

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

WILLIAM HOWARD; JASON  
DUEMLER; NICOLE DUEMLER;  
ANN DUEMLER; MICHAEL LUTZ;  
SHERRI HOWELL; ROCHELLE  
JAMMER; and MARK  
KOHLEHORST, individually and on  
behalf of all others similarly situated,

Plaintiffs,

Case No. 25-10926

v.

Hon. Thomas L. Ludington

UBP BAY CITY, LLC (doing  
business as BAY CITY BRIDGE  
PARTNERS) and CITY OF BAY  
CITY,

Defendants.

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**DEFENDANT CITY OF BAY CITY'S  
MOTION TO DISMISS PURSUANT TO FRCP 12(b)(6)**

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Defendant City of Bay City (the “City”), by and through its undersigned attorneys, moves pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss Counts I and II of Plaintiffs’ Complaint. This Motion is supported by the accompanying brief.

Under Local Rule 7.1, the City's counsel contacted Plaintiffs' counsel to ascertain whether this motion will be opposed. Plaintiffs' concurrence has not been received.

Respectfully submitted,

WARNER NORCROSS + JUDD LLP

Dated: May 9, 2025

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**BRIEF IN SUPPORT OF DEFENDANT CITY OF BAY CITY'S  
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## INTRODUCTION

The City of Bay City (the “**City**”) and UBP Bay City, LLC (“**UBP**”) entered into an Amended and Restated Concession and Lease Agreement dated March 1, 2023 regarding the Liberty Bridge and the Concession and Lease Agreement on the same date regarding the Independence Bridge (collectively, the “**Leases**”). (Pls.’ Compl. ¶¶ 27-28.) Pursuant to the Leases, the City leased certain Real Property<sup>1</sup> and Personal Property to UBP, and further granted UBP – subject to the terms of the Leases – the exclusive right to refinance, operate, expand, upgrade, improve, maintain, rehabilitate, repair, management and toll the [Bridges].” (Leases, ¶ 1.) Recently, UBP released to the public a plan to revise its tolling structure. (Pls.’ Compl. ¶ 83.) Shortly thereafter, Plaintiffs commenced this lawsuit.

Plaintiffs’ Complaint alleges two claims against the City: (I) Violation of Public Trust Principles, and (II) Third-Party Beneficiary Claim – Breach of Contract.<sup>2</sup> Neither states a claim upon which relief can be granted, and the City

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<sup>1</sup> Any capitalized words not defined herein shall take their defined meaning in the Agreements attached to Plaintiffs’ Complaint.

<sup>2</sup> Plaintiffs also alleged seven causes of action against co-defendant Bay City Bridge Partners (“**UBP**”), including Count I Violation of Public Trust Principles and Count II Third-Party Beneficiary Claim – Breach of Contract. These allegations and their merit as they relate to UBP are not the subject matter of this Motion and thus not addressed herein.

therefore moves this Court to dismiss same pursuant to Federal Rule of Civil Procedure 12(b)(6).

### **STANDARD OF REVIEW**

A complaint cannot survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) unless it contains “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)) (internal quotations omitted). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). The plausibility standard requires “more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (citing *Twombly*, 550 U.S. at 556). Rather, it “depends on a host of considerations, including common sense and the strength of competing explanations for the defendant’s conduct.” *16630 Southfield Ltd. P’ship v. Flagstar Bank, F.S.B.*, 727 F.3d 502, 504 (6th Cir. 2013) (citing *Iqbal*, 556 U.S. at 682; *Twombly*, 550 U.S. at 567). When evaluating a motion to dismiss under Rule 12(b)(6), the Court may consider any “document [that] is referred to in the complaint and is central to the plaintiff’s claim.” *Greenberg v. Life Ins. Co. of Virginia*, 177 F.3d 507, 514 (6th Cir. 1999).



## ARGUMENT

### **I. Plaintiffs’ claim for “violation of trust principles” must be dismissed because Plaintiffs fail to state a claim upon which relief can be granted.**

Plaintiffs’ claim for “violation of trust principles” is not a cause of action for which relief can be granted, or a cause of action generally, therefore dismissal pursuant to Fed. R. Civ. P. 12(b)(6) is required. In Count I of their Complaint, Plaintiffs attempt to extend the public trust doctrine to cover access to infrastructure used to cross the navigable waters that the public trust doctrine seeks to protect for public use. Plaintiffs also attempt to put themselves in the shoes of the State of Michigan to bring this claim. Such extensions are not supported by case law, nor is it justified.

The public trust doctrine is a longstanding legal principle under Michigan’s common law which provides that the state, as sovereign “has an obligation to protect and preserve the waters of the Great Lakes and the lands beneath them for the public.” *Glass v. Goeckel*, 473 Mich 667, 678; 703 NW2d 58 (2005). In particular, this means that “[t]he *state* serves, in effect, as the trustee of public rights in the Great Lakes for fishing, hunting, and boating for commerce or pleasure.” *Id.* at 679. (Emphasis added.) See also, *Nedtweg v. Wallace*, 237 Mich 14, 16; 208 NW51 (1926); *State v. Venice of America Land Co*, 160 Mich 680, 702; 125 NW 770 (1910); *State v. Lake St. Clair Fishing & Shooting Club*, 127 Mich 580, 586; 87 NW 117 (1901); *Lincoln v. Davis*, 53 Mich 375, 388; 19 NW 103 (1884). The public trust

doctrine recognizes Michigan's navigable waters as "natural resources and thoroughfares that belong to the public." *Glass* at 673-674.

Here Plaintiffs assert that by entering into an agreement that grants the right to charge tolls to cross a bridge, the City has violated "public trust principles". Plaintiff goes on to equate such "public trust principles" with the public trust doctrine, alleging that "the unreasonable tolling and its disproportionate impact violate principles of public trust and fair access to essential infrastructure" amount to a violation of public trust principles. (Pls' Compl. ¶ 109.)

The Complaint does not say *what* public trust principles are being violated, but they certainly cannot stem from the public trust doctrine. As discussed *supra*, "our courts have traditionally articulated rights protected by the public trust doctrine as fishing, hunting, and navigation [of water] for commerce or pleasure." *Glass* at 695. As access to bridges or other infrastructure have never been the type of right protected by the public trust doctrine, therefore Plaintiffs' Count I against the City must be dismissed for failing to state a claim upon which relief can be granted.

## **II. Plaintiffs' third-party beneficiary breach of contract claim against the City fails as a matter of law.**

Count II of the Complaint alleges that Plaintiffs are third-party beneficiaries of the Leases entered between the City and UBP, such they are able to bring a claim for breach of contract against *both* parties to the Leases. Not only is Plaintiffs' claim

illogical, but it is also unsupported under Michigan law and dismissal under Fed R. Civ. P. (12)(b)(6) is required.

Historically, only parties to a contract could sue to enforce the obligations of a contract. As American legal jurisprudence has evolved, courts have recognized the right of third-party beneficiaries to bring suit to enforce contracts—in limited circumstances. In Michigan, a claim arising from an individual’s categorization as a third-party beneficiary is governed by MCL 600.1405. It states in pertinent part:

Any person for whose benefit a promise is made by way of contract, as hereinafter defined, has the same right to enforce said promise that he would have had if the said promise had been made directly to him as the promisee.

(1) A promise shall be construed to have been made for the benefit of a person whatever the promisor of said promise had undertaken to give or to do or refrain from doing something directly to or for said person.

MCL 600.1405(1). Notably, MCL 600.1405(2)(b) states,

If such person is not in being or ascertainable at the time the promise becomes legally binding on the promisor then his rights shall become vested the moment he comes into being or becomes ascertainable if the promise has not been discharged by agreement between the promisor and the promisee in the meantime.

Generally, this means that a “third-party beneficiary to a contract *stands in the shoes of the promisee* and thus may enforce the contract against the promisor.” *White v. Taylor Distributing Co, Inc*, 289 Mich App 731, 734; 798 NW2d 354. (Emphasis added.) “To create a third-party beneficiary, a contract must expressly contain a

promise to act to benefit the third party. *Farm Bureau Ins Co v. TNT Equipment, Inc*, 328 Mich App 667, 674-675; 939 NW2d 738 (2019) (cleaned up). Michigan courts utilize “an objective standard to determine from the language of the contract itself whether the promisor undertook to give or to do, or to refrain from doing, something directly to or for the person asserting status as a third-party beneficiary.” *Id*. Accordingly, “only intended third-party beneficiaries, not incidental beneficiaries, may enforce a contract under § 1405.” *Koenig v. City of South Haven*, 460 Mich 667, 680; 597 NW2d 99 (1999).

Here, Plaintiffs are attempting to enforce the Lease against *both* the promisor (UBP) and the promisee (the City). Specifically, Plaintiffs allege that they are the third-party beneficiaries of the Leases entered into between the City and UBP relating to the construction and maintenance of both the Independence Bridge and the Liberty Bridge. (Pls’ Compl. ¶ 113.) Plaintiffs further allege that the City has materially breached the Agreements by failing “to require UBP to adhere to the terms and conditions of the purpose and obligations of the [Leases].” (*Id.* at § 121.) Such claim fails as a matter of law because Plaintiffs are not the direct beneficiaries of the Leases nor did the City make any promises under the Leases which were for the direct benefit of Plaintiffs.

In *Koenig*, plaintiffs’ daughter nearly drowned when swept off of a pier in the city of South Haven by a large wave. 460 Mich at 669. Although the pier was owned

by a private corporation, the city and the corporation entered into a memorandum of understanding (“MOU”) whereby the city would be responsible for coordinating and controlling the entrance to the pier during periods of inclement weather. *Id.* at 671. Plaintiffs commenced an action for breach of contract against the city under a third-party beneficiary theory. *Id.* Plaintiffs contended that the MOU required the city to preclude access to the piers during inclement weather conditions, and that the city breached such duty on the day their daughter nearly drowned. *Id.* at 672. The plaintiffs further alleged that their daughter was an intended third-party beneficiary of the MOU.

The Michigan Supreme Court held that after objectively assessing the MOU, it was clear that the MOU sought to delegate responsibilities of the city and the corporation regarding restricting access to the pier during periods of dangerous conditions. *Id.* at 680. “Thus, the focus of the MOU is to specify the respective duties of the two parties regarding restricting access to the pier.” *Id.* at 681. Recognizing the underlying concern in regulating the pier for public safety, the *Koenig* court considered whether the MOU contemplated a specific class of individuals and held that it did not and thus plaintiffs’ claim for breach of contract must be dismissed as a matter of law. *Id.* at 683. “Absent contractual language demonstrating an undertaking directly for the benefit of plaintiffs’ daughter or a sufficiently

designated class that would include her, plaintiffs cannot establish she was a third-party beneficiary of the MOU.”

Here, like in *Koenig*, the terms of the Leases are clear and unequivocal, including the beneficiary of the City’s promises. An objective review of the Leases shows that the City agreed to lease certain Real Property and Personal Property relating to the Independence Bridge and Liberty Bridge to UBP. (Agreement, ¶1.) The Leases do not demonstrate an undertaking directly for the benefit of Plaintiffs or a sufficiently designated class that would include them. Thus, Plaintiffs cannot establish they are anything more than incidental beneficiaries to the promises made by the City to UBP, and accordingly their claims for breach of contract against the City must be dismissed as a matter of law.

Moreover, as discussed thoroughly in *Koenig*, the mere fact that a municipality acts in the interest of the general public under an agreement is not sufficient to establish third-party beneficiary standing. See *Koenig*, 460 Mich at 680, holding “this of course means that the class must be something less than the entire universe, e.g., “the public”; otherwise, subsection 1405(2)(b) would rob subsection 1405(1) of any narrowing effect.” Thus, Plaintiffs’ attempt to include every individual who utilizes either bridge at any point in time as an intended third-party beneficiary of the Leases fails as a matter of law because the class is not sufficiently defined, and dismissal is warranted.

## CONCLUSION

For the foregoing reasons, the City respectfully requests that this honorable Court dismiss Plaintiffs' entire Complaint as it relates to the City of Bay City and order any other relief this Court deems just and proper.

WARNER NORCROSS + JUDD LLP

Dated: May 9, 2025

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## CERTIFICATE OF SERVICE

The undersigned attorney certified that I caused a true and correct copy of the foregoing to be filed and served upon all counsel of record via the U.S. District Court for the Eastern District of Michigan's CM/ECF system.

Dated: May 9, 2025

/s/Jonathan E. Lauderbach  
Jonathan E. Lauderbach

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