

5/21/2025

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT
C.A. No. 2481CV693

Theory Wellness, Inc.,)
Community Growth Partners Great)
Barrington Operations, LLC)
d/b/a Rebelle and Highminded, LLC)
d/b/a Farnsworth Fine Cannabis,)
Plaintiffs)
)
v.)
)
Massachusetts Cannabis Control)
Commission,)
[Proposed] Third Party)
Plaintiff-Intervenor)
)
v.)
)
The Town of Great Barrington,)
Defendant)

**MASSACHUSETTS CANNABIS CONTROL COMMISSION'S
MEMORANDUM IN SUPPORT OF INTERVENTION**

INTRODUCTION

Proposed Third Party Plaintiff Intervenor, the Massachusetts Cannabis Control Commission (hereafter the “CCC” or “Commission”) hereby submits this Memorandum in Support of its Motion to Intervene. The Defendant in this action, the Town of Great Barrington (“Great Barrington” or “Town”) has argued, in its opposition to Plaintiffs’ motion for judgment on the pleadings, that the Host Community Agreements (“HCAs”) between it and the Plaintiffs in this matter are not subject to review and approval by the Commission under G.L. c. 94G and the regulations promulgated thereunder by the Commission, 935 CMR 500.180 *et seq.* See Def.’s

Mem. in Opp. to Pls.' Mot. for Judgment on the Pleadings and to Dismiss Def.'s Counterclaims at pp. 8-18 (Paper # 7.2) ("Opposition Memorandum"). More specifically, the Defendant cites to *dicta* in a decision on cross-motions for summary judgment in *Haverhill Stem v. Fiorentini et al*, Essex Superior Court (C.A. No. 2177CV00375) on or about June 10, 2024, to support its argument that statutory amendments to G.L. c. 94G cannot be applied retroactively to HCAs, such as those in the instant case, that were executed prior to the effective date of the statutory amendments. In advancing this argument, however, Defendant demonstrates a profound misunderstanding of the Commission's licensing process, and directly attacks the Commission's statutory and regulatory authority. Because the arguments made by Great Barrington in this case directly implicate the Commission's authority to review and approve HCAs under G.L. c. 94G and the Commission's implementing regulations, the Commission should be allowed to intervene as a Third Party Plaintiff in this matter.

Because the defenses raised by the Defendant would limit or abrogate the authority of the Commission if recognized, and none of the parties currently involved in this matter are adequately situated to fully protect that authority, the CCC claims intervention as a matter of right. *See* Mass. R. Civ. P. 24(a) (intervention as a matter of right). Alternatively, the Commission should be granted permissive intervention under Mass. R. Civ. P. 24(b) because "When a party to an action relies for ground of claim or defense upon any statute ... administered by a ... state governmental officer or agency or upon any regulation ... issued or made pursuant to the statute ... the officer or agency upon timely application may be permitted to intervene in the action." Mass. R. Civ. P. 24(b). Here, Great Barrington is relying as a ground for its defense upon a statute (c. 94G) and regulations (935 CMR 500.180 *et seq.*) that are administered by the Commission, and the Commission is making a timely application to intervene, so it should be granted permissive intervention.

PROCEDURAL HISTORY

On or about March 24, 2024, the Plaintiffs in this action, Theory Wellness, Inc. (“Theory Wellness”), Community Growth Partners Great Barrington Operations, LLC d/b/a Rebelle (“Rebelle”) and Highminded d/b/a Farnsworth Fine Cannabis (“Highminded”)—three marijuana establishments located in Great Barrington and previously licensed by the Commission—filed suit against Great Barrington, seeking the recoupment of Community Impact Fees (“CIFs”), legal fees, “and additional costs, payments and disbursements.” Complaint, p. 1. Court Docket no. 1.

Great Barrington filed its answer and counterclaims on or about April 26, 2024. Court Docket no. 5.

On or about May 17, 2024, Theory Wellness, Rebelle, and Highminded served their motion for judgment in their favor and for the dismissal of Great Barrington’s counterclaims on Great Barrington, filing a notice of same with this Court on that date. Court Docket nos. 5 and 6. On or about August 15, 2024, the Rule 9A package was filed with this Court, which included Great Barrington’s Opposition to the motion for judgment and dismissal of counterclaims (“Opposition Memorandum”). Court Docket nos. 7.1 and 7.2.

In its Opposition Memorandum, Great Barrington in relevant part stated that the regulations of the Commission cannot be applied retroactively to HCAs entered into prior to November 9, 2022. *See* Opposition Memorandum at pp. 8-18. Docket no. 7.2. The Opposition Memorandum directly challenges the Commission’s authority to review or approve HCAs, and its challenge is premised entirely on the execution date of each individual contract, each of which predates recent amendments by the Legislature to the adult-use marijuana law, Chapter 180 of the Acts of 2022, *An Act Relative to Equity in the Cannabis Industry* (“Chapter 180”).

A hearing on the Plaintiff's Motion for Judgment on the Pleadings was originally scheduled for November 19, 2024. However, on November 12, 2024, the parties to this action jointly moved to reschedule the hearing to permit undersigned counsel to file a motion to intervene. Docket no. 8. This Court allowed the motion on November 13, 2024 (Talit, J.). The Commission now files its motion to intervene and memorandum in support thereof, along with its proposed complaint in intervention as required by Mass. R. Civ. P. 24(c).

ARGUMENT

THE COMMISSION SATISFIES THE REQUIREMENTS FOR INTERVENTION UNDER MASS. R. CIV. P. 24(a) AND MASS. R. CIV. P. 24(b).

The Commission should be granted intervention as a plaintiff in this case, either as a matter of right under Mass. R. Civ. P. 24(a), or via permissive intervention under Mass. R. Civ. P. 24(b). *See Bolden v. O'Connor Cafe of Worcester, Inc.*, 50 Mass. App. Ct. 56 (2000). For intervention as of right, "the proposed intervener as of right must satisfy four criteria: (1) the application must be timely; (2) the applicant must claim an interest relating to the property or transaction which is the subject of the litigation in which the applicant wishes to intervene; (3) the applicant must show that, unless able to intervene, the disposition of the action may, as a practical matter, impair or impede his ability to protect the interest he has; and (4) the applicant must demonstrate that his interest in the litigation is not adequately represented by existing parties." *Id.* at 61. As explained more fully below, the Commission has satisfied the requirements for intervention under Mass. R. Civ. P. 24(a)(2) and Mass. R. Civ. P. 24(b)(2).

In the instant matter, the Defendant has advanced the position that the HCAs at issue were not subject to the Commission's review and approval under G.L. c. 94G because they were executed prior to the 2022 amendments by the Legislature to that chapter under Chapter 180.

However, the legislative overhaul under Chapter 180 explicitly granted the Commission authority over HCAs. *See* G.L. c. 94G §3(d)(3) (stating “[t]he commission shall review and approve each host community agreement as part of a completed marijuana establishment or medical marijuana treatment center license application and *at each license renewal*) (emphasis added). The language relating to license renewals is especially important because marijuana licenses must be renewed annually, and a license cannot be renewed without a valid HCA (as approved by the Commission) in place.

Here, the Defendant asserts an argument that directly challenges the Commission’s oversight over HCAs. Because the claims raised by the Defendant would limit or abrogate the authority of the Commission if recognized, and none of the parties currently involved in this matter are adequately situated to fully protect the Commission’s authority, the CCC requests intervention as a matter of right. *See* Mass. R. Civ. P. 24(a)(2); *Bolden*, 50 Mass. App. Ct. at 61. The facts as alleged by the Commission must be presumed as true by this Court in determining whether or not to allow the Commission’s intervention. *See Beacon Residential Mgmt. LP v. R.P.*, 477 Mass. 749, 752-56 (2017) (stating “because the issue to be determined in deciding a motion to intervene is simply whether the prospective intervenor has alleged plausible facts that claim an interest, not whether she would ultimately prevail in the underlying action, we take the [proposed intervenor]’s allegations in her motion, testimony, and supporting documents as true, and draw reasonable inferences in her favor”). *Cf. Commonwealth v. Fremont Investment & Loan*, 459 Mass. 209, 216-19 (2011) (holding that court properly denied intervention as of right where intervenor’s interest in the case was in the documents produced at trial, not in the “property or transaction” that was the subject of the action).

Alternatively, where, as here, the parties' claims or defenses rely "upon any statute ... administered by a ... state government ... agency or upon any regulation ... made pursuant to the statute, the ... agency upon timely application may be permitted to intervene in the action." Mass. R. Civ. P. 24(b)(2) (permissive intervention). *Beacon Residential Mgmt. LP v. R.P.*, 477 Mass. at 752-56 (reasonable inferences must be resolved in proposed intervenor's favor in deciding on a motion to intervene). Certainly Great Barrington has argued, in opposing Plaintiffs' motion for judgment on the pleadings, that the Commission may not review or approve an HCA that was executed prior to the effective date of the Legislature 2022 amendments to c. 94G. *See* Opposition Memorandum at pp. 8-18. And although Plaintiffs do not make an express argument on this point in their papers to date, it is possible they will make an argument about the Commission's authority in this regard at a future point in the litigation. Therefore, the question of the Commission's authority to review and approve HCAs, including HCAs that were executed before the effective date of the Legislature's 2022 amendments to c. 94G, has been squarely raised by this case. And the other parties to the case, which are focused on the existence and extent of the Town's financial liability to the Plaintiffs based on the Town's collection of CIFs for years prior to 2022, cannot and should not be expected to adequately represent the question of the Commission's authority under the 2022 amendments to c. 94G. Therefore, the Commission is not adequately represented by the existing parties to the action, and the Commission should be permitted to intervene to fully litigate this important issue in the case. *See Bolden*, 50 Mass. App. Ct. at 70 (permissive intervention under Mass. R. Civ. P. 24(b)(2) is left to judge's discretion).

Finally, the Commission's motion to intervene is timely. In assessing timeliness, courts generally consider "(i) the length of time that the putative intervenor knew or should have known that his interests were at risk before he moved to intervene; (ii) the prejudice to existing parties

should intervention be allowed; (iii) the prejudice to the putative intervenor should intervention be denied; and (iv) any special circumstances militating for or against intervention.” *Galbi v. Cellico P’ship*, 101 Mass. App. Ct. 260, 263 (2022) (citations omitted). Great Barrington’s opposition, which first raised the issue of the Commission’s authority under the amended statute and its regulations, was filed on August 15, 2024. *See* Docket no. 7.2. There has been no further motion practice by the parties, or orders from the Court, in the case since that time, other than to reschedule the hearing on Plaintiffs’ motion for judgment on the pleadings and to dismiss the Town’s counterclaims. The parties therefore will not suffer any prejudice from the Commission’s intervention in the case; to the contrary, the parties, and the Court, will benefit from the Commission’s participation at the upcoming motion hearing on June 9. In contrast, the Commission would suffer great prejudice if its motion to intervene were denied, as it would raise the risk that this Court would adjudicate the scope of the Commission’s authority to review and approve HCAs that pre-date the 2022 amendments to the statute, in a case in which the Commission is not even a party. To avoid this highly prejudicial result, the Court should allow the Commission to intervene, either as of right or permissively, to allow it to address the scope of the Commission’s authority under the Legislature’s 2022 amendments.

CONCLUSION

For the reasons set forth above, the Commission requests that the Court allow it to intervene in the case, either as of right under Mass. R. Civ. P. 24(a) or permissively under Mass. R. Civ. P. 24(b).

Respectfully submitted,

CANNABIS CONTROL COMMISSION

By its attorney,

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

By: Kajal K. Chattopadhyay

/s/ Kajal K. Chattopadhyay
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Dated: April 30, 2025

CERTIFICATE OF SERVICE

I hereby certify that I sent a copy of the foregoing by email on this date to counsel of record in this matter.

/s/ Kajal K. Chattopadhyay
Kajal K. Chattopadhyay

Dated: April 30, 2025