

STATE OF MAINE
CUMBERLAND, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CUMSC-CV-15-438

STEVEN KELSEY HAZEN,)
)
 Plaintiff,)
)
 v.)
)
 FRANKLIN GRAHAM HAZEN,)
 MARY ELIZABETH OSGOOD,)
 MICHAEL FRANKLIN HAZEN,)
 RODERIC OSGOOD, and)
 ROBERT E. MacDONALD, trustee for the)
 PRUDENCE ELEANOR HAZEN TRUST,)
)
 Defendants,)
)
 and)
)
 RODERIC OSGOOD, trustee for the)
 FRANKLIN GRAHAM HAZEN)
 REVOCABLE TRUST,)
)
 Party-in-Interest.)

ORDER ON DEFENDANTS' MOTION
TO DISMISS COUNTS I, II, III, VI, & VII
OF THE AMENDED COMPLAINT,
DEFENDANTS' MOTION TO
DISQUALIFY, & PLAINTIFF'S MOTION
FOR SANCTIONS

STATE OF MAINE
Cumberland, ss, Clerk's Office
AUG 09 2016
RECEIVED

Presently before the court are the following motions: (1) Defendants Mary Elizabeth Osgood and Michael Franklin Hazen's motion to dismiss Counts I, II, III, VI, and VII of Plaintiff Steven Kelsey Hazen's amended complaint; (2) Defendants Mary Osgood and Michael Hazen's motion to disqualify Plaintiff's counsel, Colby Wallace, Esq.; and (3) Plaintiff's motion for sanctions. Defendant Franklin Graham Hazen has moved to join Mary Osgood and Michael Hazen's motions.¹ Based on the following, Defendants' motion to dismiss and motion to disqualify are both denied. Plaintiff's motion for sanctions is also denied.

¹ Franklin Hazen's motion to join is granted. Mary Osgood, Michael Hazen, and Franklin Hazen are collectively referred to as "Defendants" in this order. Although Defendant Roderic Osgood is represented by the same counsel as Mary Osgood and Michael Hazen, Roderic Osgood is not a party to the motion to dismiss or motion to disqualify. Roderic Osgood is not a beneficiary the Prudence Trust or signatory of

I. BACKGROUND

According to Plaintiff's amended complaint, Franklin Hazen and Prudence Eleanor Hazen were married until Prudence Hazen's death in October 2009. (Am. Compl. ¶ 15.) On March 25, 2009, Franklin and Prudence Hazen entered into an agreement regarding the organization, ownership, and disposition of their respective estates by signing a document entitled "Report of Recommendations Regarding the Estates of Franklin G. and Prudence E.K. Hazen" (the "Agreement"). (*Id.* ¶¶ 16-17.) According to Plaintiff, the Agreement provided that Franklin and Prudence Hazen would divide their assets between two trusts, the Prudence Eleanor Hazen Trust (the "Prudence Trust") and the Franklin Graham Hazen Revocable Trust (the "Franklin Trust"). (*Id.* ¶¶ 5-6, 18.) The Prudence Trust and the Franklin Trust were established on April 17, 2009, in accordance with the Agreement. (*Id.* ¶¶ 5-6, 28-29.) Plaintiff asserts that Franklin Hazen, Mary Osgood, Michael Hazen, and he are the four beneficiaries of the Prudence Trust. (*Id.* ¶ 8.) Plaintiff asserts that Franklin Hazen is the only beneficiary of the Franklin Trust while he is living. (*Id.* ¶ 9.) Plaintiff asserts that, as a result of a March 25, 2013 amendment to the trust, only Mary Osgood and Michael Hazen have remainder rights in the Franklin Trust. (*Id.* ¶ 10.)

According to Plaintiff, one of the assets transferred to the Prudence Trust was a parcel of real property located 70 Murch Point Road in South Casco, Maine referred to as the "Camp." (*Id.* ¶ 19.) According to Plaintiff, the Agreement provided that the Camp would be preserved for Franklin and Prudence Hazen's use during their lives and would then pass to Mary Osgood, Michael Hazen, and Plaintiff, upon the death of the second to die of Franklin and Prudence

the Release. Thus, the affirmative defense raised by Defendants' motions does not apply to him. Similarly, Defendant Robert E. MacDonald, as trustee for the Prudence Trust, is also not a beneficiary of the trust or signatory to the Release. Thus, the affirmative defense raised by Defendants' motions also does not apply to him. Defendant Robert E. MacDonald, as trustee for the Prudence Eleanor Hazen Trust, has not appeared or participated in this action.

Hazen. (*Id.* ¶ 22.) According to Plaintiff, the Agreement provided that all other property held by both the Prudence and Franklin Trusts would be managed, liquidated, subdivided and generally utilized to maintain and improve the Camp and to take care of Franklin and Prudence Hazen during their lives. (*Id.* ¶ 23.) Prudence Hazen died on October 7, 2009. (*Id.* ¶ 30.)

On May 31, 2013, Plaintiff, Mary Osgood, Michael Hazen, and Franklin Hazen, as beneficiaries of the Prudence Trust, entered into a Nonjudicial Settlement Agreement regarding the Prudence Trust (the “Settlement Agreement”). (Defs. Mot. Dismiss, Ex. A.) As part of the Settlement Agreement, Plaintiff, Mary Osgood, Michael Hazen, and Franklin Hazen entered into a Consent and Release Agreement (the “Release”), discharging each other from all claims based on actions taken or not taken with regard to the Prudence Trust. (*Id.*) The Settlement Agreement and the Release were incorporated into a June 5, 2013 Order issued by the Cumberland County Probate Court, docket number 2013-0695. (Am. Compl. ¶ 5, Ex. A.)

Plaintiff initially filed his complaint in this action on September 28, 2015. Plaintiff filed an amended complaint May 12, 2016. Plaintiff’s amended complaint alleges that the trustees of both the Prudence and Franklin Trusts have failed or refused to market or sell the property held by the Prudence and Franklin Trusts in accordance with the Agreement. (*Id.* ¶ 31-32.) Plaintiff alleges that the trustees’ failure to liquidate all property in Prudence and Franklin Trusts is the result of repeated intentional interference by Defendants. (*Id.* ¶ 31-33.) Plaintiff alleges that, as a result of Defendants’ interference, the Camp has not been maintained or improved in accordance with the Agreement. (*Id.* ¶ 34.) Plaintiff also alleges that Franklin Hazen has materially altered the terms of the Franklin Trust by reducing Plaintiff’s one-third share of the Franklin Trust as a result of undue influence from Mary Osgood, Michael Hazen, and Roderic Osgood. (*Id.* ¶¶ 36-38.) Plaintiff’s amended complaint asserts claim for breach of contract

(Count I), breach of implied contract (Count II), interference with a contractual relationship (Count III), tortious interference with an expected inheritance (Count IV), undue influence (Count V), declaratory judgment (Count VI), and a declaration of trustee's authority (Count VII). (*Id.* ¶¶ 45-80.)

Mary Osgood, Michael Hazen, and Roderic Osgood filed an answer and counterclaim on May 20, 2016. Franklin Hazen filed his answer and counterclaim on May 23, 2016. On May 20, 2016, Defendants Mary Osgood and Michael Hazen also filed a motion to dismiss Counts I, II, III, VI, and VII of the amended complaint for failure to state a claim or, in the alternative, to disqualify Plaintiff's counsel, Colby Wallace, Esq. Franklin Hazen filed a motion to join Mary Osgood and Michael Hazen's motion to dismiss and their motion to disqualify on June 6, 2016. Plaintiff filed an opposition to the motion to dismiss and motion to disqualify on June 8, 2016. In his opposition, Plaintiff requests that the court impose sanctions on Defendants. Defendants Mary Osgood and Michael Hazen filed a reply on June 17, 2016. The court addresses each motion in turn.

II. DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

A. Standard of Review

Defendants have moved to dismiss Counts I, II, III, VI, and VII of Plaintiff's amended complaint pursuant to Maine Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. (Defs. Mot. Dismiss 1-3.) Typically, Rule 12(b) motions are made before the filing of a responsive pleading. *See* M.R. Civ. P. 12(b). Defendants in this case simultaneously answered and moved to dismiss. Therefore, Defendants' motion is more accurately a motion for judgment on the pleadings pursuant to Rule 12(c). *See* M.R. Civ. P.

12(c) (“After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.”).

However, a motion for judgment on the pleadings by a defendant “is the equivalent of a motion to dismiss for failure to state a claim.” *MacKerron v. MacKerron*, 571 A.2d 810, 813 (Me. 1990); 2 Harvey, *Maine Civil Practice* § 12:14 at 429-30 (3d ed. 2011). Therefore, regardless of whether Defendants’ motion is titled as a motion to dismiss for failure to state a claim or motion for judgment on the pleadings, the court’s analysis is the same. Both motions test the legal sufficiency of the complaint. *MacKerron*, 571 A.2d at 813. The sufficiency of the complaint is a question of law. *Id.* The court reviews the complaint in the light most favorable to the plaintiff to determine whether the complaint “sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory.” *Bean v. Cummings*, 2008 ME 18, ¶ 7, 939 A.2d 676 (internal citation and quotation marks omitted). “A complaint is sufficient unless it appears to a certainty the plaintiff is entitled to no relief under any set of facts he might prove in support of his claim.” *MacKerron*, 571 A.2d at 813 (internal citation, alterations, and quotation marks omitted).

The sole basis for Defendants’ motion to dismiss is the May 31, 2013 Release. (Defs. Mot. Dismiss 5.) Defendants assert that, under the terms of the Release, they were released from the claims asserted in Counts I, II, III, VI, and VII of the amended complaint. (*Id.* at 5-10.) Release is an affirmative defense. M.R. Civ. P. 8(c). Generally, a defendant may not assert affirmative defenses in either a motion for judgment on the pleadings or a motion to dismiss for failure to state a claim. *MacKerron*, 571 A.2d at 813; 2 Harvey, *Maine Civil Practice* § 12:14 at 429-30. An affirmative defense may be raised in motion to dismiss for failure to state a claim only if the facts giving rise to the defense appear on the face of the complaint. 2 Harvey, *Maine*

Civil Practice § 12:12 at 423. Release has been recognized as an affirmative defense that may be raised on a motion to dismiss for failure to state a claim. *Id.* § 12:12 at 424-25 (citing *Hoover v. Lacey*, 80 F. Supp. 691 (D.D.C. 1943)).

Neither the Settlement Agreement nor the Release are referenced in or attached to Plaintiff's amended complaint. *See* (Am. Compl.) Defendants have provided the court with a copy of the Settlement Agreement and the Release as part of their motion to dismiss. (Defs. Mot. Dismiss, Ex. A.) Normally on a motion to dismiss for failure to state a claim, only the facts alleged in the complaint are considered by the court. *Moody v. State Liquor & Lottery Comm'n*, 2004 ME 20, ¶ 8, 843 A.2d 43. If the court considers materials outside the pleading, the court must convert the motion to dismiss into a motion for summary judgment under Rule 56. M.R. Civ. P. 12(b). However, in limited circumstances, the court may consider certain extraneous documents without converting a motion to dismiss to one for a summary judgment. *Moody*, 2004 ME 20, ¶ 9, 843 A.2d 43. The court may consider "official public documents, documents that are central to the plaintiff's claims, and documents referred to in the complaint, without converting a motion to dismiss into a motion for a summary judgment when the authenticity of such documents is not challenged." *Id.* ¶ 10.

Although the Release is not referenced in or attached to the amended complaint, the Settlement Agreement and the Release were incorporated in and attached to the June 5, 2013 Probate Court Order. (Am. Compl. ¶ 5, Ex. A.) The Probate Court Order is referenced in and attached to the amended complaint without the Settlement Agreement or the Release. (*Id.*) Defendants argue that, because the Settlement Agreement and the Release were incorporated in and attached to a court order, they are public documents. (Defs. Mot. Dismiss 4-5.) Plaintiff

does not dispute that the Settlement Agreement and the Release are public documents, nor their authenticity. (Pl. Opp'n to Defs. Mot. Dismiss 2-6.)

Because June 5, 2013 Probate Court Order, which references both the Settlement Agreement and the Release, is referenced in and attached to the amended complaint, the Settlement Agreement and the Release constitute documents referred to in the amended complaint. Moreover, because the Settlement Agreement and the Release were referenced in and attached to the June 5, 2013 Probate Court Order, they are also public documents. Accordingly, the Release is both a document referred to in the amended complaint and a public document under the *Moody* exception. Therefore, the court may consider the Release in deciding Defendants' motion to dismiss without converting the motion to one for summary judgment. The court shall review the facts on the face of the amended complaint in the light most favorable to Plaintiff to determine whether Plaintiff's claims fall with the terms of the Release.

B. Analysis

Principles of contract law govern the court's interpretation of settlement agreements and releases. *Hawkes v. Commercial Union Ins. Co.*, 2001 ME 8, ¶¶ 20-21, 764 A.2d 258. Like all contracts, a release must be construed to effectuate the parties' intentions as reflected in the written instrument. *See V.I.P., Inc. v. First Tree Dev.*, 2001 ME 73, ¶ 3, 770 A.2d 95. Thus, the court must give the terms used in a release their plain meaning. *See Am. Prot. Ins. Co. v. Acadia Ins. Co.*, 2003 ME 6, ¶ 13, 814 A.2d 989. "If a release is absolute and unequivocal in its terms, it cannot be explained by parol evidence and must be construed according to the language that the parties have seen fit to use." *2301 Cong. Realty, LLC v. Wise Bus. Forms, Inc.*, 2014 ME 147, ¶ 10, 106 A.3d 1131 (internal quotation marks and citation omitted). Unless the release expressly reserves a parties' right to bring a cause of action, the release constitutes the complete accord and

satisfaction of all claims by immediate parties arising out of the same transaction or occurrence.

Butters v. Kane, 347 A.2d 602, 604 (Me. 1975).

Section IV of the Release, signed both Plaintiff and Defendants, expressly states:

IV. Each of the undersigned Beneficiaries hereby releases and forever discharges each of the other Beneficiaries, and his or her estate, heirs, successors and assigns, from and against, all manner of actions, causes of action, suits, accounts, claims and demands whatsoever, whether presently known or unknown, for any action taken or not taken with regard to the [Prudence] Trust through the date hereof and actions reflected herein, that he or she ever had, now has or shall or may have.

(Defs. Mot. Dismiss, Ex. A.) The plain and unambiguous language of the Release contains no limitations on the types of claims covered by its terms. However, the plain and unambiguous language of the Release clearly limits its scope to only claims based on “any action taken or not taken with regard to the [Prudence] Trust *through the date hereof and actions reflected herein,...*” (*Id.*) (emphasis supplied). Thus, based on its plain and unambiguous language, the Release discharges only those claims based on any action or inaction regarding the Prudence Trust that occurred prior to its effective date, May 31, 2013.

1. *Breach of Contract by Franklin Hazen*

Count I of Plaintiff’s complaint is a breach of contract claim against Franklin Hazen. Plaintiff alleges that Franklin Hazen has breached the material terms of the Agreement, which has diminished the assets in both the Prudence Trust and Franklin Trust, injuring Plaintiff as an intended beneficiary. (Am. Compl. ¶¶ 46-48.) Plaintiff alleges that Franklin Hazen has prevented the trustees of the Prudence Trust from selling property held by the Prudence Trust in accordance with the Agreement. (*Id.* ¶¶ 23, 31.) Any breach of contract claims based on any actions by Franklin Hazen regarding the Prudence Trust that occurred prior to May 31, 2013, are barred by the Release. However, Plaintiff’s complaint does not specify when Franklin Hazen’s

alleged conduct occurred. Therefore, any actions by Franklin Hazen regarding the Prudence Trust that occurred after to May 31, 2013, could be the basis for a breach of contract claim against Franklin Hazen.

Plaintiff's amended complaint also alleges that Franklin Hazen has interfered with the trustee of the Franklin Trust's efforts to market property held by the Franklin Trust, has materially altered the terms of the Franklin trust by reducing Plaintiff's share, and has intentionally failed to market property held by the Franklin Trust, all in violation of the terms of the Agreement. (*Id.* ¶¶ 23, 32, 38, 42.) All of these allegations relate to the Franklin Trust and do not directly involve the Prudence Trust. Any claims based on Franklin Hazen's actions regarding the Franklin Trust are not barred by the Release.

Therefore, Plaintiff's amended complaint sufficiently sets forth a claim for breach of contract against Franklin Hazen for any actions regarding the Franklin Trust and any actions regarding the Prudence Trust that occurred after May 31, 2013.

2. *Breach of Implied Contract by Franklin Hazen*

Count II of Plaintiff's amended complaint is a breach of implied contract claim against Defendant Franklin Hazen. Plaintiff asserts that Franklin Hazen made certain promises to Prudence Hazen, which Franklin Hazen should have reasonably expected would induce her to act or forbear, and that Prudence Hazen was induced to take action or forbearance. (Am. Compl. ¶ 50.) Plaintiff asserts that Franklin Hazen's alteration of terms of the Franklin Trust are a breach of his promises to Prudence Hazen, which have resulted in injury to Plaintiff as an intended beneficiary of the promises. (*Id.* ¶¶ 52-53.) As previously stated, Plaintiff alleges that Franklin Hazen has materially altered the terms of the Franklin trust by reducing Plaintiff's share. (*Id.* ¶ 38.)

On its face, Plaintiff's breach of implied contract claim appears to be solely based on Franklin Hazen's alleged alteration of terms of the Franklin Trust. Plaintiff's breach of implied contract claim does not appear to be based on any conduct by Franklin Hazen regarding the Prudence Trust. Thus, Plaintiff's breach of implied contract claim is not barred by the Release.

Therefore, Plaintiff's amended complaint sufficiently sets forth a claim for breach of an implied contract against Franklin Hazen for actions regarding the Franklin Trust. Any breach of implied contract claim based on actions regarding the Prudence Trust that occurred prior to May 31, 2013, would be barred by the Release.

3. *Interference with a Contractual Relationship by Defendants*

Count III of the complaint is a claim for tortious interference with a contractual relationship against Defendants. Plaintiff asserts that Defendants have interfered with efforts by the current and former trustees of the Prudence Trust to market for sale some or all of the property held by the Prudence Trust, which had resulted in a breach of the Agreement. (Am. Compl. ¶¶ 57-58.) Plaintiff asserts that Defendants intentional conduct has jointly and severally damaged Plaintiff as an intended beneficiary. (*Id.* ¶¶ 58-59.)

On its face, Plaintiff's claim for tortious interference with a contractual relationship appears to be based solely on Defendants' actions regarding the Prudence Trust. Any claims based on actions regarding the Prudence Trust that occurred prior May 31, 2013 are barred by the Release. However, Plaintiff's complaint does not specify when Defendants' alleged interference occurred. Therefore, any conduct by Defendants regarding the Prudence Trust that occurred after May 31, 2013, could support a claim for tortious interference with a contractual relationship.

Therefore, Plaintiff's amended complaint sufficiently sets forth a claim for tortious interference with a contractual relationship against all Defendants for any actions regarding the Prudence Trust that occurred after May 31, 2013.

4. *Declaratory Judgment*

Count VI of Plaintiff's amended complaint is a claim for declaratory judgment. Plaintiff asserts that there is a controversy among the parties concerning their rights and obligations under the Agreement, the trusts, and the promises, including but not limited to, whether the Agreement is an enforceable contract. (Am. Compl. ¶¶ 73-74.)

Plaintiff's claim for declaratory judgment is not based on any prior action or inaction regarding the Prudence Trust. On its face, Plaintiff's claim for declaratory judgment seeks a judicial determination of the parties' rights and obligations under the Agreement, the trusts, and the promises going forward. Therefore, Plaintiff's claim for declaratory judgment is not barred by the Release. Accordingly Plaintiff's amended complaint sufficiently sets forth a claim for declaratory judgment.

5. *Declaration of Trustee Robert E. MacDonald's Authority*

Count VII of Plaintiff's amended complaint is claim for judicial determination and declaration of trustee Robert E. MacDonald's authority. MacDonald is the current trustee of Prudence Trust. (Am. Compl. ¶ 5.) Plaintiff seeks a declaration that MacDonald's failure to market, liquidate, maintain, or improve property held by the Prudence Trust constitutes breach of trust. (*Id.* ¶¶ 76-79.) Plaintiff request that the court issue an order compelling MacDonald and any subsequent trustee to market and sell the property held by the Prudence Trust in order to maintain and improve the Camp in accordance with the terms of the Agreement. (*Id.* ¶ g.)

Like Plaintiff's claim for declaratory judgment, Plaintiff's claim for declaration of the trustee's authority is prospective. Plaintiff seeks a declaration of trustee's authority going forward and an order compelling the trustee to take certain actions in the future. Thus, Plaintiff's claim for declaration of the trustee's authority is not based on any action or inaction regarding the Prudence Trust that occurred prior to May 31, 2013, and not barred by the Release. Plaintiff's amended complaint sufficiently sets forth a claim for a declaratory judgment regarding trustee Robert E. MacDonald's authority.

Based on the foregoing, Plaintiff's amended complaint sufficiently sets forth claims for breach of contract, breach of implied contract, interference with a contractual relationship, declaratory judgment, and declaration of the trustee's authority. Therefore, Defendants' motion to dismiss Counts I, II, III, VI, and VII of the amended complaint pursuant to Rule 12(b)(6) for failure to state a claim must be denied.

III. DEFENDANTS' MOTION TO DISQUALIFY

Defendants have also moved to disqualify Plaintiff's counsel, Colby Wallace, Esq. (Defs. Mot. Dismiss 10.) Defendants assert that, if the court finds that Counts I, II, III, VI, and VII cannot be dismissed because of any perceived ambiguity in the Release, the court will need to consider parol evidence in order to construe the terms of the Release. (*Id.*) Defendants assert that Attorney Wallace was a key negotiator of the Release and that his testimony will be necessary to resolve any ambiguity. (*Id.* at 13-14.) Defendants assert that Maine Rule of Professional Conduct 3.7 prohibits Attorney Wallace from continuing to represent Plaintiff in this action, and therefore, Attorney Wallace must be disqualified. *See* M.R. Prof. Conduct 3.7(a) ("A lawyer shall not act as advocate at a tribunal in which the lawyer is likely to be a necessary witness...").

Although the court finds the Defendants' motion to dismiss Counts I, II, III, VI, and VII must be denied, the court's decision is not based on any perceived ambiguity in the Release. As discussed above, the court finds the terms of the Release to be plain and unambiguous. The plain language of the Release unambiguously limits its scope only to claims based on "any action taken or not taken with regard to the [Prudence] Trust *through the date hereof and actions reflected herein,...*" (Defs. Mot. Dismiss, Ex. A) (emphasis supplied). Thus, based on its plain and unambiguous language, the Release discharges only claims based on any action or inaction regarding the Prudence Trust that occurred prior to its effective date, May 31, 2013. The court finds that Counts I, II, III, VI, and VII of the amended complaint sufficiently set forth causes of action not discharged by the Release.

Because the court finds the Release to be unambiguous, the court need not resort to parol evidence in order to construe its terms. *See 2301 Cong. Realty, LLC*, 2014 ME 147, ¶ 10, 106 A.3d 1131. Therefore, the court sees no reason for Attorney Wallace to be called as a witness in this case at this time. Accordingly, Defendants' motion to disqualify Colby Wallace, Esq. is denied.

IV. PLAINTIFF'S MOTION FOR SANCTIONS

In his opposition, Plaintiff requests that the court impose Rule 11 sanctions on Defendants. (Pl. Opp'n to Defs. Mot. Dismiss 7-8.) Plaintiff argues that Defendants have mischaracterized the allegations in the amended complaint, misconstrued the Release, and brought their motion to dismiss in bad faith. (*Id.*)

Pursuant to Maine Rule of Civil Procedure 11, every motion must be signed by at least one attorney of record. M.R. Civ. P. 11(a). The signature constitutes a representation that the attorney has read the motion; that to the best of the attorney's knowledge, information, and belief

there are good grounds to support the motion; and that it is not interposed for delay. *Id.* If a motion is signed with intent to defeat the purpose of Rule 11, the court may impose appropriate sanctions upon the attorney, the party, or both. *Id.*

There is no basis for the court to conclude that Defendants filed their motion to dismiss in violation of Rule 11. Defendants have not misconstrued the plain language of the Release. Defendants acknowledge that the Release does not discharge claims based on conduct that occurred after its execution on May 31, 2013. (Defs. Reply to Pl. Opp'n to Defs. Mot. Dismiss 6-7.) Further, although Defendants' characterization of the allegations in the amended complaint differs from Plaintiff's characterization, there is no indication that Defendants have acted in bad faith. Therefore, the court declines to impose sanctions.

V. CONCLUSION

Based on the foregoing, Defendants Mary Elizabeth Osgood and Michael Franklin Hazen's motion to dismiss Counts I, II, III, VI, and VII of Plaintiff's amended complaint is denied.


Defendants Mary Elizabeth Osgood and Michael Franklin Hazen's motion to disqualify Colby Wallace, Esq. is also denied.

Plaintiff Steven Kelsey Hazen's motion for sanctions is denied.

The Clerk is directed to enter this Order on the civil docket by reference pursuant to Maine Rule of Civil Procedure 79(a).

Date:

8/9/14



Lance E. Walker
Justice, Superior Court