COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2472CV00032

DANA RUSSELL DEFURIA & others[1]

vs.

SEACOAST SHORES ASSOCIATION, INC.

MEMORANDUM OF DECISION AND ORDER ON MOTION TO AMEND (PAPER NO. 22.1)

Plaintiffs Dana Russell DeFuria, Julie A. Defuria, John Gushue, Denise Gushue, Robert J. Kowalewski, Jr., Patrick T. O'Regan, Jr., Cecily Anne O'Regan, and Valerie A. Saffron, initiated the present lawsuit on February 1, 2024 against Defendant Seacoast Shores Association, Inc.[2] Through a first amended complaint, Plaintiffs allege a number of counts for declaratory judgment (Counts 1-3, 5-6, 8) and related counts for damages (Counts 4, 7). In essence, Plaintiffs' claims concern whether they are obligated to pay homeowners' association dues to Defendant and whether they are entitled access to a new community clubhouse. The matter is currently before the court on Plaintiffs' second motion to amend the complaint. See Paper No. 22.1. Defendants oppose Plaintiffs' motion on the grounds that it is futile. After hearing, and for the reasons that follow, Plaintiffs' motion is **DENIED IN PART** and **ALLOWED IN PART**.

---

[1] Julie A DeFuria, John J. Gushue, Denise Gushue, Robert J. Kowalewski, Jr., Patrick T. O'Regan, Jr., Cecily Anne O'Regan, and Valerie A Saffron

[2] Friends of Seacoast Shores, Inc. was originally named as a plaintiff in this matter, but its claims were dismissed on standing grounds. See Paper No. 16 (memorandum of decision and order on motion to dismiss).

BACKGROUND[3]

At some point prior to April 1947, Raymond H. Stotter acquired an approximately 300-acre undivided property from the Ovington Point Trust. See Proposed Second Amended Complaint ("PSAC"), par. 28. That property was located along Jenkins' Neck, a peninsula located in Falmouth, bounded by Child's River. Between April 1947 and June 1947, Stotter recorded five subdivision plans with the Barnstable Registry of Deeds, creating approximately 1,000 corresponding residential lots. See PSAC, pars. 20, 22. Those subdivision plans also indicated several common areas, including two areas labeled "beach," thirty-one unlabeled rights-of-way between named streets, and approximately two-acres of land for a community clubhouse. See PSAC, par. 22. In August 1947, Stotter conveyed the 300-acre property to Seacoast Shores, Inc., of which Stotter himself was President. See PSAC, pars. 23-24. That community—the subject of the present litigation—has come to be known as Seacoast Shores.

The Beach and Recreation Clause

Between November 1947 and June 1951, Seacoast Shores, Inc. conveyed fourteen lots via ten deeds. See PSAC, par. 28. Each such deed included a conditional requirement that the grantees become members of a homeowners' association "in the event that . . . a property owner's association is formed" and to pay "up to $20 per annum". See PSAC, par. 28. Those deeds also granted "right(s) in common . . . to make the customary use of the beach, beaches, or boat basin, as designated on said plans . . . for boating, bathing and fishing, in accordance with the regulations thereof." PSAC, par. 29.

[3] For purposes of deciding Plaintiffs' motion, the court accepts as true the facts alleged in the proposed second amended complaint. See *Lingblom* v. *American Fed'n of State, Cnty. & Mun. Emp.*, 7 Mass. App. Ct. 920, 921 (1979).

After 1951, Seacoast Shores, Inc. issued two more single-lot deeds, but those deeds did not reference any homeowners' association. PSAC, par. 30. Seacoast Shores, Inc. itself never formed a homeowners' association. PSAC, par. 31. The first ten deeds—issued by Seacoast Shores, Inc. between 1947 and 1951—are the only deeds containing any reference to a homeowners' association. PSAC, par. 32.

In 1948, Seacoast Shores, Inc. conveyed the remaining subdivision to another Massachusetts corporation, Sailcoast Shores, Inc. PSAC, pars. 34-35. The deed from Seacoast Shores, Inc. to Sailcoast Shores, Inc. did not reference a homeowner's association. PSAC, par. 37.

In 1948, Sailcoast Shores, Inc. issued thirteen deeds for fifteen lots with revised deed language, eliminating the conditional homeowners' association membership from the earlier Seacoast Shores, Inc. deeds and including a new clause that "buyer acquires no riparian rights but is entitled to all other privileges such as boating, bathing and fishing." PSAC, pars. 40-41.

Between August 1948 and December 1970, Sailcoast Shores, Inc. issued an additional 455 deeds conveying 553 lots, each of which contained the following new clause: "The Grantee shall have the right to use and enjoy in common with other owners of property on the premises known as Seacoast Shores, any and all beaches and recreation areas established by the grantor on said Seacoast Shores." PSAC, par. 42. This clause, which Plaintiffs refer to as the "1948 Beach and Recreation Clause," is central to Plaintiffs' claims.

Between 1947 and 1986, various entities issued deeds to 962 lots in Seacoast Shores containing the 1948 Beach and Recreation Clause. PSAC, pars. 71, 73.

The Clubhouse

In August 1951, Defendant Seacoast Shores Association, Inc. (SSAI) was formed as a Massachusetts private non-profit corporation.[4] See PSAC, pars. 77, 85. Its articles of organization provide that its purpose is as follows:

> To maintain and promote the social and civic welfare and social contacts of the residents and real estate owners in the section of Falmouth known as Seacoast Shores; to organize and promote water and land sports among the members and their families; to engage in all activities which shall serve to improve the appearance and residential desirability of this section; to aid in securing betterments and improvements. Also, to purchase, lease, sell, hold, develop, convey, or otherwise acquire and dispose of any real and personal property necessary and proper for carrying out the purpose of this Corporation, and to erect, equip and maintain social buildings, floats and appropriate structures or buildings for the use and enjoyment of the members of the Corporation, upon and under such terms and conditions, and subject to such rules, regulations and restrictions, as the Officers, Directors and Committee members may, from time to time, determine. These purposes shall not include the right to apply for seasonal or yearly license to sell alcoholic beverages.

PSAC, par. 78.

In 1952, Sailcoast Shores, Inc. conveyed title to the clubhouse land at issue to SSAI, subject to the following easements and restrictive clauses in the corresponding deed:

> "subject to the use of said premises for recreational purposes only, and no building or structure shall be erected, constructed or placed thereon other than a clubhouse, boathouse or bathhouse to be used for the purposes as set forth in the Charter granted to . . . [SSAI] . . . from the Commonwealth of Massachusetts only.
>
> . . .
>
> Said premises are also conveyed subject to all easement and restrictions of record which may be in force and applicable. . . .
>
> . . .
>
> The foregoing restrictions shall be deemed and considered covenants running with said premises and shall be binding on the grantees' successors and assigns.

[4] Seacoast Shores Association, Inc. was administratively dissolved in 1986, see PSAC, par. 80, then revived and merged with its successor in 2010, see PSAC, pars. 82-83.

PSAC, par. 43 and Exhibit H thereto. In 1953, SSAI constructed a single-story clubhouse building. PSAC, par. 95. Up until 2011, that building was used for annual neighborhood meetings and social activities. PSAC, par. 96.

Around 2011, a new Seacoast Shores clubhouse was constructed, replacing the old community clubhouse. See PSAC, par. 115, 117. The new clubhouse was opened in June 2012. PSAC, par. 115. Construction of the new clubhouse was financed through voluntary "Clubhouse Investment Member" (IM) certificates purchased by Seacoast Shores property owners. See PSAC, pars. 108, 119. An IM recorded in a property owner's chain of title obligates the property owner to make financial commitments to SSAI. See PSAC, par. 108. This obligation constitutes one tier of SSAI membership. SSAI also includes general members who apply for SSAI membership and are accepted. PSAC, pars. 102-103. General members are obligated to pay an annual membership fee to SSAI to remain members. See PSAC, pars. 103-104. Access to the new community clubhouse is restricted to SSAI IM members during July and August. See PSAC, pars. 121, 137. As of 2023, there were approximately 400 members of SSAI and 500 non-members within the Seacoast Shores community. See PSAC, pars. 112-113.

Plaintiffs contend that they are not automatically obligated to pay SSAI homeowners' dues as landowners in Seacoast Shores because they are not members of SSAI and no IM certificates exist in their chains of title. They further contend that they are entitled to access to the new community clubhouse because the new clubhouse was built on land to which they have access rights pursuant to the 1948 Beach and Recreation Clause.

DISCUSSION

Plaintiffs seek to amend their complaint to convert their suit to a class action lawsuit, with all landowners in the Seacoast Shores community with easement rights to the neighborhood

as prospective class members. Plaintiffs define the proposed class as: "Those persons or legal entity [sic] that currently owns residential property in the Seacoast Shores neighborhood of East Falmouth, Massachusetts, that have not contributed to the construction of a clubhouse and been designated Clubhouse Investment Members." See PSAC, 1. Plaintiffs also seek to amend to name one plaintiff as holding his property interest in trust instead of personally.

Leave to amend a complaint should be "freely given when justice so requires," Mass. R. Civ. P. 15(a), but it may be denied where there is undue delay, undue prejudice to the opposing party, or futility in amending the complaint. *Nguyen* v. *Massachusetts Inst. of Tech.*, 479 Mass. 436, 461 (2018). A motion to amend a complaint may be denied on the grounds that the added claims would not survive a motion to dismiss and therefore are futile. *Chang* v. *Winklevoss*, 95 Mass. App. Ct. 202, 212 (2019). Applying this standard, the court looks to the standard of review for a motion to dismiss.

To survive a motion to dismiss under Mass. R. Civ. P. 12(b)(6), a complaint must allege facts that, if true, would "plausibly suggest[ ] . . . an entitlement to relief." *Lopez* v. *Commonwealth*, 463 Mass. 696, 701 (2012), quoting *Iannacchino* v. *Ford Motor Co.*, 451 Mass. 623, 636 (2008). For the purpose of deciding Plaintiffs' motion, the court must assume the truth of the facts alleged in the complaint and any reasonable inferences that may be drawn in Defendant's favor from those allegations. See *Golchin* v. *Liberty Mut. Ins. Co.*, 460 Mass. 222, 223 (2011). In so doing, however, the court must "look beyond the conclusory allegations in the complaint and focus on whether the factual allegations plausibly suggest an entitlement to relief." *Maling* v. *Finnegan, Henderson, Farabow, Garrett & Dunner, LLP*, 473 Mass. 336, 339 (2015), quoting *Curtis* v. *Herb Chambers I-95, Inc.*, 458 Mass. 674, 676 (2011). In support of their motion, Plaintiffs assert that Defendant will suffer no prejudice from amendment.

Defendant opposes Plaintiffs' amendment on the grounds that their pursuit of class certification is futile.

A. Class Certification

Class certification does not turn on the merits. *Salvas* v. *Wal-Mart Stores, Inc.*, 452 Mass. 337, 361 (2008), quoting *Weld* v. *Glaxo Wellcome Inc.*, 434 Mass. 81, 84-85 (2001). On a motion for class certification pursuant to rule 23, "[t]he plaintiffs bear the burden of providing information sufficient to enable the motion judge to form a reasonable judgment that the class meets the requirements of rule 23 . . .; they do not bear the burden of producing evidence sufficient to prove that the requirements have been met." *Kwaak* v. *Pfizer, Inc.*, 71 Mass. App. Ct. 293, 297 (2008).

To achieve class certification, Rule 23(a) requires a plaintiff show that (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. Mass. R. Civ. P. 23(a). Additionally, under Rule 23(b), the plaintiff must show (5) that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and (6) that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Mass. R. Civ. P. 23(b).

Here, Plaintiffs have failed to carry their burden for several reasons. First, as Defendant correctly argues, the court's decision on Plaintiffs' declaratory judgment counts will be binding on Defendant. The addition of unnamed class members will have no effect on the legal force of the court's ultimate decision. Because the same relief may be obtained without class certification,

class certification is not appropriate. See *Dionne* v. *Bouley*, 757 F.2d 1344, 1356 (1st Cir. 1985) ("[W]hen the same relief can be obtained without certifying a class, a court may be justified in concluding that class relief is not 'appropriate.'") (applying Fed. R. Civ. P. 23). Thus, a class action is not superior to other methods of adjudicating this matter.

Second, Plaintiffs must show that they "will fairly and adequately protect the interests of the class." Mass. R. Civ. P. 23(a)(4). Specifically, Plaintiffs must establish that there is no potential conflict between the named plaintiff and the class members and that his counsel is "qualified, experienced and able to vigorously conduct the proposed litigation." *Andrews* v. *Bechtel Power Corp.*, 780 F.2d 124, 130 (1st Cir. 1985) (applying Fed. R. Civ. P. 23). As proposed, Plaintiffs' prospective class included both non-members of SSAI and general members of SSAI. See PSAC, 1. General members of SSAI pay dues to SSAI. See PSAC, pars. 101-104, 112. Plaintiffs appear to bring two claims for monetary damages. See PSAC, Counts 4, 6. If Plaintiffs prevail, SSAI would be liable for such damages. This potential liability of SSAI suggests a conflict between Plaintiffs' interests—seeking damages from SSAI—and prospective class members' interests—paying general membership dues to SSAI.

Next, the court is not persuaded that Plaintiffs have satisfied the numerosity requirement. A class is numerous when joinder of all members is impracticable, unwise, or imprudent when considering efficiency, the limitation of judicial resources, and expenses to the plaintiff. See *Brophy* v. *School Comm. of Worcester*, 6 Mass. App. Ct. 731, 735 (1978). Joinder is more practicable when all members of the class are from the same geographic area. See *Andrews*, 780 F.2d at 132-133. Similarly, joinder is more likely to be practicable where prospective members can be easily identified. See *Garcia* v. *Gloor*, 618 F.2d 264, 267 (1st Cir. 1980). All prospective class members are geographically concentrated within the Seacoast Shores community, weighing

in favor of joinder. See *Andrews*, 780 F.2d at 132. Further, Friends of Seacoast Shores was previously in contact with at least some prospective class members. See First Amended Complaint, Paper No. 8, 1 (describing Friends of Seacoast Shores, Inc. as "an incorporated group of property owners" in Seacoast Shores). This contact suggests that Plaintiffs are capable of identifying prospective class members, weighing in favor of joinder. See *Andrews*, 780 F.2d at 132 ("[W]here class members can be easily identified, joinder is more likely to be practicable."). The court leaves open the question of whether Plaintiffs may seek joinder of specific, identifiable parties as additional plaintiffs in this matter.

Finally, Plaintiffs have more generally failed to carry their burden at this stage of proceedings. In support of their motion, Plaintiffs argue that amendment must be "freely given when justice so requires" pursuant to Mass. R. Civ. P. 15(a). Beyond this conclusory position, Plaintiffs have wholly failed to address Defendant's argument that Plaintiffs' amendment would be futile.

B. Trustee Amendment

Plaintiffs have also moved to amend to name Robert J. Kowalewski, Jr. as Trustee of the Kowalewski Realty Trust. Defendant opposes this request on the grounds that amendment would have no legal effect. To the extent Plaintiffs seek to substitute Robert J. Kowalewski, Jr., individually, for Robert J. Kowalewski, Jr. as Trustee of the Kowalewski Realty Trust, Plaintiffs' motion is allowed. See *Lancaster* v. *General Acc. Ins. Co. of Am.*, 32 Mass. App. Ct. 925, 926 (1992) (reversing allowance of summary judgment on "possible technical defect in pleading" where wrong party named as trustee).

CONCLUSION

For the foregoing reasons, the court orders as follows:

1. Plaintiffs' motion to amend to substitute Robert J. Kowalewski, Jr., individually, for Robert J. Kowalewski, Jr. as Trustee of the Kowalewski Realty Trust is **ALLOWED**; and

2. Plaintiffs' motion to amend is otherwise **DENIED**, but the court leaves open the question of whether Plaintiffs may seek joinder of specific, identifiable parties as additional plaintiffs in this matter.

Date: October 31, 2025

So ordered.

Elaine M. Buckley
Justice of the Superior Court