

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

CITY COUNCIL OF MOUNT VERNON; LISA A. COPELAND, in her Official Capacity as a Member of the Mount Vernon City Council, ANDRE WALLACE, in his Official Capacity as a Member of the Mount Vernon City Council; JANICE DUARTE, in her Official Capacity as a Member of the Mount Vernon City Council; DELIA M. FARQUHARSON, in her Official Capacity as a Member of the Mount Vernon City Council; and MARCUS A. GRIFFITH, in his Official Capacity as a Member of the Mount Vernon City Council,

Petitioners,

– against –

CITY OF MOUNT VERNON; RICHARD THOMAS, Individually and in his Official Capacity as Mayor of the City of Mount Vernon; and DEBORAH REYNOLDS, Individually and in her Official Capacity as Comptroller of the City of Mount Vernon,

Respondents.

Index No. _____

VERIFIED PETITION

Petitioners CITY COUNCIL OF MOUNT VERNON, LISA A. COPELAND, in her Official Capacity as a Member of the Mount Vernon City Council, ANDRE WALLACE, in his Official Capacity as a Member of the Mount Vernon City Council; JANICE DUARTE, in her Official Capacity as a Member of the Mount Vernon City Council; DELIA M. FARQUHARSON, in her Official Capacity as a Member of the Mount Vernon City Council; and MARCUS A. GRIFFITH, in his Official Capacity as a Member of the Mount Vernon City Council (collectively, “Petitioners”), by their attorneys, WILSON & CHAN, LLP, hereby allege:

1. This proceeding is brought pursuant to Article 78 of New York's CIVIL PRACTICE LAW & RULES (CPLR). This action seeks a preliminary injunction and temporary relief pursuant to CPLR §§ 6301, 6311, and 6313.

2. This action has been brought in the County of Westchester, in the Judicial District where substantially all of the material events occurred, pursuant to CPLR §506(b).

PARTIES

3. At all relevant times, the **CITY COUNCIL OF MOUNT VERNON** (the "**City Council**") is the legislative branch of the City of Mount Vernon, a municipal corporation, duly authorized and existing under and by virtue of the laws of the State of New York.

4. At all relevant times, **LISA A. COPELAND**, in her Official Capacity as a Member of the Mount Vernon City Council, is a resident of Westchester County and holds the public office as a member of the City Council of Mount Vernon.

5. At all relevant times, **ANDRE WALLACE**, in his Official Capacity as a Member of the Mount Vernon City Council, is a resident of Westchester County and holds the public office as a member of the City Council of Mount Vernon.

6. At all relevant times, **JANICE DUARTE**, in her Official Capacity as a Member of the Mount Vernon City Council, is a resident of Westchester County and holds the public office as a member of the City Council of Mount Vernon.

7. At all relevant times, **DELIA M. FARQUHARSON**, in her Official Capacity as a Member of the Mount Vernon City Council, is a resident of Westchester County and holds the public office as a member of the City Council of Mount Vernon.

8. At all relevant times, **MARCUS A. GRIFFITH**, in his Official Capacity as a Member of the Mount Vernon City Council, is a resident of Westchester County and holds the public office as a member of the City Council of Mount Vernon.

9. That, upon information and belief, at all times hereinafter mentioned, Respondent **CITY OF MOUNT VERNON** (the "**City**"), was and is a municipal corporation, duly authorized and existing under and by virtue of the laws of the State of New York.

10. That, upon information and belief, at all times hereinafter mentioned, Respondent **RICHARD THOMAS, INDIVIDUALLY AND IN HIS CAPACITY AS MAYOR OF MOUNT VERNON** ("**Thomas**"), was and/or is a resident of Westchester County and holds the public office of Mayor of the City of Mount Vernon.

11. That, upon information and belief, at all times hereinafter mentioned, Respondent **DEBORAH REYNOLDS, INDIVIDUALLY AND IN HER CAPACITY AS CITY COMPTROLLER OF MOUNT VERNON** ("**Reynolds**"), was and/or is a resident of Westchester County and holds the public office of City Comptroller of the City of Mount Vernon.

STATEMENT OF FACTS

Memorial Field

12. Upon information and belief, Memorial Field is a public park and athletic facility located in the City of Mount Vernon.

13. Upon information and belief, in December 2008, the City and Westchester County entered into an inter-municipal agreement to design and construct improvements to Memorial Field. Westchester County agreed to contribute up to \$9.7 million, with the City of Mount Vernon expected to contribute another \$3 million to complete the planned renovation.

14. Upon information and belief, by 2010, a design had been agreed upon and only about twenty-five percent (25%) of the demolition had been completed. The cost estimates associated with those two aspects, upon information and belief, total about \$3.4 million.

15. Upon information and belief, the previous mayor of Mount Vernon, the Honorable Ernest Davis, undertook to modify the design, including restoring the grandstands at Memorial Field rather than replacing them, as well as including an indoor tennis center in the new facility.

16. Upon information and belief, an indoor tennis facility was eventually erected on the land adjacent to the Memorial Field athletic field and was operated by a private entity as the Kela Tennis Center.

17. Unfortunately, for many reasons, including Mayor Davis' deviation from the original plan, along with subsequent changes in city leadership, ensured that the project has stalled for nearly a decade.

18. Upon information and belief, at some point in the last five years, the Memorial Field site became used as an illegal dumping ground for construction waste and debris, ultimately culminating in a mound of debris exceeding, by one estimate, 12,000 cubic tons of debris.

19. Upon information and belief, in 2015, the New York State Department of Environmental Conservation issued two (2) citations to the City of Mount Vernon for operating an illegal waste management facility, citing the presence of dangerous contaminants.

20. This activity has continued and still continues despite the City Council's efforts to stop it.

21. Upon information and belief, this activity is conducted in the presence of Mount Vernon Police personnel, under the direction of Thomas.

22. The City Council has not authorized the use of Mount Vernon Police personnel for this purpose.

Thomas' Activities at the Memorial Field Site

23. Upon information and belief, on or around May 14, 2018, Thomas instructed a contractor (Capital Industries) to demolish the grandstand at Memorial Field, and the grandstand was demolished immediately.

24. On May 16, 2018, Mayor Thomas was indicted after an investigation by the New York State Attorney General on charges that he stole campaign funds and failed to disclose his use of inaugural funds for personal expenses. That case remains pending.

25. Upon information and belief, Capital Industries was not selected by a public procurement, charging the City \$190,000 to complete the demolition.

26. Thomas had no authority from the City Council to hire Capital Industries.

27. Thomas had no authority from the City Council to proceed with any activities at the Memorial Field site.

28. The City Council has not authorized the Memorial Field renovation to proceed in any fashion.

29. Thomas has failed to provide evidence that an "emergency" exists on the Memorial Field site, despite numerous requests to produce engineering reports to support such a contention.

30. On May 31, 2018, the Honorable George Latimer, Westchester County Executive, issued a letter to Thomas, citing numerous defaults under the inter-municipality agreement, demanding a full accounting, and formally requesting the County be permitted to complete the design and construction of the Memorial Field renovation, a copy of which is attached hereto as **Exhibit A**.

31. Upon information and belief, on June 1, 2018, Thomas instructed a contractor, in the middle of the night, to demolish the tennis bubble at the Kela Tennis Center.

32. The City Council has not authorized the hiring of a contractor to demolish the tennis bubble at the Kela Tennis Center.

33. The City Council has not authorized the demolition of the tennis bubble at Kela Tennis Center.

34. The City Council has not authorized Thomas to terminate the City's agreement with Kela Tennis Center.

35. Upon information and belief, Thomas plans to conduct further demolition of the Kela Tennis Center and, if the foundation of the building is damaged, the property will be wholly unusable for the residents of Mount Vernon and would constitute the destruction of a valuable City asset. See §29 of the City Charter of the City of Mount Vernon.

36. Prior to the demolition of the tennis bubble, on June 1, 2018, the City Council unanimously passed a resolution handing responsibility for the design and construction of the renovated Memorial Field over to Westchester County, a copy of which is attached hereto as **Exhibit B**.

37. Thomas has not officially responded to the City Council resolution, but he has issued statements indicating he has no intention of ceasing his unauthorized activities in relation to the Memorial Field site.

38. In Mayor Richard Thomas' Office Weekly Report, dated June 2, 2018, Thomas stated,

Approximately two weeks ago the administration took down the ancient grandstands because they were decayed and in disrepair. Today, we continued our actions by reclaiming the tennis bubble and breathing new life into Mount Vernon's iconic Memorial Field....rest assured I will not waiver in my pledge to bring you back your park.

Available at <https://medium.com/@MayorRichThomas/mayor-richard-thomas-weekly-report-june-2-2018-116257ae04f8>

39. On a radio show, recorded on June 1, 2018, Thomas stated, in pertinent part,

The bottom line is it's time. It's time for some action....Two weeks ago we started the demolition of the grandstands and they're just about completely removed by now....We paid about \$190,000 to demolish the grandstands....Today, actions were taken to reclaim the tennis bubble facility at Memorial Field....Based on my conversations with the City Comptroller, she's supportive of this move....The bottom line is that we're moving forward.... We're looking to get this done by the end of the summer and we're keeping to our schedule....Enough is enough. It's time for some action....I understand that there's resistance but, at the end of the day, we have to move forward....

Available at <https://www.facebook.com/MayorRichardThomas/videos/613803192307479/>

40. The City Council has not authorized the expenditure of any funds for continuing renovation or demolition activities at the Memorial Field site.

41. Upon information and belief, Reynolds is complicit and is participating in Thomas' unlawful approach to the renovation of Memorial Field, including the distribution of City funds without authorization from the City Council.

42. Reynolds and Thomas, acting in concert, can release City funds without authorization or approval of the City Council.

43. Upon information and belief, Thomas is continuing to allow and/or direct unauthorized and potentially hazardous activities to occur at or around the Memorial Field site related to the mound of debris, illegally diverting Mount Vernon Police resources to facilitate or conceal those late night activities.

LEGAL ARGUMENTS

44. This Article 78 proceeding seeks review of Respondents' illegal and unauthorized conduct and actions beyond the scope of their statutory jurisdiction, as well as preliminary injunctive and temporary relief.

45. Pursuant to CPLR §§ 7803(2) and (3), questions that can be raised in an Article 78 proceeding include "whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction," or "whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed."

46. In the present case, the relative authority (and constraints) of elected officials in the City of Mount Vernon is provided for in the City Charter of the City of Mount Vernon.

47. Section 32 of the City Charter of the City of Mount Vernon provides:

The legislative power of the City, however conferred or possessed by it, during the first year after this Charter goes into effect, from January 1, 1923, to December 31, 1923, is vested in a City Council composed of the five members of the existing City Council, who were chosen for two-year terms at the general election held during the year 1921, and thereafter is vested in a City Council composed as hereinafter provided, and **it has authority to enact ordinances, not inconsistent with law, for the government of the**

City and the management of its business, for the preservation of good order, peace and health, for the safety and welfare of its inhabitants and the protection and security of their property; and its authority, except as otherwise provided in this chapter or by law, is legislative only.

City Charter of the City of Mount Vernon, §29, Adopted as Chapter 490, Laws of 1922 (as amended) (*emphasis added*).

48. Section 32 of the City Charter of the City of Mount Vernon provides:

The City Council and the several members thereof, and all officers and employees of the City are hereby declared trustees of the property, funds and effects of the City respectively, so far as such property, funds and effects are or may be committed to their management or control, and every taxpayer residing in the City is hereby declared to be a cestui que trust in respect to the said property, funds and effects respectively; and any cotrustee or any cestui que trust shall be entitled as against said trustees and in regard to said property, funds and effects to all the rules, remedies and privileges provided by law for any cotrustee or cestui que trust, to prosecute and maintain an action to prevent waste and injury to any property, funds and estate held in trust; and such trustees are hereby made subject to all the duties and responsibilities imposed by law on trustees, and such duties and responsibilities may be enforced by the City or by any cotrustee or cestui que trust aforesaid. The remedies herein provided shall be in addition to those now provided by law.

City Charter of the City of Mount Vernon, §32, Adopted as Chapter 490, Laws of 1922 (as amended) (*emphasis added*).

49. Here, Respondents are trustees of City assets and properties (§32) and are compelled to abide by the authorizations conferred upon them by the City Council insofar as the protection and security of those assets and properties are concerned (§29).

50. Respondents have ignored their statutory obligations in conducting unauthorized activities which have destroyed and continue to threaten the property and assets of the City, in blatant violation of the law.

51. Respondents have indicated they intend to continue acting without authority or authorization.

52. Petitioners have no means to enjoin their illegal activities without resort to the Court's intercession.

WHEREFORE, Petitioners respectfully demand judgment: 1) restraining Respondents from conducting any further demolition on structures contained in or around the Memorial Field site; 2) restraining Respondents or any other party, including third-party contractors, from performing any activity on or around the Memorial Field site until such time as enabling legislation is approved by Petitioners; 3) restraining Respondents from disbursing any funds associated with activities conducted on the Memorial Field site to any third party unless and until such expenditures have been authorized and approved by Petitioners; 4) restraining Respondents from conducting any activity in furtherance of the renovation of the Memorial Field site until such time as enabling legislation is approved by Petitioners; 5) restraining Respondents from entering upon or conducting any further demolition of the property known as the Kela Tennis Center; and 6) such other and further relief as this Court deems proper.

Dated: New York, New York
June 8, 2018

WILSON & CHAN, LLP



By: _____

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VERIFICATION

STATE OF NEW YORK)
) SS:
 COUNTY OF NEW YORK)

HENRY C. CHAN, being duly sworn, deposes and says:

I am one of the attorneys for Petitioners **CITY COUNCIL OF MOUNT VERNON, LISA A. COPELAND**, in her Official Capacity as a Member of the Mount Vernon City Council, **ANDRE WALLACE**, in his Official Capacity as a Member of the Mount Vernon City Council; **JANICE DUARTE**, in her Official Capacity as a Member of the Mount Vernon City Council; **DELIA M. FARQUHARSON**, in her Official Capacity as a Member of the Mount Vernon City Council; and **MARCUS A. GRIFFITH**, in his Official Capacity as a Member of the Mount Vernon City Council (collectively, "**Petitioners**") in this Article 78 proceeding.

I have read the foregoing petition and the same is true to my own knowledge, except as to those matters stated herein to be alleged on information and belief, and as to those matters, I believe them to be true based on my review of pertinent documents and conversations with persons with personal knowledge.

This verification is made by me rather than Petitioners because at least one of the Petitioners acquainted with the facts resides outside the County of New York where I maintain my office.

Dated: June 8, 2018
 New York, New York



Henry C. Chan