

STATE OF MAINE  
CUMBERLAND, ss

BUSINESS AND CONSUMER COURT  
CIVIL ACTION  
DOCKET NO. BCD-APP-2024-00011

CHARLES SIDMAN,	)
	)
	)
Plaintiff,	)
	)
	)
v.	)
	)
	)
TOWN OF BAR HARBOR,	)
	)
Defendant.	)

**ORDER GRANTING  
DEFENDANT’S MOTION  
TO DISMISS**

Before the court is Defendant Town of Bar Harbor’s (“Town”) Motion to Dismiss. The court held oral argument on this motion via Zoom on September 3, 2024. The court now grants the Town’s Motion to Dismiss.

A. Allegations

The following facts are recited from the complaint and are taken as true for purposes of the motion to dismiss.

Plaintiff Charles Sidman (“Sidman”) has two pending related actions, this matter and *Sidman v. Town of Bar Harbor*, BCD-AP-2024-7 (hereinafter *Sidman I.*) The two cases concern a Town Ordinance (“Ordinance”) that limits the number of cruise ship passengers allowed to disembark in Bar Harbor to 1,000 per day in the aggregate. (Pet. ¶ 9.) (*see* Bar Harbor, Me., Code § 125-77(H) (Nov.8, 2022.)) Sidman was a major proponent of the citizen’s initiative that resulted in this ordinance. (Pet. ¶ 6.) While the initiative was not passed until November 8, 2022, and the Ordinance took effect on December 8, 2022, it applies to cruise ship reservations that were accepted after March 17, 2022. (Pet. ¶¶ 7, 8, 14.) The Town’s Harbor Master was to report violations of the Ordinance to the Town’s Code Enforcement Officer (“CEO”) who has

enforcement power over the property owners where the passengers would disembark. (Pet. ¶¶ 12, 13.)

On March 6, 2024, Bar Harbor’s Town Council issued a statement proclaiming that it would “honor [2024] reservations made before the town voted,” on the Ordinance. (Pet. ¶ 17.) The statement reflected an apparent decision where the Town Council ordered the Harbormaster not to report violations to the CEO for enforcement action. *Id.* ¶ 18.

Sidman appealed the Town Council’s direction not to enforce the ordinance for preexisting reservations to the Town’s Board of Appeals (“BOA”) under Chapter 125, Article XI, Section 125-103 of Bar Harbor’s Land Use Ordinance. (Pet. ¶¶ 3, 68.) The BOA denied Sidman’s appeal on the grounds that it did not have jurisdiction to consider his appeal. (Pet. ¶ 71.) To be appealable to the BOA, the Town’s Statement must have been a decision or an enforcement action by a municipal body. (Pet. ¶ 66.) In this context Section 125-103 limits a “decision” to “an order, decision, ruling, or enforcement action made in writing.” (Pet. ¶ 66.)

The BOA found “that the Town Council does not have authority to enforce the Ordinance, that authority to enforce the Ordinance was vested with the Harbor Master and the CEO, that the Town Council’s [Statement] has no force of law, and that the appeal is not of a concrete event or action about which an ordinance interpretation or enforcement decision has been made.” (Pet. ¶ 72.)

Sidman disputes whether the Town Council had authority to instruct the Harbormaster not to initiate enforcement proceedings. (Pet. ¶¶ 17, 22-47.) According to Sidman, the Town Council’s instructions reflect “a ‘decision’ by ‘a municipal body or official’ interpreting the Land Use Ordinance, Chapter 125, within the meaning of Article XI, Section 125-103(A), as the Decision and Order implicitly interprets, or rather re-interprets, the effective date of the

Ordinance and implicitly interprets the Code as permitting the Town Council to direct the Harbor Master's action with respect to enforcement of the Ordinance.” (Pet. ¶ 67.)

In his appeal to this court pursuant to Maine Rule of Civil Procedure 80B, Sidman's petition seeks for the court to (i) review the BOA's decision, (ii) find that the BOA's findings of fact were not adequately supported by substantial evidence in the record, (iii) hold that the BOA erred in its determination that it did not have jurisdiction over his appeal, (iv) vacate the BOA's decision, and (v) remand the matter to the BOA with instructions that the BOA decide Sidman's administrative appeal on its merits. (Pet. ¶ 83.)

#### B. Standard of Review

A motion to dismiss under M.R. Civ. P. 12(b)(6) asks whether a complaint as written states plausible grounds on which the plaintiff could recover. *Saunders v. Tisher*, 2006 ME 94, ¶ 8, 902 A.2d 830. The court assumes that all of the facts alleged in the complaint are true and examines the complaint “in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory.” *Oakes v. Town of Richmond*, 2023 ME 65, ¶ 15, 303 A.3d 650 (quoting *Moody v. State Liquor & Lottery Comm'n*, 2004 ME 20, ¶ 7, 843 A.2d 43). “A dismissal should only occur when it appears beyond doubt that a plaintiff is entitled to no relief under any set of facts that [they] might prove in support of [their] claim.” *Id.* (quoting *Moody*, 2004 ME 20, ¶ 7, 843 A.2d 43). Here, the Town moves to dismiss Sidman's singular count of administrative appeal brought under 30-A M.R.S. § 2691 and M.R. Civ. P. 80B.

#### C. Discussion

The Town asks the court to dismiss this Rule 80B appeal for the same reasons that the court dismissed the Rule 80B appeal in *Sidman I*. In *Sidman I*, the court found that the Town's

issuance of instructions to the Harbormaster was not a quasi-judicial action, and thus Rule 80B did not provide an avenue for relief. (*Sidman I*, slip op. at 6 (Me. B.C.D., July 10, 2024.))<sup>1</sup>

Sidman distinguishes this appeal from *Sidman I* on the grounds that it presents a different question. The BOA found that it does not have jurisdiction over Sidman’s appeal of the Statement. To be appealable to the BOA under Section 125-103(A) of the Town’s Land Use Ordinance, the Statement must have been a decision or an enforcement action. 125-103(A) defines a decision as “an order, decision, ruling or enforcement action made in writing.” Thus, Sidman argues, his current 80B action survives the motion to dismiss because he has adequately pled that the Town’s Statement was a decision appealable to the BOA.

The court agrees that this appeal presents a different legal question. Ultimately, however, the court cannot distinguish this case from *Sidman I*. The Town Council’s instructions the Harbormaster were a policy decision, not the type of quasi-judicial decision subject to review under Rule 80B. (*Sidman I*, slip op. at 6 (Me. B.C.D., July 10, 2024.))

D. Order

The entry is:

Town of Bar Harbor’s Motion to Dismiss is GRANTED.

The Clerk is requested to enter this Order on the docket by incorporating it by reference.

M.R. Civ. P. 79(a).

DATED: 9/18/2024

Entered on the docket: 09/18/2024

  
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Thomas R. McKeon  
Justice, Business & Consumer Court

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<sup>1</sup> The only claim remaining pending in *Sidman I* is Sidman’s claim for Declaratory Relief.