

STATE OF MAINE
CUMBERLAND, ss

BUSINESS AND CONSUMER COURT
Location: Portland
Docket No.: BCD-CV-2014-43



AMERICAN HOLDINGS)
)
)
Plaintiff,)
)
v.)
)
TOWN OF NAPLES, et al.)
)
Defendants.)
)

**ORDER ON DEFENDANT’S MOTION
FOR RECONSIDERATION AND
PLAINTIFF’S MOTION FOR ENTRY OF
FINAL JUDGMENT**

I. INTRODUCTION

Before the Court is Defendant Town of Naples’ (the “Town”) Motion for Reconsideration of this Court’s Order on Parties’ Cross Motions for Partial Summary Judgment dated March 23, 2015. In response Plaintiff, American Holdings, has moved this Court for entry of final judgment pursuant to M.R. Civ. P. 54(b)(1). The Court has reviewed the parties’ filings, the last of which was dated April 8, 2015, and issues this Order denying the Defendant’s motion and granting entry of final judgment in favor of the Plaintiff.

II. ANALYSIS

1. Defendant’s Motion for Reconsideration

“Ordinarily, a motion for reconsideration is appropriate only if a moving party presents newly discovered evidence, if there has been an intervening change in the law, or if the moving party can demonstrate that the original decision was based on manifest error of law or was clearly unjust.” *In re Hannaford Bros. Co. Customer Data Sec. Breach Litig.*, 600 F. Supp. 2d 94, 97 (D. Me. 2009) (citing *United States v. Allen*, 573 F.3d 42, 53 (1st Cir.2009)). In Maine,

motions for reconsideration shall only be filed “to bring to the court's attention to an error, omission or new material that could not previously have been presented.” M.R. Civ. P. 7(b)(5). “The court may in its discretion deny a motion for reconsideration without hearing and before opposition is filed.”¹

The crux of the Town’s argument is set forth on page 6 of its motion: “While the Town believes that the Court appropriately found that the prior use of the main building was commercial in nature, the conclusion reached by the Court that there was never any change in use in this building is not supported by undisputed facts.” The Town specifically challenges the Court’s findings on pages 14 and 17 of its order on this issue.

The Town argues that prior to the November 16, 2006 Condominium Declaration, the first and second floors in the main building were rented to commercial tenants. At some point in time, which the Town concedes is not clear in the summary judgment record, and before the Declaration was filed, these businesses ceased operating. The Declaration created five single-family residential units, and this residential use was reaffirmed by the first and second amendments to the Declaration.

Based on these facts, the Town argues essentially that the filing of the Declaration created an illegal subdivision because of this change of use. American Holdings and the Parties-In-Interest Katherine E. Bourbon, Bruce Landry, Jennifer Landry and John Hudgins point out, however, that the Town’s analysis ignores the requirement that three or more of the original five condominium units in the main building had to have been sold or leased as dwelling units within

¹ The Advisory Committee on the Maine Rule of Civil Procedure explains that Rule 7(b)(5) was added to “make[] clear that such motions are not to be encouraged. Too frequently, disappointed litigants bring motions to reconsider not to alert the court to an error . . . but solely to reargue points that were or could not have been presented to the court on the underlying matter.” M.R. Civ. P. 7(b)(5) Advisory Committee's note to 2000 amend. Me. Rptr., 746-754 A.2d XXVIII. See also *City of Portland v. Let's Play Around, LLC*, 2008 WL 7055404.

a five-year period for any subdivision to have been created. And as they point out, the Town does not mention the five-year requirement at all in its argument in this motion. Further, as the Parties-In-Interest point out, the Town has failed cite any statute or case in support of its proposition that the recording of the Declaration by itself creates a subdivision.

The Town also relies upon *Day v. Town of Phippsburg*, 2015 ME 13, 110 A.3d 645 as new authority, which the Court should use in its reconsideration analysis. However, upon review the Court does not find this case applicable to the facts as generated in the summary judgment record before this Court. The Court concludes that the Town's arguments made in this motion have already been made and were rejected by the Court in its prior Order, and therefore the Town's Motion to Reconsider that Order is Denied.

2. Plaintiff's Motion for Entry of Final Judgment

Plaintiff, unopposed, seeks Final Judgment under Rule 54(b)(1) of the Maine Rules of Civil Procedure. "Rule 54(b) requires a trial court to make an express determination that there is no just reason to delay the entry of a final judgment on a claim. *Key Bank of Maine v. Park Entrance Motel*, 640 A.2d 211, 212 (Me. 1994). In determining whether there is "no just reason for delay" Maine courts consider:

- (1) The relationship of the adjudicated and unadjudicated claims;
- (2) The possibility that the need for review may be mooted by future developments in the trial court;
- (3) The chance that the same issues will be presented to us more than once;
- (4) The extent to which an immediate appeal might expedite or delay the trial court's work;
- (5) The nature of the legal questions presented as close or clear;

(6) The economic effects of both the appeal and any delays on all of the parties, including the parties to the appeal and other parties awaiting adjudication of unresolved claims; and

(7) Miscellaneous factors such as solvency considerations, the res judicata or collateral estoppel effect of a final judgment and the like.

McClare v. Rocha, 2014 ME 4, ¶ 8 n.1, 86 A.3d 22 (quoting *Marquis v. Town of Kennebunk*, 2011 ME 128, ¶ 13, 36 A.3d 861). Maine courts have further held that a final judgment should be entered “only in limited and special circumstances Because there is a strong policy against piecemeal review of litigation, there must be a good reason for the certification.” *Guidi v. Town of Turner*, 2004 ME 42, ¶ 9, 845 A.2d 1189. Thus, the Court must “determine whether the facts of this case constitute such an unusual circumstance.”² *Id.* ¶ 10.

In this case, the Court sees no just reason to delay entry of judgment in favor of American Holdings. Applying the factors above, this case meets many of the Rule 54(b) considerations. First, the adjudicated claim, involving the applicability of Town zoning ordinances and subdivision laws are unrelated to the remaining counterclaims. Said counterclaims are permissive in nature and concern only the legality of certain individual condominium units owned by Parties-in-Interest. American Holdings has no apparent interest at stake as to the remaining counterclaims. The Law Court has stated, “the existence of a related claim that does not affect the rights of the plaintiff should not generally prevent entry of a judgment on the plaintiff’s claim.” *Fleet Nat’l Bank v. Gardiner Hillside Estates, Inc.*, 2002 ME 120, ¶ 12, 802 A.2d 408; *see also Fleet Bank of Me. v. Hoff*, 580 A.2d 690, 691 (Me. 1990) (upholding the trial court’s entry of final judgment where other claims arose out of the same transaction but concerned only indemnification and personal guarantees).

² The court’s statement of specific findings may be short, but it must be more than a summary recitation of the provisions of M.R. Civ. P. 54(b)(1). *Guidi v. Town of Turner*, 2004 ME 42, ¶ 9, 845 A.2d 1189.

Second, because the claims involve different parties, it is highly unlikely that the reviewing court will face the same issues more than once. Finally, the economic effects of delay are considerable to the Plaintiff as the litigation has prevented the sale of condo units. Upon review of the Plaintiff's Motion for Entry of a Final Judgment pursuant to Rule 54(b), the Court hereby finds that there is no just reason for delay and directs entry of final judgment in favor of Plaintiff American Holdings.

III. CONCLUSION

Based on the Foregoing the entry will be: Town of Naples' Motion to Reconsider is DENIED. American Holdings' Motion for Entry of Final Judgment is GRANTED.

This Order may be noted on the docket by reference pursuant to Rule 79(a) of the Maine Rules of Civil Procedure.

5/5/15
DATE



SUPERIOR COURT JUSTICE, BUSINESS
AND CONSUMER COURT

Entered on the Docket: 5/6/15
Copies sent via Mail Electronically