

**STATE OF MAINE
WALDO, SS.**

**SUPERIOR COURT
CIVIL ACTION
DOCKET NO. BELSC-RE-2021-007**

JEFFREY R. MABEE, et al.,)	
)	PLAINTIFFS' MOTION FOR LEAVE
Plaintiffs,)	TO AMEND COMPLAINT WITH
)	INCORPORATED
v.)	MEMORANDUM OF LAW
)	
CITY OF BELFAST, MAINE, et al.,)	(Title to Real Estate Involved)
)	
Defendants.)	

Pursuant to Rule 15(a) of the Maine Rules of Civil Procedure, Plaintiffs Jeffrey Mabee and Judith Grace (“Mabee/Grace”), Friends of the Harriet L. Hartley Conservation Area (“Friends”) and Upstream Watch (“Upstream”) (collectively, “Plaintiffs”) move this Court for a for leave to amend the Complaint and states as follows:

Plaintiffs filed their Complaint as against Defendant City of Belfast, Maine (“City”) on August 16, 2021, following the City’s vote to use its eminent domain powers to take Plaintiff Mabee/Grace’s land with an improved residential home located on their deeded parcel and which also includes intertidal land, a portion of which Belfast Tax Map 29, Lot 36 fronts, for the private benefit of Nordic Aquafarms, Inc. (“Nordic”), a for-profit business entity, for the express, non-public purpose of granting Nordic an easement that would allow commercial and industrial development of environmentally sensitive land for the placement of three industrial pipes in upland Lot 36.

Plaintiffs Friends and Upstream hold interests in a Conservation Easement granted by Plaintiffs Mabee/Grace over the affected intertidal land. The stated purpose of the conservation

Easement is to protect the intertidal land in its natural condition, and prohibit commercial and industrial infrastructure in, on or under the fragile estuary. All the activities Nordic proposes in order to bury its industrial pipes in the intertidal land adjacent to Lot 36 are expressly prohibited by the Conservation Easement.

On August 19, 2021, Attorneys Stephen E.F. Langsdorf, Kristine Collins and Sigmund D. Schutz entered their appearances in this action as counsel for the City. On August 26, 2021, Nordic filed a motion to intervene in this action through its Attorneys Melissa Hewey and David Kallin. Nordic's motion to intervene was just granted by the Court on September 2, 2021.

Given Nordic's intervention and the City's stated intent to grant Nordic easements for placing industrial pipes in the intertidal land, the Plaintiffs are amending their complaint to add Nordic as a defendant and to seek relief, including injunctive relief, against Nordic.

STANDARD OF REVIEW

After a responsive pleading has been filed, a party may amend a pleading "only by leave of the court or by written consent of the adverse party; and leave shall be freely given when justice so requires." M.R. Civ. P. 15(a). A motion for leave to amend a pleading shall be granted absent a showing of bad faith, delay, or undue prejudice to the opponent. *Holden v. Weinschenk*, 1998 ME 185, ¶ 6, 715 A.2d 915. "[A] trial court should rule on a motion for leave to amend before acting on another motion, such as a motion to dismiss, that could be dispositive of the original complaint." *Paul v. Town of Liberty*, 2016 ME 173, ¶ 7, 151 A.3d 924.

ARGUMENT

On September 2, 2021, following a telephonic conference with counsel of record, and by agreement of counsel for the parties, the court established certain deadlines for the filing of responsive pleadings by the City and Nordic, Plaintiffs' reply memoranda in support of its motion for preliminary injunction, and submission of dates for hearing to address the pending motion. *See Order Regarding Briefing Schedule (Sept. 2, 2021)*. As of the date of filing of this motion, there has been no answer(s) or other responsive pleadings by defendant(s) pursuant to Rules 12 and 80B to the Complaint. Accordingly, Plaintiffs' motion for leave to amend, made out of caution, is timely and will not cause delay or undue prejudice to any defendant.

Moreover, Plaintiffs seek to amend their Complaint to assert additional facts in support of their claims against Nordic and the City of Portland.

The amended complaint is submitted herewith.

The Plaintiffs have requested consent for the amended complaint from Nordic and the City of Belfast, but there has been no reply as of this filing.

The amended complaint is filed promptly after Nordic intervened in this case. The filing causes no prejudice to the Defendants. Given the City of Belfast's expressed intent to grant Nordic easements to the intertidal land, the joinder of Nordic as a defendant in this matter is required.

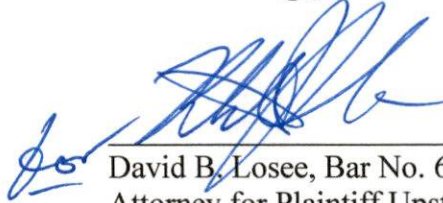
CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that this Court grant them leave to amend their Complaint, that the Court accept the First Amended Complaint attached to this motion, and the Court deem the First Amended Complaint filed and served on Defendants who have each appeared through counsel in this action.

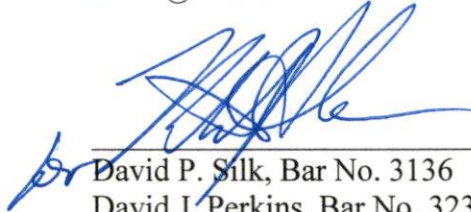
Dated: September 8, 2021



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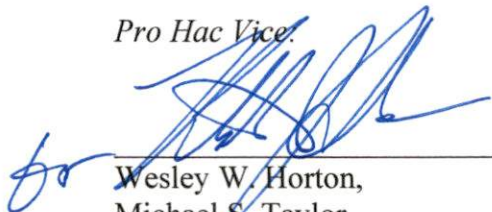


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NOTICE

Pursuant to Rule 7 of the Maine Rules of Civil Procedure, opposition to this Motion must be filed not later than 21 days after the filing of the Motion, unless another time is provided by the Rules of Court. Failure to file a timely objection will be deemed a waiver of all objections to this Motion which may be granted without further notice or hearing.

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 Plaintiffs,)
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 CITY OF BELFAST, MAINE, et al.,)
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 Defendants,)

ORDER

(Title to Real Estate Involved)

UPON CONSIDERATION of Plaintiffs’ Motion For Leave to Amend Complaint (the “Motion”), with/without objection, with/without hearing, the motion is **GRANTED**.

IS IT SO ORDERED that Plaintiffs’ First Amended Complaint dated September 8, 2021, filed concurrently with the motion, is hereby accepted by the Court and the clerk is directed to file the First Amended Complaint and enter on the docket the filing of the First Amended Complaint as of the date of this Order.

IT IS FURTHER ORDERED that each named-defendant shall file an answer or other responsive pleading to the First Amended Complaint with the court within a period of ten (10) days from the date of the clerk’s docketing of this Order.

The clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a) of the Maine Rules of Civil Procedure.

Dated: _____, 2021

Justice, Superior Court