

11/11/22 after reviewing and through consideration, 11/11/22. The TS conceded at the hearing that Court I was the A.D.A. down in Court II must be dismissed. That leaves the down in Court II that the TS violated the F.F.H.A. The amended complaint fails to plausibly suggest an entitlement to relief under any of the 3 provisions that are necessary under the F.F.H.A. See Casey v. City of Beverly, 978 Mass. v. Fitchburg, 978 Mass. App. Ct. 822-833 (2020). The theory of liability is a personal injury to a person's property. It is completely immaterial to the City of Beverly. The amended complaint fails to plausibly suggest that the keeping of chickens is indispensable to the health and well-being of the City of Beverly. Even though Court II is nothing more than a prayer for relief, Court II must be dismissed as well. Therefore, it is heavily recommended that the First Amended Complaint is Dismissed.

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ESSEX, ss.

SUPERIOR COURT DEPARTMENT
DOCKET NO.: 2177CV01254

WILLIAM WILSON, Individually and as a Father and Next Friend of RAFAELLA TSIROZIDOU, and IRENE TSIROZIDOU, Plaintiffs,
v.
CITY OF BEVERLY, MASSACHUSETTS, MICHAEL CAHILL, MAYOR, and WILLIAM T. BURKE, III, DIRECTOR OF PUBLIC HEALTH, Defendants.

RECEIVED

3/30/2022

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

I. INTRODUCTION AND STATEMENT OF THE FACTS

This matter arises out of claims brought by the Plaintiffs William Wilson ("Dr. Wilson"), Individually and as Father and Next Friend of Rafaella Tsirozidou ("Ms. Tsirozidou"), and Irene Tsirozidou ("Dr. Tsirozidou"). The Plaintiffs reside at 74 Lothrop Street, Beverly, Essex County, Massachusetts 01915.

Section A of the City of Beverly Board of Health Regulation 400-4.8: Cows, goats, swine, poultry and other animals (the "Regulation"), states:

No person shall keep within the limits of this City in any building, or on any premises or tract of land of which he may be the owner, lessee, tenant, or occupant, any cattle, wine horses, birds, poultry, fowl, reptiles or any other animals without a permit from the Board of Health and then only in such places and manner as it shall direct. All such permits expire annually on December 31 and may be revoked by the Board at any time for cause.

(See Exhibit A).

to relief under any of the 3 provisions that are necessary under the F.F.H.A. See Casey v. City of Beverly, 978 Mass. v. Fitchburg, 978 Mass. App. Ct. 822-833 (2020). The theory of liability is a personal injury to a person's property. It is completely immaterial to the City of Beverly. The amended complaint fails to plausibly suggest that the keeping of chickens is indispensable to the health and well-being of the City of Beverly. Even though Court II is nothing more than a prayer for relief, Court II must be dismissed as well. Therefore, it is heavily recommended that the First Amended Complaint is Dismissed.

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the TS' motion for a P.I. (see Paper No. 18) at PP 11-13, the Court rules that the amended complaint fails to plausibly suggest that the keeping of chickens is indispensable to the health and well-being of the City of Beverly. Even though Court II is nothing more than a prayer for relief, Court II must be dismissed as well. Therefore, it is heavily recommended that the First Amended Complaint is Dismissed.

TRANSCRIPT OF ENDORSEMENT

Endorsement on Motion to Memorandum of Law in Support of Defendant's Motion to Dismiss (#19.1): ALLOWED

After hearing and thorough consideration, ALLOWED. The Plaintiffs conceded at the hearing that Count I and the Americans with Disabilities Act (A.D.A.) claim in Count III must be dismissed. That leaves the claim in Count III that the Defendants violated the Fair Housing Amendments Act (F.F.H.A.). The Amended Complaint fails to plausibly suggest an entitlement to relief under any of the three (3) permissible theories of recovery under the F.F.H.A. See (*Crossing Over, Inc. v Fitchburg*, 98 Mass. App. Ct. 822,833 (2020)). The theory of failure to provide reasonable accommodation comes closest to surviving the Rule 12(b)(6) standard. However, principally for the reasons stated by the Court (McCarthy-Neyman, J.) in denying the Plaintiffs' Motion for a Preliminary Injunction (see Paper No. 18) at pp 11-13, the Court rules that the Amended Complaint fails to plausibly suggest that the keeping of chickens is indispensable to Rafaella's use and enjoyment of the Plaintiff's home. Given that Count II is making more than a prayer for relief, Count II must be dismissed, as well. Wherefore, it is Hereby Ordered that the First Amended Complaint is DISMISSED. Dated 11/11/2022. Karp, Justice