

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Josephine Amatucci

v.

Civil No. 17-cv-237-JL

Stuart Chase et al.

O R D E R

After due consideration of the objection (Doc. No. 83) filed by plaintiff Josephine Amatucci, I herewith approve the Report and Recommendation (Doc. No. 74) ("R&R") of Magistrate Judge Andrea K. Johnstone dated February 7, 2018, with the following two exceptions:

1. James O'Brien

Based on filings before the magistrate judge at the time the R&R issued, it appeared that Mrs. Amatucci did not want this action to proceed against former Wolfeboro Police Officer James O'Brien. In her objection (Doc. No. 83) to the R&R, Mrs. Amatucci asserts that she now wants O'Brien to remain as a defendant in this case. Accordingly, the court declines to accept the magistrate judge's recommendation to grant Mrs. Amatucci's motion to amend (Doc. No. 60) and dismiss O'Brien from this case. Mrs. Amatucci's motion to amend (Doc. No. 60) is denied, and O'Brien remains a defendant in this matter.

2. Retaliatory Lien Claim

In the R&R, the magistrate judge recommended that the court deny Mrs. Amatucci's request to add a claim to this action asserting that, on December 13, 2017, Attorney Mark Puffer placed a lien on Mrs. Amatucci's property at the Carroll County Registry of Deeds, in the amount of either \$4,460.89 or \$4,500.89, to satisfy a judgment for attorneys' fees and costs entered against Mrs. Amatucci on August 12, 2015 in a state court proceeding she had filed against Attorney Timothy Morgan, Amatucci v. Morgan, No. 212-2015-CV-00052 (N.H. Super. Ct., Carroll Cty.). Mrs. Amatucci seeks to amend her complaint to assert a claim here that the lien was placed on her property in retaliation for her exercise of her First Amendment right to redress her grievances by filing this and other lawsuits, and lodging misconduct complaints against officials of the Town of Wolfeboro and the Wolfeboro Police Department.

The court finds that Mrs. Amatucci has asserted sufficient facts to proceed on a retaliation claim against Attorney Morgan and Attorney Puffer. Accordingly, the court declines to accept the magistrate judge's recommendation to deny Mrs. Amatucci's request to add that claim to this action, and that claim will be allowed to proceed.

3. Service of O'Brien, Morgan, and Puffer

As stated above, the court now allows Mrs. Amatucci to serve the above-referenced claims against James O'Brien, Attorney Timothy Morgan, and Attorney Mark Puffer in this case. Mrs. Amatuci has not provided this court with a summons form for any of those defendants. Accordingly, the clerk's office is directed to forward three blank summons forms to Mrs. Amatucci. Mrs. Amatucci is directed to complete summonses for O'Brien, Morgan, and Puffer, and return the completed summonses to the court within fourteen days of the date of this Order.

Once the completed summonses are received from Mrs. Amatucci, the clerk's office is directed to issue the summonses for defendants O'Brien, Morgan, and Puffer. The clerk's office and United States Marshal for the District of New Hampshire are directed to effect service in the manner set forth in the court's November 17, 2017 Order (Doc. No. 26), except that the documents to be served upon defendants pursuant to this Order are: Document Nos. 1, 2, 5-8, 11-56, 60, 61, 63, 64, 66-80, 82-85, 87, 89-92, and 94; and the endorsed orders issued on June 16 and December 14, 2017, January 4, 19, 22, and 25, 2018, and February 2 and 6, 2018; this Order; and two other Orders issued this date.

O'Brien, Morgan, and Puffer are instructed to answer or

otherwise plead within twenty-one days of service. See Fed. R. Civ. P. 12(a)(1)(A).

Conclusion

For the foregoing reasons, the court now enters the following Order:

1. The Report and Recommendation (Doc. No. 74) of Magistrate Judge Andrea K. Johnstone, dated February 6, 2017, is approved, except to the extent that it recommends that: 1) Mrs. Amatucci's motion to amend the complaint (Doc. No. 60) be granted and James O'Brien be dismissed from this action; and 2) Mrs. Amatucci's request to add a First Amendment retaliatory lien claim against Attorney Timothy Morgan and Attorney Mark Puffer be denied.

2. Mrs. Amatucci's motion to amend (Doc. No. 60) is denied, and James O'Brien remains as a defendant in this case.

3. Mrs. Amatucci's request to assert a First Amendment retaliatory lien claim against Attorneys Timothy Morgan and Mark Puffer is granted.

4. The clerk's office is directed to forward three blank summons forms to Mrs. Amatucci, which Mrs. Amatucci is to return to the clerk's office, completed for defendants O'Brien, Morgan, and Puffer, within fourteen days of the date of this Order.

5. Defendants O'Brien, Morgan, and Puffer are to be served, and are to answer the complaint, as set forth in this Order.

SO ORDERED.



Joseph N. Laplante
United States District Judge

April 11, 2018

cc: Josephine Amatucci, pro se
Daniel J. Mullen, Esq.
Mark H. Puffer, Esq.