

STATE OF MAINE
CUMBERLAND, ss

BUSINESS AND CONSUMER COURT
BCD-RE-2019-14

RANDY SLAGER,
Plaintiff

v.

**COMBINED ORDER ON MOTION FOR
RECONSIDERATION AND MOTION FOR
INSPECTION**

LORI BELL and
JOHN SCANELL,
Defendants

Before the Court are motions brought by Plaintiff and Defendants.¹ The Court deferred action on two of these motions for reasons stated in two Orders issued November 1, 2021. In one of the orders, the Court stated that it would wait until the Law Court issued its decision on Plaintiff's appeal of the York County Superior Court's decision to dismiss his Rule 80B complaint with prejudice. On November 2, 2021 the Law Court issued its decision in *Slager v. Bell*, 2021 ME 52, __ A.3d __. The Law Court

¹ In addition to the two motions identified in the caption to this Combined Order, on March 22, 2021 Plaintiff filed a Motion for Leave to File Supplemental Affidavit in Support of Motion to Conduct Discovery and on April 5, 2021 filed a Motion for Leave to File Supplement to Plaintiff's Motion to Conduct Discovery. Both these motions are denied as the Court previously permitted Plaintiff to renew its Motion for Inspection, which was fully briefed and has now been addressed in this Order. Defendant's Motion for Sanctions, which was embedded in their Opposition to Plaintiff's Motion for Leave to File Supplement to Plaintiff's Motion to Conduct Discovery, is denied as well. Both parties have filed multiple motions in this contentious litigation. However, the conduct complained of does not approach the kind of conduct that would justify imposition of any sanction, and the request for sanctions is denied.

reversed the decision of the York County Superior Court, and the dismissal of the Rule 80B complaint is now without prejudice. The Court will address Defendants' Motion for Reconsideration first.

In their Motion, Defendants argued among other things that because the dismissal of the appeal had been made "with prejudice," the dismissal "should have been treated like the dismissal with prejudice of any other case." Defendants' Motion for Reconsideration at 3. Defendants argued in both their Motion for Summary Judgment and Motion for Reconsideration that "a valid final judgment was entered in the prior action," and that the dismissal with prejudice satisfied that element of claim preclusion. *Cutting v. Down E. Orthopedic Assoc., P.A.*, 2021 ME 1, ¶ 10, 244 A.3d 226.

As a result of the Law Court's decision, the Defendants can no longer satisfy that element. While the Court had rejected Defendants' claim preclusion argument in its Summary Judgment Order for other reasons, Defendants recognized in their Motion for Reconsideration that their "Motion for Summary Judgment on claim preclusion grounds was based primarily on the York County Superior Court's dismissal with prejudice of Plaintiff's Rule 80B appeal.... Defendant's claim preclusion argument was *not* based primarily on the CEO's decision underlying that appeal." Defendants' Motion for Reconsideration at 2. The Court therefore denies the Motion for Reconsideration brought by Defendants.

With respect to Plaintiff's Renewed Motion for Inspection, the Court has once again reviewed the previous orders issued on this request, the first issued on July 9, 2020 and the second on February 5, 2021, after the stay of these proceedings were lifted. The Court concludes that Plaintiff's argument is undercut by two considerations. First, while this dispute has been pending, more than one winter has come and gone. There is absolutely no evidence that the wall in question has failed to perform, or shown any signs that it is no longer plumb, level, or under distress. In addition, in Plaintiff's own assertions on page 4 of his Reply to Defendants' Opposition, Plaintiff points to his "convincing and irrefutable evidence that the existing footing of wall A11 does not bear on ledge and therefore the integrity of the wall is deficient." He also points to the lack of any structural design for the wall, the lack of a review of

the interior wall design by a licensed professional engineer, and other evidence that he claims will bolster his claim should the case proceed to trial.

Under these circumstances, the Court cannot find that there is any need for the invasive testing that is being proposed. While the current proposal is less invasive than the one previously made, it is nevertheless invasive. And on balance, the Court concludes that the current proposal is not reasonable or necessary to proving Plaintiff's case. The Court will therefore deny the Plaintiff's renewed Motion for Inspection.

The entry will be: The Defendants' Motion for Reconsideration is DENIED. Plaintiff's renewed Motion for Inspection is DENIED. Defendants' Motion for Sanctions is DENIED. Plaintiff's Motion for Leave to File Supplemental Affidavit in Support of Motion to Conduct Discovery and Motion for Leave to File Supplement to Plaintiff's Motion to Conduct Discovery are both DENIED. The Clerk may note this Combined Order on the docket by reference pursuant to Rule 79(a) of the Maine Rules of Civil Procedure.

12/13/2021

DATE



M. Michaela Murphy
SUPERIOR COURT JUSTICE