

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 339-12-08 Oscv

Leblanc et al vs. Estate of Robert Snelgrove

ENTRY REGARDING MOTION

Title: Motion to Amend Complaint; Motion to Consolidate ; (Motion: 42; 43)
Filer: David Leblanc; David Leblanc
Filed Date: May 29, 2023; May 29, 2023

The motions are DENIED.

The present matter is before the Court on remand from the Vermont Supreme Court. That decision, *LeBlanc v. Snelgrove*, 2015 VT 112, has a good factual recitation of the parties' history in this particular action, which is supplemented by the Federal District Court Magistrate's Report and Recommendation in *Snelgrove v. LeBlanc*, Case. No. 5:20-v-148 (D.Vt. Nov. 5, 2020) (Conroy, J.), which was accepted and adopted as an order by the Vermont District Court on December 23, 2023. This Court has also summarized many of the salient facts and history in its most recent Order granting the Estate of Robert Snelgrove summary judgment in *Snelgrove v. LeBlanc*, Dckt No. 161-7-17 Oscv (August 11, 2023) (Richardson, J.).

Presently before the Court are a motion from Plaintiffs to consolidate the dockets in the present docket (339-12-08 Oscv) and Docket No. 161-7-17 Oscv. The other motion, also from Plaintiffs, is a motion to amend the complaint.

Motion to Consolidate

Based on the Court's grant of summary judgment in Docket No. 161-7-17 Oscv, Plaintiffs' motion to consolidate is **Denied as Moot** as there is no longer a second, active case with which to consolidate.

Motion to Amend

Plaintiffs' motion to amend must be viewed in light of several factors, but it must be first viewed in terms of what Plaintiffs are seeking add to their original 2008 complaint in this matter. In their original complaint, Plaintiffs alleged four causes of action: (1) violations of 13 V.S.A. § 3701 (unlawful mischief); (2) ejectment under 12 V.S.A., Chapter 169; (3) trespass and continuing trespass; and (4) injunctive relief. In Plaintiffs' proposed amended complaint, they seek to maintain causes (1) and (2). They have modified cause (3) to drop the claim of continuing trespass. They have dropped the original cause (4) for injunctive relief and instead have added a new count (4) for conversion and unjust enrichment for personal property.

Because this case comes to the Court on remand from the Vermont Supreme Court, the Court must view any motion or action under the lens of the law-of-the-case doctrine. *Kneebinding, Inc. v. Howell*, 2020 VT 99, ¶ 41. As explained in *Kneebinding*, the law-of-the-case means that when a Vermont Supreme Court decision is remanded, its decision “is the law of that case on the points presented throughout all subsequent proceedings.” *Id.* (quoting *In re FitzGerald*, 2020 VT 14, ¶ 35). That means “no question then necessarily involved and decided will be reconsidered by the Court.” *In re FitzGerald*, 2020 VT 14, at ¶ 35 (quoting *Coty v. Ramsey Assocs., Inc.*, 154 Vt. 168, 171 (1990)).

The Vermont Supreme Court's decision in this matter stated the initial disposition of the issues as follows:

In sum, (1) the trial court's declaration of the boundary between the parties' properties is unappealed and stands; (2) the trial court's rulings on the LeBlancs' claims for trespass, ejectment, and unlawful mischief are reversed, and those matters are remanded for a new trial consistent with this opinion; (3) the judgment for Snelgrove against Herman LeBlanc is affirmed; and (4) the trial court's denial of Snelgrove's fee petition is affirmed. On remand, the trial court shall address the outstanding bill of costs and the remaining claims that were pled in the LeBlancs' complaint and tried to the court but never decided.

LeBlanc, 2015 VT 112, at ¶ 65.

From this decision, the Court finds that counts (1), (2), and (3) remain alive. *Id.* at ¶ 47.¹ No boundary issues remain.

¹ The Court also remanded the issue of spring rights, but based on the subsequent partition action, this issue is no longer active. See *LeBlanc*, 2015 VT 112, at ¶ 64 (discussing spring rights); *Snelgrove v. LeBlanc*, Docket No. 2018-104 (Nov. 21, 2018) (affirming the partition action judgment assigning the LeBlanc parcel to Snelgrove).

To this extent, the proposed amended complaint is futile as it does not materially add or subtract from the claims that were made in 2008 and which have been remanded to this Court by the Vermont Supreme Court. *Perkins v. Windsor Hosp. Corp.*, 142 Vt. 305, 313 (1982).

The only new claim that Plaintiffs seek to add is a claim for personal property that was not removed from the LeBlanc parcel. To this amendment, Defendant notes that this issue was raised in the partition action under Docket No. 231-8-15 Oscv. In that docket, Judge VanBenthuyesen issued two entry orders on April 22, 2019 and on July 16, 2019 that gave Plaintiffs an opportunity and right to removal any and all personal property from the LeBlanc property. In particular, the Court's July 16, 2019 Entry Order stated the following:

Accordingly, the final scheduled dates for removal of personal property, from the premises now owned by the Plaintiff [Snelgrove], by the designated agent(s) of the Defendant are now August 5th and 6th, 2019, all as specified in the Motion. After the period specified for removal of Defendant's personal property, e. g, after 5:01 p.m. on August 6th, 2019, **if said property is not removed, the Plaintiff will be authorized to dispose of said personal property as he sees fit and at the Defendant's expense.**

Snelgrove v. Fortin, Dckt. No. 231-8-15 Oscv (July 16, 2019) (VanBenthuyesen, J.).

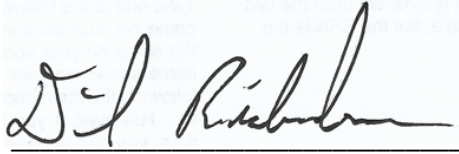
Plaintiffs did not take this opportunity to remove their personal items, and they did not challenge or take an appeal of the Court's order. Therefore, they are precluded under the doctrine of res judicata from raising this issue in later filing in a separate docket. *Lamb v. Geovjian*, 165 Vt. 375, 379–80 (1996) (“The doctrine does not require that claims must have been actually litigated in an earlier proceeding; rather, res judicata ‘bars parties from litigating claims or causes of action that were or should have been raised in previous litigation.’”) (quoting *Merrilees v. Treasurer*, 159 Vt. 623, 624 (1992) (mem.)).

Therefore, the only new claim, seeking damages based on, or the recovery of, lost personal property is futile because the claims are barred under the doctrine of res judicata, the Court's prior orders, and the failure to preserve the issue. The motion to amend is **Denied**.

ORDER

Based on the foregoing, Plaintiffs' motions to consolidate and amend the complaint are **Denied** as a matter of law.

Electronically signed on 8/11/2023 5:52 PM pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "D. Richardson", is written over a light blue rectangular background. The signature is fluid and cursive.

Daniel Richardson
Superior Court Judge