STATE OF MAINE
YORK, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-12-187
JON - YOR - 6/18/2013

MEREDITH RICHARDSON and
CHRISTIAAN CLARK,

Plaintiffs,

v.

GARY DECOSTE,
PATRICIA DECOSTE,
CASSANDRA DAVIDSON,
JEREMY DAVIDSON,
MICHELE COLLISHAW and
ADAMS COVE CONDOMINIUM
ASSOCIATION,

Defendant.

ORDER

I. Background

This case arises out of a dispute concerning the membership of the Adams Cove Condominium Association, the maintenance of the units pursuant to decisions made by the members of the Association, and alleged harassment of Plaintiffs by condo unit owners. Plaintiffs have filed a complaint against five other condo owners and the Association alleging four counts of Negligence, four counts of Breach of Fiduciary Duty, Defamation, Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress, and she has made a request for punative damages.

Defendants Jeremy Davidson and Patricia Decoste Move to Amend their Answers. Both filed pro se answers stating in a single sentence that they denied everything. Plaintiff moves for Judgment against Jeremy Davidson for Failure to File an Answer (on the basis that Plaintiff was not properly served) and for Judgment against Patricia Decoste for Failure to File a Sufficient Answer. Plaintiff also Moves the Court to Appoint a Property Manager for Adams Cove Condominium Association.

II. Motion for Judgment for Failure to File Sufficient Answer and Motion to Amend Answer

"[A] party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Me. R. Civ. P. 15. "If the moving party is not acting in bad faith or for delay, the motion will be granted in the absence of undue prejudice to the opponent." 1 Field, McKusick & Wroth, *Maine Civil Practice* § 15.4 (2d ed.1970); *Holden v. Weinschenk*, 1998 ME 185, 715 A.2d 915, 917. In the current case, Plaintiffs have offered no evidence of bad faith on the part of Defendants Jeremy Davidson and Patricia Decoste. Defendants both filed timely answers putting Plaintiffs on notice of their intent to participate in the case. No undue prejudice will be caused by allowing Defendants to amend. The Court Allows Defendants Jeremy Davidson and Patricia Decoste's Motions to Amend and Denies Plaintiff's Motions for Judgment for Failure to File Sufficient Answers.

III. Motion to Appoint Property Manager

Plaintiff has cited to no legal authority or condominium association bylaw to support her Motion to Appoint a Property Manager. Furthermore, Defendant the Association has already agreed to complete the work requested on Plaintiff's unit. If Plaintiff seeks appointment of a property manager as injunctive relief for the harms she alleges, such as the Association's failure to make the requested improvements to her unit, she has not met the four part test as laid out in *Ingraham v. University of Maine*.[1] Without

[1] "Before granting a preliminary or permanent injunction, the Court must find that four criteria are met:
(1) that plaintiff will suffer irreparable injury if the injunction is not granted,
(2) that such injury outweighs any harm which granting the injunctive relief would inflict on the defendant,

any legal authority to appoint a Property Manager, and with Plaintiff's request that the Court order improvements be made to her unit moot, the Court Denies Plaintiff's Motion to Appoint a Property Manager.

IV. Conclusion

The Court Grants Defendants Patricia Decoste and Jeremy Davidson's Motion to Amend Answer, Denies Plaintiffs Motions for Judgment Against Jeremy Davidson for Failure to File an Answer and Patricia Decoste for Failure to File a Sufficient Answer, and Denies Plaintiff's Motion to Appoint a Property Manager.

DATE: 6/18/13

John O'Neil, Jr.
Justice, Superior Court

(3) that plaintiff has exhibited a likelihood of success on the merits (at most, a probability; at least, a substantial possibility),
(4) that the public interest will not be adversely affected by granting the injunction."
Ingraham v. Univ. of Maine at Orono, 441 A.2d 691, 693 (Me. 1982). Because Defendant the Association has already agreed to make the improvements Plaintiff requests, there is no irreparable harm shown. Furthermore, without irreparable harm, Plaintiff's harm does not outweigh the harm to Defendants of appointment of a property manager. Plaintiff has not shown likelihood of success on the merits. Finally, a granting of a motion to appoint a property manager on so scarce authority could be adverse to public interest.

ATTORNEY FOR PLAINTIFFS:
AMY MCGARRY
MACGARRY LAW OFFICES
PO BOX 1208
KENNEBUNK ME 04043

ATTORNEY FOR DEFENDANTS:
THOMAS MCKEON
RICHARDSON WHITMAN LARGE & BADGER
PO BOX 9545
PORTLAND ME 04112-9545