

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-
NM-CUM-12/6/2013 ✓

DONALD M. MILLET
and MARY JANE MILLET,

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Plaintiffs

v.

C & C FAMILY LLC and
TRAVIS J. CARUSO,

Defendants

ORDER ON DEFENDANTS'
MOTIONS TO DISMISS AND
PLAINTIFFS' MOTION TO
COMPEL JOINDER

Before the court are the defendants' motions to dismiss the plaintiffs' complaint pursuant to M.R. Civ. P. 12(b)(6) and 12(b)(7) and the plaintiffs' motion to compel joinder of necessary parties under Rule 19. For the following reasons, the motions are denied.

BACKGROUND

The plaintiffs allege the following in their complaint. The plaintiffs live in Gorham in Cumberland County. (Compl. ¶ 1.) They own lot 6 on the plan for Fort Hill Estates recorded in the Cumberland County Registry of Deeds. (Compl. ¶ 5.) The defendant C & C Family LLC owns lot 1 described in the same plan. (Compl. ¶ 6.) Each lot in the Fort Hill Estates plan is subject to certain relevant restrictive covenants as follows:

Said premises are conveyed subject to the following covenants and restrictions for the benefit of other lot owners in the above mentioned subdivision which shall run with the land:

2. Said lot shall not be subdivided

3. Said lot shall be used for a single family residential use only and no commercial, industrial, or business use shall be permitted thereon.

(Compl. ¶ 7.) The defendants propose to use a portion of lot 1 as a right-of-way, bisecting the lot, to access a new subdivision the defendants propose to develop.

(Compl. ¶ 8.) The defendants' proposal violates the restrictive covenants in its deed because the creation of the right-of-way is not a single-family use of the land and is effectively subdividing the lot. (Compl. ¶¶10-11.)

PROCEDURAL HISTORY

The plaintiffs filed their complaint on May 20, 2013. The defendants filed an answer, counterclaim, and motion to dismiss the complaint pursuant to Rule 12(b)(6) on June 25, 2013. On July 11, 2013, the plaintiffs filed a motion to compel joinder pursuant to Rule 19 on defendants' counterclaim of the other lot owners in Fort Hill Estates. On July 25, 2013, the defendants responded to the plaintiffs' motion to compel joinder and moved to dismiss the plaintiffs' complaint under Rule 12(b)(7) for failure to join necessary parties under Rule 19.

DISCUSSION

1. Standard of Review

The court must "examine the complaint in the light most favorable to the plaintiffs to determine whether it alleges the elements of a cause of action or facts entitling the plaintiffs to relief on some legal theory" and "assume that all factual allegations in the complaint are true." Stevens v. Bouchard, 532 A.2d 1028, 1030 (Me. 1987); see also Saunders v. Tisher 2006 ME 94, ¶ 8, 902 A.2d 830 (in determining whether a motion to dismiss should be granted, the court considers "the allegations in the complaint in relation to any cause of action that may reasonably be inferred from the complaint," and a claim will be dismissed "when

it appears beyond a doubt that the plaintiff is not entitled to relief under any set of facts that he might prove in support of his claim”).

2. Documents Considered on a Motion to Dismiss

The defendants argue the court may consider the defendants’ application submitted to the Maine Department of Environmental Protection because the document is referenced in the plaintiffs’ complaint. (Ex. A attached to Defs.’ Mem.) In Moody v. State Liquor and Lottery Commission, the Law Court held:

{O}fficial public documents, documents that are central to the plaintiff’s claim, and documents referred to in the complaint may be properly considered on a motion to dismiss without converting the motion to one for a summary judgment when the authenticity of such documents is not challenged.

Moody v. State Liquor & Lottery Comm’n, 2004 ME 20, ¶ 11, 843 A.2d 43. The plaintiffs reference the DEP application in their complaint and neither party appears to challenge its authenticity. (Compl. ¶ 9.) The plaintiffs argue that other documents are relevant and the issues involved are more suited to a motion for summary judgment.

The DEP application is attached to the defendants’ motion and memorandum and includes the following: a letter dated 4/30/13 to the DEP from Andrew Morrell, the application, a letter dated 3/7/13 to defendant Caruso from the DEP, a suggested deed description, and deeds. The letter dated 5/21/13 to defendant Caruso from the DEP and a letter dated 4/30/13 to the Gorham Town Planner from Andrew Morrell, attached to the plaintiffs’ objection and memorandum in response to the defendants’ motion, are documents central to the plaintiffs’ claim and their authenticity is not challenged. These documents support the plaintiffs’ argument that a more complete record is required and that

the defendants have not shown beyond a doubt that the plaintiffs are not entitled to relief under any set of facts.¹

2. Defendants' Rule 12(b)(6) Motion to Dismiss

The defendants argue that there is no genuine case or controversy because the plaintiffs only speculate as to whether a violation will occur in the future. The plaintiffs' complaint, however, is not founded on the way the right-of-way will be used in the future. The plaintiffs allege that the creation of the right-of-way is a violation of the restrictive covenants in the deed. (Compl. ¶¶ 10-11.)

The defendants further argue that the proposal is unambiguously acceptable under the covenants in the deed. Because it is unclear on this record "whether the proposed easement is for a driveway for one single-family home or multiple single-family residential lots," the proposal could violate the covenants in the deeds. (5/21/13 Letter attached to Pls.' Mem.) The Law Court has stated: "The use of Lot 1 for construction of a roadway to access another subdivision is inconsistent with the single-family residential use restriction that [the plaintiff] imposed on all lots in the [] subdivision, including Lot 1." ALC Dev. Corp. v. Walker, 2002 ME 11, ¶ 12, 787 A.2d 770. The plaintiffs could potentially show that the proposed right-of-way itself violates the single-family use restriction, even without a showing that the defendants plan to develop the neighboring lot into a new subdivision. See id. ("The proposed use of Wiley Farms is irrelevant to whether the roadway complies with the lot's use restriction.").

¹ The Moody case makes clear that a document referenced in the plaintiff's complaint, a document central to the plaintiff's claim, or a public document may be considered because the plaintiff "should have notice of the contents." Moody, 2004 ME 20, ¶ 11, 843 A.2d 43. The defendants' argument that the 5/21/13 letter cannot be considered because it is not referenced in the complaint is incorrect. (Def.'s Rep. Mem. at 2-3.)

The DEP application does not make clear that the proposed driveway is consistent with the restrictive covenants in the deed. The application simply provides that Mr. Caruso seeks an easement over lot 1 to benefit property owned by C & C Family LLC. The defendants have not shown beyond any doubt that the plaintiffs are not entitled to relief under any set of facts.

3. Plaintiffs' Motion to Compel Joinder

The plaintiffs move the court to compel joinder of the other lot owners in Fort Hill Estates. Rule 19 provides:

A person who is subject to service of process shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant.

M.R. Civ. P. 19(a). The plaintiffs argue that the defendants-counterclaimants may have to relitigate issues raised in this lawsuit and could be exposed to inconsistent results if the other lot owners are not joined.

In Sanseverino v. Gregor, the Law Court found that the trial court did not err by concluding that other lot owners benefitted by the same restrictive covenant involved in the case were not necessary parties under Rule 19. Sanseverino v. Gregor, 2011 ME 8, ¶ 8, 10 A.3d 735. The defendant in that case argued that the other lot owners were necessary parties "because the court's ruling could affect their interests arising from the restrictive covenant" Id. The Court held that the "[f]ailure to join other lot owners in the development did

not prevent the parties 'from fully adjudicating the underlying dispute,' did not expose the parties 'to multiple or inconsistent obligations,' and did not prejudice the interests of the absent lot owners. Id. (quoting Muther v. Broad Shore Cove Ass'n, 2009 ME 37, ¶ 9, 968 A.2d 539).

Following the holding in Sanseverino, the absence of the other lot owners in this case would not prevent the court from fully adjudicating this dispute, would not expose the parties to multiple or inconsistent obligations, and would not prejudice the interests of the other lot owners.

4. Defendants' Motion to Dismiss for Failure to Join Necessary Parties

As discussed above, the other lot owners in the development are not necessary parties under Rule 19.

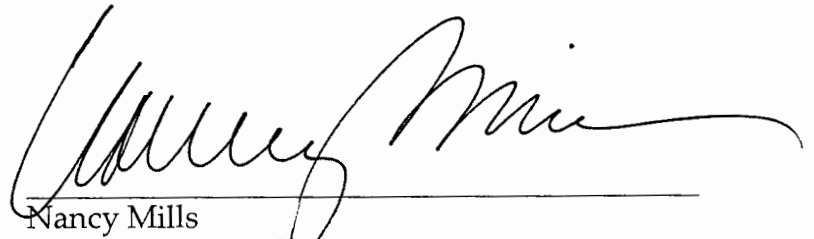
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Defendants' Motion to Dismiss pursuant to Rule 12(b)(6) is DENIED.

Defendants' Motion to Dismiss pursuant to Rule 12(b)(7) is DENIED

Plaintiffs' Motion to Compel Joinder pursuant to Rule 19 is DENIED.

Dated: December 5, 2013



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