

GOLDEN ANCHOR, L.C.,)
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 Plaintiff,)
)
 v.)
)
 TOWN OF BAR HARBOR,)
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 Defendant.)
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**ORDER DENYING MOTION TO
INTERVENE**

Charles Sidman (“Sidman”), proposed Defendant-Intervenor, moves this Court pursuant to Rule 24 of the Maine Rules of Civil Procedure to intervene as of right in this matter (the “Motion”). Plaintiff Golden Anchor, L.C. (“Golden Anchor”), opposes the motion and the Town of Bar Harbor (the “Town”) takes no position (but has filed a brief discussing the facts from the Town’s perspective). For the reasons discussed below, the Court denies the Motion.

BACKGROUND

On November 8, 2022, the voters of the Town of Bar Harbor adopted a citizen’s initiative (the “Initiative”) that limited the number of cruise ship passengers disembarking onto land in the Town to 1,000 per day. Sidman played a prominent role in securing passage of the Initiative. He owns a fine art gallery in downtown Bar Harbor which is adversely impacted when cruise ships disembark more than 1,000 passengers per day. The Initiative was subsequently incorporated into the Town’s Land Use Ordinance, codified as Bar Harbor, Me., Municipal Code, Chapter 125, Article VII, § 125-77(H) (Nov. 8, 2022) (the “Cruise Ship Ordinance”). Golden Anchor, L.C., and other persons brought an action in the U.S. District Court for the District of Maine to challenge the lawfulness of the Cruise Ship Ordinance. Stidman sought and was granted leave to intervene

in the federal court litigation on the grounds that, *inter alia*, he had a sufficient interest in the litigation and the Town might not adequately work to defend the Cruise Ship Ordinance.¹ *Association to Preserve and Protect Local Livelihoods, et al. [“APPLL”] v. Town of Bar Harbor*, No. 1:22-cv-00416-LEW, 2023 WL 2273949, at *2-3 (D. Me. Feb. 28, 2023). Despite this latter misgiving the Town litigated the case for over a year, and following a three-day bench trial, the Town and Sidwell working together defeated the challenge to the Cruise Ship Ordinance. On March 1, 2024, the U.S. District Court upheld the lawfulness of the Cruise Ship Ordinance in nearly all respects. *APPLL*, 721 F. Supp. 3d 56, 98 (D. Me. 2024).

On June 18, 2024, the Town Council adopted an ordinance titled, “Cruise Ship Disembarkation Ordinance Amendment, which was codified at Chapter 52 of the Town Code (the “Disembarkation Ordinance”). The Disembarkation Ordinance imposes certain procedures and responsibilities on private companies such as Golden Anchor for implementing the 1,000 passenger per day cap created by the Cruise Ship Ordinance. On August 5, 2024, the Town issued a Notice of Violation to Golden Anchor for not complying with the Disembarkation Ordinance. Golden Anchor now challenges the lawfulness of the Disembarkation Ordinance and the Notice of Violation.

DISCUSSION

In the absence of statutory authority, intervention as of right is permitted when “the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately

¹ As to this latter factor, the judge was concerned that because of local politics, the Town Council might not be willing to champion the wishes of the voters as expressed in the Initiative. *APPLL*, No. 1:22-cv-00416-LEW, 2023 WL 2273949, at *2-3 (D. Me. Feb. 28, 2023).

represented by existing parties.” M.R. Civ. P. 24(a). Here, Sidman contends he has the right to intervene largely for the reasons limned in the federal court action challenging the Cruise Ship Ordinance. *See APPLL*, No. 1:22-cv-00416-LEW, 2023 WL 2273949, at *1-4 (D. Me. Feb. 28, 2023).² However, there are two significant differences between this litigation and the federal litigation.

First, this action challenges the Disembarkation Ordinance, not the Cruise Ship Ordinance. In other words, what is at stake is not the 1,000 per day passenger limitation, but whether and how enforcement of the 1,000 per day passenger limitation can be imposed on a private company such as Golden Anchor. Unlike the federal court litigation, the current case involves an essentially private dispute, especially in light of the Notice of Violation. Sidman does not have the same qualifying interest in this litigation as he did in defense of the Cruise Ship Ordinance. *See id.* Second, to the extent Sidman has an interest in the dispute, the Town has shown that it can and will adequately represent that interest.

Second, through its efforts in the federal litigation, the Town has demonstrated that it is willing and able to defend the Disembarkation Ordinance. Sidman rejects the idea that the Town’s participation as an existing party in the litigation will be adequate to protect his interests. He asserts that the Town is still attempting in a variety of ways to undermine, slow walk, or roll back the Cruise Ship Ordinance. Sidman’s claims, however, are belied by the Town’s actions in support of the Cruise Ship Ordinance. The Town defended the Cruise Ship Ordinance in the federal court litigation, despite the judge’s initial misgivings, and prevailed. The Town Council then passed the Disembarkation Ordinance. The Town then issued a Notice of Violation to Golden Anchor.

² Sidman also points to other cases where parties have been permitted to intervene, such as *NECEC Transmission LLC v. Bureau of Parks and Lands*, 2022 ME 48, ¶ 3 n.4, 281 A.3d 618. In that case, however, there was no opposition to the requests to intervene, and so the Court had no occasion to address the requirements for intervention as of right.

Indeed, the Town does not object to Sidman’s intervention in this case. Although the Town may still in a variety of ways be attempting to balance the myriad interests of its residents, businesses, and other stakeholders, there is no persuasive evidence that the Town will shirk its duty to defend the Disembarkation Ordinance in good faith.³

Finally, in the event this Court denies his request to intervene, Sidman asks that the Court exercise its discretion to permit him to participate as a party-in-interest through oral argument and written submissions. The Court declines the request. This is essentially private litigation, and to the extent Sidman’s interests are implicated, there is insufficient reason to doubt that the Town will adequately represent his interests as a resident of Bar Harbor. Under the circumstances, allowing Sidman to litigate the case alongside the Town would be unfair to Golden Anchor.

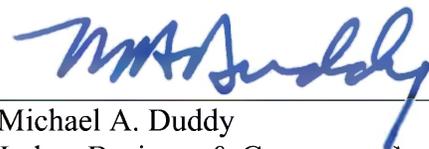
CONCLUSION

For all of these reasons, Sidman has not satisfied the Rule 24(a) requirements for intervention as of right. *See* M.R. Civ. P. 24(a). His Motion to Intervene is denied, as is his request to participate as a party-in-interest.

SO ORDERED.

The Clerk is instructed to enter this Order on the Docket, incorporating it by reference pursuant to M.R. Civ. P. 79(a).

Date: **11/27/2024**



Michael A. Duddy
Judge, Business & Consumer Court

Entered on the docket: 11/27/2024

³ In cases where a citizen wishes to intervene to defend governmental action which the government is itself defending, the U.S. Court of Appeals for the First Circuit applies a presumption that the proposed intervenor’s rights will be adequately represented. *State v. Director, U.S. Fish and Wildlife Svcs.*, 262 F.3d 13, 19 (1st Cir. 2001). The Court here is not imposing any such presumption, but if it were, Sidman would not be able to overcome the presumption, regardless of how low the bar is set. *See B. Fernandez & Hnos., Inc. v. Kellogg USA, Inc.*, 440 F.3d 541, 546 (1st Cir. 2006).