

STATE OF MAINE
CUMBERLAND, ss.

BUSINESS AND CONSUMER COURT
Location: Portland
Docket No. BCD-APP-2025-_____
(Superior Ct. Dkt. ELLSC-AP-2025-1)

CHARLES SIDMAN,

Plaintiff

v.

TOWN OF BAR HARBOR,

Defendant

and

GOLDEN ANCHOR, L.C.,

Party in Interest

**TOWN OF BAR HARBOR'S
OPPOSITION TO MOTION TO
SPECIFY**

and

MOTION TO DISMISS COUNT II

Defendant Town of Bar Harbor (the "Town"), by and through undersigned counsel, Rudman Winchell, opposes Plaintiff Charles Sidman's Motion to Specify Future Course of Proceedings, and moves to Dismiss Count II of Sidman's Amended Complaint, as follows.

BACKGROUND

On August 5, 2024, the Town's Code Enforcement Officer issued a Notice of Violation to Golden Anchor, L.C., for disembarking cruise ship passengers over its property without required permits. (Amd. Compl. ¶ 58.) Golden Anchor appealed that Notice of Violation to the Bar Harbor Board of Appeals. (Amd. Compl. ¶ 59.) Plaintiff Charles Sidman participated in that appeal as a member of the public, and opposed

Golden Anchor's appeal. (Amd. Compl. ¶¶ 101, 119, 151-56, 161, 174.) The Board denied Golden Anchor's appeal. (Amd. Compl. ¶¶ 159-60.)

Despite the fact that Sidman opposed Golden Anchor's appeal, and thus the Board's ultimate decision was favorable to Sidman, Sidman's Amended Complaint purports to seek judicial review of the Board's decision.¹ (Amd. Compl. ¶ 6.) He argues, *inter alia*, that the Board of Appeals erred in denying him "interested party" status in Golden Anchor's administrative appeal on December 10, 2024, and further erred in finding in its decision on the merits that disembarkation of cruise ship passengers is a permitted use in the district in which Golden Anchor's property is situated. (Amd. Compl. ¶¶ 18, 163, 167-68, 170-71, 181-82, 192-97).

Count I of Sidman's Amended Complaint requests, pursuant to M.R. Civ. P. 80B, that the Court

review the December 10 decision of the Board, find the Board's findings of fact were not supported by the record, hold that the Board erred as a matter of law in its determination that Mr. Sidman is not an abutter to Golden Anchor's property, did not show particularized injury, and did not have standing to participate as an Interested Party, and vacate the Board's December 10 decision and recognize him as an Interested Party, and also vacate the Board's Merits Decision and remand for the limited purpose and with instructions to allow Mr. Sidman's full participation as an Interested Party, thereby allowing Mr. Sidman to participate in all future proceedings related to Golden Anchor's BOA Appeal.

(Amd. Compl. ¶ 197.) Count II of Sidman's Amended Complaint seeks a declaratory judgment that he was entitled to participate in Golden Anchor's administrative

¹ The Town does not concede that Sidman has standing to appeal from those decisions, or that his claims are otherwise justiciable. Golden Anchor has separately appealed the decision of the Board of Appeals; that matter is pending under docket number ELLSC-AP-2025-2. Sidman has moved to consolidate the two appeals. While reserving its right to seek dismissal or other appropriate relief as to any of the claims in either matter, the Town supports consolidation.

appeal as an interested party, and that disembarkation of cruise ships is not a permitted use in the district in which Golden Anchor's property is situated. (Amd. Compl. ¶¶ 198-213.)

On February 3, 2025, Sidman filed a Motion to Specify Future Course of Proceedings, in accordance with M.R. Civ. P. 80B(i).

ARGUMENT

I. Sidman's Declaratory Judgment Claim Is Duplicative of his Rule 80B Claim and Must Be Dismissed.

Rule 80B of the Maine Rules of Civil Procedure allows a party seeking judicial review of government agency action to join any number of independent claims for relief as separate counts. M.R. Civ. P. 80B(i). A petitioner raising such independent claims is required to move, within 10 days after filing the complaint, "requesting the court to specify the future course of proceedings, including the timing of briefs and argument and the scope and timing of discovery and other pretrial proceedings including pretrial conferences." Although Rule 80B review is generally limited to the administrative record, the Rule provides for discovery on independent claims "as in other civil actions." M.R. Civ. P. 80B(j).

Independent claims, however, must be truly independent. "[W]hen direct review is available pursuant to Rule 80B, it provides the exclusive process for judicial review unless it is inadequate." *Gorham v. Androscoggin Cty.*, 2011 ME 63, ¶ 22, 21 A.3d 115. Duplicative claims—i.e., claims based on the same facts and seeking the same relief—are subject to dismissal. *See, e.g., Cape Shore House Owners Ass'n v. Town of Cape Elizabeth*, 2019 ME 86, ¶¶ 8-9, 209 A.3d 102 (affirming dismissal of

declaratory judgment count as duplicative of Rule 80B count). This includes claims seeking declarative relief, and claims of deprivation of due process. *See, e.g., Cape Shore*, 2019 ME 86, ¶¶ 8-9, 209 A.3d 102 (declaratory relief); *Colby v. York Cty. Comm'rs*, 442 A.2d 544, 547-48 (Me. 1982) (due process claims). As the Court explained in *Cape Shore*,

A claim for a declaratory judgment is proper in circumstances where a challenge to a regulation or ordinance is necessary to resolve a dispute regarding a planned action, before the matter actually proceeds and the challenged ordinance is applied to the detriment of the plaintiffs—in other words, as an anticipatory challenge. *After* a municipal agency has adjudicated a matter, however, a contention that the decision was erroneous because it infringes upon some superior legal authority becomes subsumed within the essence of matters that must be brought pursuant to Rule 80B to question whether the particular action of a municipal administrative agency is consistent with the requirements of law. This is true even when a party asserts that the challenged ordinance is inconsistent with statutory or constitutional provisions. Therefore, if, pursuant to Maine Rule of Civil Procedure 80B(i), a complaint contains both a Rule 80B appeal and an ostensibly independent challenge to the law applied by the municipal body, the latter may properly be dismissed as duplicative if it relies on the same factual allegations, and seeks the same relief as the Rule 80B appeal.

2019 ME 86, ¶ 8, 209 A.3d 102 (quotation marks and citations omitted); *see also Colby*, 442 A.2d at 547-48 (concluding that due process claims relating to agency's failure to hold a public hearing, exclusion of evidence, and lack of opportunity to examine witnesses could be adequately addressed through Rule 80B review).

Sidman's Count II seeking a declaratory judgment is entirely duplicative of Count I seeking review under Rule 80B. He seeks the same relief (i.e., a determination that the Board of Appeals erred) based on the same facts. This complete overlap is made all the more plain by Sidman's proposal, in his Motion to

Specify, that “the issues raised by the independent claim be briefed and decided as part of the Rule 80B briefing.” (Mot. at 1.) At the risk of stating the obvious, an independent civil claim cannot be addressed by Rule 80B briefing—hence why the Rule requires a motion to specify the future course of proceedings in the first place. Where Rule 80B applies, it is exclusive. *See, e.g., Cape Shore*, 2019 ME 86, ¶¶ 8-9, 209 A.3d 102; *Gorham*, 2011 ME 63, ¶ 22, 21 A.3d 115. As such, Count II of Sidman’s Complaint must be dismissed. In the absence of any genuine independent count, Sidman’s Motion to Specify should be denied as moot.

CONCLUSION

For all of the foregoing reasons, the Town respectfully requests that this Court dismiss Count II of Sidman’s Complaint, and deny his Motion to Specify as moot.

Dated: February 24, 2025

/s/ Jonathan P. Hunter
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NOTICE

Pursuant to rule 7(b)(1) of the Maine Rules of Civil Procedure, notice is hereby given that matter in opposition to this motion pursuant to Rule 7(c) of the Maine Rules of Civil Procedure must be filed not later than twenty-one (21) days after the filing of this motion unless another time is provided by the Rules or set by the Court. Failure to file timely opposition will be deemed a waiver of all objections to this motion, allowing the Court to grant this motion without further notice or hearing.