

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

ST. CROIX GOVERNMENT RETIREES, INC.
DEBRA A. CHRISTOPHER, in her individual
capacity, and capacity as President of the
St. Croix Government Retirees, Inc.; and
PHYLLIS M. NEHLSSEN, in her individual capacity,
and her capacity as chair of the St. Croix
Government Retirees Advocacy Committee

CASE NO. ^S~~DX~~-17-CV-152

PETITIONERS

GOVERNOR KENNETH E. MAPP, Governor of
the Virgin Islands of the United States, and
VALDAMIER O. COLLENS, Commissioner of
the Virgin Islands Department of Finance

RESPONDENTS



PETITION FOR WRIT OF MANDAMUS

COMES NOW Petitioners, St. Croix Government Retirees, Inc., Debra A. Christopher as a retiree and in her capacity as President of St. Croix Government Retirees, Inc., Phyllis M. Nehlsen as a retiree and in her capacity as Chair of St. Croix Government Retirees Advocacy Committee, pursuant to section 13 of Act 7261 to petition this honorable Court to issue Writ of Mandamus order to the Governor of the Virgin Islands, Kenneth E. Mapp and the Commissioner of Finance, Valdamier O. Collens to uphold an act in accordance with Bill 29-0123, section 13 of Act 7261 enacted on July 7, 2011 and in favor of Petitioners.

JURISDICTION & PARTIES

1. This Court has jurisdiction over this action pursuant to 5 VIC-1361 and 4 VIC-76.
2. Petitioners Debra A. Christopher and Phyllis M. Nehlsen as retirees under the jurisdiction of the Government Employees Retirement System have the standing to petition the Court.
3. Petitioner St. Croix Government Retirees, Inc. is duly registered with the Office of the Governor as an organization dedicated to the preservation of the GERS has a membership of retirees located in the Virgin Islands and mainland USA.

4. Honorable Kenneth E. Mapp, Governor of the Virgin Islands of the United States represents the Territory of the Virgin Islands and is subject to the jurisdiction of this Court.
5. The Commissioner of Finance of the Virgin Islands of the United States is appointed by the Governor with the consent of the Legislature and represents the Department of Finance of the Virgin Islands and is subject to this Court.

FACTS

6. On July 7, 2011, the 29th Legislature of the Virgin islands passed Bill No. 29-0123 , section 13 that was signed into law and became Act 7261.
7. From 1983 to 2001 nine unfunded legislative mandates have resulted in a loss of funding of approximately \$600 million in contributions to the GERS according to the GERS Update Newsletter issue 28, April 2016.
8. The Government of the Virgin Islands who is the Plan Sponsor of the GERS is required on an annual basis to contribute Actuarially Determined Contributions . For the past 25 years (from 1991 to 2015), the Government of the Virgin Islands has contributed \$1.278 billion less than it should have contributed to the GERS.
9. The total pension liability as of April 2016 is \$4.23 billion.
10. Act 6905 that was passed on December 29, 2006, allowed for a loan pension obligation bond for \$600 million that was not executed.
11. In the testimony of Commissioner Valdamier Collens to the Legislature on January 13, 2017, he stated that at present the Virgin Islands Government only funds its obligations to the GERS at 19.6%.
12. At the last Investment Managers Meeting on March 2, 2017, Actuaries have projected that 2020 is the year of the collapse of the GERS .
13. The Petitioner, St. Croix Government Retirees, Inc., is a corporation in good standing and authorized to do and is doing business in St. Croix, United States Virgin Islands.
14. The Petitioner, St. Croix Government Retirees Inc. is an entity that was created in order to protect the interests of current and/or retired employees of the Government of the Virgin Islands who are receiving or should in the future receive retirements benefits from GERS, and/or from the Government of the Virgin Islands.
15. That Respondent Governor Kenneth E. Mapp is a person of the full age of majority and a resident of the Virgin Islands. Furthermore, Governor Kenneth E. Mapp is the Chief Executive Officer of the Government of the Virgin Islands.
16. Petitioners have filed this Writ of Mandamus because the imminent and potential harm threatened by the lack of action of the Respondents is irreparable . The denial of the Writ of Mandamus would permanently damage the interests of both past, present and future

government employees and retirees, along with other citizens of the Virgin Islands, and Petitioner reasonably believes that if/when the merits of this matter are fully tried that judgement in favor of Petitioners will/should be granted.

DISCUSSION

I Petitioners Have A Clear Right to Have a Writ of Mandamus Issued By This Court Ordering the Governor of the Virgin Islands and the Commissioner of Finance to Make the Direct Contribution of \$7 Million dollars Annually.

Act 7261 specifically mandates a direct contribution of \$7,000,000 from the Internal Revenue Matching Fund to the GERS in the fiscal year ending on September 30, 2013 and all subsequent fiscal years. Section 13 specifically states "Notwithstanding any law or provision to the contrary, there is hereby appropriated in the fiscal year ending September 30, 2013 and all subsequent fiscal years, the sum of \$7,000,000 from the Internal Revenue Matching Fund to the GERS as a direct contribution." Act 7261 does not provide that the Commissioner of Finance as the representative of the Department of Finance can amend, modify or refuse the direct contribution of the \$7,000,000 from the Internal Revenue Matching Fund to the GERS every fiscal year.

II The Governor of the Virgin Islands and the Commissioner of Finance Have a Plainly Defined and Preemptory Duty to Pay \$7,000,000 from the Internal Revenue Matching Fund as a Direct Contribution to GERS Every Fiscal Year Retroactive to the Fiscal Year Ending on September 30, 2013.

Mandamus, when directed to an administrative agency or public office, will be issued only to require the performance of a clear legal duty. For a duty to be enforceable by mandamus, the duty must be prescribed with such precision and certainty that nothing is left to discretion or judgement. To that end, mandamus relief is appropriate where a public official fails to perform his or her duty under statute. (See- *Donastorg v. Virgin Islands*, ex ref. Department and Agencies, et al. 2003 WL 21653354 Terr. VI 2003)

III Petitioners Have No Other Adequate Remedy At Law Available.

As of the filing of this Petition, the Governor and the Commissioner of Finance made only one contribution of \$7,000,000. The Governor and Commissioner of Finance have stated that they have no intention of making more contributions of \$7,000,000 to GERS from the Internal Revenue Matching Fund in the foreseeable future. Act 7261 does not provide that the Governor and the Commissioner of Finance have the authority to act in the manner in which they have, and Act 7261 does not provide for a process to redress or appeal the lack of action of the Governor and the Commissioner of Finance.

No sufficient remedy is available to address the harm suffered if the Department of Finance is not directed by a Writ of Mandamus to take all necessary steps to ensure that the internal Revenue Matching Fund is brought into compliance with Virgin Islands law. It is not possible to correct the harm suffered by GERS having to withdraw funds from its investments. The Petitioners' only remedy at law to redress this issue is to file for Writ of Mandamus.

WHEREFORE, because there is a clear right to the relief Petitioners seek, a plainly peremptory duty to make a direct contribution of \$7 million from the Internal Revenue Matching Fund to the GERS in the fiscal year ending September 30, 2013 and all subsequent fiscal years, and there is no other adequate remedy at law available. Petitioners respectfully request that this honorable Court grant this petition for mandamus relief and order the Governor of the Virgin Islands and the Commissioner of Finance to make retroactive payments to the GERS. The Petitioners request that the direct and retroactive contributions from the Internal Revenue Matching Fund to GERS be implemented immediately.

Respectfully submitted,

Dated: 4/04/17

By: 

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