

**ROBERT F. CHERRY, JR., ET AL.**

**Plaintiffs**

**v.**

**MAYOR & CITY COUNCIL OF  
BALTIMORE CITY**

**Defendant.**

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**IN THE**

**CIRCUIT COURT**

**FOR**

**BALTIMORE CITY**

**Civil Case No.: 24-C-16-004670**

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### **ORDER**

This matter comes before the court on (1) Plaintiffs’ Motion for Partial Summary Judgment on Count I of the Class Action Complaint (filed May 4, 2017; Paper No. 20; hereinafter referred to as the “Motion”); (2) Defendant’s Cross-Motion for Summary Judgment and Opposition to Plaintiffs’ Motion (filed June 28, 2017; Paper Nos. 21 and 20/1; hereinafter referred to as the “Cross-Motion”); (3) Plaintiffs’ Response in Opposition to Defendant’s Motion for Summary Judgment and Reply to Defendant’s Opposition to Plaintiff’s Motion for Partial Summary Judgment on Count I of the Class Action Complaint (filed July 31, 2017; Paper No. 21/1); and (4) Defendant’s Reply Memorandum in Support of Cross-Motion for Summary Judgment (filed August 31, 2017; Paper No. 21/2).

On November 28, 2017, Plaintiffs filed a First Amended Class Action Complaint to substitute Plaintiff Christopher Houser for Plaintiff John Lewandowski (hereafter the “Amended Complaint”). As set forth in more detail in the accompanying Memorandum Opinion, the court construes and deems the parties’ above-referenced papers to pertain to the Amended Complaint.

The court having considered all papers submitted, case law and other relevant legal authority, as well as oral argument of the parties, and as set forth in the accompanying Memorandum Opinion, it is this 2<sup>nd</sup> day of January, 2018

**ORDERED**, as to the Amended Complaint, Count I for Declaratory Judgment

A. *[Whether] the City, by adopting Ordinance 10-306, engaged in the unlawful taking of property without just compensation.*

The Motion and Cross-Motion as to requested declaration A shall be, and are hereby, **DENIED**;

B. *[Whether] the City, by adopting Ordinance 10-306, unlawfully diminished and impaired the benefits of the members of the Plan and their beneficiaries.*

The Motion as to requested declaration B shall be, and is hereby, **GRANTED IN PART AND DENIED IN PART** as follows: **GRANTED** to the extent that the court declares that by enacting Ordinance 10-306, the City retrospectively, and therefore unlawfully, withdrew from Plaintiffs Houser, Williams and Sledgeski their rights to the Variable Benefit feature of the Plan as it stood prior to the Ordinance; the Motion as to Count I requested declaration B is otherwise **DENIED**.

The Cross-Motion as to requested declaration B shall be, and is hereby, **DENIED**;

C. *[Whether] members of the Plan and their beneficiaries are entitled to the benefits provided under Article 22, § 29 et seq. that existed immediately prior to the enactment of Ordinance 10-306.*

The Motion as to requested declaration C shall be, and is hereby, **GRANTED IN PART AND DENIED IN PART** as follows: **GRANTED** to the extent that the court declares that by enacting Ordinance 10-306, the City retrospectively, and therefore unlawfully, withdrew from Plaintiffs Houser, Williams and Sledgeski their rights to the Variable Benefit feature of the Plan

as it stood prior to the Ordinance; the Motion as to Count I requested declaration C is otherwise **DENIED**.

The Cross-Motion as to requested declaration C shall be, and is hereby, **DENIED**;

**D.** *[Whether] members of the Active Sub-Class, by virtue of their membership in the Plan prior to the adoption of Ordinance 10-306, held contractual rights to the benefits provided under the Plan that the City could not unilaterally diminish or impair.*

The Motion as to requested declaration D shall be, and is hereby, **GRANTED IN PART AND DENIED IN PART** as follows: **GRANTED** to the extent that the court declares that The City is entitled to make prospective and reasonable unilateral modifications to the Plan. Plaintiffs Cherry and Lake held contractual rights such that each is entitled to “substantially the program he bargained for and any diminution thereof must be balanced by other benefits or justified by countervailing equities for the public’s welfare.” *City of Frederick v. Quinn*, 35 Md. App. 626, 631 (1977). The Motion as to requested declaration D is otherwise **DENIED**.

The Cross-Motion as to requested declaration D shall be, and is hereby, **GRANTED IN PART AND DENIED IN PART** as follows: **GRANTED** to the extent that the City is entitled to make unilateral, prospective, reasonable modifications to the Plan consistent with *Quinn*’s mandate recited above. The Cross-Motion as to requested declaration D is otherwise **DENIED**;

**E.** *[Whether] members of the Retired and Retirement-Eligible Sub-Classes, having satisfied all of the contractual conditions precedent to receipt of benefits under the Plan prior to the adoption of Ordinance 10-306, held vested rights to Plan benefits that the City could not unilaterally diminish or impair.*

The Motion as to requested declaration E as to Plaintiffs Houser, Williams and Sledgeski shall be, and is hereby, **GRANTED**. The Cross-Motion as to requested declaration E as to Plaintiffs Houser, Williams and Sledgeski shall be, and is hereby, **DENIED**;

*F. [Whether] the City, by adopting Ordinance 10-306, breached its contract with the members of the Plan.*

The Motion as to requested declaration F shall be, and is hereby, **GRANTED IN PART AND DENIED IN PART** as follows: **GRANTED** to the extent that by enacting Ordinance 10-306, the City breached its contract with Plaintiffs Houser, Williams and Sledgeski. The Motion as to requested declaration F is otherwise **DENIED**.

The Cross-Motion as to requested declaration F shall be, and is hereby, **DENIED**;

*G. [Whether] Article 22 § 42 prohibits the City from unilaterally diminishing or impairing Class members' benefits under the Plan.*

The Motion as to requested declaration G shall be, and is hereby, **GRANTED IN PART AND DENIED IN PART** as follows: **GRANTED** to the extent that Section 42, as interpreted by Maryland common law, prohibits the City from retrospectively modifying the Plan such that a modification shall not remove, diminish or impair a Plan benefit where a Plaintiff had satisfied all defined contingencies related to such benefit prior to the effective date of the modification. The Motion as to requested declaration G is otherwise **DENIED**.

The Cross-Motion as to requested declaration G shall be, and is hereby, **DENIED**;

*H. [Whether] the City is prohibited from unilaterally diminishing or impairing the benefits of members of the Retired and Retirement-Eligible Sub-Classes who have satisfied all of the contractual contingencies necessary to receive retirement benefits under the Plan.*

The Motion as to requested declaration H as to Plaintiffs Houser, Williams and Sledgeski shall be, and is hereby, **GRANTED**. The Cross-Motion as to requested declaration H as to Plaintiffs Houser, Williams and Sledgeski shall be, and is hereby, **DENIED**;

- I. [Whether] the City is obligated to compensate members of the Retired Sub-Class in accordance with the Variable Benefit provision of the Plan in place prior to the enactment of Ordinance 10-306.*

The Motion and Cross-Motion as to requested declaration I shall be, and are hereby,

**DENIED;**

- J. [Whether] the City is obligated to reimburse members of the Retirement-Eligible and Active Sub-Classes the full amount they were required to pay in increased employee contributions as a result of Ordinance 10-306.*

The Motion and Cross-Motion as to requested declaration J shall be, and are hereby,

**DENIED;**

- K. [Whether] the tiered-COLA provided under Ordinance 10-306 is . . . the equivalent of the Variable Benefit that was provided under the Plan prior to the enactment of Ordinance 10-306.*

The Motion and Cross-Motion as to requested declaration K shall be, and are hereby,

**DENIED;**

- L. [Whether] the City is required to restore all Plan benefits that were unlawfully diminished or impaired through its enactment of Ordinance 10-306.*

At the summary judgment hearing on November 2, 2017, Plaintiffs orally withdrew their Motion as to requested declaration L.

The Cross-Motion as to requested declaration L shall be, and is hereby, **DENIED;**

- M. [Whether] the City had the financial ability, as of June 30, 2010, to adequately fund the benefits provided under the Plan.*

At the summary judgment hearing on November 2, 2017, Plaintiffs orally withdrew their Motion as to requested declaration M.

The Cross-Motion as to requested declaration M shall be, and is, hereby **DENIED**;

*N. [Whether] the members of the Class have the right to an adequately-funded Plan.*

The Motion and Cross-Motion as to requested declaration N shall be, and are hereby, **DENIED**; and further it is

**ORDERED** that the court shall issue a Declaratory Judgment and Order consistent herewith as to Count I; and further it is

**ORDERED**, as to the Amended Complaint, Count II for Breach of Contract (Contractual Rights of Retired and Disabled Plaintiffs), that the Cross-Motion shall be, and is hereby, **DENIED** as to Plaintiffs Houser and Williams; and further it is

**ORDERED**, as to the Amended Complaint, Count III for Breach of Contract (Contractual Rights of Retirement-Eligible Plaintiffs), that the Cross-Motion shall be, and is hereby, **DENIED** as to Plaintiff Sledgeski; and further it is

**ORDERED**, as to the Amended Complaint, Count IV for Breach of Contract (Contractual Rights of Active Plaintiffs), that the Cross-Motion shall be, and is hereby **GRANTED IN PART AND DENIED IN PART** as follows: **GRANTED** to the extent that the court finds as a matter of law based upon the undisputed and stipulated facts that Plan modifications contained in Ordinance 10-306 are prospective, not retrospective, with respect to Plaintiffs Cherry and Lake; the Cross-Motion as to Count IV is otherwise **DENIED**; and further it is

**ORDERED**, as to Count IV, pursuant to Rule 2-501(g), whether Plan modifications contained in Ordinance 10-306 with respect to Plaintiffs Cherry and Lake are otherwise in accordance with *Quinn, Saxton* and other applicable Maryland common law, remains undecided by the court and will be subject to adjudication by trial of this action; and further it is

**ORDERED** that Plaintiffs' Motion for relief pursuant to Rule 2-502 shall be, and is hereby,  
**DENIED.**

This court retains continuing jurisdiction over this action, including the discretion and authority to reconsider and revise the foregoing.

*[JUDGE'S SIGNATURE ON ORIGINAL]*

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Judge Julie R. Rubin

Madam Clerk, please mail copies to:

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