

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

(FILED: May 17, 2013)

GIRARD BOUCHARD, in his capacity :
as President of the Board of Directors :
of the Central Coventry Fire District :
v. :
CENTRAL COVENTRY FIRE DISTRICT :

C.A. No. KB-2012-1150

DECISION

STERN, J. This matter is currently before this Court on an Emergency Petition for Authorization to Conduct Board Election for the Central Coventry Fire District (the "CCFD") which was filed by the Special Master Richard Land ("the Special Master") on May 9, 2013. The Town of Coventry (the "Town") filed a response to this Petition and other requests by the Special Master on May 10, 2013, stating that it took no position on the instant Petition. This Court entertained oral arguments on this Petition on May 10, 2013 and now issues the following Decision.

I

Background

On October 1, 2012, an annual meeting by the CCFD Board was held, as required by the CCFD's Charter. At the meeting a \$6,500,000 budget was proposed to the taxpayers for the 2012-2013 Fiscal Year. After much public comment and debate, including requests for financial information, a motion was made from the floor to table the budget and recess the meeting for a period of sixty (60) days. After the motion was "seconded" from the floor, the taxpayers at the annual meeting voted to pass the motion. As a result, no taxes were levied. No tax bills were

sent to the residents of the fire district for the 2012-2013 Fiscal Year, and no new¹ tax revenue was received.

On or about October 16, 2012, the Board of Directors of the CCFD (“the Board”) voted to file an application before the Superior Court to place the CCFD into Receivership. After conferencing this matter—and based on the representations that: (i) there was less than \$1000 cash in the bank, (ii) the employees had not received pay in more than three weeks, (iii) Centerville Bank had closed the CCFD credit line, and (iv) the debts of the CCFD were far in excess of its assets—this Court appointed Richard Land as the Temporary Special Master on October 16, 2012. Subsequently, on November 13, 2012, Temporary Special Master Land was appointed as Permanent Special Master. The Special Master was authorized by this Court to take possession and charge of all the assets, effects, property, and business of the CCFD. A stay was also ordered by this Court that prevented new lawsuits, the continuation of existing lawsuits and collection activities brought against the CCFD by creditors and others.

During the subsequent two months, the Special Master and his staff conducted an investigation and attempted to reconstruct the financial records of the CCFD, which were in disarray at the time of the filing of the petition requesting receivership. During his investigation, the Special Master discovered serious discrepancies between the fire taxes purportedly owed to the CCFD and the amounts collected. These discrepancies were a result of several factors, including the failure of the CCFD to pursue and collect unpaid taxes, errors in the fire tax bills issued, including those issued to a large commercial taxpayer of more than \$800,000² per year.

In Fiscal Year 2010-2011, the CCFD spent the entire tax levy—in excess of 5.2 million dollars—on operating and capital expenses; however, more than \$800,000 was not received due

¹ Some monies were received from the prior Fiscal Year.

² This mistake represents more than fifteen percent (15%) of the annual budget.

to the aforementioned taxing error as well as a myriad of other financial errors. Although the actual tax receipts were more than \$800,000 less than budget and that shortfall was discussed by the Board at the May 11, 2011 meeting, no investigation or due diligence was undertaken by the Board to determine the reason for this large disparity. Rather, the Board made a decision to make the same revenue assumption for the next Fiscal Year and request the same tax rate for approval at the 2011-2012 Annual Meeting by sending out the exact same tax bills as the prior Fiscal Year. This resulted in a structural deficit of more than \$1,600,000 at the end of the 2011-2012 Fiscal Year based upon tax errors alone. There is no evidence in the Board's minutes that this structural deficit was disclosed to the taxpayers of the CCFD.

During this period the CCFD, through its Board, also increased the expenditures of the fire district. This included: (i) hiring additional firefighters, (ii) leasing a new ladder truck and; (iii) entering into a new collective bargaining agreement with the firefighters that increased the firefighter's rate of pay and other benefits.

Without tax proceeds and other revenue available, the Board resorted to various approaches in order to continue paying the CCFD's bills. These actions included: (i) borrowing funds from the Centerville Bank through a credit line to pay operating expenses, (ii) failing to remit employee contributions withheld from their pay to the Municipal Employee Retirement System and, instead, using those funds to pay operating expenses, and (iii) failing to pay bills as they became due, including health insurance premiums for the employees.

The Special Master's investigation also revealed that the CCFD assessed a different and higher tax rate to owners of commercial property than the tax rate charged to owners of residential property.³ The Special Master has taken the position during the pendency of the

³ This resulted in artificially low tax bills to residential taxpayers.

Special Mastership that this “two-tier tax rate” is not permissible under the CCFD’s Charter and was expressly disallowed by the Superior Court in Kirkbrae Glen, Inc. v. Albion Fire Dist., 2011 WL 3153303.⁴

A

The Special Meeting and Vote

The Special Master then prepared a new budget to be presented to the taxpayers at a Special Meeting. In order to reduce the expenses of the CCFD, the Special Master entered into concession bargaining with the union and made other adjustments to operations. As a result, the expenses of the CCFD were reduced by annualized savings of approximately \$500,000. Based upon those adjustments, the Special Master, on February 13, 2013, presented a total levy to the taxpayers of \$5,400,000. This levy was represented by a single-tier rate of \$3.15 per \$1000 assessed value for all taxpayers of the CCFD.

In the subsequent vote, the taxpayers rejected the levy for the current (2012-2013) Fiscal Year by a vote of 204 in favor, and 228 against.

B

Court Hearings on February 14-15, 2013

After the taxpayers of the CCFD rejected the levy, the Special Master provided a status report to this Court. Based upon the current and anticipated receipts—and without the authorization of a levy by the taxpayers—the Special Master reported that the CCFD would run out of money within two weeks and recommended that the fire district be liquidated. After

⁴ The Kirkbrae Glen Court held that: “The statute at issue in this matter plainly empowers cities or towns to create tax classification plans. Notably, § 44-5-11.8 excludes any mention of a fire district. As this statute is unambiguous and expresses a clear and sensible meaning, “there is no room for statutory extension” to add fire districts to the statute.” Id.

hearing extensive comment and testimony, this Court adjourned until the following day to allow the parties the opportunity to present this Court with the public safety consequences of an immediate liquidation, to weigh in on the extent of this Court's equitable powers, and to give interested parties the opportunity to continue discussions and provide alternatives.

The following day, at a hearing before this Court, the President of the Town of Coventry's Town Council, the Chief of the CCFD, the President of the firefighters' union, and a CCFD taxpayer, Mr. John Asselone, asked to be heard in open court. These parties reported that they had met and had formulated a pathway that provides for additional concessions by the firefighter's union, further operational changes—including the closure of one fire station—and the Town assuming certain tax collection activities. They reported that these changes would result in a decrease in the levy required from the CCFD taxpayers for the current Fiscal Year as well as a significant decrease in the levy for future Fiscal Years. Significantly, the tax rate required to effectuate this plan would be lower than had been requested of the taxpayers at the April 13, 2013 Special Meeting. A request was then made, supported by the Special Master, to allow another Special Meeting and vote. Several individuals expressed concerns at the hearing that, if the current Board members were to remain in office, it would be an impediment to the passage of a new budget. Also, concerns were expressed based upon experiences during the prior vote and it was requested that any new vote authorized by this Court be supervised by the Town of Coventry Board of Canvassers.

After hearing from interested parties and receiving no further opposition to the proposed Special Meeting—other than that all the details of the reductions were not available at the time of the hearing—this Court authorized another vote to take place. This Court's authorization was contingent on the finalization of a budget to include a reduced tax levy, incorporating the

operational and personnel changes, and the agreement of the Town of Coventry Board of Canvassers to supervise the election. This Court further requested that the current Board members resign.

In order to provide funding during the interim period until another Special Meeting, this Court further ordered that the tax bills for the first, second, and third quarters of the current Fiscal Year be paid when due at the same rate and amount as authorized by the taxpayers for the 2009-2010 Fiscal Year and continued without change for the 2011-2012 Fiscal Year. The Court further ordered that, in addition to proceeding towards another Special Meeting and vote, the Special Master formulate a liquidation plan to be implemented in the event that the voters were to reject the tax levy proposed at the Special Meeting.

C

The Second Vote and Subsequent Court Hearings

The second vote was held on March 26, 2013. More than 1800 taxpayers voted and those taxpayers overwhelmingly rejected the tax levy of \$5,149,000 with a tax rate of \$2.99 per \$1000 assessed value by a vote of 484 in favor, and 1337 opposed.

Following this vote, this Court held an emergency hearing on March 29, 2013. After receiving a report by the Special Master, this Court found that neither did the fire district have the funds to operate for more than seven days, nor did this Court have the equitable or legal authority to order the additional taxes to be paid. As a result, this Court authorized the liquidation of the CCFD to take place the following week.

Subsequent to that hearing, the Town of Coventry's Town Council authorized a loan, with conditions, for up to a total of \$300,000 for the continuation of CCFD operations. This loan, in theory, would have allowed the CCFD to operate for approximately three weeks. The

loan would have allowed time for a contingency plan to be developed, and/or time for the General Assembly to pass legislation to address the issue. Over the strenuous objections of certain interested parties, this Court approved the CCFD's acceptance of the loan which allowed it to continue limited operations.

During the interim period, the General Assembly passed an amendment to the CCFD Charter. The Governor allowed this bill to become law without his signature. The bill became law effective May 10, 2013. The law provides the authority for the CCFD to levy taxes, without prior voter approval, for the current Fiscal Year. The levy amount was limited to the amount previously authorized by the voters for the 2009-2010 Fiscal Year. This new law, an amendment to the CCFD Charter, effectively enables the CCFD to continue limited operations until September 1, 2013, or until the tax receipts are exhausted.

The new law does not alter the other provisions of the CCFD Charter. One such unaltered provision worth noting is the provision of the Charter that provides for a required annual meeting and vote of the taxpayers. Therefore, barring any additional legislation that changes the CCFD Charter, an annual meeting and vote must be held during the late summer of 2013. Thus, the determination of whether to pass a tax levy for the 2013-2014 Fiscal Year, or to liquidate the fire district, will ultimately need to be made by the CCFD taxpayers at that meeting.

II

Standard of Review

This Court is a court of general equitable jurisdiction. R.I. Gen. Laws 1956, § 8-2-13. This jurisdiction is not limitless; however, as a matter of fundamental judicial power, the jurisdiction to hear and confront the merits of any case wherein the power of determination has not been specifically conferred upon another tribunal. See *id.*; La Petite Auberge, Inc. v. R.I.

Comm'n for Human Rights, 419 A.2d 274 (1980). Equity is an elusive concept, which has been defined as “a systematic appeal for relief from a cramped administration of defective laws to the disciplined conscience of a competent magistrate, applying to the special circumstances of defined and limited classes of civil cases the principles of natural justice, controlled in a measure as well by considerations of public policy as by established precedent, and by positive provisions of law.” Charles E. Phelps, Juridical Equity, § 143 (1894). The exercise of equity must not lead to unpredictable decisions, because, after all, equity shall not be determined by the length of the Chancellor’s foot.⁵ Due to the nature of the case at bar, this Court must once again venture into uncharted territory and consider exercising its equitable powers.

III

The Instant Petition for Authorization to Conduct Board Election

As the Charter provides, there must be an annual meeting and vote. The issue raised in the Petition by the Special Master is whether or not the Court should authorize a Special Meeting to fill the vacancies created by the resignation of the Board’s membership.

Currently, the power and authority of the CCFD over all matters, is vested with this Court. This Court has, as outlined in several orders issued, allowed the Special Master to operate, control, and be the fiduciary of the CCFD. For the first several months of this Special

⁵ John Selden, 17th century barrister, critiqued the concept of equity as “a roguish thing.” Thomas E. Holland, The Elements of Jurisprudence 74 (13th ed. 1924) (quoting John Selden, Table Talk (1689)). He further stated:

“For law we have a measure, know what to trust to: equity is according to the conscience of him that is Chancellor, and as that is larger or narrower, so is equity. ‘Tis all one as if they should make the standard for the measure, a Chancellor’s foot. What an uncertain measure would this be. Once Chancellor has a long foot, another a short foot, a third an indifferent foot; ‘tis the same thing in the Chancellor’s conscience.”

Mastership, the Board continued to serve in an advisory capacity only. This changed when the Board members resigned at the Court's request.

The Court entertained oral argument and extensive comment at the May 10, 2013 hearing. While all of the interested parties supported the creation of a new Board in some form, there was less consensus about the following issues: (i) whether the Board of Directors should be elected or appointed, (ii) the process under which the election or appointment would take place, (iii) the term the Board members would serve, and (iv) whether the Board would be delegated authority by the Court or if it would be advisory to the Special Master. As such, this Court must discuss each of these issues, in turn.

A

Should a new Board of Directors be constituted?

The merger that resulted in the creation of the CFFD was authorized in 2006 by the General Assembly. That merger was contingent upon the approval of the voters of the four fire districts proposed to be merged into the CCFD. The Charter provides for the actions of the CCFD to take place through its Board. In fact, the only reason this Court, through the Special Master, controls the affairs of this fire district is because the prior Board requested that this Court intervene due to its inability to manage its own financial affairs. Regardless of whether the Special Master retains all powers and the Board remains advisory or not, this Court finds that it is in the best interest of the Special Mastership estate, the taxpayers of the CCFD and also in the public interest to constitute a new Board to fill the vacancies created by the resignation of the Board's membership.

B

Should the Board be elected or appointed?

While there is general agreement that a new Board should be constituted, there is less agreement about whether the Board should be elected or appointed by this Court. While it is possible to select representatives of the taxpayers through either process, this Court finds that it is crucial that the Board have the direct *imprimatur* of the taxpayers of the CCFD. This can only occur through a vote of the taxpayers, whereby, after considering a diverse group of candidates with differing points of view, the voters can determine for themselves which of the candidates they believe will represent their interests as members of the Board. Although this process will take more time and may involve greater expense than an appointment of the Board by the Court, the need to have the Board be true representatives of the taxpayers outweighs both of these factors.

C

By what process should the election occur?

In accordance with the Charter, vacancies on the Board may be filled by election at a Special Meeting of the district. The Special Master, as the fiduciary of the CCFD has requested that a Special Meeting be held to elect directors to fill the vacancies created by the resignation of the prior Board's membership. In accordance with the Charter, and pursuant to this Court's equitable authority, this Court finds that it is in the public interest to have replacement board members elected by the taxpayers of the CCFD as soon as practicable. This is necessary and appropriate because of the limited time period before the next annual meeting, the limitation of funds and the gravity of the decisions to be made.

The election to fill the vacancies on the Board of Directors shall proceed as follows:

1. A fourteen (14) day period commencing May 20, 2013 and ending June 2, 2013, during which candidates may qualify for election and submit applications for candidacy substantially in a form consistent with the format provided by the Special Master with the Petition. The Special Master shall make these forms available at the CCFD's administrative offices, the Town of Coventry's Town Hall, and post on the Special Master's website;
2. A Special Meeting and election shall be held on June 29, 2013;
3. The Special Master shall engage the Town of Coventry Board of Canvassers to administer the election's voting process;
4. The Special Master shall allow qualified voters to cast votes for Board members in an "all day referendum" style election, between the hours of 8:00 a.m. and 8:00 p.m. at a location determined at least fifteen (15) days prior to the election by the Special Master;
5. The Special Master shall publish the notice of the Special Meeting and election, at a minimum, (i) twice in the Kent County Times, (ii) with the electronic outlets of the Providence Journal and the Coventry Patch, (iii) at each of the District's fire stations, (iv) with the Secretary of State, and (v) on the Special Master's website;

D

For what period shall the newly elected Board members serve?

The newly elected members of the Board will fill, in accordance with the Charter, the unexpired terms of the members of the Board that resigned. The Special Master shall prepare an order delineating the unexpired terms for each Board vacancy. The candidate receiving the highest number of votes will be elected to the longest unexpired vacancy term. The candidate receiving the next highest number of votes will be elected to the next unfilled longest unexpired vacancy term available until the entire Board is constituted.

E

What powers, if any, shall be vested in the new Board?

The most important issue centers on the question of what powers, if any, does the Court delegate to the newly constituted Board. Several interested parties, including the Special Master, support the concept that this Board, elected by the taxpayers, should have actual delegated authority by this Court and not merely be advisory to the Special Master.

The Board currently has no actual power. This Court, in its October 16, 2012 and November 13, 2012 Orders, empowered the Special Master, at the request of the current Board, “to take possession and charge of all of the (Districts) assets, effects, property and business of the (District.)” These Orders vest control of the CCFD in the Special Master under the auspices of this Court. As a result of this Special Mastership the Board was relegated to an advisory role.

As this Court has indicated from the commencement of this proceeding, this matter is very different from the normal insolvency proceeding. In the vast majority of insolvencies that come before this Court, a business that cannot pay their debts as they become due seeks the Court’s protection. The purpose of the filing is generally to halt matters such as lawsuits, repossessions and levies by creditors. This type of protection provides time to either sell the business or have an orderly liquidation of its assets that, in theory, will provide a greater return for the creditors.

In the instant case, this Court’s role is not limited to realizing the largest return for creditors; rather, public safety and public policy implications are also major concerns here. The CCFD is the primary provider of fire and emergency medical services for the 18,000 residents of the fire district. The CCFD is also the lighting district for twenty-seven (27) square miles of the

Town of Coventry. The public depends on this fire district for these services and the discontinuance of these services presents a significant public safety issue.

Another significant issue that this Court appreciates is that the taxpayers, residents and employees of the CCFD are understandably quite upset. Why is the CCFD the first fire district in Rhode Island—and possibly in the entire nation—having to seek court protection because it could no longer manage its financial affairs? From a financial point of view, it is clear that the merger of four fire districts that took place in 2006 increased taxes and expenses substantially. In retrospect, many would argue that the consolidation was not a good solution. Others may argue that it was not the consolidation, but the fact that the Board did not fulfill its fiduciary duties to act in the best interest of the fire district, that led to the current situation. Arguably, while the Board did not investigate a glaring error in the tax receipts, it leased a new fire truck, purchased equipment and entered into a new collective bargaining agreement without having a plan detailing how to meet these financial obligations. Still others believe that the taxpayers have to accept some of the responsibility for the current situation. This argument is based on the fact that at all of the fire district annual meetings, save the October 2012 meeting, less than one hundred (100) voters of all those eligible even bothered to attend. This arguably eliminated any meaningful taxpayer engagement or oversight.

The bottom line is that this Court must approach this Special Mastership differently than a traditional case because of these public safety and public policy issues. This fact requires this Court to consider the unique circumstances involved and to implement a different, non-traditional approach. Although there is a consensus that there must be some form of fire and emergency medical services coverage available to the residents of Central Coventry, there is not a consensus regarding what form that should take.

Therefore, this Court finds that the taxpayers of the CCFD, through their duly elected representatives, are in the best position to decide the future of their fire district going forward. It may be a paid department, larger, smaller, or the same than it is now; it may be a volunteer department or a for-profit department.

At the same time this Court still has a responsibility to preserve the assets of the fire district for the benefit of creditors that have loaned money, have contractual agreements and provided services to the CCFD. It is critical for any fiduciary of the CCFD to recognize that the CCFD does not have a “clean slate”- such as would exist with a newly created entity.

The CCFD has existed, at least in its present form, through state enabling legislation and the vote of the taxpayers for the past seven years. The CCFD currently has assets as well as liabilities. These liabilities include, but are not limited to: (i) a collective bargaining agreement with the firefighters union that does not expire until April, 2015, (ii) a lease for a new ladder truck, (iii) ambulances and other emergency equipment bought on credit, (iv) obligations to the Municipal Employees Retirement System, and (v) existing contracts with health care providers and utilities. The other “liability,” which may prove to be the largest issue, is the responsibility to ensure that any changes to the existing operations will guarantee acceptable levels of public safety to the residents served by the CCFD.

It is a daunting task, but the questions this Court must consider are: (1) Who is in the best position to perform this task? and (2) Who should determine the short- and long-term future of the fire district, for the next Fiscal Year and the following years?

One option would be to allow the Special Master to formulate and present another budget at the annual meeting as permitted under the Charter. The Special Master presented a tax levy for a vote to the taxpayers of the CCFD twice and the levy was rejected each time. Having the

Special Master propose another tax levy at the next annual meeting, particularly one that may be at approximately the same rate as the last tax levy proposed and overwhelmingly rejected, would likely be an exercise in futility, as any such levy seems unlikely to achieve passage. As Albert Einstein stated: “Insanity: doing the same thing over and over again and expecting different results.”

The other option is for this Court to delegate the power to formulate a short- and long-term plan to the newly constituted Board. The Board, as the direct representatives of the voters, can analyze each of the available options to make a recommendation to the taxpayers at the annual meeting, including a tax levy.

Upon weighing these available options, this Court has determined that it is appropriate to shift the delegation of certain specific powers of the Special Master to the newly constituted Board. These specific powers delegated to the Board take into account the responsibility of this Court to ensure that the assets of the CCFD are preserved and protected for the benefit of creditors. At the same time, this delegation of power allows the taxpayers of the CCFD to have a large degree of control over their future.

Therefore, at the first organizational meeting of the newly elected Board, after the Special meeting and election on June 29, 2013 and subject to modification by the Court, the following powers and duties shall be delegated to the Board to allow its members the exercise of their fiduciary duties owed as representatives of this Court, acting in accordance with the law and the CCFD Charter:

1. The Board shall develop a short- and long-term plan for the future of the CCFD to be implemented on or before September 1, 2013.

2. The Board shall formulate a budget for the 2013/2014 Fiscal Year that includes a plan for the satisfaction of outstanding liabilities, including administrative expenses.
3. The Board shall recommend a tax levy and tax rate to the voters to sustain the budget approved by the Board.
4. The Board shall notice and convene an annual meeting of the fire district prior to September 1, 2013 and present to the taxpayers for vote the budget approved by the Board.
5. The Board shall have the authority to negotiate and/or renegotiate contracts and agreements with third parties, including, but not limited to, the government and quasi-governmental agencies, as well as secured and unsecured creditors for the 2013/2014 Fiscal Year and going forward. The Board shall have the power to bind the CFFD estate only with the prior approval of this Court. Nothing in this section shall be deemed to impair the rights, if any, of parties to existing contracts without their consent or further order of this Court.
6. The Board shall have the authority to negotiate with the firefighters' union and shall constitute the bargaining agent of the CCFD for the 2013/2014 Fiscal Year and future years. The Board shall have the power to bind the CFFD estate only with the prior approval of this Court. Nothing in this section shall be deemed to impair the rights, if any, of parties to existing contracts without their consent or further order of this Court.
7. The Board shall formulate a contingency plan, together with evidence of the efficacy and viability of the plan, to provide for fire and emergency medical and lighting services to the fire district to be implemented should the CCFD be liquidated. The Board shall present the contingency plan to the Court for approval.
8. The Board shall provide this Court and the Special Master with a written update every two weeks on its progress towards fulfilling its delegated authority.
9. The Board and the Special Master shall cooperate and share information and resources to allow each to fulfill their respective delegated authority.
10. The Board may, if it deems it appropriate and necessary, request of this Court authorization to expend estate funds in furtherance of its delegated authority

11. The Special Master will retain all other powers not expressly delegated to the Board. These powers include, but are not limited to, the management, operations and oversight of the CCFD during the 2012/2013 Fiscal Year.

IV

Conclusion

As stated in the preceding sections of this Decision, this Court has determined that a new Board should be constituted for the CCFD through an election by eligible taxpayers of the CCFD. This Court set the procedures for that election as well as the method for determining the terms to be served by any newly elected member of the Board. Finally, this Court finds that it is necessary to delegate certain specific powers to the newly constituted Board in order to allow the taxpayers of the CCFD to have a large degree of control over their future.

As such, the Special Master shall prepare and submit an Order for Entry that approves the form of nomination papers attached to the petition and complies with the findings and procedures set forth in this Decision.



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: KB 2012-1150

COURT: Filed in Kent County Superior Court

DATE DECISION FILED: May 17, 2013

JUSTICE/MAGISTRATE: Stern, J.

ATTORNEYS:

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