



City of New Bedford
OFFICE OF THE CITY SOLICITOR

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Hand Delivered

September 20, 2018

George J. Leontire, Esquire
Leontire & Associates, P.C.
66 N. Second Street
New Bedford, MA 02740

RE: City of New Bedford v. ABC Disposal Service, Inc.
Bristol County Superior Court, Docket No. 1873CV00487

Dear Attorney Leontire:

Pursuant to Superior Court Rule 9A and M.R.C.P. Rule 12(c), enclosed please find the following:

1. Plaintiff/Defendant in Counterclaim City of New Bedford's Motion for Judgment on the Pleadings as to Counts 1, 2, 5, and 6 of ABC Disposal Service Inc.'s Counterclaim; and
2. Plaintiff/Defendant in Counterclaim City of New Bedford's Memorandum in Support of its Motion for Judgment on the Pleadings as to Counts 1, 2, 5, and 6 of ABC Disposal Service Inc.'s Counterclaim.
3. City of New Bedford's Rule 9A(c)(2) request for hearing.

In accord with Rule 9A, please serve this office with an original and a copy of any opposition that you wish to be filed with the Court in accord with the Rule.

Very truly yours,

Eric Jaikes
Assistant City Solicitor

EJ/amp
Encs.

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 1873CV00487

CITY OF NEW BEDFORD,)
Plaintiff)
VS.)
ABC DISPOSAL SERVICE, INC.)
Defendant)

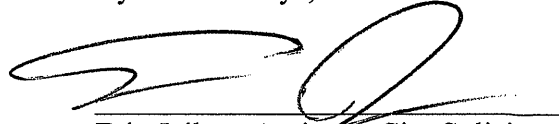
**PLAINTIFF/DEFENDANT IN COUNTERCLAIM CITY OF NEW BEDFORD'S
MOTION FOR JUDGMENT ON THE PLEADINGS AS TO COUNTS 1, 2, 5, AND 6
OF ABC DISPOSAL SERVICE INC.'S COUNTERCLAIM**

Now comes the Plaintiff/Defendant in Counterclaim City of New Bedford and moves this honorable Court for an order granting judgment on counts 1, 2, 5, and 6 of ABC Disposal Service Inc.'s Counterclaim in favor of the City of New Bedford and against ABC Disposal Service, Inc. In support thereof, the City states that the Counterclaim in counts 1, 2, 5, and 6 raise no issue of fact and that the City is entitled to judgment on counts 1, 2, 5, and 6 as a matter of law.

In support thereof, the City relies upon its memorandum of law submitted herewith.

Respectfully submitted,
City of New Bedford

By its Attorneys,



Eric Jaikes, Assistant City Solicitor
BBO# 543709B

Mikaela A. McDermott, City Solicitor
BBO# 639796

CITY OF NEW BEDFORD

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Mikaela.McDermott@newbedford-ma.gov

DATED: September 20, 2018

CERTIFICATE OF SERVICE

I, Eric Jaikes, Assistant City Solicitor, counsel for the Plaintiff, City of New Bedford, hereby certify that I have this day served a copy of foregoing PLEADING upon the Defendant ABC Disposal Service, Inc. in hand to the attorney of record:

George J. Leontire, Esquire
Leontire & Associates, P.C.
66 N. Second Street
New Bedford, MA 02740



Eric Jaikes
Assistant City Solicitor

DATED: September 20 2018

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS
DEPARTMENT

SUPERIOR COURT

CIVIL ACTION NO. 1873CV00487

CITY OF NEW BEDFORD,)
) Plaintiff)
))
VS.))
))
ABC DISPOSAL SERVICE, INC.)
) Defendant)

**MEMORANDUM OF PLAINTIFF AND DEFENDANT IN
COUNTERCLAIM CITY OF NEW BEDFORD IN SUPPORT OF ITS
MOTION FOR JUDGMENT ON THE PLEADINGS
AS TO COUNTS 1, 2, 5, AND 6 OF
ABC DISPOSAL SERVICE INC.'S COUNTERCLAIM**

The City of New Bedford (“City”), the Plaintiff and Defendant in Counterclaim in this case, submits this memorandum in support of its motion for judgment on the pleadings pursuant to Massachusetts Rule of Civil Procedure 12(c) with respect to the first, second, fifth, and sixth counts brought by Defendant and Plaintiff in Counterclaim ABC Disposal Service, Inc. (“ABC”).

I. INTRODUCTION

ABC and the City entered into a contract (“contract”) on or about October 1, 2013 titled “Agreement for Solid Waste Services.” In the contract, ABC

agreed to collect and dispose of recyclables and solid waste for the City for a fixed monthly fee. Since last fall, ABC has demanded that the City pay more money for the recycling portion of the contract. ABC says that it is seeking more money because China, which was the world's largest importer of recyclables, adopted a new policy that bans certain types of recyclables and requires a lower amount of contamination than was previously acceptable in waste containers and individual bales. ABC asserts that the change in China's policy triggered a global market disruption that dramatically increased the costs associated with the recycling portion of its contract.

On April 12, 2018, ABC sent the City a letter stating that unless the City paid it additional money, it might not be financially able to continue collecting the City's recyclables as of July 1, 2018. Faced with an imminent public health hazard, the City filed suit against ABC on May 21, 2018, seeking a preliminary injunction ordering ABC to continue collecting recyclables. The City also sought a declaratory judgment seeking specific performance of the contract. The City included a copy of the contract as Exhibit A to its complaint.

Within minutes of being served with the City's complaint, ABC informed the City that it would continue to collect its recyclables on July 1, 2018. On June 18, 2018, the Court (Buckley, J.) denied the City's request for a preliminary injunction, but the City's action for a declaratory judgment remains.

ABC filed a counterclaim against the City on August 8, 2018 that contains six counts. The City answered ABC's counterclaim on August 28, 2018.

The City moves for judgment on the pleadings pursuant to Mass. R. Civ. P. 12(c) on all of the counts in ABC's counterclaim, except the third and fourth ones.

II. LEGAL STANDARD

Massachusetts Rule of Civil Procedure 12(c) provides that “[a]fter the pleadings are closed but within such time as not to delay trial, any party may move for judgment on the pleadings.” A defendant’s motion for judgment on the pleadings is “actually a motion to dismiss [that] argues that the complaint fails to state a claim upon which relief can be granted” and is therefore governed by the same standards as a motion to dismiss under Massachusetts Rule of Civil Procedure 12(b)(6). Welch v. Sudbury Youth Soccer Ass’n, Inc., 453 Mass. 352, 353-54 (2009).

In evaluating whether the complaint should be dismissed under Mass. R. Civ. P. 12(b)(6) or 12(c), courts consider the allegations in the complaint, “although matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint, also may be taken into account.” Schaer v. Brandeis Univ., 432 Mass. 474, 477 (2000)(internal citation omitted). Courts must accept factual allegations as true, but they “do not accept legal conclusions cast in the form of factual allegations.” Id. “Factual allegations must be enough to raise a right to relief above the speculative level . . . [based] on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” Iannachino v. Ford Motor Co., 451 Mass. 623, 636 (2008), quoting Bell Atl. Corp. v. Twombly, 127 S.Ct. 1955, 1964-65 (2007). “What is required at the

pleading stage are factual allegations plausibly suggesting (not merely consistent with) an entitlement to relief . . .” Id.

A judgment on the pleadings is available in the declaratory judgment context, if there are no material issues of fact left to be determined. See Noe v. Sex Offender Registry Board, 480 Mass. 195, 202 (2018)(“A court may rule on a motion for judgment on the pleadings seeking declarations of the parties’ rights if there are no material issues of fact left to be determined.”).

III. ARGUMENT

The City moves for judgment on the pleadings with respect to the first, second, fifth, and sixth counts in ABC’s counterclaim for the overarching reason that it is clear from the plain language of the contract that, as a matter of law, the counts do not state claims upon which relief can be granted, even assuming the facts alleged by ABC are all true. Because the contract was attached to the complaint, it is part of the pleadings and may be considered on a motion for judgment on the pleadings. Mass. R. Civ. P. 10(c)(“A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes”); Marram v. Kobrick Offshore Fund, Ltd., 442 Mass. 43, 63 n.4 (2004).

The interpretation of a contract is a matter of law, as is the question of whether a contract is ambiguous. Eigerman v. Putnam Investments, Inc. 450 Mass. 281, 287 (2007). Where, as here, it is clear from the plain language of the contract that a party has no claim, it is appropriate for a court to grant a motion for judgment on the pleadings and not to order fact discovery. Flomenbaum v. Com.,

451 Mass. 740, 751-52 (2008)(granting motion to dismiss contract claim because plain language of contract made clear that Commonwealth could terminate chief medical examiner before completion of full five-year term); Eigerman, 450 Mass at 287, 290 (affirming dismissal of breach of contract claim where there was no ambiguity in the contract).

A. There has been no “Change in Law” under the contract that would require the City to engage in a cost analysis.

ABC’s second count is for breach of contract, and the alleged breach by the City is its purported failure to engage in a cost analysis pursuant to Section 14.02 of the contract. Countercl. ¶¶ 75-82. The City should be granted a judgment on the pleadings on this count because, as a matter of law, the City had no contractual obligation to engage in a Section 14.02 cost analysis.

Section 14.02, which is titled “Change in Law,” states in relevant part that “a Change in Law, if any, during the Term of the Agreement shall be subject to thorough cost analysis relative to the impact on additive or deductive changes to the original Fixed Fee.” ABC alleges that on October 20, 2017, it invoked Section 14.02 “in recognition of the announcement of China’s National Sword policies,” Countercl. ¶ 78, and that since then, “New Bedford has failed to negotiate in good faith within the meaning of Section 14.02 of the Agreement.” Countercl. ¶ 81. ABC further alleges that “[a]s a result of New Bedford’s breach of Section 14.02 of the Agreement, ABC has incurred additional costs under the Agreement and legal fees.” Countercl. ¶ 82.

ABC's second count fails to state a claim upon which relief can be granted because the plain language of the contract establishes that, even assuming ABC's allegations are true, there was no breach as a matter of law. The only reason ABC alleges that the City should engage in a cost analysis under section 14.02 is because of the China National Sword policy. However, a cost analysis is only required under section 14.02 if there is a "Change in Law," and "Change in Law" is defined in Section 3.02 of the contract in relevant part as "a substantive change in the *federal, State or local* laws, rules, regulations, policies, requirements or ordinances after the Contract Date." It is incontrovertible that the China Sword policy is not a change in the federal, State or local laws that would regulate ABC. Rather, it is a change in policy of a foreign nation that affects the recyclables market.

ABC seeks to have the court ignore the plain, unambiguous language of the contract and to have a change in a foreign nation's policy serve as the basis of its breach of contract claim under section 14.02. This ABC cannot do, and the City should be granted judgment on the pleadings with respect to ABC's second count in its counterclaim.

B. No Force Majeure event occurred under the contract.

ABC's sixth count seeks a declaratory judgment as to "whether China's National Sword policies constitute a force majeure event that excuses its performance." Countercl. ¶ 103. Part (B) of the "Wherefore" clause in ABC's counterclaim requests that the Court "[o]rder that ABC Disposal may terminate recycling services to New Bedford because China's National Sword policies

constitute . . . force majeure within the meaning of the Agreement.” Countercl. ¶1.

24. As explained below, the City seeks a judgment on the pleadings that the contract’s force majeure provision does not, as a matter of law, excuse ABC’s performance.

Section 14.01 of the contract, titled “Force Majeure,” states in relevant part that “[e]ach party shall be excused, subject to this Section, for failure or delay in performing its obligations under this Agreement if such failure or delay is caused solely by a Force Majeure event.” Section 3.02 of the contract in turn defines “Force Majeure” as “an act of God, hurricane, tornadoes, epidemic, landslide, lightning, earthquake, fire or explosion, flood or similar occurrence, an act of public enemy, war, blockade, insurrection, riot or civil disturbance, sabotage, or similar occurrence beyond the Contractor’s control.”

Whether a force majeure event has occurred is a matter of contract interpretation, and “it is a well-established rule of contract law that force majeure clauses be narrowly construed.” Great Lakes Gas Transmission Limited Partnership v. Essar Steel Minnesota, LLC, 871 F.Supp.2d 843, 854 (D. Minn. 2012), citing Route 6 Outparcels, LLC v. Ruby Tuesday, Inc., 910 N.Y.S.2d 408 (Table)(N.Y. Sup. Ct. May 12, 2010). See also Kyocera Corp. v. Hemlock Semiconductor, LLC, 313 Mich. App. 437, 447 (Mich. Ct. App. 2015)(“Force majeure clauses are typically narrowly construed, such that the clause ‘will generally only excuse a party’s nonperformance if the event that caused the party’s nonperformance is specifically identified.’”), citing In re Cablevision Consumer Litigation, 864 F.Supp.2d 258, 264 (E.D.N.Y. 2012).

Courts routinely hold market fluctuations, including those induced by governmental policy, as being outside the scope of a force majeure provision unless explicitly mentioned. See In re Old Carco, 452 B.R. 100, 119 (Bankr. S.D.N.Y. 2011) (“The requirement that the event must be expressly identified in the force majeure clause in order to excuse performance is especially true where the event relied upon to avoid performance is a market fluctuation. Therefore, while courts will not presume that a change in economic conditions constitutes an excuse for nonperformance, this does not preclude the parties from negotiation for such an excuse.”) (internal citations and quotations omitted); Seaboard Lumber Co. v. U.S., 41 Fed. Cl. 401, 415 (Fed. Cl. 1998) (“federal courts have consistently held that market-changing governmental policies should not be considered acts of government for force majeure clause purposes”).

In this case, the implementation of China’s National Sword policy does not, as a matter of law, constitute a force majeure event under the contract, even assuming all of the facts in ABC’s counterclaim to be true. ABC alleges that the China National Sword policy — a change in policy of a foreign nation — has caused global disruption in the recycling market. Countercl. ¶¶ 27-48. But Section 3.02’s definition of a Force Majeure event does not specifically include changes in foreign policy, law, or regulation, nor does it include market shifts or disruptions.

Moreover, changes in foreign policy, law or regulation and market disruptions do not fall within the catchall provision of the Force Majeure definition (i.e., “similar occurrence[s] beyond the Contractor’s control”). Catchall

provisions in force majeure definitions are to be interpreted under the canon of construction *ejusdem generis*, which dictates that where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words. See Banushi v. Dorfman, 438 Mass. 242, 244 (2002) (defining *ejusdem generis*); Seitz v. Mark-O-Lite Sign Contractors, Inc., 510 A.2d 319, 321 (N.J. Super. Ct. Law Div. 1986) (applying *ejusdem generis* to catchall clause in force majeure provision).

Here, the imposition of the China National Sword policy is fundamentally different from the specific types of occurrences listed in the force majeure definition. The occurrences in the force majeure definition are all fall within the broad categories of natural disasters or physically violent acts that make performance impossible. The change in Chinese policy and the resulting market impact do not fit within either of these categories and, as such, are not included within the catchall provision's purview.

Since China's National Sword policy and any resulting global disruption in the recyclables market do not, as a matter of law, fall within the contract's definition of force majeure, no force majeure event has occurred. The City therefore should be granted judgment on the pleadings that the contract's force majeure provision does not excuse ABC's performance under the contract, notwithstanding the effects of China's National Sword policy on its bottom line.

C. The contractual term “Uncontrollable Circumstance” does not operate to excuse ABC’s performance under the contract.

ABC’s fifth count, titled “G.L. c. 231A – Declaratory Judgment re: Uncontrollable Circumstance,” seeks a declaratory judgment with respect to whether ABC “will be excused from performance because any failure to perform does not constitute an event of default due to the unforeseeable and uncontrollable disruption of the global recycling market caused by China’s National Sword policies.” Countercl. ¶ 98. Paragraph (B) of ABC’s “Wherefore” clause asks the Court to “[o]rder that ABC disposal may terminate recycling services to New Bedford because China’s National Sword policies constitute an uncontrollable circumstance . . . within the meaning of the Agreement.” The City seeks a judgment on the pleadings that, as a matter of law, the contractual term “Uncontrollable Circumstance” does not excuse ABC’s performance.

Contrary to ABC’s assertion in paragraph 96 of the Counterclaim that “[t]he term ‘Uncontrollable Circumstance’ is defined under the Agreement,” the contract does not define “Uncontrollable Circumstance.” Rather, “Uncontrollable Circumstance” is used only once in the contract, in Section 12.02, titled “Contractor Events of Default.” That section states, “[u]nless excused by an *Uncontrollable Circumstance* or a waiver in writing, an event of default by the Contractor (‘the Contractor Event of Default’) shall occur . . .” (Emphasis added). Section 12.02 then goes on to list the specific events that constitute contractor default.

ABC has seized upon the term “Uncontrollable Circumstance” to argue that because the China National Policy was an uncontrollable circumstance, it should be excused from the contract. This argument is unsupportable as a matter of established contract law because it would effectively read the force majeure clause and definition out of the contract.

As described above, Section 14.01, titled “Force Majeure,” provides in relevant part that each party shall be excused for failure or delay in performing its obligations under the contract “if such failure or delay is caused solely by a Force Majeure event.” Section 3.02 narrowly defines “Force Majeure” as “an act of God, hurricanes, tornadoes, epidemic, landslide, lightning, earthquake, fire or explosion, flood or similar occurrence, an act of public enemy, war, blockade, insurrection, riot or civil disturbance, sabotage, *or similar occurrence beyond the Contractor’s control.*” (Emphasis added).

If, as ABC suggests, any “Uncontrollable Circumstance” excuses ABC’s performance, then the force majeure clause and definition, which encompass only very specific uncontrollable circumstances, would have no effect. Under ABC’s interpretation of the contract, a party seeking to be excused from performance would not be limited by the language in the force majeure clause and definition, but rather could avoid performance if any uncontrollable circumstance — however large or small — affected the contract, regardless of whether performance was still possible. Under ABC’s interpretation, it could be excused from performance if any of its expenses increased, regardless of whether it could still perform.

ABC's interpretation of the contract is incorrect as a matter of law. It is a fundamental principle of contract law that contracts should be construed "as a whole, to give reasonable effect to each of its provisions." James B. Nutter & Co., v. Estate of Murphy, 478 Mass. 664, 669 (2018)(internal citation omitted); King Features Syndicate, Inc. v. Cape Cod Broadcasting Co., Inc., 317 Mass. 652, 654 ("The contract is to be interpreted as a whole. If possible, reasonable effect must be given to all its provisions.")(internal citations omitted).

The obvious way to give every term of the contract meaning is to read the term "Uncontrollable Circumstance" as referring to, and limited by, the force majeure clause and definition. The section in which the term "Uncontrollable Circumstance" appears, section 12.02 (Contractor Events of Default), does not independently operate to excuse the contractor's default, as ABC suggests. Rather, Section 12.02 establishes the circumstances in which the contractor does default but indicates that such circumstances do not constitute default if they are "excused by an Uncontrollable Circumstance . . ." The section that legally operates to excuse contractor performance is section 14.01, the force majeure section. The entire contract can and must be harmonized by interpreting the term "Uncontrollable Circumstance" in section 12.02 as being circumscribed by the specific uncontrollable circumstances listed in section 3.02's definition of force majeure.

The language in the catchall provision in the force majeure provision – "or other similar occurrence beyond the Contractor's control" – further supports this position. This language indicates that each of the specific items listed in the force

majeure definition is an occurrence “beyond the Contractor’s control” or, in other words, an Uncontrollable Circumstance. The fact that the force majeure catchall provision contains language so similar to the term “Uncontrollable Circumstance” buttresses the idea that “Uncontrollable Circumstance” must be read in the context of, and limited by, the force majeure provision and definition.

ABC will likely argue that the City’s position is wrong and that, at the very least, the contract is ambiguous and that discovery should be granted. But whether a contract is ambiguous is a matter of law, Eigerman 450 Mass. at 287, and “an ambiguity is not created simply because a controversy exists between the parties, each favoring an interpretation contrary to the other.” Citation Ins. Co. v. Gomez, 426 Mass. 379, 380 (1998)(internal citation omitted). “A term is ambiguous only if it susceptible of more than one meaning and reasonably intelligent persons would differ as to which meaning is the proper one.” *Id.* Here, reasonably intelligent people could not differ as to the meaning and scope of the term “Uncontrollable Circumstance.” The only way to interpret it that makes sense of the entire contract is to limit it by the force majeure clause and definition.

Because, as a matter of straightforward contract interpretation, the term “Uncontrollable Circumstance” in section 12.02 does not operate to excuse ABC’s performance, the City should be granted judgment on the pleadings on ABC’s fifth count.

D. ABC has failed to state a breach of contract claim with respect to purportedly unacceptable recyclable set-outs.

In the first count of its counterclaim, ABC alleges that “New Bedford has breached Section 5.01 of the Agreement by failing to keep the residents of the City of New Bedford from placing contaminants in their recyclables bins.” Countercl. ¶ 72. ABC alleges that, “[a]s a result of New Bedford’s inaction, ABC . . . has been forced to accept and remove Unacceptable Recyclable Set-outs,” Countercl. ¶ 73, and that “[a]s a result of New Bedford’s breach of Section 5.01 of the Agreement, ABC has incurred additional costs under the Agreement and legal fees.” Countercl. ¶ 74.

ABC’s first count fails to state a claim upon which relief can be granted because a close examination of the contract reveals that, even assuming ABC’s factual allegations to be true, there was no breach by the City as a matter of law. Therefore, ABC cannot prove an essential element of its breach of contract claim. Singarella v. City of Boston, 342 Mass. 385, 387 (1961)(element of breach of contract claim is that defendant’s breach has prevented plaintiff from performing).

ABC relies on Section 5.01 of the contract to support the breach of contract action in its first count, but Section 5.01 does not establish any obligation whatsoever on the part of the City “to keep the residents of the City of New Bedford from placing contaminants in their recyclables bins,” Countercl. ¶ 72. The second sentence in Section 5.01 states, “With respect to . . .Unacceptable Recyclables Set-outs . . . the Contractor shall work with the City to develop and implement an educational program and shall provide the City with the

information needed to enforce applicable ordinances and regulations.” Subsection (d) of section 5.01 states in relevant part that “In the event of an . . . Unacceptable Recyclables Set-out, . . . the Contractor *shall* promptly notify the Director and *shall* affix a sticker to the . . . Unacceptable Recyclables Set-out . . . advising the Customer of the reasons for the unacceptable set-out.” (Emphasis added).

Reading these sentences together, Section 5.01 envisions a situation where (1) ABC and the City work together to educate residents about recyclables; (2) the City has the right – but not the duty – to engage in enforcement; and (3) ABC has the duty to reject unacceptable recyclables and to inform the City of such rejections.

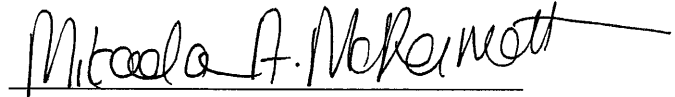
ABC’s claim that the City had an obligation to “keep the residents of the City of New Bedford from placing contaminants in their recyclables bins” is therefore wholly unsupported by the plain language of the contract, and indeed, ABC cites no specific language establishing this purported duty. Since ABC cannot, as matter of law, prove that the City breached the contract with respect to unacceptable recyclables set-outs, the City should be granted judgment on the pleadings with respect to ABC’s first count.

CONCLUSION

For the above stated reasons the City respectfully requests that the Court grant its motion for judgment on the pleadings with respect to ABC’s first, second, fifth, and sixth counts in its Counterclaim.

Respectfully submitted,
Plaintiff City of New Bedford

By its Attorneys,

A handwritten signature in black ink that reads "Mikaela A. McDermott". The signature is written in a cursive style and is positioned above a horizontal line.

Eric Jaikes, Assistant City Solicitor

BBO # 543709B

Mikaela A. McDermott, City Solicitor

BBO#639796

CITY OF NEW BEDFORD

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Tel. 508-979-1460

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Mikaela.McDermott@newbedford-ma.gov

DATED: September 20, 2018

CERTIFICATE OF SERVICE

I, Eric Jaikes, Assistant City Solicitor, counsel for the Plaintiff, City of New Bedford, hereby certify that I have this day served a copy of foregoing PLEADING upon the Defendant ABC Disposal Service, Inc. in hand to the attorney of record:

George J. Leontire, Esquire
Leontire & Associates, P.C.
66 N. Second Street
New Bedford, MA 02740



Eric Jaikes
Assistant City Solicitor

DATED: September 20, 2018

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS

SUPERIOR COURT DEPT.
DOCKET NO. 1873CV00487

CITY OF NEW BEDFORD,)
Plaintiff)

vs.)

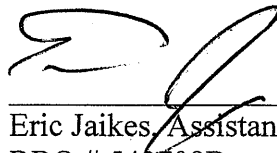
ABC DISPOSAL SERVICE, INC.,)
Defendant)

**PLAINTIFF CITY OF NEW BEDFORD'S SUPERIOR COURT
RULE 9A (c)(2) REQUEST FOR HEARING**

Now comes the Plaintiff City of New Bedford and requests that pursuant to the provisions of Superior Court Rule 9A (c)(2) that it be provided with a hearing relative to the City of New Bedford's Motion for Judgment on the Pleadings as to Counts 1, 2, 5 and 6 of ABC Disposal Service, Inc.'s Counterclaim. In support thereof, the City of New Bedford states that Rule 12 motions are subject to a presumptive right to a hearing pursuant to Superior Court Rule 9A (c)(3).

Respectfully submitted,
Plaintiff City of New Bedford

By its Attorneys,



Eric Jaikes, Assistant City Solicitor
BBO # 543709B
Mikaela A. McDermott, City Solicitor
BBO#639796
CITY OF NEW BEDFORD
Office of the City Solicitor

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Mikaela.McDermott@newbedford-ma.gov

DATED: September 20, 2018

CERTIFICATE OF SERVICE

I, Eric Jaikes, counsel for the Plaintiff, City of New Bedford, hereby certify that I have this day served the foregoing PLEADING, upon counsel of record as follows:

George J. Leontire, Esquire
Leontire & Associates, P.C.
66 N. Second Street
New Bedford, MA 02740

A handwritten signature in black ink, appearing to read 'Eric Jaikes', is written over a horizontal line.

Eric Jaikes
Assistant City Solicitor

DATED: September 20, 2018