

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-12-473

NM - CIVIL - 5/30/2013

30 MAY '13 4:19

EAST SHORE BEACH
CONDOMINIUM
ASSOCIATION,

Plaintiff

v.

ORDER ON MOTION
TO DISMISS

STEVEN R. EDDLESTON
and DANIEL MOSELEY,

Defendants

Before the court is the defendants' motion to dismiss pursuant to M.R. Civ. P. 12(b)(6). For the following reasons, the motion is denied.

The defendants have attached to their motion thirteen exhibits, including affidavits, deeds, parts of the plaintiff's by-laws, parts of the plaintiff's declaration of condominium, amendment to the declaration, a meeting agenda, meeting minutes, correspondence, and emails. In general, only the facts alleged in the complaint are considered on a motion to dismiss. Moody v. State Lottery Comm'n, 2004 ME 20, ¶ 8, 843 A.2d 43. If the court considers materials outside the pleadings, the motion is treated as a motion for summary judgment. Id. The court may, however, consider "official public documents, documents that are central to the plaintiff's claim, and documents referred to in the complaint, without converting a motion to dismiss into a motion for summary judgment when the authenticity of such documents is not challenged." Id. ¶ 10, citing Alternative Energy, Inc. v. St. Paul Fire & Marine Ins. Co., 267 F.3d 30, 33 (1st

Cir. 2001). The court treats this motion as one pursuant to Rule 12(b)(6)¹ but will consider the certificate of amendment to the declaration of the East Shore Beach Condominiums, attached to the complaint as exhibit A, the documents referred to in the complaint, and the by-laws submitted by the plaintiff with its memorandum.

Viewing the allegations in the complaint in the light most favorable to the plaintiff, 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.” In re Wage Payment Litig., 2000 ME 162, ¶ 3, 759 A.2d 217; see 33 M.R.S. §§ 1602-117(d) (2012); 33 M.R.S. 1603-102(a)(4), (15)-(17) (2012); By-laws, Art. II(A), II(K)(4), (14)-(16); Declaration, Art. 8(a), 12(a)(ii), (c)²; Certificate of Amendment.

The entry is

The Defendant’s Motion to Dismiss is DENIED.

Date: May 29, 2013



Nancy Mills
Justice, Superior Court

30 MAY '13 AM 8:18

¹ If the defendants intended that the court consider thirteen exhibits, a motion for summary judgment should have been filed, along with a supporting statement of material facts. See M.R. Civ. P. 56(h)(1). The procedure provided by Rule 56 significantly aids the court’s determination of the existence of disputed material facts and application of law to those facts. See M.R. Civ. P. 56(h)(1)-(4).

² The court relies on the plaintiff’s description of article 12(c) of the declaration. This part of the declaration is not attached to the Eddleston affidavit. (Pl.’s Mem. at 7.)

EAST SHORE BEACH CONDOMINIUM ASSOCIATION VS STEVEN R EDDLESTON ET AL

UTN:AOCSSr -2012-0111640

CASE #:PORSC-CV-2012-00473

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<u>F</u>	<u>STEVEN R EDDLESTON</u>	<u>DEF</u>	<u>RTND</u>	<u>12/14/2012</u>
<u>F</u>	<u>DANIEL MOSELEY</u>	<u>DEF</u>	<u>RTND</u>	<u>12/14/2012</u>

02 0000008401

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<u>F</u>	<u>EAST SHORE BEACH CONDOMINIUM ASSOCIATION</u>	<u>PL</u>	<u>RTND</u>	<u>11/16/2012</u>
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