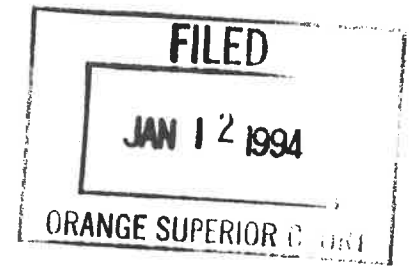


STATE OF VERMONT  
ORANGE COUNTY, SS



Edwin Mullenbrock and  
Lois Mullenbrock

Orange Superior Court

v.

John Czalpinski and  
Patricia Czalpinski

Docket No. S 52-93 OeC

Entry Order re:

Motion to Dismiss and Motion for Sanctions

This action was instituted by plaintiffs in an attempt to resolve a dispute with defendants as to the location of, relative rights to, and drainage from former Town Highway 21, now a trail, located in the Town of Newbury. Plaintiffs sought damages resulting from changes to the trail by defendants which they alleged caused water damage to their property. Defendants counterclaimed, asserting that plaintiffs had wrongfully encroached upon the former highway in a manner which interfered with defendants' access to their property. Defendants also named the Town of Newbury as a party, claiming that the Town had a duty to keep the relevant area free of obstructions.

The defendant-counterclaimants' claims against the Town were dismissed by the court, without prejudice, on May 26, 1993, according to the terms of a stipulation submitted by the parties. Plaintiffs have since moved to dismiss defendants' counterclaim, asserting that the defendants' petition to the Newbury Board of Selectmen on the very same issues raised by their counterclaim renders the Newbury Select Board the body with primary jurisdiction over the defendants' claims against the plaintiffs.

The Newbury Select Board issued a decision on the issues raised by defendant's petition on September 27, 1993. This decision required plaintiffs Mullenbrock to remove a balsam tree which the Board found interfered with a line of sight of an intersection between an existing town highway and the trail

constituting former Town Highway 21. Plaintiffs also seek Rule 11 sanctions against defendants for the defendants' filing of their counterclaim, asserting that defendants should have known that primary jurisdiction over the issues in their counterclaim lay with the selectboard, and that the filing of the counterclaim has caused plaintiffs to incur unwarranted legal expenses.

Defendants do not oppose the motion to dismiss their counterclaim. They state that they are satisfied with the decision of the Newbury Select Board. They do oppose plaintiff's request for Rule 11 sanctions.

Especially in light of defendants' assent to the decision of the Board and the dismissal of the counterclaim, this court believes that such dismissal is warranted. The court has considered plaintiffs' motion for sanctions in regard to the counterclaim, but concludes that sanctions are not warranted. There is no indication that the counterclaim was motivated by bad faith designs or other reprehensible conduct.

Rule 11 sanctions to reimburse legal expense are generally appropriate primarily where a litigant's conduct demonstrates bad faith or an unreasonably obstinate pursuit of vexatious litigation, see Cameron v. Burke, 153 Vt. 565, 576 (1990), or where a party fails to make an objectively reasonable inquiry into the facts of a situation before instituting formal legal action, see State v. Delaney, 157 Vt. 247, 257 (1991).

Sanctions are committed to the discretion of the court. Delaney, 157 Vt. at 256. The pleadings in this case show that the defendants filed their counterclaim first, then petitioned the Town of Newbury. Based on the subject matter in the complaint, it was reasonable for defendants to assert a counterclaim arising out of the same subject matter in order to preserve a compulsory counterclaim under V.R.C.P. 13(a). The fact that the claim was

subsequently disposed of at the Town level does not necessarily mean that the filing of the counterclaim was done in bad faith. There are no facts to suggest bad faith, vexatious litigation, or lack of objectively reasonable inquiry. In the exercise of this court's discretion, sanctions are not warranted in the present matter.

Order

Plaintiff's request for dismissal of defendant's counterclaim is hereby GRANTED. Plaintiff's request for Rule 11 sanctions is hereby DENIED. The only portion of this case which remains pending is plaintiff's original request for damages from defendants resulting from defendant's alleged interference with the grade of the trail, causing water damage to plaintiff's property.

Dated this 12<sup>th</sup> day of January, 1994, at Chelsea, Vermont.

Mary Miles Teachout  
Mary Miles Teachout  
Presiding Judge