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STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-18-97

DALE T. HOLMAN,
Plaintiff,

v.

STJ, INC., and
Gorham Sand & Gravel, Inc.,
Defendant.

ORDER ON PLAINTIFF'S MOTION
TO SET ASIDE THE COURT'S
ORDER AND DEFENDANTS'
MOTION FOR INJUNCTION

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Before the Court is Plaintiff Dale T. Holman's Motion to Set Aside the Court's July 20, 2018 Order. In addition, Defendants' STJ Inc., and Gorham Sand & Gravel Inc., have filed a motion for a *Spickler* order¹ and motions to strike Plaintiff's motion and Plaintiff's opposition to Defendants' *Spickler* request.²

For the following reasons, Plaintiff's motion is denied. Because it appears the Court does not have jurisdiction to grant Defendants' request for a *Spickler* order at this stage of the litigation, Defendants' motion is denied.

I. Factual and Procedural Background

The motions presently before the Court are the result of an ongoing struggle between the parties to conclude their dispute. The first case, initiated in 2007, was dismissed with prejudice following a stipulation of dismissal. *Holman v. STJ Inc., et al.*, CUMSC-RE-2007-188 (Me. Super. Ct., Cum. Cty., Apr. 16, 2008) (*Crowley, J.*). Approximately ten years later on January 12, 2018 Defendants were served with a

¹ *Spickler v. Key Bank*, 618 A.2d 204 (Me. 1992).

² Based on this Order, Defendants' motions to strike are rendered moot.

summons and complaint involving similar allegations. *Holman v. STJ Inc., et al.*, CUMSC-CV-2018-97 (Me. Super. Ct. Cum. Cty., June 21, 2018) (*Walker, J.*). In that case, Defendants filed their answer and counterclaim. Unbeknownst to them, Plaintiff had deliberately withheld filing the complaint with the court. Consequently, Plaintiff's failure to timely file the complaint within twenty days of service led to its dismissal.³ M.R. Civ. P. 3. Approximately two months later Plaintiff turned around and filed a third complaint, based on similar allegations. This third action was dismissed on the merits by order dated November 9, 2019. *Holman v. STJ Inc., et. al.*, No. CV-18-302, 2018 Me. Super. LEXIS 35 (Nov. 9 2019) (*Warren, J.*). The third case was dismissed in part due to Plaintiff's failure to timely oppose Defendants' motion to dismiss, and partly because the complaint was a reiteration of the issues litigated in the 2007 complaint. *Id.* (further discussing the history of complaints and Plaintiff's litigious behavior). Now, after an unsuccessful appeal,⁴ Plaintiff moves to set aside the order.

The motions presently before the Court stem from the second action. After a hearing held on July 20, 2018, Justice Walker ordered Plaintiff to pay \$3,500 in attorney's fees upon finding, pursuant to Rule 3, the action was "vexatiously commenced." *Holman, CUMSC-CV-2018-97*, at 2 (order dated July 20, 2018).

³ Defendants' motion to dismiss the complaint and motion for default on the counterclaim were initially denied without prejudice. Upon granting Defendants' motion for reconsideration, the court recognized that serving the complaint commenced the civil action, despite Plaintiff's failure to file the complaint with the court.

⁴ The Law Court dismissed Plaintiff's appeal because he failed to file a brief. *Holman v. STJ, Inc.*, Docket No. Cum-18-316 (Nov. 6, 2018).

conduct that a *Spickler* order is intended to address. Defendants' evidence suggests that Plaintiff has no intention of letting this matter go. After Defendants' shared their answer and counterclaim with Plaintiff in this action, in an email dated February 14, 2018, Plaintiff stated:

Thank you for sharing your hand with me regarding the response game plan for your clients. This current suit has not been submitted to the courts, therefore, I will be submitting a new one with help from your filings. Thank you! Please allow your client to know that I will not be going away, and that I will fight this fight Forever! I have not yet begun to fight, and I will prevail legally with all my pursuits and efforts.

(Def.s' Ex. B.) This communication was cited as one of the reasons Justice Walker found the action to be "vexatiously commenced." Later that year, in an email to Defendants' counsel, Plaintiff stated he was considering filing criminal and emotional distress charges against Defendants and Defendants' counsel. (Def.s' Ex. C.) Defendants' counsel has also been subjected to three bar complaints filed by Plaintiff, one of which was filed just two hours after the July 20, 2018 hearing. (Def.s' Mot. Restrain 3.)

The Court takes judicial notice of Plaintiff's litigious history with others. While this case was pending, in April, 2018, Plaintiff filed two separate lawsuits against nine parties – including, inter alia, his neighbors and the Willow Home Owners Association. These cases were consolidated and resulted in a stipulation of dismissal. The settlement agreement included a *Spickler* order. See *Holman*, 2018 Me. Super. LEXIS 35, at *2-3 (citing *Holman v. Johnson*, CUMSC-CV-2018-68 & CV-2018-143 (order entered Nov. 20, 2018)). While that case was pending, the court dismissed an additional complaint filed against the Willow Home Owners Association. *Holman v. Willow Home Owners Association*, CUMSC-RE-2018-179 (Sep. 11, 2018). Defendants have also offered evidence that Plaintiff intends to sue the City of Portland for an alleged zoning issue and other related matters involving the property at issue in this case. (Def.s' Ex. D, at 2.)

While Plaintiff's current motion is not the product of a new complaint, the ensuing motions and memorandum are the result of a lengthy motion that lacked any merit. Plaintiff's litigious history in connection with the property and his repetitive lawsuits suggests Plaintiff will continue his legal onslaught unless an injunction is issued. Justice Warren already instructed Plaintiff on the consequences of any future similar behavior:

Because the court concludes that jurisdiction to issue a *Speckler* order may be lacking in this case, it will dismiss defendants' motion. Given Holman's repetitive lawsuits, Justice Walker's finding that Holman's action in CV-18-97 was vexatiously commenced, and the other points noted above, Holman is on notice that any future similar behavior on his part could result in the imposition of a *Spickler* injunction against him.

Holman, 2018 Me. Super. LEXIS 35, at *3. To that end, the Court is instructing Plaintiff, again, that any future similar behavior on his part or attempts to re-litigate old matters could result in the imposition of a *Spickler* injunction against him.

C. Attorney's Fees

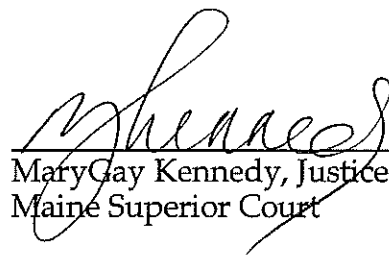
The Motion to Set Aside the Court's Order appears to be premised on Plaintiff's failure to accept the consequences of his actions and Justice Walker's application of Maine law. Although Defendants' failed to attach an attorney fee affidavit in support of their request for attorney's fees, the Court will consider the matter of attorney's fees pending receipt of their affidavit.

III. Conclusion

For the foregoing reasons, Plaintiff's Motion to Set Aside the Court's July 20, 2018 Order is DENIED. Defendants' motion to restrain Plaintiff from filing further lawsuits against Defendants is DENIED. The Court will consider Defendants' request for attorney's fees upon receipt of their affidavit.

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

Dated: 10/29/19


Mary Gay Kennedy, Justice
Maine Superior Court

Entered on the Docket:

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Plaintiff-Pro Se
Defendants-Bruce Hepler, Esq.