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COMMONWEALTH OF MASSACHUSETTS

DUKES, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 2014-00023-A

MARTHA'S VINEYARD AIRPORT COMMISSION

vs.

COUNTY COMMISSION FOR DUKES COUNTY & others<sup>1</sup>

**MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S EMERGENCY  
MOTION FOR LEAVE TO FILE SECOND AMENDED VERIFIED COMPLAINT AND  
EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION ON COUNT 5 OF SECOND AMENDED VERIFIED  
COMPLAINT**

The Martha's Vineyard Airport Commission ("MVAC") brought this action against the County Commission for Dukes County ("the County Commission"), Martina Thornton, in her official capacity as County Manager for the County of Dukes County ("the County Manager"), and Noreen Mavro Flanders, in her official capacity as County Treasurer for the County of Dukes County ("the County Treasurer") (collectively, "the County"), seeking certain declaratory judgments regarding the County's alleged unlawful interference with and obstruction of the functioning of the MVAC. Specifically, the MVAC's First Amended Verified Complaint sought declaratory and injunctive relief that the County lacks the authority to (1) insert the County Manager onto the MVAC (Count 1); (2) refuse to pay invoices duly approved for payment by the MVAC (Count 2); (3) obtain privileged or confidential attorney-client information (Count 3); and (4) release such privileged or confidential attorney-client information to the public (Count 4).

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<sup>1</sup> Martina Thornton, in her official capacity as County Manager for the County of Dukes County, and Noreen Mavro Flanders, in her official capacity as County Treasurer for the County of Dukes County.

On August 7, 2014, this court granted the following injunctive relief to the MVAC:

(1) [T]he County Commission is enjoined from appointing the County Manager to MVAC as an ex-officio, nonvoting member; (2) the County Manager is enjoined from serving in such a capacity; and (3) the County Treasurer is enjoined from . . . refusing to pay invoices duly approved for payment by the MVAC, from obtaining privileged or confidential communications between the MVAC and its attorneys without notice to or the consent of the MVAC, and from releasing privileged or confidential communications between MVAC and its attorneys to the public.

Now, the County Commission has voted to expand the size of the MVAC from seven to nine members, and to appoint two new commissioners to the MVAC. In response, the MVAC has filed an Emergency Motion for Leave to File Second Amended Verified Complaint to add Count 5, seeking declaratory and injunctive relief regarding the County Commission's actions.<sup>2</sup> The MVAC has also filed an Emergency Motion for Temporary Restraining Order and Preliminary Injunction on Count 5 of the Second Amended Verified Complaint. For the reasons discussed below, both motions are ALLOWED.

#### BACKGROUND

The MVAC is an airport commission duly constituted under G. L. c. 90, § 51E, with the statutory responsibility for "the custody, care and management" of Martha's Vineyard Airport ("the Airport"). General Laws c. 90, § 39G states that the MVAC "shall be appointed by the county commissioners." General Laws c. 90, § 51E provides for an airport commission "consisting of an odd number of members not less than three nor more than eleven in number."

The history of the dispute between these parties is long. In 1997, the MVAC applied for

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<sup>2</sup> The County has not filed an opposition to this motion setting forth any prejudice that will result from allowing the motion and "a motion to amend should be allowed unless some good reason appears for denying it." *Hamed v. Fadili*, 408 Mass. 100, 105 (1990); see Mass. R. Civ. P. 15(a) (leave to amend shall be freely given when justice so requires).

federal and state grants for the construction of a new passenger terminal. See Weibrecht v. MVAC, Dukes Super. Ct. No. 2002-00071 (July 14, 2005) (Bohn, J.). General Laws c. 90, § 51K requires an airport commission that wants to receive federal funds to designate the Massachusetts aeronautics commission (“Aeronautics Division”) as its agent to receive the federal money.<sup>3</sup> Because the Executive Director of the Aeronautics Division was concerned about the dispute between the County and the MVAC concerning management of the airport, he conditioned the grant of state and federal funds on a commitment from the County not to interfere with the MVAC’s power to manage the Airport. See Weibrecht v. MVAC, Dukes Super. Ct. No. 2002-00071 (July 14, 2005) (Bohn, J.). Thus, the MVAC, the County Commission, and the County Manager executed “Grant Assurances,” stating that “[n]otwithstanding any powers that may be granted to the County Commissioners under [G. L. c. 34A], the County Commissioners agree not to take any action to reorganize the [MVAC], or in any way interfere with the autonomy and authority of the [MVAC] as created under [G. L. c. 90, § 51E], without the express written approval of the Aeronautics Division.” Section E.1. The County also certified that it would not interfere in any way with the powers, authority and responsibilities granted to the MVAC by G. L. c. 90, § 51E, see Sections E.3.a and F.3.a, or “take or permit any action which would . . . deprive [the MVAC] of or otherwise diminish any of the rights, privileges, responsibilities or powers of [the MVAC] as are necessary for it to exercise the custody, care and management of the Airport,” see Sections E.4.a and F.4.a. Finally, the Grant

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<sup>3</sup> General Laws c. 90, § 51K also requires that the airport commission and the Aeronautics Division enter into an agreement prescribing the terms and conditions of the agency between them in accordance with federal laws, rules, and regulations and applicable laws of the Commonwealth.

Assurances provided that “oversight of the Airport is exclusively held by the [MVAC] and that the [MVAC] has sole custody and control of the Airport.” Section D.2.a. The MVAC, the County Commission, and the County Manager have executed similar Grant Assurances since 1997. The most recent version was executed on June 8, 2011.

On July 14, 2005, the court (Bohn, J.) issued a decision in a case where the Airport’s manager and assistant manager brought suit against the MVAC, alleging that the MVAC had failed to pay their agreed-upon salaries. Weibrecht v. MVAC, Dukes Super. Ct. No. 2002-00071 (July 14, 2005). The MVAC impleaded the County Commission, alleging that the County Commission had refused to release the necessary funds. Judge Bohn concluded that the MVAC has the authority to set the salaries at issue and that the County Commission could not interfere with the MVAC’s payment of these salaries. Relevant to the issue now before this court, Judge Bohn determined that even if a certain statute gave the County Commission the authority to constrain the MVAC’s fixing of salaries, the County Commission forfeited those rights by executing the Grants Assurances, in which it agreed not to interfere in any way with the powers, authority and responsibilities granted to the MVAC by G. L. c. 90, § 51E.

On April 23, 2014, the County Commission unanimously passed a motion to “reorganize” what they referred to as the County Manager’s role on the MVAC. As discussed above, on April 25, 2014, the MVAC filed this action seeking declaratory and injunctive relief and on August 7, 2014, this court granted that injunctive relief to the MVAC.

On September 24, 2014, the County Commission voted to expand the size of the MVAC from seven to nine members and to fill the two additional seats. The County Commission has not received the express written approval of the Aeronautics Division. The MVAC now seeks an

injunction prohibiting the County Commission from increasing the size of the MVAC from seven to nine and appointing two new members or from otherwise interfering with the autonomy and authority of the MVAC without the express written approval of the Aeronautics Division.

### DISCUSSION

Typically, “[t]o succeed in an action for a preliminary injunction, a plaintiff must show (1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that, in light of the plaintiff’s likelihood of success on the merits, the risk of irreparable harm to the plaintiff outweighs the potential harm to the defendant in granting the injunction.” Tri-Nel Mgmt. v. Board of Health of Barnstable, 433 Mass. 217, 219 (2001). When the government brings suit “to enforce a statute or a declared policy of the Legislature” and moves for injunctive relief, however, the usual requirement of a showing of irreparable harm is not required. LeClair v. Norwell, 430 Mass. 328, 331 (1999). Instead, “[a] judge, in these circumstances, must first determine whether there is a likelihood of success on the merits of [the government’s] claims and then determine whether ‘the requested order promotes the public interest, or alternatively, that the equitable relief will not adversely affect the public.’” Id. at 331-332, quoting Commonwealth v. Mass. CRINC, 392 Mass. 79, 89 (1984).

#### **I. Likelihood of Success on the Merits**

The MVAC argues that the actions of the County constitute an “action to reorganize” the MVAC without the approval of the Aeronautics Division in violation of the Grant Assurances. The County contends because G. L. c. 90, § 51E allows them to appoint between three and eleven airport commissioners, their actions are not a “reorganization” within the meaning of the Grant Assurances. This court disagrees. While G. L. c. 90, § 51 provides for the establishment

of the MVAC, nothing in the statute gives the County Commission the power to change the number of board members once the MVAC has been established. See G. L. c. 90, § 51 (“[T]here shall be established a board consisting of an odd number of members not less than three nor more than eleven in number, to be called the airport commission, which shall have the custody, care, and management of the municipal airport . . . .”) Further, even if G. L. c. 90, § 51E gives the County Commission the authority change the number of members on the MVAC at its whim, the County Commission forfeited that right by executing the Grants Assurances, in which it agreed not to interfere with the autonomy and authority of the MVAC without the express written approval of the Aeronautics Division. Particularly considering the history between the parties, the court concludes that the MVAC had shown a likelihood of success on the merits of its contention that by adding two additional seats to the MVAC, the County is trying to reorganize the MVAC and/or interfere with the autonomy and authority of the MVAC.<sup>4</sup>

## **II. Public Interest**

Similar to the court’s determination in its August 7, 2014 decision, the court concludes that it will not harm the public interest to continue operating the Airport with only seven members on the MVAC, as it has been operated for some time. Further, the County’s alleged

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<sup>4</sup> The County makes a convoluted argument that G. L. c. 90, § 51K requires that any Grant Assurances entered into by the MVAC and the Aeronautics Division comply with “the applicable laws of the Commonwealth.” Thus, because G. L. c. 90, § 51E is an applicable law of the Commonwealth, any Grant Assurances entered into must respect the authority of the County Commission to appoint the airport commission pursuant to G. L. c. 90, § 51E. The provision in G. L. c. 90, § 51K that the County is referencing, however, deals with the agency agreement between the MVAC and the Aeronautics Division. The Grant Assurances are not the agency agreement. Instead, they are agreements required by the Aeronautics Division as a condition for funding and entered into by the MVAC and the County. General Laws c. 90, § 51K does not apply to the Grant Assurances.

violations of the Grant Assurances could put the MVAC's funding at risk and interfere with its ability to operate the Airport safely and efficiently to the detriment of the public. Thus, the MVAC has shown that the requested equitable relief will promote the public interest or, alternatively, will not adversely affect the public. See LeClair, 430 Mass. at 332.<sup>5</sup>

**ORDER**

For the reasons discussed above, it is hereby **ORDERED** that the MVAC's Emergency Motion for Leave to File Second Amended Verified Complaint to add Count 5 and Emergency Motion for Temporary Restraining Order and Preliminary Injunction on Count 5 of the Second Amended Verified Complaint are **ALLOWED**. The County is enjoined from expanding the size of the MVAC and appointing new commissioners to the MVAC or from otherwise interfering with the autonomy and authority of the MVAC without the express written approval of the Aeronautics Division.

  
Richard J. Chin  
Justice of the Superior Court

Dated: November 5, 2014

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<sup>5</sup> In response to the County's other arguments, the court points out that the Grant Assurances are a contract between the MVAC, the County Commission, and the County Manager. The Aeronautics Division is not a signatory of the Grant Assurances.