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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

2012 JUN 29 4:08

Civil Action No. 12-cv-11117-MLW

Friedrich Lu, Plaintiff )  
v )  
George Hulme, )  
Trustees of Boston Public Library, Defendants )

U.S. DISTRICT COURT  
DISTRICT OF MASS.

PLAINTIFF'S MOTION TO DISQUALIFY SO CALLED COUNSEL

City of Boston, through its arm Law Department, yesterday entered appearance on behalf of the two defendants. Now plaintiff Friedrich Lu moves to disqualify counsel, or "attorneys."

Lu and the city, earlier yesterday, exchanged four emails about city's intended representation of the defendants. Exhibits 1-4. The city insists:

"The Law Department represents all city departments, including the Boston Public Library and its Trustees, who are appointed by the Mayor. As a BPL employee, Mr Hulme is a city employee \* \* \* The Law Department advises and represents the Trustees in all matters concerning the BPL, including all of its branches. The Trustees themselves are a separate legal entity by statute. That said, they are considered special municipal employees of the City of Boston under Massachusetts law. As for Mr. Hulme, all library employees are City of Boston employees.

It is not just "Trustees themselves are a separate legal entity;" in fact Trustees of Boston Public Library (hereafter "Trustees of BPL")--not just trustees themselves--is a "body corporate," (see complaint(3)) with "capacity to sue and be sued." Fed. R. Civ. Proc. 17(b).

On occasions, the city and Trustees of BPL roil the water by not sufficiently distinguishing themselves through words or deeds. However, the law is clear on their separateness. Indeed the city itself acknowledges so, and Supreme Judicial Court of Massachusetts so ruled more than 70 years ago--to the point (See Part IV).

I

Lu was excluded from BPL on June 13 and stepped into rain. There he met an acquaintance, who screamed, "This is discrimination. Go to City Hall." Then and there, Lu knew neither was correct.<sup>1</sup>

Any one with keen observation knows BPL is separate from the city. Trustees of BPL hires and fires its own employees, including president of BPL. Matt Viser, Trustees to Replace BPL Head;

Margolis praised; Need for change cited. Boston Globe, Nov 4, 2007.  
[http://www.boston.com/news/local/massachusetts/articles/2007/11/04/trustees\\_to\\_replace\\_bpl\\_head/](http://www.boston.com/news/local/massachusetts/articles/2007/11/04/trustees_to_replace_bpl_head/)

(Trustees of BPL ousted BPL president Bernie Margolis)

Boston Mayor Thomas Menino had clashed Margolis for a decade, but could not boot him out until the mayor replaced trustees one by one, and assumed control of board of trustees.

When contemplating the instant action, Lu spent the bulk of research (total 3 hours, for want of

access to a library) on the nature of BPL. Surely Trustees of BPL would have move to dismiss

if Lu instead listed as a defendant BPL (not a legal entity) or the city (mistaken identity). So Lu

was not amused upon hearing the city would represent the defendants.

II

A

The city barely mentions library in its charter or Municipal Code (colloquially, city ordinances),

both of which are supplied in the website of Boston City Council.<sup>2</sup>

<http://www.cityofboston.gov/citycouncil/>

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1. It is not a discrimination. See Mass. Gen. Laws Chap 272, § 98 (Discrimination in admission to, or treatment in, place of public accommodation). Not in legal sense--unless the word is used in the literal sense (to discriminate is to distinguish), thus collapsing into equal protection.

2. (a) Nothing in the charter.

(b) Municipal Code:

(i) "2-7.2 Appointment by Mayor \* \* \* For the term of five (5) years, beginning with the first day of May in the year of appointment: one trustee of the Boston Public Library."

(ii) "11-8 LIBRARY DEPARTMENT AND TRUSTEES OF THE PUBLIC LIBRARY.

11-8.1 Duties of Trustees.

The Library Department shall be under the charge of a Board of nine (9) Trustees, who shall adopt such measures as shall extend the benefits of the institution as widely as possible, and may from time to time establish branch libraries and delivery stations in different sections of the City; and shall annually appoint an examining Committee of not less than five (5) persons, not members of the Board who, with one of the Board as Chairman, shall examine the library and make to the Board a report of its conditions.

(St. 1853 c. 38; St. 1878 c. 114; St. 1885 c. 266 §§ 6, 12; Rev. Ord. 1961 c. 18 § 1; CBC 1975 Ord. T11 § 350; Ord. 1989 c. 6; Ord. 1994 c. 5 §§ 1, 2)

11-8.2 Annual Report.

The Board shall, in its annual report, include a statement of the condition of the library,

B

In its official website, the city lists BPL as its "department." See City Department <http://www.cityofboston.gov/government/citydept.asp>, which can not be taken serious, because also listed are Boston Housing Authority (BHA),<sup>3</sup> Boston Redevelopment Authority (BRA), Boston Public Health Commission (BPHC),<sup>4</sup> Boston Water & Sewer Commission (BWSC), city council and city clerk (who are independently elected).

C

Equally untidy is Trustees of BPL.

(1) It is unclear who posted the invitation for bids, which incorrectly identified Trustees of BPL.

(a) TRUSTEES OF THE PUBLIC LIBRARY DEPARTMENT CITY OF BOSTON. Invitation for Request for Proposal for Providing Annual Independent Audit Services for a Multi-Year.

GovCB.com (Government Contract & Bid), Mar 12, 2012 (GovCB Opps ID :

ADP13323637580000679).

<http://www.govcb.com/TRUSTEES-OF-THE-PUBLIC-LIBRARY-ADP13323637580000679.htm>

(b) TRUSTEES OF THE PUBLIC LIBRARY DEPARTMENT OF THE CITY OF BOSTON.

Invitation for Sealed Bids for Leasing of Two (2) 4-Door Hybrid Sedans,... GovCB.com, Mar 21,

2012 (GovCB Opps ID : ADP13323637580000678).

<http://www.govcb.com/TRUSTEES-OF-THE-PUBLIC-LIBRARY-ADP13323637580000678.htm>

Cf. LIBRARY DEPARTMENT. (CM 01-A). Invitation for Sealed Bids for Window Cleaning at the

Central Library Building and at other Library Locations, During the Period July 1, 2008, Through

June 30, 2009. UAMCC Contractor Forum, "1/19/09."

<http://www.uamcc.org/forum/showthread.php/860-City-of-Boston-Window-Washing-Contract?s=0ca1c8dadf664890ab62ab97b4be0d2f>

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the number of books that have been added thereto during the year, the report of the Committee appointed to examine the library, and the total amount of money received from fines and sales. (Rev. Ord. 1961 c. 18 § 2; CBC 1975 Ord. T11 § 351)"

3. Chap 121B, § 3 ("There is hereby created, in each city and town in the commonwealth, a public body politic and corporate to be known as 'Housing Authority' of such city or town")

4. Chap 111, App. § 2-3 ("There is hereby established a body politic and corporate and political subdivision of the commonwealth to be known as the Boston Public Health Commission")

(2) On June 30 each year, independent auditors/certified public accounts presents the financial

statement to Trustees of BPL. Prior to 2011 (exclusive), the title asserted Trustees of BPL as "a component unit of the City of Boston."

(a) Library of Last Recourse; Financial Statements, June 30, 2011.

[www.bpl.org/finances/files/2012/04/FY11-LLR-Financial-Statements.pdf](http://www.bpl.org/finances/files/2012/04/FY11-LLR-Financial-Statements.pdf)

(b) Basic Financial Statements and Management's Discussion and Analysis. The Trustees of

the Public Library of the City of Boston (a component unit of the City of Boston), June 30, 2010.

[www.bpl.org/finances/files/2011/11/FY10\\_Financial\\_Statements.pdf](http://www.bpl.org/finances/files/2011/11/FY10_Financial_Statements.pdf)

(c) Basic Financial Statements and Management's Discussion and Analysis. The Trustees of

the Public Library of the City of Boston (a component unit of the City of Boston), June 30, 2009.

[http://www.bpl.org/finances/files/2011/11/FY09\\_Financial\\_Statements.pdf](http://www.bpl.org/finances/files/2011/11/FY09_Financial_Statements.pdf)

(d) Basic Financial Statements and Management's Discussion and Analysis. The Trustees of

the Public Library of the City of Boston (a component unit of the City of Boston), June 30, 2007.

[http://www.bpl.org/finances/files/2011/11/FY07\\_Financial\\_Statements.pdf](http://www.bpl.org/finances/files/2011/11/FY07_Financial_Statements.pdf)

### III

Trustees of BPL is a body corporate, a legal person of its own right.

(1) Trademark

<http://www.trademarkia.com/boston-public-library-78266386.html>

("On Tuesday, June 24, 2003, a U.S. federal trademark registration was filed for BOSTON PUBLIC LIBRARY by TRUSTEES OF THE PUBLIC LIBRARY OF THE CITY OF BOSTON, BOSTON 02199. The USPTO has given the BOSTON PUBLIC LIBRARY trademark serial number of 78266386. The current federal status of this trademark filing is REGISTERED")

(2) Trustees of BPL has its own chief financial officer.

Board of Trustees Meeting. Boston Public Library, Mar 23, 2011.

[http://www.bpl.org/general/trustees/fy12\\_bpl\\_budget\\_trustee\\_presentation\\_2011march23.pdf](http://www.bpl.org/general/trustees/fy12_bpl_budget_trustee_presentation_2011march23.pdf)  
(FY12 funding sources at page 2: city (\$36.94M) and state (\$3.9M) originally)

(3) Trustees hires and fires its own employees (presumably including defendant George

Hulme), not just its president.

John M Guilfoil, BPL to Eliminate 40 Jobs; Branch closings on slate. Boston Globe, Oct 1, 2010.

[http://www.boston.com/news/local/massachusetts/articles/2010/10/01/bpl\\_to\\_eliminate\\_40\\_jobs\\_branch\\_closings\\_on\\_slate/](http://www.boston.com/news/local/massachusetts/articles/2010/10/01/bpl_to_eliminate_40_jobs_branch_closings_on_slate/)

Kargman v Boston Water and Sewer Commission (1984) 18 Mass.App.Ct. 51 (interpreting

Massachusetts Tort Claims Act, Gen. Law Chap 258), 52 ("In the Boston Water and Sewer

Reorganization Act of 1977, St. 1977, c. 436, effective July 18, 1977, the Legislature created the

commission as a 'body politic and corporate and political subdivision of the commonwealth'), 54

(explaining "body politic and corporate"), 557, n. 7 (attributes of "separate corporate existence") Trustees of BPL fulfills exhibits most of the attributes.

(3) Trustees of BPL enjoys capacity to sue and be sued. See, e.g., City of Boston, Boston Public Library v Professional Staff Association (2004) 61 Mass.App.Ct. 105, 115 (collective bargaining agreement), 116 ([Arbitrator's] Award directed decision to Boston Public Library, but not City of Boston), n. 1 ("Neither party seeks the termination of Ms Henry as a BPL employee") Take notice of "[n]either" (excluding the city) and a "BPL employee" (not city employee).

(4) Trustees of BPL holds assets of its own, citation in Complaint (3), and may transfer to the City. See Committee on Economic Development and Planning, Boston City Council, Dec 8,

2011 <http://meetingrecords.cityofboston.gov/sirepub/cache/2/mzk4nueqavgnsb45voi01uet/2826406292012095350917.PDF>

(A memo on "Docket #1238 Message and order authorizing the city to accept from the Trustees of the Public Library of the City of Boston the former Kirstein Building located at 20 City Hall Avenue, Ma 02108 (Ward 03, Parcel 02865000)")

(a) If Trustees of BPL had been an arm of the city, the transfer would not have been necessary.

(b) Law Department of the city did represent Trustees of BPL in this superior court, but nobody raised it as an issue (in any event, the case is not a legal precedent).

#### IV

The following two items are controlling.

(1) Comprehensive Annual Financial Report; Fiscal year ended June 30, 2011. City of Boston,

Dec 21, 2011.

[www.cityofboston.gov/Images\\_Documents/FY2011\\_CAFR\\_tcm3-29923.pdf](http://www.cityofboston.gov/Images_Documents/FY2011_CAFR_tcm3-29923.pdf)

(pages i (Dec 21, 2011) and 4 "[heading] Discretely Presented Component Units")

Page numbers are at upper right or left corner.

(2) Trustees of the Public Library of Melrose v City of Melrose (1944) 316 Mass 584, 586-587

<http://law.justia.com/cases/massachusetts/supreme-court/volumes/316/316mass584.html>

(mirror image of Trustees of BPL and Boston's Library Department)

#### V

The city argues defendants are a branch and an employee of the city. Neither is true. Lu's

unbinding fear is that if the outcome of the case turns against defendants, both would maintain

that both were misled, misrepresented faultily, and seek to upsend the final decision.

Lu doubts lawyers of BHA or BRA can represent defendants.

In a pre-emptive move, Lu moves to disqualify the city, which is a non-party, from representing defendants. For the same reason, Lu states no attorney-client privilege ever exists between the city on one hand and defendants on the other.

Plaintiff: Friedrich Lu, pro se

Signed: 

Date: June 21, 2012

Email address: x2flu@yahoo.com

Telephone number: none

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A copy of this document is served electronically on Ms Driscoll.