

United States Court of Appeals For the First Circuit

No. 24-1931

JEREMIAH NICHOLLS, WALTER GOODROW, WESLEY DINSMORE,
RICHARD RUPPERT,

Plaintiffs, Appellants,

v.

VEOLIA WATER CONTRACT OPERATIONS USA, INC.,
f/k/a Suez Water Environmental Services, Inc.,

Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Mark G. Mastroianni, U.S. District Judge]

Before

Gelpí, Lynch, and Thompson,
Circuit Judges.

Terence E. Coles, with whom Pyle Rome Ehrenberg PC was on
brief, for appellants.

Stephen T. Melnick, with whom Shea A. Miller and Littler
Mendelson, P.C. were on brief, for appellee.

Barry J. Miller and Seyfarth Shaw LLP on supplemental brief
for appellee.

August 19, 2026

LYNCH, Circuit Judge. This case returns to us after the Massachusetts Supreme Judicial Court ("SJC") issued an opinion answering two questions of Massachusetts law, each of which we certified to it. Nicholls v. Veolia Water Cont. Operations USA, Inc., 144 F.4th 354 (1st Cir. 2025); Nicholls v. Veolia Water Cont. Operations USA, Inc., 281 N.E.3d 966 (Mass. 2026). We assume familiarity with the facts, statutory framework, and procedural history, which are set out in our prior opinion and the SJC's opinion. The SJC's answers rejected the two interpretations of Massachusetts law on which the federal district court, sitting in diversity, had relied in granting summary judgment to Veolia. The parties then filed supplemental briefs addressing the effect of the SJC's answers on this appeal. We agree with plaintiffs that further proceedings in the district court are required. Veolia's arguments for affirmance mischaracterize both the record and the SJC's opinion.¹ We reverse the order granting summary judgment to Veolia, vacate the judgment, and remand for prompt resolution of the remaining issues of fact and law in light of the SJC's clarification of Massachusetts law.

I.

We briefly recount the background relevant to the issues before us. Plaintiffs are employees of Veolia who seek prevailing

¹ Veolia was represented by different counsel in its supplemental briefing following the SJC's decision.

wages under the Massachusetts Prevailing Wage Act ("PWA"), Mass. Gen. Laws ch. 149, §§ 26-27H (2024), for certain repair and replacement work they performed under Veolia's service contract with the Springfield Water and Sewer Commission ("Commission"). The Commission entered into that contract pursuant to a 1997 special act, 1997 Mass. Acts ch. 155 (the "Special Act"). Section 6 of the Special Act provides that work falling within "the construction and design of improvements" remains governed by the PWA.

The service contract between Veolia and the Commission contemplated "two distinct stages of work." Nicholls, 281 N.E.3d at 970. The first stage consisted of contract-defined Initial Capital Improvements ("ICI"), "specific structural improvements intended to upgrade the [C]ommission's main wastewater treatment facility." Id. That work "was subject to the prevailing wage requirements of the PWA" and was performed by subcontractors rather than Veolia employees. Id. The second stage consisted of "ongoing operation, maintenance, repair, and replacement services for the [C]ommission's wastewater facilities and equipment," for which Veolia employees were paid according to collective bargaining agreements. Id. Plaintiffs' claims concern only certain repair and replacement work they performed during the second stage.

After discovery, the parties filed cross-motions for summary judgment. The district court entered summary judgment for

Veolia, holding that the PWA did not apply to the work for which plaintiffs sought prevailing wages. Nicholls v. Veolia Water Cont. Operations USA, Inc., No. 3:22-cv-30034-MGM, ECF No. 69 (D. Mass. Sep. 26, 2024). The court's ruling rested on two interpretations of the relevant Massachusetts statutes. First, the court held categorically that the work plaintiffs performed during the second stage did not fall within the phrase "construction and design of improvements" as used in § 6 of the Special Act. Id. In reaching that conclusion, the court relied on the terms of the service contract, which it said "make[] clear that the PWA does not apply to the services [p]laintiffs provide but, rather, only to [ICI] and 'ICI Design-Build Work.'" Id. The court also emphasized plaintiffs' admission at summary judgment that they "have not, and do not, perform ICI or ICI Design-Build work" under the contract, finding that their work instead "falls within the Maintenance, Repair and Replacement section, Article 8, of the contract." Id.

Second, relying on the SJC's decision in Metcalf v. BSC Group, Inc., 214 N.E.3d 1043 (Mass. 2023), the district court held that "the nature of the procurement scheme here is inconsistent with applying the PWA to the service contract as a whole." Id. The court underscored Metcalf's concern that a "retrospective, fact-intensive inquiry into the work performed by each employee" would be "unworkable as a practical matter and unsupported by the

[PWA]." Id. (alteration in original) (quoting Metcalf, 214 N.E.3d at 1049 n.19).

On appeal, we certified two unresolved and dispositive questions of Massachusetts law to the SJC:

1. What is meant by the phrase "construction and design of improvements" as used in section 6 of 1997 Mass. Acts ch. 155?

2. Is 1997 Mass. Acts ch. 155 incompatible with the Prevailing Wage Act, Mass. Gen. Laws ch. 149, §§ 26-27H (2024), under the court's decision in Metcalf v. BSC Group, Inc., 214 N.E.3d 1043 (Mass. 2023)?

Nicholls, 144 F.4th at 359.

As to the first certified question, the SJC held that the phrase "construction and design of improvements" is not synonymous with the term "construction" as defined by the PWA. Nicholls, 281 N.E.3d at 967. Rather, the Special Act employs the "technical meaning of 'improvements' as it pertains to property." Id. at 972. The SJC explained that an "improvement" is "[a] valuable addition made to property . . . or an amelioration in its condition, amounting to more than mere repairs or replacement, costing labor or capital, and intended to enhance its value, beauty or utility or to adapt it for new or further purposes." Id. (alteration in original) (quoting Black's Law Dictionary 757 (6th ed. 1990)). With that understanding, the SJC held that "the phrase 'construction and design of improvements' does not encompass

ordinary repairs, routine inspections, day-to-day operations and maintenance, or ordinary replacements." Id. at 975.

The SJC did not, however, determine which, if any, of plaintiffs' particular tasks fall within that statutory phrase. The SJC expressly left the question open, observing that "[t]he parties appear to dispute the scope of the employees' day-to-day work" and explaining that "[t]hese disparate descriptions do not affect our answers to the certified questions." Id. at 970 n.9.

As to the second certified question, the SJC held that the Special Act is not incompatible with the PWA. Id. at 967-68. The SJC distinguished Metcalf in several respects, including that, unlike the statute at issue there, the Special Act expressly provides that "[w]ork that falls within the 'construction and design of improvements' is governed by the PWA." Id. at 975. The SJC thus held that "Metcalf does not control the application of the [S]pecial [A]ct or its compatibility or incompatibility with the PWA." Id.

II.

"[W]e review a district court's grant of summary judgment de novo, taking the record in the light most favorable to the nonmoving party." Friedman v. Cent. Me. Power Co., 174 F.4th 233, 240 (1st Cir. 2026) (quoting Appleton v. Nat'l Union Fire Ins., 145 F.4th 177, 184 (1st Cir. 2025)). "Summary judgment is appropriate only where there is no genuine dispute as to any

material fact and the movant is entitled to judgment as a matter of law." Id. (quoting Appleton, 145 F.4th at 184).

The district court entered summary judgment for Veolia without the benefit of the SJC's answers to our certified questions. In light of those answers, the judgment can no longer be sustained on either of the grounds on which the district court relied. Veolia nonetheless argues that the SJC's answer to the first certified question requires affirmance, asserting that plaintiffs "conceded in the trial court that their work was limited to the same set of tasks that the SJC held to be excluded from the PWA." That assertion is contradicted by the record. Plaintiffs admitted only that they did not perform the contract-defined ICI or ICI Design-Build work.² Throughout this litigation, they have maintained that at least some of their second stage repair and replacement work constitutes "construction and design of

² Nor does the fact that plaintiffs' work falls within Article 8 of the service contract, entitled "Maintenance, Repair and Replacement," establish that the work necessarily falls outside the phrase "construction and design of improvements." Article 8 does not treat all maintenance, repair, and replacement work as a single category. It distinguishes "Ordinary Maintenance" from "Major Maintenance, Repair and Replacements," some of which may be "'structural' or 'capital' in nature." The summary judgment record, moreover, contains task-specific evidence that the district court did not have occasion to evaluate under the SJC's new standards. One work order, for example, identifies a "PROJECT" on which two plaintiffs worked to "[f]abricate and install a PVC / Stainless piping system." We do not mean to suggest how any particular task should be classified, but merely that the question remains for the district court to resolve on remand.

improvements." Indeed, before certification, Veolia itself framed the question before us as whether "the 'repair and replacement' work that Appellants performed falls within" that phrase. The SJC likewise recognized the parties' disagreement over the scope of plaintiffs' day-to-day work. Nicholls, 281 N.E.3d at 970 n.9.

Veolia also asserts that the SJC "explicitly held that the PWA applies only to the [ICI] under the Contract, to the exclusion of ongoing repair and maintenance work." The SJC did not so hold. Nothing in the SJC's opinion equates the statutory term "improvements" with the contract-defined ICI. As explained, the SJC instead construed "improvements" according to its "technical meaning . . . as it pertains to property," not by reference to the contract's ICI designation. Id. at 972.

Veolia separately contends that, "[t]o the extent" plaintiffs seek to "revive their earlier argument that the Contract required Veolia to pay prevailing wage for certain work that [p]laintiffs performed, irrespective of the requirements of any statute or legislation," the SJC's opinion "forecloses that argument." But plaintiffs do not renew that argument in their supplemental brief. Rather, they rely on the contract as evidence bearing on whether some of their repair and replacement work constitutes "construction and design of improvements." To the extent Veolia now seeks affirmance on the ground that, even if the Special Act does not exempt it from the PWA, it cannot be held

liable under the PWA because the service contract does not require payment of prevailing wages, we stated in our prior opinion that we understood Veolia to have "abandoned" that defense. Nicholls, 144 F.4th at 357 n.1. Veolia may not now revive it.

The district court's reliance on Metcalf likewise cannot support affirmance. The SJC squarely held that "Metcalf does not control the application of the [S]pecial [A]ct or its compatibility or incompatibility with the PWA." Nicholls, 281 N.E.3d at 975.

III.

It is for the district court in the first instance to determine whether and to what extent the repair and replacement work for which plaintiffs seek prevailing wages constitutes "construction and design of improvements" under § 6 of the Special Act as that phrase has now been construed by the SJC, and to address any other unresolved issues of fact or law. See LimoLiner, Inc. v. Dattco, Inc., 839 F.3d 61, 62 (1st Cir. 2016); Bos. Gas Co. v. Century Indem. Co., 588 F.3d 20, 23 (1st Cir. 2009).

Accordingly, we **reverse** the order granting summary judgment to Veolia, **vacate** the judgment, and **remand** for prompt further proceedings consistent with this opinion.