

Anti-Slapp#1 *Email rec'd from*
Luke 1/9/14
Decision 12/23/13

STATE OF MAINE
AROOSTOOK, ss

SUPERIOR COURT
CIVIL ACTION
CV-12-155

TOWN OF MADAWASKA

Plaintiff,

v.

RICHARD CAYER and
ANN CAYER

Defendants.

DECISION AND ORDER

This matter is before the Court on Defendants' Special Motion to Dismiss Plaintiff's Amended Complaint pursuant to 14 M.R.S. § 556.

History

On August 16, 2010, Plaintiff filed a Land Use Citation and Complaint in District Court pursuant to M.R. Civ. P. 80K. This pleading was served on Defendants on August 13, 2010, according to the Return of Service filed with the Court.

On November 12, 2010, Defendants filed a Notice of Removal to the Superior Court.¹

On November 14, 2012, Plaintiff filed a Motion to Amend the Complaint alleging an additional theory of recovery under the Madawaska Shoreland Zoning Ordinance.

On January 24, 2013, the Court granted the Motion to Amend pursuant to M.R. Civ. P. 15(a). That Order was docketed on February 7, 2013.

On March 25, 2013, Defendants filed a Special Motion to Dismiss pursuant to 14 M.R.S. § 556.

This matter was conferenced with the Court in August and Plaintiff filed a supplemental memorandum in opposition on September 3, 2013. Defendants filed a supplemental memorandum in support of their Special Motion to Dismiss on

¹ Rule 80K(e)(1) does not require a written answer to a land use violation complaint. The response is to be made orally when the matter is scheduled for hearing.

September 9, 2013. The Court's traveling schedule caused it to be delayed in getting to this matter.

Discussion

The initial pleading is a land use complaint alleging a violation of the Madawaska Shoreland Zoning Ordinance. The violation allegedly involved two trailers being located on Defendants' land on which a mobile home was already located. In the initial pleading it was alleged that these facts constituted a violation of Section 15.A.5 of the Madawaska Shoreland Zoning Ordinance. The amended complaint keeps Count 1 and adds Count 2. In Count 2, no additional facts are alleged but it is alleged that these underlying facts also constitute a violation of Section 15.D.1 of the Shoreland Zoning Ordinance.

M.R. Civ. P. 15 deals with amendments. It requires that leave of court be obtained in filing an amendment (Rule 15(a)), *Baillargeon v. Estate of Delores A. Daigle*, 2010 ME 127, ¶ 14, 8 A.3d 709. That was done here. The Rule allows amendments to relate back to the date of the original pleading where "the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading." M.R. Civ. P. 15(c)(2).

The facts alleged in the original complaint are the same facts alleged in the amendment. The amendment adds only an alternate theory of Zoning Ordinance Violation. The Court is satisfied that the Amendment relates back to the original pleading and the date of service.

The most recent discussion of 14 M.R.S. § 556 (anti-SLAPP statute upon which the Special Motion to Dismiss is based) was provided in *Bradbury v. City of Eastport*, 2013 ME 72, ¶ 11, n.3, 72 A.3d 512. Applicable to this case, the Law Court focused on the 60-day filing period required by 14 M.R.S. § 556 and noted "we interpret the sixty-day period as running from the date of service of the challenged pleading . . ." *Id.*

Applying the facts and law to this case, clearly the Special Motion to Dismiss was filed outside the time limitations found in that statute as interpreted in *Bradbury*. Service was made on the Defendants on August 13, 2010. The Special Motion to Dismiss was filed on March 25, 2013.

Much like in *Bradbury*, Defendants as the moving party have provided no valid reason for the delay in filing the Motion. The facts as initially alleged were not changed by the proposed amendment. There were no additional facts alleged in the Amendment that were not presented in the original pleading which would have implicated for the first time Defendants' right to petition as protected by the Federal and State Constitutions.

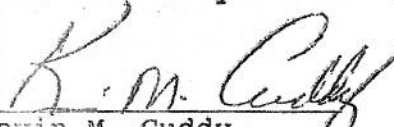
As in *Bradbury*, there was also no request to seek leave to file the Special Motion to Dismiss after the 60-day period had lapsed. There is no basis in the record presented to warrant the exercise of discretion to allow the filing of the Motion beyond the 60-day period.²

The Special Motion to Dismiss was filed outside the time limitations found in 14 M.R.S. § 556.

The entry will be:

1. Defendants Special Motion to Dismiss is denied and dismissed.
2. At the direction of the Court, this Order shall be incorporated into the docket by reference. Rule 79(a) M.R.Civ.P.

December 23, 2013


Kevin M. Cuddy
Justice, Superior Court

² It is noted that the Special Motion to Dismiss is intended to be filed at the commencement of the action to minimize expense in terms of litigation cost. Likewise the procedure provided in Rule 80K is designed for expeditious resolution of a land use violation. Clearly, for a variety of reasons, the policy goals of the legislation and civil rules were not accomplished. The Clerk is directed to schedule this matter for hearing at the earliest available date that respects the rights of the parties consistent with M.R. Civ. P 80K.

ENTERED: 1-7-14