (R.I. filed Mar. 27, 2017) (citing Simeone v. Charron, 762 A.2d 442, 445 (R.I. 2000)). Accordingly, the fact that the term of the CBAs in this case spans beyond the terms of the Board of Directors does not result in the CBAs being voided because the General Assembly has clearly derogated the common law in instances of CBAs between municipalities and firefighters to allow for terms of CBAs to extend beyond the terms of the government officials.

Thus, this Court next addresses whether the Charter mandates that valid CBAs must be approved by the taxpayers of CCFD, as is asserted by CCFD. The Court notes the following provision of the Charter which is relevant to the resolution of this issue:

> "Commencing in 2007 and continuing annually thereafter, the district shall hold an annual meeting in a public place on the second Monday in September, at 7:00 P.M. at such place within the District as the Board shall determine, for the purposes of: . . . (4) authorizing an annual budget to provide for the purchase and maintenance of equipment, apparatus, real and personal property, the payment of wages and salaries, and for such other expenditures deemed necessary by the qualified voters of the District . . . ." Charter § 3(b) (emphasis added).

Under the Charter, the taxpayers of CCFD are not explicitly required to approve CBAs entered into; they are, however, granted the authority to approve annual budgets which may or may not provide funding for the CBAs. See id. In other words, approval by the qualified voters of CCFD

> commission, or by whatever other name or combination of names they may be designated."

Receivers appointed under the Fiscal Stability Act fall within this definition because the Receiver stands in the shoes of the Board of Directors during a receivership. See By-Laws § 1(G) ("The Board of Directors shall determine the duties, salaries or wages, benefits, and conditions of employment of all appointees and/or employees . . . ."); see also § 45-9-9.

is not a prerequisite to CCFD entering into CBAs. Should the taxpayers not wish to provide funding for CBAs, their disapproval may be reflected during their annual meeting to approve CCFD's budget. As such, this Court declares that, pursuant to Section 3(b) of the Charter, the taxpayers of CCFD must fund the CBAs insofar as the taxpayer-approved budgets provide.[12]

IV

Conclusion

For the reasons articulated above, this Court declares that the CBAs at issue in this case are valid and binding and that under Section 3(b) of the Charter, valid CBAs must be funded by the taxpayers of CCFD to the extent provided by the taxpayer-approved budgets. Counsel shall submit the appropriate judgment for entry.

[12] This Court pauses to emphasize, as it discussed in its prior Bench Decision on third-party standing, that no individual taxpayer is a plaintiff in this action. See supra n.9. As a result, this Court does not address in this Declaration whether the individual taxpayers may ultimately be liable if there is an obligation under the CBAs that is not funded by the budget approved at the annual meeting. See Cole v. E. Greenwich Fire Engine Co., 12 R.I. 202 (1878). This Court, however, has addressed this issue in the affirmative with respect to other creditors in this matter.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Girard Bouchard, in his capacity as President of the Board of Directors of the Central Coventry Fire District v. Central Coventry Fire District
CASE NO:	C.A. No. KB-2012-1150
COURT:	Kent County Superior Court
DATE DECISION FILED:	April 14, 2017
JUSTICE/MAGISTRATE:	Stern, J.
ATTORNEYS:	
For Plaintiff:	William J. Conley, Jr., Esq.
For Defendant:	Michael P. Robinson, Esq.; David M. D'Agostino, Esq.; Elizabeth A. Wiens, Esq.