

STATE OF MAINE  
CUMBERLAND, ss.

BUSINESS AND CONSUMER DOCKET  
Location: Portland  
Docket No. BCD-CV-2018-47

KIRK FRANKLIN and )  
STACY FRANKLIN, )  
 )  
Plaintiffs )  
 )  
v. )  
 )  
DAVID DOUIN )  
Defendant )  
 )  
PORTLAND HARBOR LIGHTS, )  
LLC )  
 )  
Party-in-interest )  
 )  
 )

**ORDER DENYING PLAINTIFFS’ SECOND  
MOTION FOR LEAVE TO FILE  
PLAINTIFFS’ FIRST AMENDED  
AMENDED (sic) COMPLAINT (VERIFIED)**

Plaintiffs commenced this litigation back on April 26, 2018, with a simple, straightforward Complaint for dissolution, which seemed headed for prompt resolution.<sup>1</sup> As reflected in the Court’s Hearing/Conference Report dated October 5, 2018, the parties represented to the Court at a conference held on October 3, 2018 that they “agreed to explore the possibility” of a resolution that would allow the parties “to part ways and to resolve any financial disputes in a manner that minimizes legal costs and expedites resolution of the case.” The Court granted an extension of certain deadlines “[g]iven that the parties are exploring a way to short cut the litigation . . . .” By Order dated October 15, 2018, the Court ordered the parties to use the extension to “meet and

<sup>1</sup> Defendant counterclaimed, and Plaintiffs have a pending Motion to Dismiss the counterclaims. Pursuant to the revised Scheduling Order, Defendant will have the opportunity to oppose the Motion to Dismiss. However, given the Court’s Order on Plaintiffs’ Second Motion for Leave, Defendant may wish to evaluate whether opposing the Motion to Dismiss the counterclaims makes sense.

confer in an effort to settle or reduce the issues of the case,” and to facilitate “winding up the affairs of (and dissolving) Portland Harbor Lights, LLC and liquidating all assets.”

The parties did meet and confer, and ultimately agreed to a very fine Memorandum of Understanding (“MOU”) that laid out a sensible process for selling the one asset involved in this case, a condominium owned by Portland Harbor Lights, LLC (“PHL”). At the request of the parties, the Court then stayed the case in order to allow the MOU process to unfold. Although the parties came close to undermining their own MOU, see this Court’s Order dated May 16, 2019, ultimately the parties complied with the MOU, the condo was sold, and the proceeds escrowed pending resolution of this case. Indeed, Plaintiffs’ Motion for Leave to Amend its Complaint, filed on September 11, 2018, was stayed to allow the parties to focus on selling the condo pursuant to the MOU.

Upon sale of the only asset involved in this case, one would have expected the parties to resume efforts to get at a fair disbursement of escrowed monies in as cost effective and expeditious manner as possible, along with simply winding up of the LLC. That does not appear to be what happened. Instead, Plaintiffs pursued their Motion for Leave to Amend. The Motion sought a disproportionate expansion of the case, rather than a focused tweak of the Complaint to facilitate a cost effective resolution.

By Order dated September 18, 2019, this Court denied Plaintiffs’ Motion for Leave to Amend their original Complaint. The Court concluded the proposed amended pleading represented an unwarranted expansion of this relatively straightforward case, especially given that the one asset at stake (the condominium) was sold at auction pursuant to the parties’ MOU. The Court’s denial, however, was without prejudice, in order to allow Plaintiffs to “update” the Complaint “to reflect current developments,” e.g., the sale of the condo.

Plaintiffs apparently misunderstood the Court's Order, because they have once again moved to amend the Complaint in a manner that would disproportionately and unreasonably expand this litigation well beyond its modest beginnings, especially in light of the sale of the condo pursuant to the MOU. This case has now been pending for over eighteen months, and the delays and extensions were specifically permitted by the Court to facilitate the parties' original goals of a cost effective and expeditious litigation—not to facilitate or encourage senseless expansion of the litigation.

“A motion to amend a pleading pursuant to Rule 15 is committed to the sound discretion of the trial court . . . .” *Bangor Motor Co. v. Chapman*, 452 A.2d 389, 392 (Me. 1982). Rule 15 provides that, after a responsive pleading has been served, leave to amend a party's pleading “shall be freely given when justice so requires.” M.R. Civ. P. 15(a). The purpose of Rule 15 is to achieve the goals of Rule 1, which are the “just, speedy and inexpensive determination of every action.” *Chapman*, 452 A.2d at 392. Accordingly, justice does not require granting leave to amend when there is good reason to deny the motion, such as undue delay, bad faith, dilatory motive, undue prejudice, futility of amendment, or other reasons. *Id.*

In this case, as explained above and in the Court's prior orders, granting the motion would contravene the just, speedy and inexpensive determination of this action; would lead to undue delay in resolving the case; and would contravene the reason the Court granted the various extensions and stays in the first place.<sup>2</sup> The Court is not at this juncture willing to pick and choose which, if any, of Plaintiffs' numerous proposed new counts should be permitted. Plaintiffs have now had two opportunities to amend their Complaint in a reasonable fashion to update the

<sup>2</sup> Additionally, when “a proposed amended complaint would be subject to a motion to dismiss, the court is well within its discretion in denying leave to amend.” *Glynn v. City of S. Portland*, 640 A.2d 1065, 1067 (Me. 1994). Here, most if not all of the proposed new counts would be subject to a motion to dismiss (as are Defendant's counterclaims), for the reasons set forth in the two Opposition briefs.

Complaint, and have overreached on both occasions. Moreover, the existing pleadings are sufficient to get to the nub of the issue, which is how the funds should be disbursed following the sale of the condo, and winding up of the LLC. *See* 31 M.R.S. § 1595(2), which allows the Court in a dissolution proceeding to order other remedies in addition to the dissolution. For all of these reasons, the Motion is Denied.

After all the pending motions are decided, the Court anticipates scheduling a status conference to discuss sending the parties back to ADR in the wake of all the developments over the last eighteen months.

Pursuant to M.R.Civ.P. 79(a), the clerk is hereby directed to incorporate this order by reference on the docket.

So Ordered.

Date: November 7, 2019

/s

Hon. Michael A. Duddy  
Maine Business and Consumer Court