

STATE OF VERMONT

SUPERIOR COURT
Windsor Unit

CIVIL DIVISION
Docket No. 158-3-13 Wrcv

CHRISTOPHER KATUCKI
& MARGARET KATUCKI,
Plaintiffs

v.

TOWN OF NORWICH,
Defendant

ENTRY ORDER

The Plaintiffs, Christopher Katucki and Margaret Katucki, move for reconsideration of the court's decision on August 25, 2014, disposing of all outstanding issues in favor of the Defendant, Town of Norwich. The Plaintiffs' motion is granted in part and denied in part.

Discussion

"Motions for reconsideration serve a limited function: to correct manifest errors of law or fact or to present newly discovered evidence." *Caisse Nationale de Credit Agricole v. CBI Industries, Inc.*, 90 F.3d 1264, 1269 (7th Cir. 1996) (citations omitted).

The Plaintiffs' motion does not present new facts or legal arguments that would support reconsideration of most counts of their complaint, first amended complaint, or proposed second amended complaint. For the reasons set forth in the court's previous decision, the Plaintiffs' claims for relief directly related to the abatement decision of the administrative body, including the amended unjust enrichment claim, are dismissed and will not be reconsidered. Similarly, the Plaintiffs' claims for relief under the Vermont Constitution and for equitable relief in their proposed second amended complaint will not be allowed for the reasons set forth in the decision.

However, the Plaintiffs' motion also calls the court's attention to their claim under 42 U.S.C. § 1983 in their proposed second amended complaint. Although the Vermont Supreme Court has settled the issue of whether claims brought under the Vermont Constitution require exhaustion of administrative remedies, the Court has not addressed claims brought under § 1983. Upon further review of the federal case law, this court finds that exhaustion of administrative remedies is not required for the Plaintiffs' federal claim. *Patsy v. Board of Regents of State of Fla.*, 457 U.S. 496, 516 (1982). Accordingly, the court's August 25, 2014 decision is amended only as to the § 1983 claim, which will be allowed to proceed. Rulings on all other issues in the decision will not be reconsidered, except that the parties' motions regarding discovery will be considered after the new claim is briefed.

FILED

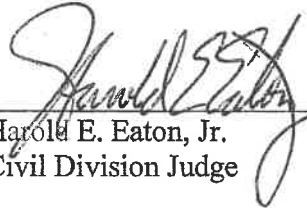
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In allowing the Plaintiffs to proceed under 42 U.S.C. § 1983, the court makes no conclusions regarding the merits or viability of the claim. The parties are invited to submit motions and memoranda on this issue.

Order

The Plaintiffs' motion to reconsider the court's August 25, 2014 is granted in part and denied in part. The Plaintiffs' motion for leave to file a second amended complaint is granted solely to allow the § 1983 claim to proceed.

Dated at White River Jct. this 2nd day of October, 2014.


Harold E. Eaton, Jr.
Civil Division Judge