

STATE OF MAINE
CUMBERLAND, ss.

BUSINESS AND CONSUMER COURT
LOCATION: PORTLAND
DOCKET NO. BCD-CV-2017-14 ✓

WAWENOCK LLC, et al.)
)
 Plaintiffs,)
)
 v.)
)
 STATE OF MAINE DEPARTMENT OF)
 TRANSPORTATION,)
)
 Defendant.)
)
 *****)
)
 TOWN OF WISCASSET,)
)
 Party-in-Interest)

**ORDER ON PLAINTIFFS’
MOTION FOR PRELIMINARY
INJUNCTION PENDING APPEAL**

Pursuant to M.R. Civ. P. 62(d) and 65, Plaintiffs Wawenock, LLC; Bermuda Isles, LLC; 48 Federal Street, LLC; and 32 Middle Street, LLC (collectively, “Plaintiffs”) have moved this Court to enjoin Defendant Maine Department of Transportation (“MDOT”) from demolishing Haggett’s Garage as part of its streets alteration and widening project (the “Project”) in the Town of Wiscasset, Maine (“Wiscasset” or “the Town”). Given the interest to all parties in resolving this matter as expeditiously as possible, the Court has decided to rule on the motion without hearing, as neither M.R. Civ. P. 62(d) nor 65 require a hearing prior to decision.

PROCEDURAL HISTORY

Concurrent with their initial pleading in this matter, Plaintiffs filed a motion for preliminary injunction on February 14, 2017, seeking to “enjoin MDOT to suspend implementation of its Project, including its eminent domain taking process” (Mot. For Prelim. Inj. dated Feb. 14, 2017 at 14.) After this case was transferred to the Business and

Consumer Court, the Court held an initial Case Management Conference on April 7, 2017. At that conference, the Court told counsel that it would schedule Plaintiff's Motion for Preliminary Injunction for an evidentiary hearing in June. Faced with that information, Plaintiffs withdrew their motion for a preliminary injunction without objection and without prejudice, as memorialized in Paragraph 2 of this Court's Case Management Scheduling Order No. 1, entered April 12, 2017.

Plaintiffs thereafter filed their first amended complaint (the "Complaint") in this Court on June 14, 2017. Although the Complaint, like the pleading before it, sought an injunction against MDOT in its prayer for relief, Plaintiffs did not renew their motion for a preliminary injunction when they filed the Complaint. Several months later, this Court granted MDOT's motion for judgment on the pleadings in full and dismissed all counts of the Complaint in its order entered September 12, 2017 (the "Prior Order"). Plaintiffs subsequently filed a motion for reconsideration that this Court denied in its order entered November 1, 2017. On November 9, 2017, Plaintiffs filed a notice of appeal with this Court pursuant to M.R. App. P. 2A(1). On November 22, 2017, Plaintiffs filed the instant motion, a renewed motion for preliminary injunction, seeking to enjoin MDOT from demolishing Haggett's Garage. Plaintiffs allege MDOT plans to demolish the building on December 4, 2017. Given this Court's uncertain jurisdiction over the motion pending Plaintiffs' appeal to the Law Court, *see* M.R. App. P. 3(b),(c), Plaintiffs filed their motion with this Court and the Law Court on the same day.

STANDARD OF REVIEW

This Court has discretionary authority over whether to order an injunction pending appeal, and its decision on a motion brought pursuant to Rule 62(d) is thus reviewed only for an

abuse of discretion. *Town of Pownal v. Emerson*, 639 A.2d 619, 621 (Me. 1994). *See also* 3 Harvey & Merritt, *Maine Civil Practice* §62:2 at 312 (3d, 2011 ed.).

DISCUSSION

At the outset, the Court notes that its jurisdiction over the instant motion is uncertain. Plaintiffs bring their motion pursuant to M.R. Civ. P. 62(d) and 65. Motions brought pursuant to M.R. Civ. P. 62(d) are explicitly excepted from the appellate stay which bars the trial court from taking further action pending disposition of an appeal by the Law Court; those brought under Rule 65 are not. *See* M.R. App. P. 3(c)(2). Rule 62(d) permits the trial court to “suspend, modify, restore, or grant an injunction during the pendency of an appeal” when an appeal is taken from a final judgment “granting, dissolving, or denying an injunction.” M.R. Civ. P. 62(d). This Court treats its September 12, 2017 order dismissing all counts of Plaintiffs’ complaint as a final judgment denying an injunction in order to exercise jurisdiction over Plaintiffs’ instant motion. Its jurisdiction to decide the instant motion established, the Court exercise its discretion under M.R. Civ. P. 62(d) and hereby **denies** the motion for two reasons.

First, Plaintiffs’ attempt to renew their motion for a preliminary injunction in this Court comes too late. Plaintiffs moved for a preliminary injunction when they first filed their case with the Lincoln County Superior Court on February 14, 2017, and that motion was before this Court when the case was transferred thereafter. Plaintiffs then voluntarily withdrew that motion on April 7, 2017, and never renewed their motion until after the Court dismissed Plaintiffs’ Complaint and Plaintiffs filed their notice of appeal. The Court will not grant Plaintiffs a second chance to argue for the appropriateness of a preliminary injunction when Plaintiffs already had the opportunity to be heard on this issue, and voluntarily suspended their right to renew that

opportunity, until after this Court entered the Prior Order dismissing the Complaint and Plaintiffs filed a notice of appeal.

Second, Plaintiffs' motion requires this Court to find that Plaintiffs would be harmed if MDOT demolishes Haggett's Garage. *See Bangor Historic Track, Inc. v. Dep't of Agric., Food & Rural Res.*, 2003 ME 140, ¶ 9, 837 A.2d 129 ("A party seeking injunctive relief by a temporary restraining order or a preliminary injunction has the burden of demonstrating . . . [] that it will suffer irreparable injury if the injunction is not granted. . . ."). To be clear, Plaintiffs do not allege that they have any legal interest in Haggett's Garage. Plaintiffs seek to enjoin its demolition on the theory that MDOT has violated state statutes and local ordinances by failing to elicit sufficient public participation in the condemnation proceedings that led to MDOT's taking the property by eminent domain. Plaintiffs cite *Roop v. City of Belfast*, 2007 ME 32, ¶ 10, 915 A.2d 966, for the proposition that the denial of a right to meaningful participation is an actionable injury. However, Plaintiffs have not alleged that *their* right to participate has been curtailed. Plaintiffs' pleadings redound with examples of their public opposition to the project. If anyone has been injured by the process that led to the condemnation and pending demolition of Haggett's Garage, he or she must come forward to a court of competent jurisdiction and seek relief. These Plaintiffs lack the authority to enjoin MDOT on that person's behalf, even if MDOT has violated state law or local ordinance in its taking of Haggett's Garage.

In their motion, Plaintiffs correctly note that the Town of Wiscasset does have this authority under its own ordinances and state law, as this Court noted in the Prior Order. *See* 11 M.R.S.A. § 651. Plaintiffs have suggested to the Court that the Town intends to file its own lawsuit against MDOT. Plaintiffs cite this development in support of their motion, arguing that enjoining MDOT from demolishing Haggett's Garage will give the Town time to prepare its own

complaint against MDOT. In effect, Plaintiffs ask the Court to allow them to act as “placeholder” for the Town, standing in the Town’s shoes until the Town can file its own lawsuit and enjoin MDOT from proceeding with its project. But Plaintiffs cite no basis in law for this authority, and the Court has already found that Plaintiffs lack such authority in the Prior Order.

In essence, Plaintiffs invite this Court to revisit its decision that 23 M.R.S.A. § 73 and 11 M.R.S.A. § 651 lack a private right of action, an invitation that the Court already declined in its order on Plaintiffs’ motion to reconsider. The Court declines to change course at this late hour, when final judgment has been entered and a notice of appeal has been filed.

CONCLUSION

By reason of the foregoing IT IS HEREBY ORDERED:

That Plaintiffs’ Motion for Preliminary Injunction Pending Appeal be **DENIED**.

The Clerk is instructed to enter this Order on the docket for this case by incorporating it by reference pursuant to M.R. Civ. P. 79(a).

Dated: November 27, 2017



Richard Mulhern
Judge, Business & Consumer Court