

ROBERT F. CHERRY, JR., ET AL.

Plaintiffs

v.

**MAYOR & CITY COUNCIL OF
BALTIMORE CITY**

Defendant.

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IN THE

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CIRCUIT COURT

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FOR

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BALTIMORE CITY

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Civil Case No.: 24-C-16-004670

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DECLARATORY JUDGMENT AND ORDER

This matter came before the court for trial on Plaintiffs' First Amended Class Action Complaint (Docket Entry 37) beginning October 29, 2018. In accordance with the Memorandum Opinion issued herewith, as to Count I seeking Declaratory Judgment, it is this 13th day of May, 2019, by the Circuit Court for Baltimore City:

FOUND that the court issued a Declaratory Judgment and Order on January 2, 2018 (Docket Entry 21/5), which remains in full force and effect; and further it is

FOUND and **ORDERED** in accordance with Maryland Rule 2-231(i), and as set forth in the accompanying Memorandum Opinion and Class Certification Order, this Declaratory Judgment and Order pertains to the Class, the Active Sub-Class, the Retirement-Eligible Sub-Class, and the Retired Sub-Class as follows:

The Class includes all members and beneficiaries of the Fire and Police Employees' Retirement System of the City of Baltimore (the "Plan") as of June 30, 2010;

The Active Sub-Class includes all members of the Plan who, as of June 30, 2010, were working and not yet eligible to receive benefits under the Plan;

The Retirement-Eligible Sub-Class includes all members of the Plan who, as of June 30, 2010, were eligible to retire but not entitled to receive benefits because they were continuing to work; and

The Retired Sub-Class includes all members and beneficiaries of the Plan who, as of June 30, 2010, were entitled to, and receiving, retirement benefits (including line-of-duty and non-line-of-duty disability retirement benefits) under the Plan; and further it is

ADJUDGED, DECREED and ORDERED as follows

1. Each Class member entered a contract with Defendant Mayor & City Council of Baltimore City (the “City”) upon employment, the terms of which were the provisions of Article 22 of the Baltimore City Code as it existed upon his or her date of employment;

2. The City has a reserved legislative power to make unilateral, prospective, reasonable modifications to the Plan. The City is prohibited from retrospectively modifying the Plan such that a modification shall not remove, diminish or impair a Plan benefit where a Class member satisfied all defined contingencies related to such benefit prior to the effective date of the modification;

3. Members of the Retired Sub-Class and Retirement-Eligible Sub-Class, having satisfied all of the contractual conditions precedent to receipt of benefits under the Plan prior to the adoption of Ordinance 10-306, held vested rights to Plan benefits that the City could not lawfully unilaterally diminish or impair;

4. By enacting Ordinance 10-306, the City retrospectively, and therefore unlawfully, withdrew from Retired and Retirement-Eligible Sub-Class members their rights to the Variable Benefit feature of the Plan as it stood prior to the Ordinance. In so doing, the City unlawfully

diminished and impaired a Plan benefit of Retired and Retirement-Eligible Sub-Class members. Ordinance 10-306 did not diminish or impair Plan benefits of Retired and Retirement-Eligible Sub-Class members other than the Variable Benefit;

5. By enacting Ordinance 10-306, the City breached its contract with Retired Sub-Class and Retirement-Eligible Sub-Class members;

6. Active Sub-Class members are entitled to substantially the program they bargained for at the start of employment and any diminution thereof must be balanced by other benefits or justified by countervailing equities for the public's welfare;

7. The Plan as modified by Ordinance 10-306 provides Active Sub-Class members substantially the pension program that existed at the time of employment, and any diminution of Plan benefits are balanced by other benefits provided under the modified Plan or are justified by countervailing equities for the public's welfare;

8. By enacting Ordinance 10-306, the City lawfully modified the Plan, and did not unlawfully diminish or impair Plan benefits of Active-Sub Class members;

9. The City did not breach its contract with Active Sub-Class members by enacting Ordinance 10-306;

10. With respect to Retired Sub-Class and Retirement-Eligible Sub-Class members, it is within the court's discretion to award money damages equivalent to the value of the withdrawn Variable Benefit (reduced to present value) or, alternatively, specific performance in the form of re-institution of the Variable Benefit. Although the City unlawfully withdrew the Variable Benefit from Retired and Retirement-Eligible Sub-Class members, the court declines to declare that Retirement Sub-Class and Retirement-Eligible Sub-Class members are entitled to the benefits that existed immediately prior to the enactment of Ordinance 10-306. Active Sub-Class members are

not entitled to the benefits that existed immediately prior to the enactment of Ordinance 10-306, as the City lawfully modified their benefits under the Plan by way of Ordinance 10-306;

11. The City is obligated to compensate each Retired Sub-Class member to the extent, if any, of his or her monetary loss following the effective date of Ordinance 10-306 owing to the withdrawal of the Plan's Variable Benefit, in accordance with the method of general damages calculation set forth in the accompanying Memorandum Opinion;

12. The City is not obligated to reimburse Retirement-Eligible or Active Sub-Classes members for amounts they were required to pay in modified employee contributions as a result of Ordinance 10-306;

13. The City did not unlawfully diminish or impair Plan benefits of Active Sub-Class members. Therefore, the City is not obligated to restore pre-Ordinance 10-306 Plan benefits to Active Sub-Class members;

14. The City funded the Plan in accordance with Article 22 of the Baltimore City Code through June 30, 2010. The Plan was actuarially unsound in June 2010. In June 2010, the City did not have the ability both to fund the Plan at a five percent post-retirement assets earnings assumption rate and ensure that it fulfilled basic, core public safety and welfare needs of Baltimore City's residents. Had the City elected in June 2010 to fund the Plan at a five percent post-retirement assets earnings assumption rate, the City would not have been able to meet basic, core public safety and welfare needs of Baltimore City's residents; and

15. Plaintiff Class members have the right to an actuarially sound Plan funded in accordance with Article 22 of the Baltimore City Code; and further it is

ORDERED that any and all other relief requested through Count I for Declaratory Judgment shall be, and is hereby, **DENIED**.

[JUDGE'S SIGNATURE ON ORIGINAL]

Judge Julie R. Rubin

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