

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2472CV00032

FRIENDS OF SEACOAST SHORES, INC., ET ALS.,
Plaintiffs/Defendants-in-Counterclaim
v.
SEACOAST SHORES ASSOCIATION, INC.,
Defendant/Plaintiff-in-Counterclaim

**REPLY BRIEF OF PLAINTIFFS/DEFENDANTS-IN-COUNTERCLAIM
UNDER RULE 9(A)5**

Plaintiffs/Defendants-in-Counterclaim ("Plaintiffs") hereby submit their Reply Brief in response to the Defendant's Opposition to Plaintiffs' Second Motion to Amend Complaint to address Defendant Seacoast Shores Association, Inc.'s (SSAI) omissions, admissions and misstatements. An Affidavit of Cecily Anne O'Regan with Exhibits (A-M) is attached in support.

I. SSAI'S OPPOSITION FAILS TO ARGUE THAT THE LIBERAL STANDARD APPLIED TO AMENDING THE PLEADINGS AT THIS STAGE OF THE LITIGATION SHOULD NOT BE GRANTED

Defendant Seacoast Shores Association, Inc. ("SSAI") argues that Plaintiffs' Motion to Amend the Complaint should be denied because Plaintiffs cannot meet the requirements for class certification under Mass R. Civ. Proc. 23. Plaintiff disagrees. The motion to amend meets the liberal standard and does not need to resolve the exact merits of the class claims or defenses at this time.

A. SSAI's arguments fail to Apply The Standard for Amending Pleadings under Mass R. Civ. Pro 15(a)

Plaintiffs' Motion to Amend the Complaint should be granted because SSAI failed to argue that Plaintiffs have not met the standard for amending the pleadings, which is liberally granted in Massachusetts. Under Mass R. Civ. Pro 15(a), "a party may amend his pleading only by leave of court ... and leave shall be freely given when justice so requires. In Castellucci v. U.S. Fidelity & Guarantee Co., 372 Mass 288, 289 (1977), also cited by SSAI, Castellucci sought leave to amend a third-party

complaint on the eve of trial over a year after the filing of an auditors' report that Castellucci was liable for the property damages. On appeal, the court held that the trial judge did not abuse his discretion in denying Castellucci's motion. In this litigation, the original complaint was filed in the name of Friends of Seacoast Shores, Inc. ("FOSS") a local non-profit advocacy group formed to protect and uphold property rights of homeowners. [O'Regan ¶4]. An Amended Complaint was filed adding the names of individual property owning plaintiffs. SSAI filed a Motion to Dismiss the Amended Complaint arguing, in part, that "the individual plaintiffs lack standing to bring claims on behalf of other residents (sic) under a declaratory action." [See page 10 of Memorandum, Docket Entry 11.2]. In fact, SSAI's prior Memorandum supports Plaintiffs' position that a class action is appropriate to protect the Seacoast Shores property owners in view of the number of properties having the same legal rights. [O'Regan ¶8, Exh B.] This court issued an order on March 20, 2025 [Docket Entry 16], substantially allowing the Amended Complaint as it relates to the individually named plaintiffs. Given the number of property rights involved, as also noted by SSAI, an amended complaint is the appropriate vehicle to achieve the first step in the process of establishing a class action. Moreover, justice and judicial efficiency requires that Plaintiffs' be allowed to amend the complaint to ensure resolution of the dispute.

B. Arguments Concerning Class Certification Under Mass. R. Civ. Pro. 23 and Futility are Premature

SSAI's arguments center on class certification. The arguments are premature and irrelevant at this time. The motion before the Court is a simple request by the Plaintiffs to amend the complaint. SSAI argues that amending the Complaint is futile and that Plaintiffs will be unable to certify a class. That is not the issue before the Court. SSAI also argues that Plaintiffs' counsel would be unable to represent the class.

In Massachusetts, the process for a class action first requires a complaint be filed, followed by discovery, and then by a motion for class certification. See Mass. R. Civ. Pro. 23. Plaintiffs have not had the opportunity to conduct discovery to substantiate numerosity, commonality, predominance etc.

Moreover, under Massachusetts law, factual disputes about class composition, conflicts, and the like are for resolution at or after class certification. See, Weld v. Glaxo Wellcome Inc., et al., 746 N.E. 2d 522, 434 Mass. 81 (SJC Suffolk 2001). SSAI will have ample opportunity to oppose class certification when a Rule 23 motion is filed, and have any opposition declarations considered along with its opposition to such motion. Moreover, the court may refuse to certify the class action if the evidence is insufficient to meet the class criteria. In such cases, the lawsuit would then only proceed as an individual action by the named plaintiffs, not as a class action. It would be premature to deny Plaintiffs' the opportunity to amend the complaint to include the class action at this time. Notwithstanding the prematurity, class certification would likely not be denied because a small number object, provided the statutory requirements for certification are satisfied and the rights in question are common to the class as a whole.

II. SSAI'S FILING OF MULTIPLE MOTIONS BELIE ITS ARGUMENTS THAT PLAINTIFF HAS DELAYED OR ENGAGED IN BAD FAITH

SSAI argues that Plaintiff is acting in bad faith and using amendments to delay proceedings and to impose costs on SSAI. These arguments are disingenuous. The court need look no further than the court docket to see that the delays are largely the result of SSAI's filing motions and specious counter claims as a means of increasing Plaintiffs' legal expenses and attempting to deny Plaintiffs' access to a judicial determination of legitimate claims.

III. SSAI HAS AQUIESCED THAT THE SEACOAST PROPERTY OWNERS HAVE LEGAL EASEMENT RIGHTS WITH ACCESS TO AT LEAST THE BEACH AND RIGHTS OF WAY AND A RIGHT TO JOIN THE (VOLUNTARY) ASSOCIATION

Paragraph 19 of Frawley states that "[a]ll residents of Seacoast Shores have the benefit of the Association beach, [and] the Rights of way." Plaintiffs believe this statement confirms its position that property owners in Seacoast Shores have legal deeded easement rights as dominant easement holders to benefit from the use and enjoyment of the property owned by the properties in the servient estate owned by SSAI. Frawley goes on to state that "residents ... have the right to join the Association." Notwithstanding the fact that Frawley seems to conflate "resident" with "property owner," plaintiffs

further believe this statement supports Plaintiffs' position that property owners in Seacoast Shores are not automatically members of SSAI by virtue of property ownership (as would be the case with, for example, a Planned Unit Development (PUD)). Instead, property owners and residents are free to join SSAI - or not join. [O'Regan ¶14] Note that Frawley's statement contradict SSAI's actual practice and communications regarding the mandatory nature of dues. [O'Regan ¶10, 14, 19, 21, 26; Exhibits C, D, L-M].

IV. SSAI PRESENTS A SERIES OF AFFIDAVITS IN SUPPORT OF ITS OPPOSITION THAT CONTAIN ERRONEOUS OR MISLEADING FACTS

Several of the statements in the Affidavits submitted by SSAI in its Opposition are misleading or inaccurate.

A. Declaration of Daniel Frawley ("Frawley")

Frawley (¶7) "in 1952 SSAI built ... a one story, cinderblock clubhouse" and "some events were open to all residents, while others were open only to those who paid annual dues." Frawley does not claim to have personal knowledge and these statements are not supported by the currently available facts. [O'Regan ¶13]

Frawley (¶11) membership would not support higher dues without an improvement and expansion of membership benefits, like a restaurant, bar, pool and organized sports." Significant and credible opposition to the clubhouse project existed as early as 2009. [O'Regan ¶15; Exhibit E]

Frawley (¶25) states only 234 investment members paid annual dues for 2025 of which only 177 paid clubhouse membership fees; 106 residents who are not investment share members paid dues; and only 340 households paid the 2025 annual dues. Frawley fails to mention that only 18% of property owners paid clubhouse membership fees, only 24% households are investment members, and only 12% of non-investment members paid membership fees. Thus, only ~35% of the 947 properties are 2025 clubhouse members. [O'Regan ¶8; Exhibit B].

B. Declaration of Andrea McCarthy ("McCarthy")

McCarthy [¶¶ 10-19] states that FOSS does not have support for additional plaintiffs or a class action. Contrary to McCarthy's unsupported assertion, there is support in the community for the efforts to preserve the legal rights of property owners and there are many property owners who have expressed a reluctance to publicly participate because of a fear of retaliation by SSAI based on SSAI's historic conduct against some property owners in the community. [See, O'Regan ¶¶ 9-12, 14, 16, Exhibits C-D].

McCarthy [¶19] states that FOSS communications "sets forth several inaccurate or false statements, in an effort to scare residents and turn them against SSAI." without specifics. Plaintiff has a list of supporters exceeding 180 and crafts its communications in an effort to inform property owners so they can make their own decision. [O'Regan ¶5-6] In contrast, Plaintiff has numerous examples that describe actual SSAI actions designed to scare or intimidate property owners or impair legal rights. [O'Regan ¶7, 20-26 and Exhibits A, K-M]

McCarthy [¶22] states that a FOSS website address was provided on the FOSS support yard signs. This statement is factually incorrect. [O'Regan ¶17, Exhibits F and H]

McCarthy [¶23] states that "O'Regan have strategically places a FOSS sign on the lot line facing the house next to them..." and that the "particular neighbor has a recorded Investment Share Certificate." These statements are not factually true, are incomplete and misleading. The FOSS support sign is located on the O'Regan property approximately 2 feet from the property line. [O'Regan ¶18, Exhibit I-K]. Additionally, the adjacent property is owned by 63 Ovington LLC operated by McCarthy's son (Matt McCarthy) while the recorded investment certificate purporting to encumber the property, notarized by McCarthy herself, was in the name of 63 Ovington Drive LLC.

For the reasons set out in the motion and herein, Plaintiffs' Motion to Amend the Complaint to include a class action should be granted.

Dated: August 5, 2025

Plaintiffs/Defendants-in-Counterclaim, By their Attorney,

Jeremy M. Carter, Esq., BBO# 542118
300 Barnstable Road, Hyannis, MA 02601
508-771-4210
jmc@carterdeyoung.com

I hereby certify that a true copy of the above document was served upon each other party or upon the attorney of record for each other party by email on 8/5/15 to the following address(es):

John C. DeSimone, BBO #550142
jdesimone@mitchelldesimone.com
Ian A. Bagley, BBO #694556
ibagley@mitchelldesimone.com
Mitchell & DeSimone
6 Beacon Street, Suite 900
Boston, MA 02108
(617) 737-8300

Jeremy M. Carter, Esq.