

PARKER HEAD ASSOCIATION, INC.

Plaintiff

v.

Docket No. BATSC-CV-11-013

ROBERT D. SPICKLER
and OLIVE S. SPICKLER

Defendants

ORDER

This civil case came before the court for argument on the Defendants' Motion for Extension of Time to Amend Counterclaim. David Sinclair, Esq. appeared for the Plaintiff Parker Head Association, Inc. (PHA) and Defendant Robert Spickler appeared *pro se*. Defendant Olive Spickler, wife of Robert Spickler, did not appear.

Mr. Spickler explained that his wife is an invalid and likely will be unable to attend any court appearances. He advised that he planned to represent his wife through a power of attorney. The court responded that by law, only licensed attorneys may represent other individuals. *See* 4 M.R.S. § 807. In fact, the Supreme Judicial Court of Maine has specifically held that a person holding a power of attorney for someone else cannot represent the other person in court. *See Haynes v. Jackson*, 2000 ME 11, ¶15, 744 A.2d 1050, 1054. Mr. and Mrs. Spickler are free to represent themselves, but because neither is an attorney, neither can represent the other, even under a power of attorney. Mr. Spickler indicated that he is exploring obtaining legal counsel for himself and his wife in this case. The court encouraged him to make such arrangements as soon as he can.

The court did indicate that Mr. Spickler may be able to use a power of attorney to participate in Alternate Dispute Resolution (ADR) on behalf of his wife, since participating in court-ordered ADR is not the same as appearing in court.

The court agreed to treat the Defendants' Motion for Extension of Time to Amend Counterclaim as a motion to amend the counterclaim, rather than as a motion merely to extend the time for doing so. However, the proposed amended counterclaim is legally insufficient for several reasons: it purports to add a claim for loss of "the Shub venture" that plainly dates back to the late 1980's or early 1990's. It also purports to add a claim against a purported fiduciary, "Oliver Domonic," who is not identified anywhere in the amended counterclaim except in the prayer for relief. The deadline for joining additional parties has passed; the claim involving the Shub venture is time-barred, and the proposed amended counterclaim fails to state any cognizable claim against Oliver Domonic. Otherwise, the proposed amended counterclaim appears to track the original counterclaim, at least in a substantive sense. Because the proposed amendment would be futile, leave to amend must be denied.

The court also noted that the original counterclaim purports to name unidentified officers of PHA as counterclaim defendants, but does not allege any ground for imposing personal liability. Nor is there any indication that any officer has been served. Accordingly, Mr. Spickler was advised that the court is treating the counterclaim as being against the Association only, and being only for the damages alleged—for the loss in market value of Defendants' property resulting from lack of a boat slip, and for loss to Defendant Robert Spickler of the opportunity to go boating from that property.

The court also drew to Mr. Spickler's attention the fact that the expert witness designation he filed September 29 does not comply with the Scheduling Order because it does not contain the additional material required by M.R. Civ. P. 26(b)(4)(A)(1). The court will grant the Defendants time to fix that problem and also grant time for PHA to respond with its own designation.

The court lastly advised the parties that the case would likely be scheduled for trial in May of 2012 at the earliest. The discovery and summary judgment deadlines fall in late December and late January.

IT IS HEREBY ORDERED AS FOLLOWS:

1. Defendants' Motion for Extension of Time to Amend Counterclaim is denied.
2. Defendants' deadline for designating expert witnesses in compliance with the Scheduling Order and M.R. Civ. P. 26(b)(4)(A)(1) is hereby extended to October 18, 2011.
3. Plaintiff's deadline for designating experts is enlarged to December 19, 2011.
4. All other deadlines remain as set.

Pursuant to M.R. Civ. P. 79(a), the clerk is hereby directed to incorporate this order by reference in the docket.

Date: October 4, 2011



A. M. Horton
Justice, Superior Court