

SUPREME JUDICIAL COURT *AMICUS* BRIEF REQUESTS – JULY, 2019

We are writing you to inform you of two cases presently pending before the Massachusetts Supreme Judicial Court (“SJC”), of particular significance to our municipal clients. In both cases, the SJC has requested interested parties to submit *amicus* (“friend of the court”) briefs on specific topics at issue in these cases. Given the potential impacts to municipalities of the SJC’s ultimate decisions in these cases, we wanted to advise you of KP Law’s active involvement in defending important municipal rights and immunities.

In the first case, Janice Magliacane vs. City of Gardner, the City of Gardner obtained dismissal of a complaint filed against it by a private property owner, who contended that the City was negligent in its oversight of the contractor hired to operate its water system, and that as a result of this negligence, improperly treated water caused corrosion and damage to her plumbing and heating fixtures. Although the City advanced several arguments as to why the case should be dismissed, the Superior Court relied only on one ground to dismiss the case; namely, that plaintiff’s claim was barred due to her failure to make “presentment” of her negligence claim under the Massachusetts Tort Claims Act (“MTCA”), within the two year period required under G.L. c. 258, §4.

The plaintiff appealed this dismissal to the state’s Appeals Court, but prior to the Appeals Court hearing the case, the SJC transferred the case to its docket, on its own initiative. The SJC also solicited the filing of *amicus* briefs on the question of whether the MTCA applies to claims by municipal residents of injury or damage stemming from the municipality’s distribution of water to the residents, or whether, by selling and distributing water, a municipality is engaging in commerce rather than performing a government function pursuant to the MTCA.

KP Law will be submitting an *amicus* brief on behalf of the Massachusetts Water Works Association, arguing that a municipality’s provision of water to its residents is covered by the immunities and defenses provided by the MTCA. If your community wishes to join with the Association as an interested party, please contact Attorney Michele E. Randazzo (MRandazzo@k-plaw.com) for more information. As part of our “value-added” services to our clients, there will be no cost to any of our communities interested in participating in this matter.

The second case, Town of Sudbury vs. Massachusetts Bay Transportation Authority, et al, involves the Town of Sudbury’s challenge to the Massachusetts Bay Transportation Authority’s (“MBTA”) planned grant of an easement to Eversource over property that the MBTA had previously acquired as a railroad right of way for the purpose of providing mass transportation facilities for public use. Eversource intends to use this easement for a combined electric transmission utility line and paved public “rail trail.” The proposed project is anticipated to have adverse environmental and other impacts upon the Town and its residents, however. It is the Town’s

position that the MBTA's contemplated change in use from the purposes for which the right of way was originally acquired cannot be accomplished absent specific legislative authorization, in accordance with established case law and the so-called "prior public use doctrine." A judge of the Land Court dismissed the Town's complaint, and the Town appealed this dismissal.

Like the Magliacane case, the SJC transferred the case to its docket on its own initiative, prior to the case being heard by the Appeals Court. It also issued an *amicus* announcement, soliciting briefs from interested parties on the question of whether the prior public use doctrine, under which public land devoted to one public use cannot be diverted to another inconsistent public use, bars the MBTA's grant of an easement over a railroad right of way to a private company for the installation of an electric transmission line, and if not, whether the doctrine should be extended to bar diversion to an inconsistent private use.

KP Law serves as Town Counsel for the Town of Sudbury, and has represented Sudbury in this case. If you are interested in learning more about this case and its potential impacts, please contact Attorney George X. Pucci (GPucci@k-plaw.com).

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