

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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MEMORANDUM ON OPERATION OF PRE-ORDINANCE SUB-SECTION 36(d)(7)

The court has before it The City’s Motion for the Court’s Reconsideration or Clarification of a Single Issue Contained in its August 27, 2019 Decision (Doc. No. 157; hereafter, the “Motion”), Plaintiffs’ Opposition thereto (Doc. No. 157/1), and the City’s reply (Doc No. 157/2).

It is apparent that the parties did not understand one another’s respective positions regarding the “third remaining issue” when they submitted their briefs on August 13, 2019 (Doc Nos. 147 and 148). More precisely, they did not mutually understand one another’s contentions regarding operation of pre-Ordinance sub-section 36(d)(7) for purposes of damages calculations. (See also, City’s Motion at pp. 4-5 n.5.) The City did not hear Plaintiffs to contend (and neither did the court) that sub-section 36(d)(7) requires – or should be interpreted by the court for damages calculations to require – the City to make contributions to Plan funds in addition to those required by operation of sub-sections 36(d)(2) through (5). As a result, the parties’ August 13 briefs did not tee up the issue presented in the Motion (and as described on the record in open court at the last status conference). That notwithstanding, nothing in the court’s memorandum and order of August 27, 2019 suggests the City is required to contribute or to add assets to Plan funds outside

of required contributions identified in sub-sections 36(d)(2) through (5), and the court does not so hold.

The intent of the legislature, deduced from the plain language of the old Plan, which is neither ambiguous nor confusing, is that the City make contributions required by sub-sections 36(d)(2) through (5).¹ Whether read alone or in the greater context of the old Plan in its entirety, sub-section 36(d)(7) does not require the City to contribute additional funds in the event the PAF lacks sufficient (allocated) assets (*i.e.*, assets at least equal to the transfer required by 36(d)(7)) upon a member's retirement. The language of 36(d)(7) does not require the City to do so expressly or implicitly, and neither does any other provision of the old Plan. Other subsections, however, expressly and clearly address City contribution obligations. Further, sub-sections 36(d)(4)(iv) and (5) (already) accommodate the potential for total accrued liability in excess of the PAF and adjust the City's annual required contribution to cover, at the very least, that year's pensions and benefits. The legislature did not intend sub-section 36(d)(7) of the old Plan to operate as Plaintiffs urge, nor does Plaintiffs' position resonate with the court as a sensible operation of the various working parts of the old Plan.² Against this backdrop, requiring the City to make contributions not required by the old Plan for purposes of calculating breach of contract damages is legally unsound. (*See* the court's Memorandum Opinion of May 13, 2019, Section VII beginning at page 135, on controlling law on breach of contract damages.)

¹ *See* the court's Memorandum Opinion of May 13, 2019, Section V beginning at page 113, on statutory and contract construction.

² History appears to corroborate, or at least not to contradict, the court's view. No evidence has been presented of which the court is aware that the parties, the actuaries, the Board, the unions or anyone else at the table over the years ever took the position that the old Plan required of the City what Plaintiffs request the court to order. To the contrary, in years in which the 36(d)(7) transfer resulted in a negative PAF balance, no additional City contribution was made, and none appears to have been expected or demanded. Rather, the Plan's valuation reports noted a negative PAF book value.

Therefore, the court will grant in part and deny in part the Motion as follows: the order of August 27, 2019 will remain in full force and effect, as nothing in this memorandum requires any modification of that order. The court will, however, issue an order that incorporates the substance of the City's proposed order (filed with the Motion) to resolve this dispute and make clear the court's findings and conclusions on this issue.

[SIGNATURE OF JUDGE APPEARS ON ORIGINAL]

Judge Julie R. Rubin

Madam Clerk: Please mail copies to all counsel and named parties of record.