

VERMONT SUPERIOR COURT
Environmental Division
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Docket No. 21-ENV-00006

Ludlow v. Guldi

ENTRY REGARDING MOTION

Title: Motion for Leave to File Interlocutory Appeal (Motion:)
Filer: George O. Guldi
Filed Date: February 18, 2022

Response filed on 03/07/2022 by Attorney Stephen S. Ankuda for Village of Ludlow

The motion is DENIED.

Currently before us is a motion filed by George O. Guldi requesting permission to file an interlocutory appeal of our January 10, 2022 decision. We consider the motion pursuant to Rule 5(b) of the Vermont Rules of Appellate Procedure. The Village of Ludlow opposes the motion.

The Village of Ludlow is pursuing an enforcement action against Mr. Guldi as the owner of property at 15 Bowker Court, Ludlow, Vermont. Mr. Guldi moved for dismissal of the complaint, asserting a lack of standing for the Village and a lack of personal jurisdiction over himself. Both of Mr. Guldi's arguments relied on the same inconsistencies in how the summons and complaint referred to the party bringing the action, as either the Village or the Town of Ludlow. We denied the motion in a January 10, 2022 decision. Mr. Guldi asks for permission to appeal that decision to the Vermont Supreme Court.

Under V.R.A.P. 5(b), we are to grant a party permission to appeal an interlocutory order of this Court if we reach three conclusions: (1) the order "involves a controlling question of law;" (2) the question of law is one in which "there exists substantial ground for difference of opinion;" and (3) "an immediate appeal may materially advance the termination of the litigation."

Although the order to be appealed must meet all three criteria, the criteria are to be treated as the statutory "equivalent of a direction to consider the probable gains and losses of immediate appeal." In re Pyramid Co. of Burlington, 141 Vt. 294, 302 (1982) (quoting 16 C. Wright, A. Miller, e. Cooper, & E. Gressman, Federal Practice and Procedure § 3930 (1977)).

The first criterion requires that the matter at issue be a controlling question of law. A controlling question of law is one that deals solely with substantive issues of law. See Pyramid Co., 141 Vt. at 303. An answer to a controlling question of law will, at a minimum, have an immediate effect on the course of litigation and save resources to either the court system or the litigants. Id. In this case, the questions that our January 10 decision addressed are: first, whether the Village of Ludlow properly commenced an enforcement action against Respondent Guldi as the owner of the subject property such that it had standing to prosecute that action, and second, whether the Court had obtained personal jurisdiction over Mr. Guldi. We conclude that these are controlling questions of law.

The next criterion is whether there is substantial ground for difference of opinion regarding the questions. The municipality (Plaintiff) bringing the enforcement action has been inconsistently named as either the Town of Ludlow or the Village of Ludlow in initial pleading documents. The party listed as “plaintiff” in the caption of the summons and in the notice of appearance forms is the “Town of Ludlow,” while the “Village of Ludlow” signed and requests relief in the complaint. In our January 10 Decision, we concluded that discrepancies in the way Plaintiff has been named in initial pleading documents do not amount to a reason for dismissal. The complaint clearly positions the Village of Ludlow as the party seeking relief for violations of the Village Ordinance regulating the storage of junk and junk vehicles. See Complaint to Enforce Municipal Ordinance Violation, filed Feb. 2, 2021 (“the Village of Ludlow requests this Court: issue a fine in the amount of . . .”). Regardless of confusion over the way the matter has been captioned, there is no genuine confusion over which property is subject to the enforcement action or that Respondent owns the subject property. The complaint gives Respondent sufficient notice of the substance of the action by specifying that it concerns violations of the Village Ordinance regulating the storage of junk and junk vehicles on his property at 15 Bowker Court. As to the personal jurisdiction argument, it is clear that the Environmental Division has personal jurisdiction over Respondent, who has given as his sole mailing address the subject property in Ludlow, Vermont. Furthermore, Respondent waived any defense of a lack of personal jurisdiction by answering the complaint and asserting counterclaims without mentioning an alleged lack of jurisdiction. There are no reasonable grounds for disagreement on either question.

The final issue is whether an immediate appeal will help to expedite the ultimate termination of the case. An immediate and final decision on the questions at issue in this motion will not fulfill this condition. Should the present matter be dismissed, the Village of Ludlow could again commence an enforcement action correcting the noted inconsistencies underlying all of the claimed bases for dismissal. Furthermore, our denial of the motion to dismiss will be appealable as part of any appeal from a resolution of the case on its merits.

Based on our reasoning above, we conclude that this is not an exceptional case and the probable gains of an immediate appeal are greatly outweighed by the potential delay caused by an interlocutory appeal. Accordingly, we **DENY** Mr. Galdi's motion for permission to file an interlocutory appeal.

Electronically Signed: 4/14/2022 10:23 AM pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink that reads "Tom Walsh". The signature is stylized with a large, sweeping "T" and a cursive "Walsh".

Thomas G. Walsh, Judge
Superior Court, Environmental Division