

STATE OF VERMONT

SUPERIOR COURT
Orleans Unit

CIVIL DIVISION
Docket No. 108-4-14 Oscv

Seymour Lake Association,
Plaintiff,

v.

State of Vermont, Agency of Natural Resources,
Department of Environmental Conservation,
Defendants.

Memorandum of Law in Support of Motion to Amend

Now comes the Plaintiff, by and through counsel, and asserts that justice and judicial economy both support granting leave to amend the complaint.

First, the essential question posed by this matter is whether or not the Defendants are subject to 30 V.S.A. 401 and 402. It is not an environmental issue, it is a straightforward legal issue. The Court suggests that Plaintiff make a renewed request to the Defendants to comply with the mandate of those statutes, and upon Defendants' refusal to then appeal within 30 days to the Environmental Court. If Plaintiff does that then Plaintiff will have to bifurcate their case by taking an appeal to the Vermont Supreme Court on the public nuisance/sovereign immunity issue but going to the Environmental Court on the mandamus/Rule 75 issue. It will be duplicative of the judiciary's resources when those resources are already sorely stretched.

Second, the Court's decision granting dismissal is not yet final and, at this point is wholly jurisdictional, not a decision on the merits.

Third, the Court has said that this mandamus action is brought erroneously because Plaintiff should have appealed within thirty days of the Defendants' 2013 refusal to allow use of the gate. Pursuant to V.R.C.P. 75(b) "Leave to amend pleadings shall be freely given when necessary to permit a proceeding erroneously commenced under this rule to be carried on as an ordinary civil action." A declaratory judgment action is an ordinary civil action.

Finally, because this is not a decision on the merits, Plaintiff could file a new declaratory judgment action in this Court pursuant to 12 V.S.A. 4711. Again, this would be wasteful and duplicative. Justice and economy both argue for an answer to the essential underlying question at this juncture.

Dated at Greensboro, Vermont, this _____ day of May, 2015.

David F. Kelley