

VERMONT SUPERIOR COURT
Washington Unit
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www.vermontjudiciary.org



CIVIL DIVISION
Case No. 23-CV-02295

Elisabeth Shedd v. Town of Calais, Vermont

ENTRY REGARDING MOTION

Title: Motion to Dismiss (Motion: 1)
Filer: Joseph S. McLean
Filed Date: June 13, 2023

Defendant has moved to dismiss on various grounds. Plaintiff has opposed. The Court makes the following determinations.

1. The Vermont Supreme Court disfavors Rule 12(b)(6) motions to dismiss. “Dismissal under Rule 12(b)(6) is proper only when it is beyond doubt that there exist no facts or circumstances consistent with the complaint that would entitle Plaintiff to relief.” *Bock v. Gold*, 2008 VT 81, ¶ 4, 184 Vt. 575, 576 (mem.) (quoting *Union Mut. Fire Ins. Co. v. Joerg*, 2003 VT 27, ¶ 4, 175 Vt. 196, 198)). In considering a motion to dismiss, the Court “assume[s] that all factual allegations pleaded in the complaint are true, accept[s] as true all reasonable inferences that may be derived from plaintiff’s pleadings, and assume[s] that all contravening assertions in defendant’s pleadings are false.” *Mahoney v. Tara, LLC*, 2011 VT 3, ¶ 7, 189 Vt. 557, 559 (mem.) (internal quotation, brackets, and ellipses omitted).

Nonetheless, a complaint must still meet a minimum standard of pleading. Vt. R. Civ. P. 8 requires that a complaint’s allegations show “the pleader is entitled to relief,” and it must provide “fair notice” to defendant of the claim against him, Vt. R. Civ. P. 8, Reporter’s Notes.

Defendant maintains the instant complaint founders on the shoals of Rule 8. The Court disagrees. While not a model of clarity, the Court believes the complaint provides sufficient detail from which the Defendant can understand the factual basis of the claims and that they are being brought under Vt. R. Civ. P. 75. No more is required. To the extent additional detail is needed, it can be provided through the discovery process.

2. Defendant’s Reply does not contest that the alleged deficiencies with service have been rectified. Accordingly, the request for dismissal for defective service is denied.

3. The Court agrees with Plaintiff that failures to act are governed by a six-month filing deadline. Vt. R. Civ. P. 75(c). The complaint alleges an ongoing failure to provide information as to boarding fees. Accepting that allegation, the complaint is timely.

4. The Court disagrees with Plaintiff's contention that the Court's entry of the Permanent Injunction in December 2022 is not a final order. It is set out as a separate document from the merits decision. Per Vt. R. Civ. P. 58, it was a final order from which no appeal was taken.

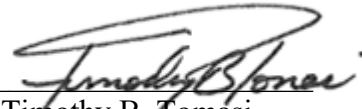
As a result, as noted in the Court's April 2023 ruling, this Court retained no general jurisdiction to review the remedial measures required by the Town. That ruling also noted a potential path for a challenge to those measures may lie through Rule 75. The instant case appears to be that challenge.

Defendant is also correct, however, that Rule 75 has a 30-day filing period, and the instant complaint, to the extent it challenges those measures, is untimely. Plaintiff's opposition makes reference to the timing issue and asks the Court to excuse it. But, she has not filed a specific motion requesting such belated relief. Nor has she articulated in detail how the request might meet the standards of excusable neglect under Vt. R. Civ. P. 6. Because of that, Defendant has not had the opportunity to dispute the request.

Given the above, the Court believes it appropriate to afford Plaintiff an opportunity to make such a motion and Defendant a chance to oppose. Any such motion shall be filed within 30 days. The Court will defer ruling on that portion of the motion to dismiss until resolution of that motion.

WHEREFORE, the motion to dismiss is denied, in part, and deferred, in part.

Electronically signed on Friday, August 11, 2023, pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink, appearing to read "Timothy B. Tomasi", written over a horizontal line.

Timothy B. Tomasi
Superior Court Judge