

STANDARD OF REVIEW

Courts may deny motions to amend based on one or more of the following grounds: undue delay, bad faith, undue prejudice, or futility of amendment. *Montgomery v. Eaton Peabody, LLP*, 2016 ME 44, ¶ 13, 135 A.3d 106 (citing *Bangor Motor Co. v. Chapman*, 452 A.2d 389, 392 (Me. 1982)). Further, “[w]hen a proposed amended complaint would be subject to a motion to dismiss, the court is well within its discretion in denying leave to amend.” *Id.* (quoting *Glynn v. City of S. Portland*, 640 A.2d 1065, 1067 (Me. 1994)) (internal quotations omitted).

ANALYSIS

Plaintiffs seek to assert a new claim under 9-B M.R.S. § 162. Section 162 prohibits financial institutions in Maine from “disclos[ing] to any person, except to the customer or the customer’s duly authorized agent, any financial records relating to that customer” unless the disclosure falls under one the exceptions enumerated in the statute. 9-B M.R.S. § 162. Section 162 however does not address penalties for violations. Instead, violations of Section 162 are addressed in 9-B M.R.S. § 164. Section 164 provides that a financial institution that “intentionally or knowingly furnishes financial records in violation of this chapter commits a civil violation for which the superintendent may assess a civil penalty of not more than \$5,000 per violation. 9-B M.R.S. § 164(1).

Under Maine law, a statute may provide for a private right of action by express language or by implication. *Wawenock, LLC v. Dep’t of Transp.*, 2018 ME 83, ¶ 5, 187 A.3d 609. Nothing in the plain language or legislative history of Sections 162 or 164 expressly or impliedly creates a private right of action. Moreover, the Business and Consumer Court has already established that under Section 164, a court even lacks the authority to impose a civil penalty for a violation of Section 162. In *Bank of Maine v Boothbay Country Club*, the Court found that Section 164 “does

not confer upon the court jurisdiction to consider the imposition of civil penalties . . .” *Bank of Me. v. Boothbay Country Club*, No. BCD-CV-2013-18, 2013 Me. Bus. & Consumer LEXIS 30, at *6 (June 27, 2013). Accordingly, “the civil penalty is available in an administrative enforcement action” only, and not in a civil action. *Id.* It follows that there is no private right of action under Section 162 in civil proceedings. Without a private right of action, the proposed amendment to the Complaint in this matter would be futile.

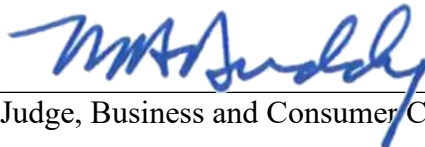
CONCLUSION

For all the foregoing reasons, the Court DENIES Plaintiffs’ Motion to Amend the Complaint on the grounds that the proposed amendment would be futile.

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

So Ordered.

Dated: 09/29/2021



Judge, Business and Consumer Court

Entered on the docket: 09/29/2021