

**COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT**

Hampshire Division

Docket No. HS16E0007QC

**TRUSTEES OF FORBES LIBRARY, Plaintiffs
and Defendant in Counterclaim**

v.

**CITY OF NORTHAMPTON AND
MAURA HEALY, in her capacity as
ATTORNEY GENERAL OF
COMMONWEALTH, Defendants
and Plaintiffs in Counterclaim**

JUDGMENT


The Court held a hearing on June 29, 2017 with respect to the Complaint for Declaratory Relief, filed on May 20, 2016, and Counterclaim filed on June 9, 2016. Present were Attorney Sandra Lucentini and Eric J. Lucentini for the Trustees of Forbes Library; Attorney Alan Seewald, the Northampton City Solicitor; and Assistant Attorney General Eric Carriker, via telephone.

An assented to Joint Motion for Entry of Agreed Judgment was filed with the Court on June 15, 2017.

THEREFORE IT IS ORDERED THAT:

The parties shall comply with their Agreement for Judgment filed with the Court on June 15, 2017, the terms of which are incorporated and merged into this Judgment.

Date: June 29, 2017


Linda S. Fidnick, Justice

AGREEMENT FOR JUDGMENT

This Agreement for Judgment is entered into by and between the City of Northampton, a municipal corporation organized under the laws of Massachusetts with offices located at 210 Main Street, Northampton (the "City") and the Trustees of the Forbes Library, a duly organized Massachusetts public charitable corporation with offices at 20 West Street, Northampton, Massachusetts (the "Trustees" or the "Library").

WHEREAS, the 1876 Will of Charles Edward Forbes (the "Will") left a bequest for the purpose of acquiring land, constructing or purchasing a building, and procuring materials for a free library open to the public in Northampton; and,

WHEREAS, Paragraph 9 of the Will (the so-called rest and residue clause) left all property not specifically bequeathed in the preceding paragraphs to Samuel T. Spalding and George W. Hubbard, as trustees, and to their successor trustees in perpetuity, with a direction to establish a fund "for the purchase of a site and the erection of a building ... for the accommodation of a Public Library, and for the purchase of books, &c., to be placed there for the use of the Inhabitants of said town of Northampton and their successors forever," to be divided into a \$50,000 Building Fund, a \$20,000 Aid Fund, the income from which was to be used "in aid of the town in the payment" of the Library's employees and "other necessary expenses"; and a \$150,000 Book Fund; and,

WHEREAS, the Will created a public charitable trust by which the Trustees hold legal title to the property in trust for the benefit of the inhabitants of Northampton; and,

WHEREAS, Judge Forbes' bequest for the benefit of Northampton's inhabitants was made on the condition that the town by vote accept the bequest within three years after probate, and on the further condition that, by a legally binding vote, the town's inhabitants in their corporate capacity as a town obligate themselves and their successors (1) to pay all expenses necessarily incurred in the management and administration of the Library over and above the income derived from the Aid Fund, (2) to keep the Library building in repair, and to rebuild it in the event of its destruction by fire or other casualty, and (3) to erect or provide such other buildings as might become necessary in consequence of the enlargement of the Library; and

WHEREAS, the Will recommended that legislation be procured from the Commonwealth of Massachusetts incorporating the Library, and giving to the town in its corporate capacity the power and authority, by town meeting vote, to adopt and execute the provisions of the Will and "to perform all the conditions and to assume all the obligations therein mentioned, and to be forever bound to the performance thereof"; and

WHEREAS, in accordance with the said recommendation, St. 1881, c. 232, styled "An Act to Authorize the Town of Northampton to Adopt and Execute the Provisions of the Will of Charles E. Forbes," was passed in the Legislature to take effect upon a town vote to accept and implement the Will; and

WHEREAS, on May 31, 1881, a special town meeting was held during which the inhabitants of Northampton voted to accept and implement the Will; and,

WHEREAS, the Will provides that real estate purchases under the Will are to be conveyed to the Trustees in fee simple, and further provides that all of the Library's "estate real, personal and mixed, of whatever description or wherever situate" is to be held by the Trustees, who are to hold the property in trust "forever, upon the trusts and for the uses and purposes" set forth in the Will; and

WHEREAS, issues have periodically arisen between the City and the Trustees regarding the manner in which the appropriation and repair obligations should be carried out, and regarding whether the Trustees are subject to certain open government laws; and,

WHEREAS, the City and the Trustees wish to amicably resolve those differences, fully and finally, and memorialize their agreement.

NOW, THEREFORE, for good and valuable consideration, each to the other, the receipt and adequacy of which are hereby acknowledged, the City and the Trustees agree as follows:

1. The Trustees are the publicly elected trustees of a public charitable trust whose duties are primarily the oversight of a public institution known as the Forbes Library.
2. The Library is neither an agency nor a department of the City. Although the Library is not within government it is a public institution operated for the benefit of the inhabitants of Northampton. The Trustees are solely responsible for, inter alia, establishing Library policies, hiring and managing employees, and developing and maintaining the Library's collections.
3. The Trustees, officers and employees of the Library are not employees of the City. The Trustees are and shall be solely responsible for independently negotiating with collective bargaining units of which Library employees are members, including for benefits to Library employees. Notwithstanding the foregoing, to the extent permissible by law, including without limitation M.G.L. c. 32 and c. 32B as they may be amended from time to time, Library employees shall be eligible for inclusion in the City's group insurance and retirement benefits on such terms as provided by law.
4. In accordance with the Will, the Trustees hold legal title to the real, personal and mixed property of the Library in a public charitable trust for the benefit of the inhabitants of Northampton. The Trustees may not convey any interest in or use the real estate held in trust for any purpose inconsistent with the Will or with the Trustees' fiduciary responsibilities under Massachusetts law.
5. In each fiscal year, the Trustees shall in the first instance use any income from the Aid Fund, based upon a total return on investment model, to pay the expenses necessarily incurred in the operation of the Library. Upon the exhaustion of such Aid

Fund income for that fiscal year, the City has the obligation to appropriate funds sufficient to pay expenses necessarily incurred in the operation of the Library.

6. It is understood that the City is solely responsible for determining the procedures it uses when appropriating funds for City agencies, which procedures are currently set forth in Article 7 of the Charter of the City of Northampton, St. 2012, c. 277. It is further understood that the City may use the said procedures when appropriating funds for the Library, provided that nothing in the said process shall be construed to render the Library a department or agency of the City, or to otherwise conflict with or derogate from any other provision in this Agreement.
7. With respect to the City's obligation to keep the Library in repair:
 - a. In all matters relating to keeping the Library in repair and implicating the expenditure of public funds in any amount, including but not limited to heating and cooling, plumbing, electrical plant, security, fire detection/protection, and construction operations, the Library shall avail itself of the resources of the City's Central Services Department or any municipal entity that may succeed or replace the Central Services Department. Nothing in this section shall be construed to require the Library to contact Central Services for maintenance items that may be properly handled by custodial staff employed by the Library. Nothing in this subsection shall be construed to limit or derogate from the terms of subsection 7 (c), below.
 - b. In any project at the Library involving construction, renovation or repair and where municipal, state, or federal funding is applied, the City and the Trustees shall actively collaborate in and shall endeavor to reach agreement upon all material aspects of the said project. For purpose of non-exhaustive illustration, such collaboration shall extend to all matters of design, the issuance of requests for proposals and bid documents, and consideration and final selection of architects, construction firms, contractors, subcontractors, and clerk of the works. It is the intent of the City and the Trustees that their respective objectives and concerns, including the City's prerogatives with respect to the appropriations process and its repair obligation under the Will, and the Trustees' fiduciary obligations with respect to the preservation of the Library building, shall be taken into account in a spirit of collaboration and partnership.
 - c. With respect to the Trustees' use of private funds for repairs, alterations, or changes in operations that may reasonably be expected to materially increase the City's appropriation or repair burden, the Trustees shall take no action without first consulting with the City and obtaining the City's written consent to such action, such consent not to be unreasonably withheld.

8. Recognizing the Trustees' important role in administering public funding allocated by the City, and the need for transparency in doing so, the City and the Trustees hereby agree that:
 - a. All meetings of the Trustees, any subcommittee of the Trustees, and any other multiple-member body established by or through the Trustees, shall strictly conform to the provisions of the Open Meeting Law, M.G.L. c. 30A, § 18, as it may be amended from time to time, or any successor open meeting statute.
 - b. In accordance with the terms of the Will, the Trustees shall ensure that all books and records of the Library shall be open for inspection by the inhabitants of Northampton during regular business hours.
 - c. Whenever contracting for supplies, services or real property to be paid for using municipal, state or federal funds in any amount, the Library shall strictly comply with all procurement procedures applicable to Massachusetts municipal governmental bodies, as set forth in M.G.L. c. 30B, or any successor procurement statute.
 - d. Whenever contracting for design and/or construction services using municipal, state or federal funds in any amount, the Library shall strictly comply with all procurement procedures applicable to Massachusetts municipal governmental bodies, as set forth in the Construction Bid Law, M.G.L. c. 149, § 44A, et seq., as it may be amended from time to time, or to any successor construction bid statute.
 - e. Whenever contracting for any activity that would constitute a "public work" within the meaning of the Massachusetts Prevailing Wage Law, M.G.L. c. 149, §§ 26-27, using municipal, state or federal funds in any amount, the Library shall strictly comply with the requirements of the said law, as it may be amended from time to time, or to any successor prevailing wage law.
 - f. Inasmuch as the Library is not an agency of the City, the Trustees shall hold the City harmless, and the City expressly disclaims any liability, for any action taken by any state agency arising from a failure of the Trustees, of any multiple-member body created by the Trustees, or of any employee of the Library to adhere to the open government statutes set forth in subsections (a) through (e), inclusive, or to the Public Records Law, M.G.L. c. 4, § 7(26) and M.G.L. c. 66, § 10, as such provisions may be amended from time to time.
9. This Agreement shall be filed with the Hampshire Probate and Family Court in settlement of the above-referenced action, and may not be amended or modified except in a writing signed by all of the parties and so-ordered by the Court.

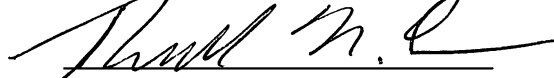
Executed on this 8 day of June, 2017.

CITY OF NORTHAMPTON

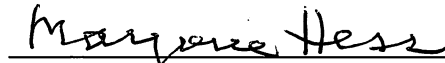


Mayor David J. Narkewicz

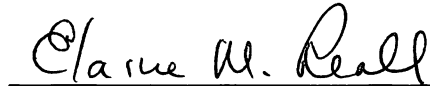
THE TRUSTEES OF THE FORBES LIBRARY



Russell Carrier, President



Marjorie Hess, Vice President



Elaine M. Reall



Joseph Twarog



Katy E. Wight