

STATE OF MAINE
PORTLAND, ss.

BUSINESS & CONSUMER DOCKET
DOCKET NO. BCD-APP-2021-00010

ELIZABETH MILLS,)
)
 Plaintiff,)
)
 v.)
)
 TOWN OF BAR HARBOR and)
 BHAPTS, LLC,)
)
 Defendants.)

ORDER DENYING PLAINTIFF’S MOTION
TO CLARIFY THAT A STAY CONTINUES

Pending before the Court is Plaintiff Elizabeth Mills’ (“Mills”) Motion to Clarify That a Stay Continues. Mills contends that a stay entered by the Superior Court two cases ago, and over two years ago, remains in effect during this case. Defendant BHAPTS, LLC (“BHAPTS”) asserts that the stay has long since terminated. The Court heard oral argument on the Motion on December 16, 2021. As discussed below, the Court determines that the stay terminated before this third case was initiated and is no longer in effect.

BACKGROUND

For well over two years, Mills has been working to defeat BHAPTS’ proposal to construct and renovate worker housing on a 1.54 acre property located at 25 West Street Extension, Bar Harbor, Maine. Mills is Trustee of the Collier Family Trust (the “Trust”). The Trust owns property located at 15 Highbrook Rd., Bar Harbor, Maine. Mills resides during a part of the year at the Trust property. The Trust property abuts the northeast property line of BHAPTS’s property.

The first of Mills three lawsuits was resolved by an Order of the Superior Court dated November 27, 2019. Order on Plaintiff’s 80B Complaint and Motion to Stay, *Mills v. Town of Bar*

Harbor, et. al., BANSC-AP-19-18 (November 27, 2019) (Murray, J.) (hereinafter the “2019 Order”). In the 2019 Order, the Superior Court vacated the decision of the Bar Harbor Board of Appeals, and remanded the matter to the Board “for action consistent with the Court’s instruction on what materials a party must submit to the Board of Appeals to pursue an appeal of a decision of the Bar Harbor Planning Board . . .” *Id.* at p.13. The Superior Court also granted a stay of construction activities pending that appeal, concluding that there was a substantial possibility Mills would “succeed on the merits before the Board of Appeals . . .” *Id.*

The second of Mills three Rule 80B Complaints was transferred to the Business and Consumer Court. Mills did not move for a stay in that proceeding, or seek clarification that the stay was still in effect. The Court affirmed the decision of the Planning Board in all respects save the issue of whether construction of the project will have undue adverse effects on adjacent historic sites in the area. The Court thus remanded the matter to the Planning Board to make a finding on that one issue. Order of Rule 80B Appeal, *Mills v. Town of Bar Harbor, et. al.*, BCD-APP-2021-00005 (June 7, 2021) (Duddy, J.) (the “2021 Order”). The instant proceeding, which is the third of Mills’ three lawsuits, was also transferred to the Business and Consumer Court where it is currently pending. Mills has not moved for a stay in this proceeding, but seeks clarification that the stay granted by the Superior Court in the 2019 Order is still in effect.

DISCUSSION

The filing of a Rule 80B complaint “does not stay any action of which review is sought, but the court may order a stay upon such terms as it deems proper.” M.R. Civ. P. 80B(b). If a court remands a Rule 80B case to a governmental agency for further action, the court’s decision is not a final judgment. M.R. Civ. P. 80B(m). All the issues raised in the review are preserved in any subsequent appeal taken. *Id.* However, the court does not retain jurisdiction of the case in between

appeals. *Id.* The question presented by this case is what becomes of a stay issued in connection with the first of multiple, distinct Rule 80B reviews, each with its own pleadings and docket number.

The answer to the question starts with an examination of the terms upon which the stay was originally granted. Here, the stay granted in the 2019 Order was limited by its own terms to the period of time beginning with the remand, and continuing in effect through the administrative appeal back to the Board of Appeals. The 2019 Order does not purport to extend the stay beyond that timeframe, or through multiple, separate Rule 80B actions. *See e.g. Johansen v. City of Bath*, SAGSC-AP-10-002 (January 4, 2011)(issuing a stay “during the remand and thereafter until further order of the court”).¹ Mills could have moved for a stay during the second lawsuit and subsequent remand, but didn’t. Mills could also move for a stay during the current proceeding and beyond, and nothing in this current Order should be construed to prevent Mills from moving for a stay.²

CONCLUSION

For all of these reasons, the Court concludes that the stay tracing back to the 2019 Order does not continue into this proceeding. Plaintiff’s Motion to Clarify That a Stay Continues is Denied.

SO ORDERED.

¹ Since a court does not retain jurisdiction in between Rule 80B appeals, it is unclear whether a court actually has authority to issue a stay effective across multiple, separate Rule 80B actions. However, the Court does not need to reach the issue, since the language of the stay at issue here is limited to the remand period following the first Rule 80B action.

² The Court has closely reviewed Mill’s Motion, and while she seeks clarification that the stay originating in the 2019 Order is still in effect, she does not move in the alternative for a stay based upon the current facts and status of the case.

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

Dated: 12/23/2021



Michael A. Duddy
Judge, Business & Consumer Docket

Entered on the docket: 12/23/2021