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CIVIL DIVISION
Case No. 22-CV-04159

Johnathan J. Billewicz, J and M Investment Trust, and Lillian E. Billewicz, Plaintiffs v. Town of Fair Haven, Vermont, Defendant	DECISION AND ORDER

RULING ON DEFENDANT'S MOTION FOR RULE 11 SANCTIONS

Plaintiffs Johnathan J. Billewicz, Lillian E. Billewicz, and J and M Investment Trust (collectively "Plaintiffs") filed this action against Defendant Town of Fair Haven based on the Town's allegedly wrongful refusal to collect delinquent taxes owed by Plaintiffs. In a prior order, the Court granted the Town's motion to dismiss the action for failure to state a cognizable legal claim. Currently pending before the Court is the Town's motion under Rule 11 of the Vermont Rules of Civil Procedure seeking an injunction against Plaintiffs preventing them from filing any future cases relating to four real properties in Fair Haven acquired by the Town from Plaintiffs via a tax sale unless the filing is signed by a licensed Vermont attorney, or (upon proof of indigence) this Court grants permission to file without counsel. Plaintiffs represent themselves and Defendant is represented by Kevin L. Kite, Esq. No party has requested a hearing on the motion. For the reasons discussed below, Defendant's motion for Rule 11 sanctions is GRANTED.

Factual Background and Procedural History

Plaintiffs Johnathan and Lillian Billewicz are residents of the Town of Fair Haven. Am. Compl. ¶¶ 1-2. Plaintiff J and M Investment Trust is a trust established under the laws of Vermont; Mr. Billewicz is a beneficiary of the Trust and Ms. Billewicz is the Trust's sole trustee. *Id.* ¶¶ 3-5. As of 2013, Plaintiffs, along with Michael Billewicz (the son and brother of Lillian and Johnathan Billewicz) owned four real properties in Fair Haven, located at 5 and 7 Union Street, 16-18 River Street, and 2-4 Willard Avenue. In late 2013, the Town's tax collector notified Plaintiffs that outstanding taxes were due with respect to those properties and that tax-sale procedures would be commenced if the delinquencies continued. Plaintiffs did not pay the back taxes, however, and in February of 2014, the tax collector recorded notices of a tax sale, together with warrants, tax bills, levies, and property descriptions. At the tax sales held in March 2014, all four properties were sold to the Town, and during the one-year period following the sale, neither the Trust nor any of the Billewiczs exercised their statutory right of redemption. On

April 1, 2015, the Town's tax collector executed tax collector's deeds transferring the properties to the Town, and duly recorded the deeds in the land records of the Town. However, reports of sale of these properties were not recorded in the Fair Haven Town Clerk's office until November of 2017.[1]

On March 22, 2018, Plaintiffs, proceeding pro se, filed an action in this Court against the Town asserting claims of quiet title, trespass to real property and to chattel, invasion of privacy, and conversion. All of Plaintiffs' claims were based solely on the theory that the tax deeds conveying the four properties to the Town were void because the tax collector did not record the reports of sale within the thirty-day period following the sales, as required by 32 V.S.A. § 5255, and therefore Plaintiffs remained the rightful owners of the properties. The trial court granted summary judgment to the Town, finding that the lawsuit constituted a challenge to an act of the tax collector related to the collection of a tax, and therefore was barred by the one-year statute of limitation imposed by 32 V.S.A. § 5294(4).

On appeal, Plaintiffs, who were then represented by counsel, argued that their action was for the recovery of lands from a grantee who had obtained title through a tax collector's deed, and thus governed by the three-year limitations period set forth under 32 V.S.A. § 5263. The Vermont Supreme Court affirmed, however, holding that "because the issue on which this matter turns is a challenge to the tax collector's procedural steps in collecting the tax, §§ 5294 and 5295 do apply, and this action is thereby barred." *Billewicz v. Town of Fair Haven*, 2021 VT 20, ¶ 23, 214 Vt. 511 ("*Billewicz I*").[2]

In May 2021, shortly after the Supreme Court denied reargument, Plaintiffs filed a new pro se action in this Court, again alleging that the Town failed to record the report of sale as required by 32 V.S.A. § 5255, and asserting claims against the Town for negligence, trespass, invasion of privacy, and conversion. The Town moved for summary judgment on grounds of issue preclusion and claim preclusion. Plaintiffs countered that their new lawsuit was distinguishable because it alleged that the *town clerk* (rather than the tax collector) failed to record the deeds of sale within the statutory time. The trial court granted summary judgment on grounds of claim preclusion, reasoning that both cases were between the same parties, concerned the same subject matter, and raised the same essential issues concerning the validity of the deeds that were or should have been asserted in *Billewicz I*. On appeal, Plaintiffs argued that their new case was not identical because it alleged new instances of trespass that occurred after the original, 2018 litigation. In affirming, the Supreme Court held that:

> Plaintiffs' trespass claims, whether for alleged incursions that occurred before or after 2018, are inextricably interwoven with their assertion that they are the

[1] Earlier in 2017, the Town brought an ejectment action against Lillian Billewicz and all other occupants of 7 Union Street, resulting in a writ of possession that was issued and served in April 2017. There is no dispute here that as of May 2017, the Town took sole possession of all four properties.

[2] At the time Plaintiffs filed their action, § 5263 provided a three-year limitations period; thus, if that section controlled, the lawsuit would have been timely filed, as the tax collector's deeds were issued in April 2015. *See Billewicz I*, 2021 VT 20, ¶ 17 nn.1-2.

> rightful owners of the land parcels and not the Town because the Town failed to properly timely record the reports of the [2014] tax sale. Contrary to plaintiffs' assertion, there is no new legal theory here. Plaintiffs' "new" trespass claims rest on the same allegations asserted in *Billewicz I*, and therefore claim preclusion bars their suit.

Billewicz v. Town of Fair Haven, No. 21-AP-244, 2022 WL 424881, at *2 (Vt. Feb. 11, 2022) (unpub. mem.) ("*Billewicz II*").

Plaintiffs again moved for reargument, but before the Supreme Court denied the motion, Plaintiffs filed their third pro se action in this Court against the Town. *See Billewicz v. Town of Fair Haven*, No. 22-CV-677 (Vt. Super. Ct. filed Feb. 28, 2022) ("*Billewicz III*"). Plaintiffs again alleged ownership of all four properties, and that the Town was liable for trespass to real estate and to chattel, for having installed boards, sheets of plywood, and padlocks on the subject properties. Notably, in an apparent effort to avoid preclusion, Plaintiffs' new complaint made no mention of *Billewicz I* or *Billewicz II*, and did not allege that the tax deeds granting ownership to the Town were void for noncompliance with 32 V.S.A. § 5255. Nevertheless, the Town filed a motion to dismiss on grounds of claim preclusion, and served Plaintiffs with a motion for sanctions under Rule 11. In response, and with the Court's permission, Plaintiffs voluntary dismissed their complaint without prejudice within Rule 11's safe harbor provision. *See* Vt. R. Civ. P. 11(c)(1)(A).

Next, on the same day they voluntarily withdrew *Billewicz III*, Plaintiffs commenced a new pro se lawsuit against the Town and various Town officials, this time in federal court. *See Billewicz v. Town of Fair Haven, Vt.*, Case No. 5:22-cv-73 (D. Vt. filed Mar. 28, 2022) ("*Billewicz IV*"). This action asserted claims for damages under 42 U.S.C. § 1983, based on familiar allegations that Town officials unlawfully deprived Plaintiffs of access to their personal and real properties at River and Union Streets in Fair Haven. The Town moved to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, arguing that Plaintiffs' claims were without legal basis, and also barred by claim preclusion, statutes of limitation, and the Rooker-Feldman doctrine. In addition, the Town also filed a motion for Rule 11 sanctions seeking, among other things, an injunction to preclude further pro se filings by Plaintiffs relating to the River Street and Union Street properties without prior court authorization.

The federal district court dismissed the case on the grounds that it was barred by Vermont's claim preclusion doctrine. *See Billewicz IV*, 2022 WL 4115966, at *7-11 (D. Vt. Aug. 11, 2022), *aff'd*, 2023 WL 3961437 (2d Cir. June 13, 2023).[3] Critically, the court concluded that Plaintiffs' federal claims arose "out of the same transaction that gave rise to

[3] The district court also held that dismissal of the § 1983 claims was warranted because Plaintiffs failed to file suit within the applicable three-year statute of limitations. *See id*. at *6-7 ("[T]he court's review of *Billewicz I, II*, and *III* reveals that the injury that is the basis for Plaintiffs' action is the Town's taking possession of the properties on May 18, 2017. Plaintiffs' Complaint in this case – filed March 28, 2022 – is well outside the three-year window."). In addition, the court denied Plaintiffs' motion to disqualify the Town's attorneys, including Mr. Kite, from representing the defendants in the action. *See id*. at *2-4.

Billewicz I, *II*, and *III*," and that key facts in all four cases had the same origin, namely, "the 2014 tax sale and the Town's subsequent possession of the River Street and Union Street properties." *Id*. at *8; *see also id*. at *9 ("Plaintiffs' allegations in this § 1983 case are 'based on new alleged incursions of their land' but 'the same nucleus of facts is at issue.'" (quoting *Billewicz II*, 2022 WL 424881, at *2)). The federal court also rejected Plaintiffs' assertion that *Billewicz I* and *II* were without preclusive effect and not final judgments "on the merits" – i.e., not adjudications of the issue whether the four tax collectors' deeds were invalid and void. *See id*. at *10 (concluding that "Vermont's claim-preclusion law does treat limitations dismissals as rulings 'on the merits'" and "[g]iven that Plaintiffs have litigated this transaction twice before the Vermont Supreme Court, the purposes of claim preclusion would be served by" such treatment).

With regard to the Town's Rule 11 motion, the federal court first discussed whether Plaintiffs' complaint was not "warranted by existing law" or presented for an "improper purpose" in violation of Rule 11(b). The court observed that while Plaintiffs were pro se, they were not "untutored in the law" or lacking in legal experience. *Id*. at *12. The court noted that "Lillian Billewicz has legal training and was previously a member of the Vermont bar and remains a member of the bar of this court." *Id*. at *4. The court also referred to Ms. Billewicz's experience as an attorney "in cases involving both the statute of limitations and claim preclusion." *Id*. at *14 (citing cases including *In re Billewicz*, 161 Vt. 631, 632, 641 A.2d 368, 369 (1994) (mem.) (imposing discipline for Ms. Billewicz's failure to file claims on behalf of a client in time to preserve them) and *In re Estate of Fanelli*, No. 2020-253, 2021 WL 2534548, at *2 (Vt. Apr. 9, 2021) (unpub. mem.) (observing that the trial court denied, on grounds of issue and claim preclusion, Ms. Billewicz's attempt to relitigate claims of trademark infringement and business valuation)).

The court then determined that Plaintiffs' federal complaint advanced frivolous legal contentions, in violation of Rule 11(b)(2). For example, it held that "Plaintiffs' § 1983 claims had no chance of success because *Billewicz I*, *II*, and *III* establish the accrual date" of May 18, 2017 for purposes of the three-year period in which to assert claims for personal injury. *Id*. at *13. "Moreover," the court reasoned,

> Plaintiffs had no reasonable basis to conclude that their § 1983 claims were not barred by claim preclusion. The identity of parties, subject matter, and causes of action are the same here as in *Billewicz I*, and *Billewicz II* all but dictates the federal court's determination that *Billewicz I* was a final judgment "on the merits." Courts in other cases have reached similar conclusions.

Id. (citing 2 James W. Moore, *Moore's Fed. Prac. Civil* § 11.11[7][a] & n.47 ("A legal contention that is made in spite of the obvious preclusive effect of a judgment in prior litigation is not warranted by existing law.")). The federal court further concluded that Plaintiffs' § 1983 action went "beyond unfounded legal contentions," and thus violated Rule 11(b)(1), since the action was

> the fourth suit in a series of cases in which Plaintiffs have challenged the validity of the tax sale and its consequences. This repeated litigation suggests a pattern of abusive litigation and gives rise to an inference of improper motives. And

> because of Ms. Billewicz's legal training and experience, this is not a case where the plaintiffs might have misunderstood the operation of the statute of limitations or the doctrine of claim preclusion. In *Billewicz II*, Plaintiffs attempted to manufacture "new" claims by faulting the town clerk instead of the town tax collector; the Supreme Court flatly found that "there is no new legal theory here." Plaintiffs avoided the sanctions motion in *Billewicz III* by withdrawing that case, only to file the same unfounded lawsuit in this court.

Id. (quoting *Billewicz II*, 2022 WL 424881, at *2).

Finally, the court considered appropriate sanctions, observing that Plaintiffs' conduct was "willful rather than negligent," part of a "pattern of activity," and perpetrated despite Ms. Billewicz's legal training and relevant experience in cases involving both claim preclusion and statutes of limitation. *Id*. at *14. Indeed, in careful and laborious detail, the federal district court also considered Ms. Billewicz's "history of filing nonmeritorious or deficient actions and appeals, along with failure to comply with court directives." *Id*. at *14-15. The court ultimately agreed with the Town's view that "Plaintiffs will not stop unless someone makes them stop." *Id*. at *15. However, the court denied the Town's request for attorney's fees incurred by the Town the federal action and in *Billewicz III*, because there was no history of Ms. Billewicz having received Rule 11 sanctions previously, and the court was not convinced that attorney's fees were "necessary for effective deterrence." *Id*. For the same reasons, the court also declined to impose a filing injunction, and instead issued a formal warning, directed to Ms. Billewicz specifically, "that **future frivolous filings in this District may result in a filing injunction or other sanctions**." *Id*. at *16.

Roughly three months later, on November 22, 2022, Plaintiffs returned to this Court by filing the instant action against the Town. In their pro se Complaint, Plaintiffs alleged that they had presented a check, drawn on their attorney's escrow account, to the Town's tax collector, which constituted an attempt to redeem real properties in Fair Haven that had tax delinquencies. Compl. ¶¶ 5-6, 9.[4] They alleged that their tendered payment was refused by the tax collector or the Chair of Town's Selectboard, and that such refusal was a "breach of a fiduciary duty" to collect taxes for the financial benefit of the Town. *Id*. at 1 & ¶¶ 7-8. They further alleged that "[t]he Town is planning to remove our belongings from the properties located at 5 and 7 Union Street . . . despite our presentation of funds, $10,500.00 to redeem." *Id*. ¶ 9. Thus, Plaintiffs' Complaint essentially rested upon the contention that the period in which to redeem their properties had *not* expired, and that the deeds issued by the Town's tax collector in April 2015 were invalid and did not properly convey Plaintiffs' titles to the Town.

[4] During the months immediately prior to the 2014 tax sale, Plaintiffs tendered a check to the Town for unpaid taxes, but it was returned for insufficient funds. In 2022, Plaintiffs retained a Middlebury law firm to hold $10,500 in that firm's client trust account, and then issue a check from the account for payment of Plaintiffs' tax liabilities. *See* Pls.' Opp'n to Def.'s Mot. for Rule 11 Sanctions (filed Feb. 21, 2023), Ex. A (letter of Nov. 14, 2022, from John M Mazzuchi, Esq. to Lillian Billewicz, re: "Funds Escrowed for Back Taxes due to Town of Fair Haven"). As discussed below, the Court finds it relevant that Plaintiffs have elected to retain licensed Vermont attorneys for some purposes, but not others.

However, before the Town filed its response, Plaintiffs filed an Amended Complaint removing all references to ownership of any specific real properties in Fair Haven. This new pleading also recharacterized Plaintiffs' tendered payment as one merely for "back taxes," rather than a payment to redeem any foreclosed properties. Am. Compl. ¶ 11. Plaintiffs thus re-framed their action as a taxpayer suit, rather than an action by parties whose property rights had been impaired following unlawful actions by a tax collector that purported to transfer their properties to the Town. *See* Am. Compl. ¶¶ 14, 18 ("Plaintiffs as current taxpayers to the Town of Fair Haven have been damaged by the Town's actions denying the acceptance of revenue to the Town's coffers for the financial operation of the Town and for the common good.").

The Town filed a Rule 12(b)(6) motion to dismiss the Amended Complaint for failure to state a claim, which this Court granted. *See Billewicz v. Town of Fair Haven*, Case No. 22-CV-04159, "Ruling on Defendant's Motion to Dismiss," slip op. at 5 (Vt. Super. Ct. Jul. 24, 2023) (hereinafter "*Billewicz V*"). The Court held that no private right of action exists allowing taxpayers generally to enforce a supposed "fiduciary duty" of town officials to collect unpaid taxes, and noted that Plaintiffs failed to cite any statutory, case law, or common law authority recognizing such a claim. *See id*. at 2-4. Moreover, the Court observed that "to the extent Plaintiffs are actually seeking to assert claims as the owners of real property located at 5 and 7 Union Street in Fair Haven, *see* Compl. ¶ 9, such claims would be barred by the doctrine of claim preclusion." *Id*. at 4 n.2 (citing *Carlson v. Clark*, 2009 VT 17, ¶ 13, 185 Vt. 324).

The last, and most recent, action brought by Plaintiffs is *Billewicz v. Kite*, Case No. 22-CV-04200 (Vt. Super Ct. filed Nov. 28, 2022) ("*Billewicz VI*"). As in *Billewicz I* through *IV*, Plaintiffs asserted tort claims predicated on their continued ownership of properties (5 and 7 Union Street) that were sold at the March 2014 tax sale to the Town. However, this time Plaintiffs avoided naming the Town or any Town officials as defendants, and instead filed their action against private entities and persons working on behalf of the Town, such as its attorney (Mr. Kite), a trash hauling company, and a construction contractor and its employee. Plaintiffs alleged claims for trespass, invasion of privacy, and negligent and intentional infliction of emotional distress based on the defendants' entry onto the properties in connection with work they were hired to do by the Town.

The *Billewicz VI* defendants moved to dismiss, arguing not only that Plaintiffs failed to plead necessary elements of their tort claims, but also that the claims necessarily depended on Plaintiffs holding valid legal title to the properties, which they could never establish. Plaintiffs did not oppose these motions on the merits, but instead filed a motion for leave to file a second Amended Complaint,[5] which they contended would address any legal deficiencies. In support of their motion to amend and in opposing dismissal, Plaintiffs also advanced a new theory to attack the validity of the 2015 tax collector's deeds: that contrary to 32 V.S.A. § 5259, no proper bid was ever received by the tax collector (or made by the Town, as purchaser) at the tax sales held in 2014. This new "insufficient bid" theory would render the tax sales entirely invalid, and thus justify Plaintiffs' claims of continued ownership, some nine years after the sales.

[5] As in the instant action, Plaintiffs had almost immediately filed a first Amended Complaint as a matter of course, making some clarifications to their original pleading.

This Court granted dismissal and denied the motion for leave to amend as futile. *See Billewicz VI*, "Ruling on Defendants' Motions to Dismiss and Other Pending Motions," slip op. at 6 (filed July 27, 2023). The Court concluded that Plaintiffs' proposed second Amended Complaint failed to sufficiently plead necessary elements of trespass and other tort claims. *See id*. at 3-4. Moreover, the Court agreed that Plaintiffs could never successfully establish that they held valid legal title to, and therefore were in lawful possession of, the real properties sold in the tax sale. The Court reasoned that Plaintiffs' "insufficient bid" theory constituted an attack on the Town's record title, which would require joinder of the Town, and thereby likely implicated the doctrine of claim preclusion. *Id*. at 4-5. The Court further observed that the "insufficient bid" theory would be clearly barred by the one-year limitations period under either 32 V.S.A. § 5294(4) or § 5263. *Id*. at 5.

Discussion

The Court first addresses whether Plaintiffs' representations to this Court violate Rule 11(b) of the Vermont Rules of Civil Procedure. Finding such violations, the Court next considers the appropriate sanctions pursuant to Rule 11(c) and applicable case law. Lastly, the Court concludes with a Sanctions Order.

I. Rule 11(b) – Plaintiffs' Representations to the Court.

A party's filings with the court are governed by Rule 11(b) of the Vermont Rules of Civil Procedure. *See generally Fox v. Fox*, 2022 VT 27, ¶ 34 , 216 Vt. 460 (holding that family court "acted within its discretion in imposing a prefiling injunction" under Rule 11(b), (c)). In pertinent part, Rule 11(b) provides that:

> By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other document, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, or belief, formed after reasonable inquiry under the circumstances:
>
> (1) it is not being presented for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation; [and]
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

Vt. R. Civ. P. 11(b). Under Rule 11, conduct is tested by an objective reasonableness standard. *See Grundstein v. Lamoille Superior Docket Entries/Orders*, Case No. 5:17-cv-151, 2019 WL 13272215, at *3 (D. Vt. Jul. 18, 2019) (citing *Star Market Mgmt., Inc. v. Koon Chin Hing Kee Soy & Sauce Factory, Ltd.*, 682 F.3d 170, 178 (2d Cir. 2012)). "With respect to legal contentions, the operative question is whether the argument is frivolous, i.e., the legal position has no chance of success, and there is no reasonable argument to extend, modify or reverse the law as it stands." *Star Mark Mgmt.*, 682 F.3d at 177 (quotation omitted). In considering whether a litigant's filing was presented for an improper purpose, courts should not "delve into" a filer's

subjective intent, but rather "assess such objective factors as 'whether particular papers or proceedings caused delay that was unnecessary, whether they caused increased in the cost of litigation that was needless, or whether they lacked any apparent legitimate purpose.'" *Sussman v. Bank of Israel*, 56 F.3d 450, 458 (2d Cir. 1995) (quoting William W. Schwarzer, *Sanctions Under the New Federal Rule 11 – A Closer Look*, 104 F.R.D. 181, 195 (1985)).

The Court concludes that Plaintiffs' representations here and in *Billewicz VI* violate Rules 11(b)(1) and 11(b)(2). To begin, Plaintiff's claims asserted in this case are entirely devoid of merit and clearly unwarranted by existing law.[6] Indeed, Plaintiffs' own filings support the inference that they knew that their initial Complaint was subject to dismissal on grounds of claim preclusion. As discussed above, Plaintiffs almost immediately amended that first complaint by removing any references to specific real properties, as well as any characterization of their tendered payment as one to redeem any foreclosed properties. Absent such an amendment, Plaintiffs would have been suing the same defendant (the Town), regarding the same properties, with claims predicated on the same (or materially similar) underlying challenge to the same transaction (the 2014 tax sales) at issue in *Billewicz I* through *IV*. Yet, in their attempt to avoid preclusion, Plaintiffs turned their stripped-down, amended complaint into one based on a supposed breach of a made-up "fiduciary duty" of town officials purportedly owed to citizen-taxpayer to collect taxes, which had absolutely no basis in existing statutory or common law.

Tellingly, when faced with the Town's argument that Plaintiffs' claim was not legally cognizable, Plaintiffs (without first receiving permission from the Court) filed a surreply brief asserting, for the first time in any case, that the tax collector's deeds were defective and invalid because, contrary to 32 V.S.A. § 5259, no proper bid was made or received during the Town's 2014 tax sales of any of the four properties. This new "insufficient bid" theory views the tax sales as entirely invalid, and consequently would mean that no redemption period ever began to run with regard to any of the properties. Under this theory, which was later advanced in *Billewicz VI* as well, Plaintiffs' tendered payment was merely for "back taxes," rather than to redeem any foreclosed properties. However, had the facts to support such a theory been properly alleged in Plaintiffs' original or Amended Complaint, it certainly would have been dismissed on grounds of claim preclusion and/or the statute of limitations.

Plaintiffs' attempts to portray their new legal theory as non-frivolous are themselves manifestly without colorable legal basis. For example, in opposing sanctions, Plaintiffs argue that the Supreme Court's decision in *Billewicz I* left open the possibility that there could be challenges to the validity of a tax sale that were not time-barred, and that Plaintiffs' "insufficient bid" theory is such a challenge to which no statute of limitation applies. *See* Pls.' Opp'n to Def.'s Mot. for Rule 11 Sanctions, filed Feb. 21, 2023, at 4. But that argument rests on a blatant misreading of a paragraph in *Billewicz I* in which the Court clarified that not every permissible challenge to the validity of a tax sale is governed by the limitations period set forth in 32 V.S.A. § 5294, and that such other challenges might instead be governed by 32 V.S.A. § 5263. *See*

[6] At no time in presenting their claims have Plaintiffs argued for the "extension modification, or reversal of existing law or the establishment of new law." That is, Plaintiffs have consistently framed their legal contentions as "valid[]" and "supported by substantial case law and Statutes." *See* Pls.' Opp'n to Def.'s Mot. for Rule 11 Sanctions (filed Feb. 21, 2023), at 9.

Billewicz I, 2021 VT 20, ¶ 19 (citing *Bogie v. Barnet*, 129 Vt. 46, 53, 270 A.2d 898, 901-02 (1970), for the conclusion that a taxpayer whose property has been purchased at a tax sale may (subject to § 5294's time limitation) file suit challenging as invalid the acts relating to the collection of taxes, or (subject to § 5263's time limitation) sue the grantee under the tax collector's deed, upon a requisite "showing of invalidity in the sale"). Contrary to Plaintiffs' assertions, the Supreme Court did not greenlight all future claims Plaintiffs might assert against the Town challenging the validity of the same tax sale without regard for the applicable statute of limitations. Moreover, Plaintiffs' assertion (*see* Opp'n Mem. at 7-8) that the Town's alleged "insufficient bid" constitutes the sort of "jurisdictional defect" that would avoid the statute of limitations is wholly unfounded. Even if it were factually correct, Plaintiffs' theory that the Town did not make or receive a proper bid under § 5259 during the 2014 tax sales plainly does not suggest a due process violation, such as constitutionally inadequate notice to the property owner or other sufficiently grave "defect [that] would render the statute of limitations inapplicable." *Contos v. Town of Londonderry*, No. 22-AP-240, 2023 WL 1875144, at *2-3 (Vt. Feb. 2023) (unpub. mem.) (affirming trial court's conclusion that challenge to tax sale was time-barred and rejecting property owner's argument that limitations period was inapplicable because "he was afforded constitutionally inadequate notice" of the sale) (citing *Benoit v. Panthaky*, 780 F.2d 336, 338-39 (3d Cir. 1985) (noting majority view that "[c]onstitutionally inadequate notice to the owner of the property sold at a tax foreclosure is a jurisdictional defect" that would render statute of limitations "ineffective to preclude a claim of voidness").[7]

Similarly, Plaintiffs' argument that their "insufficient bid" theory is not subject to claim preclusion is equally baseless. Plaintiffs maintain that because the decision in *Billewicz I* was based on the application of a statute of limitations, it was not a final adjudication "on the merits" of their assertions that the tax sales were invalid and that Plaintiffs are still rightful owners of the properties. However, that very argument was rejected in three prior merits decisions by three different courts: first, by this Court on a motion for summary judgment in *Billewicz II*; then by the Supreme Court in *Billewicz II*; and finally, by the federal court in *Billewicz IV*, 2022 WL 4115966, at *13 (citing *Billewicz II* and an established treatise on federal civil practice). And even if Plaintiffs' "insufficient bid" theory were not time-barred, it is the same cause of action and arises out of the "same transaction that gave rise to the prior lawsuit[s]." *Faulkner v. Caledonia County Fair Ass'n*, 2004 VT 123, ¶ 15. It is well settled that the claim preclusion "doctrine applies both to claims that were or should have been litigated in the prior proceeding." *Id*. ¶ 8; *see also* 18 C. Wright, A. Miller, & E. Cooper, *Fed. Prac. & Proc.: Jurisdiction* § 4408 (3d ed. 2021) ("In most circumstances, claims growing out of the same transaction are . . . precluded even though an effort is made to advance new theories or to substitute new remedies."). Thus, to advance the "insufficient bid" theory in spite of the obvious claim preclusive effects of the prior adjudications is to make a legal contention that is not warranted by existing law. Accordingly, Plaintiffs' filings violated Rule 11(b)(2) in the instant case.

The Court notes that Plaintiffs committed violations of Rule 11(b)(2) in *Billewicz VI* as well. Their proposed second Amended Complaint was obviously inadequate to cure the initial pleading deficiencies and relied almost entirely on conclusory allegations that had absolutely no

[7] Of course, Plaintiffs have never disputed that the Town issued appropriate notices of the March 2014 tax sales. *See Billewicz I*, 2021 VT 20, ¶ 4.

basis in existing Vermont law. Further, as the Court discussed in its decision granting the motions to dismiss, each of Plaintiffs' tort claims rests upon assertions of their continued ownership of the subject properties (stemming from purported defects in the tax sale process), an issue that has been repeatedly decided already or which could have been litigated in *Billewicz I*. The omission of the Town as a party defendant – from a complaint that otherwise concerns the same, well-worn assertions of Plaintiffs' ownership of the subject properties, predicated on a theory that the March 2014 tax sales were invalid for noncompliance with certain statutorily-required procedures – hardly avoids claim preclusion for lack of identity of parties, since an adjudication of the Town's record title would require its joinder as an interested and necessary party. Additionally, as the Court noted in its decision, Plaintiffs' "insufficient bid" theory is clearly time-barred. The Court's conclusion that Plaintiffs have no legally viable path to establish that they hold valid title to the properties and its denial of leave to amend the complaint as futile demonstrates that the claims asserted were not warranted by any existing law and had absolutely no chance of success.

Turning to Rule 11(b)(1)'s requirement that a party certify its filings are not being presented for any improper purpose, as the Court noted above, the instant case and *Billewicz VI* represent the fifth and sixth episodes in Plaintiffs' long-running quest to challenge the legality of the 2014 tax sale and undermine the Town's valid ownership of the four properties at issue. Plaintiffs' pleadings go well beyond merely unfounded or obviously mistaken legal contentions; the claims have been resoundingly rejected at every turn, before trial and appellate courts, state and federal. Indeed, all six of Plaintiffs' actions have been held to be entirely without merit, and most have been dismissed pursuant to Rule 12, whether because foreclosed by statutes of limitation and/or the doctrine of claim preclusion or for failing to assert a cause of action that has any colorable basis in statute or common law. Plaintiffs' pattern of repetitive litigation compels the conclusion that these cases lack any reasonable, good faith purpose, and rather were brought with the intent to abuse the judicial system and to harass, burden, waste time, and otherwise annoy the Town or any person or entity that performs services for the Town in connection with the subject properties. *See Knipe v. Skinner*, 19 F.3d 72, 77 (2d Cir. 1994) (reasserting arguments in new complaint that were already rejected by district court under the same factual circumstances "reveals an improper purpose").

Furthermore, at every turn, Plaintiffs have displayed a willingness and sufficient legal knowledge to carefully reformulate their causes of action to try to avoid preclusion or adverse judgments and continually maintain the same underlying argument that they, and not the Town, are the rightful legal owners of the properties. Such tactics have only caused delay and increased costs for the Town and the lawsuits have been burdensome and costly for the litigants (including private entities) and the court system itself. This Court can discern no purpose or objective to Plaintiffs' serial campaign of litigation other than to harass and obtain retribution against the Town and its agents for perceived grievances. We join the federal court in *Billewicz IV* in recognizing Ms. Billewicz's legal training, prior bar membership, and the repeated cases she has handled that directly involved issues of claim preclusion and statutes of limitation. *See Billewicz IV*, 2022 WL 4115966, at *14-15. This background dispels any doubt that the repeated frivolous legal contentions are the product of a person who does not understand the law. And yet, after being formally sanctioned by the federal court for her willful pattern of Rule 11 violations that ignored the concepts of claim preclusion and statutes of limitation, Ms. Billewicz was apparently

undeterred. Along with the other Plaintiffs, she immediately returned this Court, filing two new cases intended but unsuccessfully designed to avoid claim preclusion and in utter disregard for the application of the relevant limitations period. Again, these latest installments in Plaintiffs' history of presenting duplicative and frivolous legal actions are persuasive evidence of Plaintiffs' improper motives in violation of Rule 11(b)(1).

II. Rule 11(c) – Sanctions.

Rule 11(c) authorizes the imposition sanctions "of a nonmonetary nature," so long as they are "limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated." Vt. R. Civ. P. 11(c)(2). Here, the Town seeks an order

> enjoin[ing] Plaintiffs from making any further filings related to the four tax sale properties – i.e., 2-4 Willard Avenue, 16-18 River Street, 5 Union Street, and 7 Union Street – unless the filings are signed by an attorney or, if the Plaintiffs are 'indigent or without viable resources,' that the Plaintiffs obtain permission from this Court before filing any further pleadings related to the four tax sale properties.

Def.'s Motion for Rule 11 Sanctions, at 13 (quoting *Zorn v. Smith*, 2011 VT 10, ¶ 28, 189 Vt. 219). In *Zorn* and *Fox*, the Supreme Court employed the following five-factor analysis used by the U.S. Court of Appeals for the Second Circuit in its determination whether a prefiling injunction against a litigant was an appropriate sanction:

> (1) the litigant's history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, e.g., does the litigant have an objective good faith expectation of prevailing?; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties.

Fox, 2022 VT 27, ¶ 35 (quoting *Zorn*, 2011 VT 10, ¶ 18 (quoting *Safir v. U.S. Lines, Inc.*, 792 F.2d 19, 24 (2d Cir. 1986))). "These factors attempt to strike a balance between a litigant's right to court access and the need to protect the court and other parties from wasting resources." *Id*. The "ultimate question is whether a litigant who has a history of vexatious litigation is likely to continue to abuse the judicial process and harass other parties." *Id*. Applying the *Safir* factors, this Court concludes that the prefiling injunction sought by the Town is warranted and appropriately precise.

First, Plaintiffs' filings in *Billewicz II* through *VI* have been vexatious, harassing, and duplicative. Even as they reformulate their pleadings to present theories under slightly altered guises, or substitute different defendants, Plaintiffs inevitably return to and repeat the same worn-out argument that the March 2014 tax sales were invalid, and therefore that Plaintiffs, and not the Town, are the rightful owners of the subject properties. Plaintiffs' claims of trespass, conversion, and the like are raised again and again, in successive lawsuits against the Town or its

contractors, and are always predicated on the underlying assertion of Plaintiffs' continued ownership. And when confronted with multiple, adverse final judgments on the merits, Plaintiffs argue time and again that the issue of ownership and the validity of the tax sales has never been finally adjudicated by any court. That position flatly ignores the concepts of claim preclusion and statutes of limitation, which crucially serve to promote interests of finality, repose, efficiency, and the conservation of judicial resources and those of other litigants.

Second, and relatedly, Plaintiffs appear to be motivated to harass and needless burden the Town with the expense and burdens of litigation. Apart from *Billewicz I*, Plaintiffs' legal contentions have lacked even a colorable basis in existing law. Their filings are not good faith attempts to advance Plaintiffs' interests as affected property owners or taxpayers. Plaintiffs had no reasonable chance of success in *Billewicz II* through *VI*. Rather, as noted above, their filings reveal a deliberate and calculated intent to litigate for the sake of litigating further. They seek to refile, change or withdraw theories, try a different venue, escape preclusion, or pretend that they have crafted a claim that would invalidate a tax collector's deed and yet is not subject to any statute of limitation. All of which serves the goal of occupying the Town's time and resources, distracting its officials from giving attention to legitimate business.

Third, while Plaintiffs are pro se, the record shows that Ms. Billewicz has years of legal training and experience. Plaintiffs' filings reveal enough sophistication and knowledge of the law to advance theories and deploy clever litigation tactics that require considerable work to cogently address. Further, in *Billewicz IV*, the federal court gave Ms. Billewicz clear instructions, together with an admonition with regard to her meritless legal contentions. Those clear instructions and warning have gone unheeded.

Moreover, Plaintiffs have never argued in any case that they are unable to secure legal representation. In fact, they were represented by competent counsel on appeal in *Billewicz I*, and likewise retained counsel prior to the instant case, though apparently for the purpose of perfecting their tender of payment for "back taxes," but not to represent them before the Court. Yet, Plaintiffs have been through Rule 11 motion proceedings before, and their opposition to sanctions here reveals they are aware of the Rule's requirements and the risk of sanctions. Thus, little if any solicitude or leeway is owed to Plaintiffs on the basis of their decision to proceed here without counsel. *See, e.g., Zorn*, 2011 VT 10, ¶ 22 ("[A]lthough pro se litigants receive some leeway from the courts, they are still 'bound by the ordinary rules of civil procedure.'" (quoting *Vahlteich v. Knott*, 139 Vt. 588, 591, 433 A.2d 287, 288 (1981))).

Fourth, Plaintiffs have substantially burdened the courts and other litigants. As for the court system, lawsuits – regardless of their merit or chances of success – are not without cost. As the Vermont Supreme Court has emphasized, "[l]imits and burdens on judicial resources are not academic." *Zorn*, 2011 VT 10, ¶ 17. Court clerks must docket each new complaint and all subsequent filings, and serve parties with certain required notices. "Every paper filed with the Clerk of this Court, no matter how repetitious or frivolous, requires some portion of the institution's limited resources." *In re McDonald*, 489 U.S. 180, 184 (1989). And motions, especially those that are potentially dispositive or otherwise highly significant (such as a Rule 11 motion), require extensive time and careful attention of both court staff and judicial officers. "No litigant enjoys a constitutional right to delay justice to others and occupy the court's time

with unfounded filings." *Zorn*, 2011 VT 10, ¶ 17. With regard to burdens on the Town and other litigants, Plaintiffs' multiple lawsuits and the nature of their arguments have required extensive legal work in response.

Regarding the fifth, and final factor under *Safir*, it is plain that mere dismissal or other adverse judgment against Plaintiffs will not deter them from initiating further, similar proceedings. Likewise, a warning of the type given in *Billewicz IV* is unlikely to prevent future abusive filings.[8] It is reasonable to conclude, as the Town contends, that Plaintiffs will not stop unless they are ordered to stop. In *Safir*, *Zorn*, and *Fox*, a prefiling injunction, if properly tailored and precise, was considered an adequate filter or check, to prevent duplicative and vexatious filings not warranted by existing law. Equally important, although this Court is hard pressed to imagine any claim or avenue of relief available to Plaintiffs with regard to the subject properties, a properly tailored prefiling injunction is merely a preclearance requirement, not an absolute bar on what might be a meritorious claim. Accordingly, filtering Plaintiffs' future filings through a licensed attorney's professional obligations, or (upon a showing of indigence) through this Court's discretion to refuse improper or harassing filings, is a balanced and adequate sanction to protect the court system and other litigants in the future. *See Zorn*, 2011 VT 10, ¶ 25 ("Given [plaintiff's] continuing violations, it was not unreasonable for the court to interpose a lawyer's certification between [plaintiff] and the court's mail slot.").

In short, because Plaintiffs have willfully and repeatedly violated Rule 11(b), met each of the *Safir* factors to a substantial degree, and showed no indication of stopping their violative conduct absent a prefiling injunction, this Court concludes that a prefiling injunction is warranted.

Order

The Town's motion for Rule 11 sanctions is GRANTED.

It is HEREBY ORDERED that, unless represented by a duly licensed member of the Vermont bar in good standing or having received prior permission as set forth below, ***Plaintiffs shall not file, or cause to be filed on their behalf, any further actions in the Vermont Superior Court*** in connection with, or that assert claims relating to or arising out of, any or all of the following real properties (or any personal property thereon or therein) in the Town of Fair Haven:

2-4 Willard Avenue
16-18 River Street
5 Union Street
7 Union Street

[8] Tellingly, Plaintiffs have completely ignored the teachings of that decision and order. Both here and in *Billewicz VI*, Plaintiffs have burdened the very same defendant as in *Billewicz IV* (the Town and Town officials, and have even expanded the harassment to reach private entities hired by the Town to perform work regarding the Town's properties) by advancing the same meritless claims of property ownership and invalid tax sales.

This injunctive order includes, but is not limited to, filings related to the March 2014 tax sales of any of these properties, or any tax collector's deeds issued in April of 2015 pertaining to such properties. This injunctive order does ***not*** apply to filings made in appeals by Plaintiffs to the Vermont Supreme Court, or to filings in this Court that are made for the purpose of taking such appeals (including filings made for the purpose of obtaining leave from this Court to appeal, if required by rule).

Upon proof of lack of sufficient funds to afford legal representation, Plaintiffs may request permission to file a new case that relates to the four real properties listed above from the Division and Unit of the Vermont Superior Court in which the proposed action is sought to be filed. Such permission shall be requested by submitting a ***separate motion*** along with the complaint entitled "Motion for Permission to File Action Pursuant to Order Issued in 22-CV-4159," that sets forth the relevant facts, law, and grounds for the claims asserted such that the court can determine whether the complaint satisfies Rule 11. Proof of insufficient funds may be demonstrated through completion by each Plaintiff of the Vermont Superior Court's Application to Waive Filing Fee and Service Costs under V.R.C.P. 3.1,[9] or by submission of a separate affidavit sworn and signed by each Plaintiff stating the Plaintiff's full financial resources and reasons why Plaintiff is unable to afford to retain counsel. Permission to file the action must be granted by the Vermont Superior Court prior to the issuance of the Summons by the Clerk.

Any new action filed by Plaintiffs in the Vermont Superior Court that does not comply with this Order will be dismissed upon the Court's own motion.

Electronically signed on August 9, 2023 at 10:43 AM pursuant to V.R.E.F. 9(d).

Megan J. Shafritz
Superior Court Judge

[9] The form is available at: https://www.vermontjudiciary.org/self-help/application-waive-filing-fees-and-service-costs.