

VERMONT SUPERIOR COURT
Environmental Division
32 Cherry St, 2nd Floor, Suite 303,
Burlington, VT 05401
802-951-1740
www.vermontjudiciary.org



Docket No. 21-ENV-00006

Village of Ludlow v. Guldi

DECISION ON MOTION TO DISMISS

Title: Motion to Dismiss (Motion: 6)
Filer: George Guldi
Filed Date: February 22, 2023

Village of Ludlow Opposition to Motion to Dismiss filed on March 21, 2023, by Attorney Stephen S. Ankuda.

The motion is DENIED.

This is an enforcement action pursued by the Village of Ludlow (Village) against George O. Guldi (Respondent) regarding Respondent's property at 15 Bowker Court, Ludlow, Vermont (the Property). Presently before the Court is Respondent's Second Motion to Dismiss this action. The Village opposes the motion. For the reasons set forth herein, the motion is denied.

Legal Standard

Respondent moves the Court to dismiss the enforcement action pursuant Rule 12(b) of the Vermont Rules of Civil Procedure. While the motion does not specify which provision of Rule 12(b) it is made pursuant to, a review of the motion shows that it seeks to challenge this Court's jurisdiction over the action due to alleged procedural deficiencies by the Village pursuant to Rule 12(b)(1). Respondent also asserts that there is a lack of factual basis for the alleged violation, which we interpret as pursuant to Rule 12(b)(6) for failure to state a claim upon which relief may be granted.

When reviewing a Rule 12(b)(1) motion, this Court accepts all uncontroverted factual allegations as true and construes them in the light most favorable to the nonmoving party, Village

here. Rheume v. Pallito, 2011 VT 72, ¶ 2, 190 Vt. 245. The Court may consider evidence outside of the pleadings in resolving a 12(b)(1) motion. Conley v. Crisafulli, 2010 VT 38, ¶ 3, 188 Vt. 11 (citing Makarova v. United States, 201 F.3d 110, 113 (2d Cir. 2000)).

A Rule 12(b)(6) motion for failure to state a claim may not be granted unless it is beyond doubt that there are no facts or circumstances that would entitle the Village to relief. Colby v. Umbrella, Inc., 2008 VT 20, ¶ 5, 184 Vt. 1 (citation omitted). We take all well-pleaded factual allegations made by the Village as true and “assume that the movant’s contravening assertions are false.” Alger v. Dep’t of Labor & Industry, 2006 VT 115, ¶ 12, 181 Vt. 309 (citation omitted). There is a “exceedingly low” threshold to survive a 12(b)(6) motion and, “[m]otions to dismiss for failure to state a claim are disfavored and should rarely be granted.” Bock v. Gold, 2008 VT 81, ¶ 4, 184 Vt. 575 (mem.).

Discussion

I. Respondents Rule 12(b)(1) Motion

We first address Respondent’s Rule 12(b)(1) motion. Respondent asserts that the present action is improper because (1) it was not properly commenced under the Village Ordinance “Regulating Outdoor Storage and Junk and Junk Vehicles” (the Ordinance) based on his allegation that the underlying notice of violation letter was issued by the Village Manager, rather than the Village Board of Trustees; (2) it was authorized by the Village Board of Trustees too late; and (3) he was never issued a municipal ticket for the alleged violation. The Court concludes that none of these actions deprive this Court of jurisdiction.

First, we address Respondent’s first two arguments together. We conclude the Village Manager was authorized to issue the notice of violation letter and the Village authorized the pursuit of the present enforcement action. In so deciding, we must accept as true all uncontroverted factual allegations made by the Village. Respondent does not dispute the facts raised in the Village’s opposition to his motion that (a) the Village Manager was authorized to send the notice on behalf of the Village, and (b) the present action was authorized by both the initial 2020 authorization and subsequently ratified. See Village Ex. 3 at 3 (September 1, 2020 Village Trustees Meeting Minutes authorizing the Village Manager to send the underlying notice and noting that the failure to cure would result in a fine or civil action); Village Ex. 2 at 3

(November 1, 2022 Village of Trustees Meeting Minutes ratifying the continued enforcement action). Construing these facts in the light most favorable to the Village, we conclude that the Village Trustees authorized the Village Manager to send the notice and to pursue the enforcement action. Further, the minutes show that the Village Board of Trustees were informed that the failure to cure the violation would result in a civil action at the time that it authorized the Village Manager to pursue the notice of violation and it subsequently authorized the continued pursuit of this action. We therefore conclude that this authorization was not untimely. Thus, Respondent's motion to dismiss on these grounds is **DENIED**.

Second, Respondent asserts that he was never issued with a municipal ticket for the alleged violation, in violation of the Ordinance. Presumably he asserts that this Court lacks jurisdiction because of this alleged procedural error. This is not grounds to dismiss this action.

The Village is seeking to enforce the terms of the Ordinance against Respondent.¹ Respondent does not dispute that he received notice of an alleged violation at the Property and had 30 days from the date of notice via certified mail. See Respondent Ex. C. Should he not cure the violation, the letter stated that an action would be commenced against him. Id.

This is effectively a seven-day warning notice pursuant to 24 V.S.A. § 4451(a)(1), which is the only jurisdictional pre-requisite to bring an enforcement action under Chapter 117. See 24 V.S.A. § 4451(a).² Thus, Respondent's alleged deficiencies in the way the notice was issued based on provisions of the Ordinance is irrelevant in this action made pursuant to 24 V.S.A. § 4452.³

¹ We note in reviewing this motion, that the Ordinance was adopted pursuant to 24 V.S.A. Chapter 59 and 61. The present action is one for a violation of a 24 V.S.A. Chapter 117 ordinance, pursuant to 24 V.S.A. § 4452. We expect that the Village will establish at trial that the Ordinance is interrelated to Chapter 117-adopted Village zoning regulations. Given the procedural posture of the pending motion, and the fact that Respondent does not challenge this aspect of the Ordinance, we assume the Ordinance and Village zoning regulations are interrelated in some regard. We cannot conclusively so decide as neither party has presented the Village zoning regulations as an exhibit.

² We note that 24 V.S.A. § 4451(a) also contemplates enforcement actions absent a seven-day notice.

³ Because we conclude that the alleged deficiencies are immaterial for the present action, we do not address the merits of the alleged deficiencies. Baker v. Town of Goshen, 169 Vt. 145, 151 (1999) ("[C]ourts are not instituted to render advisory opinions.")

II. Respondent's 12(b)(6) Motion

Respondent asserts that there is insufficient factual basis for the pending enforcement action, either based on the state of the Property or based on the Village Manager's action relative to the Property.

The purpose of a Rule 12(b)(6) motion is "to test the law of the claim, not the facts which support it." Power v. Office of Child Support, 173 Vt. 390, 395 (2002). A party who requests dismissal of litigation pursuant to Rule 12(b)(6) must satisfy an exceptional legal standard. This Court may only dismiss a claim under V.R.C.P. 12(b)(6) when it is certain beyond any doubt that there are no possible facts or circumstances that would allow relief for the claimant. Richards v. Town of Norwich, 169 Vt. 44, 48 (1999). To make this determination, we are directed to assume that all factual allegations made by the non-moving party are true and that all contravening assertions made by the moving party are false. Id. at 49. Only when the factual allegations are viewed in this light, and the applicable legal standards still support a conclusion that the non-moving party cannot be granted the relief requested, is it appropriate to grant a dismissal request and foreclose a claimant's right to a trial. See id.

Respondent's motion does not satisfy this high legal standard. Instead, Respondent seeks to argue the merits of this matter. He does so by attempting to present matters outside of the pleadings, which we will not consider at this time. See V.R.C.P. 12(b)(6) ("If, on a [12(b)(6) motion . . . , matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment . . ."). Instead, based on the pleadings, the Town has set forth a claim sufficient to survive a Rule 12(b)(6) motion. Therefore, Respondent's motion is **DENIED** in this respect.

Conclusion

For the foregoing reasons, Respondent's motion to dismiss is **DENIED**. Respondent has failed to demonstrate any deficiencies in the Village's authorization of this action, or the notice provided to him regarding the Property, that would deprive this Court of jurisdiction. Further, Respondent has failed to satisfy the high legal standard of a Rule 12(b)(6) motion to dismiss, as the Village has set forth a claim sufficient to survive such a motion.

Having reached this conclusion, and because this matter has been pending before the Court for more than two years, in large part due to Respondent's many motions, we will set this matter for trial. **On or before, Friday May 12, 2023, the parties are directed to file the dates they are unavailable for a one-day trial in June, July, and August 2023.** The Court will hold the one-day trial via WebEx with the parties and all witnesses appearing remotely.

Electronically signed May 1, 2023 pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh". The signature is stylized, with the first name "Tom" and the last name "Walsh" written in a cursive-like script.

Thomas G. Walsh, Judge
Vermont Superior Court, Environmental Division