

STATE OF MAINE  
SAGADAHOC, ss.

BUSINESS AND CONSUMER DOCKET  
Location: West Bath  
Docket No. BCD-WB-CV-07-015

Coastal Ventures, et al.,

Plaintiffs

v.

**ORDER**  
(Clothing inventory/well water)

Alsham Plaza, LLC, et al.,

Defendants

On April 29, 2009, the Court conducted a telephonic conference with the parties to address two issues that remain in dispute following the issuance of the Court's February 3, 2009, Decision and Judgment. The disputed issues are (1) whether the clothing store items maintained by Plaintiffs have an inventory value of \$50,000, and (2) whether state law or regulation regarding Defendants' water supply caused an increase in cost to Defendants due to Defendants' obligation to supply water to the gas station on Plaintiffs' property.

At the conclusion of the telephonic conference, the Court invited the parties to submit a written summary of their respective positions on each issue. The Court informed the parties that upon review of the submissions, the Court would determine whether further proceedings, including an evidentiary hearing, were necessary. The Court has reviewed the parties' written arguments and, as explained below, does not believe that further proceedings are warranted.

#### The Clothing Store Inventory

In the Decision and Judgment, the Court concluded that the parties had contracted for the sale from Plaintiffs to Defendants of a clothing store. The Court further determined that the only unsatisfied condition to the sale was an inventory of the clothing items to be transferred to Defendants as part of the sale. The Court thus ordered the parties to complete the inventory and conclude the sale provided that Defendants would pay the contract price of \$50,000 only if the inventory confirmed that the items had a value of \$50,000. If the value of the inventory proved to be less than \$50,000, Defendants would be required to pay the lesser amount.

During the course of implementing the terms of the Decision and Judgment, the parties disagreed as to the manner in which the value of the inventory would be determined. The Court, therefore, conducted a telephonic conference after which the Court clarified its intent. In particular, the Court ordered that “[t]he inventory shall be conducted in accordance with traditional industry standards ...” (March 3, 2009, Order). When the parties could not agree on the person or entity to conduct the inventory, the Court appointed RGIS Inventory Specialists, the entity with which the parties had originally arranged to perform the inventory, to conduct the inventory. RGIS completed the inventory, and provided the parties with its report.

Defendants maintain that RGIS did not conduct the inventory in accordance with the Court’s intent. In support of their contention, Defendants again cite to the Court’s use of the term “value” when the Court referred to the inventory in the Decision and Judgment. Defendants’ objection to the inventory is, therefore, the same argument that the Court rejected in its March 3, 2009, Order. In that Order, the Court attempted to make clear that its intent was for the “value” of the inventory to be determined in accordance with traditional industry standards as the parties had agreed. RGIS, the same entity with which the parties had originally arranged to conduct the inventory, completed the inventory by reducing the retail prices of the items by the margins to establish the cost of the inventory. Based on the evidence at trial, in the Court’s view, this is the manner in which the parties agreed to “value” the inventory at the time they contracted for the sale of the clothing store. Accordingly, contrary to Defendants’ argument, RGIS conducted the inventory consistent with the Court’s intent.

#### Water Supply

After the trial, the Court concluded that “[t]he undisputed evidence established (1) that Plaintiffs were granted an easement across Defendants’ property to allow for the flow of water from the well [on Defendants’ property], and (2) that Defendant Soukarieh stopped the flow of the water.” (Decision and Judgment, p. 9). The Court, therefore, ordered,

Defendants shall restore the flow of water to the gas station property as soon as practicable. In the event that Defendants believe that state law or regulation constitutes an unanticipated, undue financial burden on Defendants, within 14 days of this Decision and Judgment, Defendants shall provide Plaintiffs with a written estimate of the cost of compliance. If after presentation of the written estimate of the cost, the parties disagree as to whether the cost represents an undue burden on Defendants’ obligation to supply the water, the parties shall submit the issue to this Court for resolution. The Court would then decide which party shall be responsible for the cost of compliance.

(Decision and Judgment, p. 14). Because the parties are unable to agree whether the cost represents an undue burden, the parties seek a resolution by the Court.

At trial, Defendants argued that their decision to stop the flow of the water was justified because of the cost of complying with state law/regulation, which cost allegedly increased because Defendants would be required to supply water to the gas station on Plaintiffs' property. As reflected above, in the Decision and Judgment, the Court provided Defendants with the opportunity to present additional information regarding the cost of compliance. Significantly, however, the information that the Defendants submitted does not reflect an increased cost of compliance with state law/regulation as the result of Defendants' obligation to supply water to Plaintiffs' property. Rather, the information reveals that the state law-related costs incurred by Defendants (e.g., the filtration and testing costs) are costs that Defendants would have incurred regardless of whether they supply water to Plaintiffs.

The issue at trial was not whether Plaintiffs should pay for the water supplied, nor was the issue whether Plaintiffs should pay a portion of the maintenance or operating costs of the well. The issue was whether state law or regulation regarding Defendants' water supply caused in an increase in cost to Defendants due to Defendants' obligation to supply water to the gas station on Plaintiffs' property so as to justify Defendants' decision to stop the flow of water to Plaintiffs' property. Defendants have failed to demonstrate any such cost and, therefore, have failed to justify their decision to stop the flow of water to Plaintiffs' property.

### Conclusion

Based on the foregoing analysis, the Court orders:

1. Within 30 days of the date of this Order, the parties shall complete the sale of the clothing store. Specifically, Plaintiffs shall transfer to Defendants the items identified in the report prepared by RGIS Inventory Specialists, and Defendants shall pay to Plaintiffs the cost of the inventory as established by RGIS Inventory Specialists.

2. To the extent that there are reconnection costs that would not have been incurred but for Defendants' decision to stop the flow of water to Plaintiffs' property, Defendants shall be responsible for said costs.

3. Plaintiffs are not obligated to pay to Defendants for the filtration, well liner, or testing costs.<sup>1</sup>

Pursuant to M.R. Civ. P. 79(a), the Clerk shall incorporate this Order into the docket by reference.

Date: 6/11/09

  
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Justice, Maine Business & Consumer Docket

David J. ...

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<sup>1</sup> Whether Defendants have a separate claim against Plaintiffs for the payment for the water, and/or for a portion of the operating costs, and whether such claims, if they do exist, survive the judgment in this action are issues that the Court specifically does not address in this Order.

*[Handwritten signature]*

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