

Hunter Recision Rec'd email from Luke 4/14/15

STATE OF MAINE
AROOSTOOK, ss

SUPERIOR COURT
DOCKET NO. CV -14-082

TOWN OF MADAWASKA)
Plaintiff)

vs.)

RICHARD CAYER and)
ANN CAYER)
Defendants)

ORDER ON MOTION TO DISMISS

Anti-Slapp
Bldg Violation

In this matter, the Town of Madawaska (the Town) has filed a complaint against the Defendants pursuant to the provisions of M.R.Civ.P. 80K and 30-A M.R.S. §4452 contending that Richard and Ann Cayer (the Cayers) have violated provisions of the Town's Shoreline Zoning Ordinance. Pending before the court is the Cayers' motion to dismiss that complaint. The Cayers bring this motion pursuant to Maine's anti-SLAPP¹ statute, 14 M.R.S. § 556 (2013). For the reasons set forth below, the court denies this motion.

The Cayers contend that the pending complaint seeking to enforce the Town's zoning ordinance against them is a retaliatory enforcement action filed in response to their attempt to exercise their right to petition their municipal government. Specifically, the Cayers point to their petition to secede from the Town. The Cayers filed their petition with the Town on or about May 28, 2013.² They direct the court's attention to the fact that the Code Enforcement Officer's Notice of Violation, from which the pending complaint arises, was served upon them on June 4, 2013, just 7 days after the Cayers filed their petition to secede from the Town. The Cayers

¹ Strategic Lawsuit Against Public Participation

² This petition was brought pursuant to 30-A M.R.S. § 2171 *et seq* and is the subject of other litigation before the court. See Richard and Ann Cayer vs Town of Madawaska, Docket No. AP-14-002 (M.R.Civ. P. 80B appeal)

contend that the temporal relationship that exists between the date on which they filed their petition to secede and the date on which the Code Enforcement Officer served his Notice of Violation is clear evidence of retaliatory animus particularly when viewed in the light of the long standing conflicts between them and the Town. They argue that the Town's enforcement action should therefore be dismissed pursuant to 14 M.R.S. § 556.

The Town contends that the recent Law Court decision Town of Madawaska v Richard Cayer, et al., 2014 ME 121, 103 A.3d 547 is directly on point and requires that the court deny the Cayer's motion. The court must agree. The Law Court stated that the anti-SLAPP statute did not apply to actions in which a town seeks to enforce its zoning ordinance for claimed land use violations, except possibly in extraordinary circumstances. Id ¶ 16. The Law Court did not articulate what those extraordinary circumstances might be, but it seems safe to say that this case does not present them. The Law Court was well aware of the long standing contentious relationship between the Cayers and the Town and it was well aware of the Cayer's argument that the Town's enforcement actions were retaliatory. That argument did not persuade the Law Court and it does not persuade this court. In this court's view, there is little difference between the circumstances in *Cayer* and the circumstances present in this case. The Cayers make the same argument; the Town is engaged in retaliatory enforcement actions against them. This court does not find the present circumstances to be those "extraordinary circumstances" that might possibly support an anti-SLAPP motion to dismiss.

The anti-SLAPP analysis set forth in *Cayer*, leads this court to the same conclusion. The Law Court has indicated that it has,


"...adopted a two-step analysis that courts must follow to determine whether a special motion to dismiss should be granted. The first step requires the court to determine whether the moving party has demonstrated that the nonmoving party's claim is "based on the moving party's exercise of the right of petition under the Constitution of the United

States or the Constitution of Maine." If the moving party makes this initial showing, the burden then shifts to the nonmoving party, and under the second step the court must dismiss the nonmoving party's lawsuit or claim unless the nonmoving party makes a prima facie showing that at least one of the moving party's petitioning activities was "devoid of any reasonable factual support or any arguable basis in law and...caused actual injury to the [non moving party]. Town of Madawaska v Richard Cayer et al, 2014 ME 121, ¶9,103 A.3d 547, 550.

In *Cayer*, the Law Court examined only the first step, that is that the moving party must demonstrate that the claims at issue are "based on petitioning activities alone and *have no substantial basis other than or in addition to the petitioning activities.*" *Id* ¶12. Therefore, in order to prevail on their motion, the Cayers must demonstrate that the Town's zoning ordinance enforcement action is based solely on the Cayer's petition to secede from the Town and has no other substantial basis. The record seems clear to this court that on September 3, 2013, the Town made a determination at a public hearing that the Cayers had violated the Town's zoning ordinance and assessed a civil penalty. When the Cayers failed to pay the penalty or to enter into a consent agreement to resolve the dispute, the matter was clearly headed for an enforcement action pursuant to M.R.Civ.P. 80K. Therefore, the record demonstrates a substantial basis, other than the Cayer's petition to secede, for the Town's complaint seeking M.R.Civ.P. 80K relief. Because this leads to the conclusion that the Cayers cannot sustain their burden of demonstrating that the Town's suit was based solely on the Cayer's exercise of their right of petition, their motion must be denied.

The entry shall be: The Defendant's anti-SLAPP Motion to Dismiss is denied.

Date: April 9, 2014


JUSTICE, SUPERIOR COURT

ENTERED: H-10-15