

VERMONT SUPERIOR COURT  
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CIVIL DIVISION  
Case No. 23-CV-04547

**Kevin Blais v. Town of Burke**

**ORDER DENYING PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT AND A REHEARING AND GRANTING IN PART DEFENDANT'S MOTION TO DISMISS**

**Introduction**

In this property tax appeal, plaintiff Kevin Blais challenges defendant the Town of Burke's appraisal of a parcel located at 3853 U.S. Route 5 in West Burke (the property). Currently pending before the court are (i) Mr. Blais's motion for summary judgment, (ii) Mr. Blais's motion for rehearing of a status conference held on January 29, and (iii) the Town's motion to dismiss. For the reasons set forth below, Mr. Blais's motions are denied, and the Town's motion is granted in part and denied in part.

**Procedural History**

According to the Town's records, the property is owned by an entity called Going Green Realty, LLC (GGR), which has a mailing address in Harrisville, Rhode Island. The Town initially valued the property at \$170,400 for the 2023 grand list. Acting on behalf of GGR, Mr. Blais appealed the valuation to the Town's Board of Civil Authority in July 2023. The Board held a hearing on August 17, at which Mr. Blais and Linda Green appeared on behalf of GGR. The Board's Site Inspection Committee thereafter inspected the property. In a written decision dated September 26, 2023, the Board set the value of the property at \$158,972. Mr. Blais then appealed that decision to this court by filing a notice of appeal with the Town. *See* 32 V.S.A. § 4461.

Mr. Blais moved for summary judgment on or about November 27, 2023, arguing that the Town (i) failed to comply with certain provisions of Rule 74 of the Vermont Rules of Civil Procedure, and (ii) failed to provide the court with the \$295 filing fee that he had provided the Town when he submitted his notice of appeal. The Town thereafter moved to dismiss the appeal on the basis that it was not filed on behalf of GGR—the owner of the property and the real party-in-interest—in violation of Rule 17 of the Vermont Rules of Civil Procedure. A status conference in the case was held on January 29, 2024, after which Mr. Blais moved for a rehearing on the basis that the assistive technology he had requested for the hearing was not functioning properly.

## Discussion

### 1. Plaintiff's motion for summary judgment

Mr. Blais's summary judgment motion argues that the Town failed to provide him with "a list of all interested persons," as required by Rule 74(b), and "misdirected [his] payment" of the \$295 filing fee. In response, the Town argues that Mr. Blais's summary judgment motion is procedurally deficient under Rule 56 of the Vermont Rules of Civil Procedure, that the Rule 74 provision cited by Mr. Blais is inapplicable, and that the dispute over the filing fee is moot because the filing fee has been received and processed by the court.

"Summary judgment will be granted 'if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *Gauthier v. Keurig Green Mountain, Inc.*, 2015 VT 108, ¶ 14, 200 Vt. 125, 129 A.3d 108 (quoting V.R.C.P. 56(a)).

Rule 74 provides that "[u]pon the filing of the notice of appeal, the clerk of the administrative body or other appropriate officer shall provide to the appellant a list of all interested persons, with instructions to serve a copy of the notice upon each of them as provided in Rule 3(b) of the Rules of Appellate Procedure." V.R.C.P. 74(b). The only service required by Rule 3(b) of the Rules of Appellate Procedure, however, is on the court clerk, counsel of record for any represented party, and any self-represented party. V.R.A.P. 3(b)(1)(B). Moreover, Rule 3 provides that the failure to provide such service "does not affect the appeal's validity." V.R.A.P. 3(b)(1)(D). The only parties to the underlying dispute are GGR and the Town. Moreover, the Town transmitted the appeal filed by Mr. Blais (purporting to act on behalf of GGR) to the superior court clerk as required by statute. *See* 32 V.S.A. § 4461(a) ("The town clerk shall transmit a copy of the notice . . . to the Superior Court . . ."); V.R.C.P. 74(h) ("Any procedure specified by statute which is inconsistent with that provided in this rule shall control to the extent of the inconsistency . . ."). Accordingly, the provision of Rule 74(b) cited by Mr. Blais provides the court no basis to conclude "he is entitled to judgment as a matter of law" in this dispute. *See* V.R.C.P. 56(a).

The dispute about the \$295 filing fee likewise provides no basis to grant Mr. Blais summary judgment. That payment has been received and processed by court, and any prior confusion between the parties about the status of the payment is wholly irrelevant to the merits of this property tax appeal.

The motion for summary judgment is denied. Because the motion fails on its merits, the court need not address the procedural deficiencies highlighted by the Town.

### 2. Plaintiff's motion for rehearing

Following the January 29, 2024 status conference, Mr. Blais filed a motion titled "Request to rehear today's hearing due to equipment failure in the CART equipment."<sup>1</sup>

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<sup>1</sup> "CART" refers to Communication Access Realtime Translation, a computer-aided transcription service designed to assist individuals who have difficulty hearing court proceedings.

While the apparent equipment failure was regrettable, Mr. Blais actively participated in the hearing, which only lasted several minutes and did not result in any substantive decisions from the court. As the court explained in a contemporaneous entry order: “The status conference was set before Mr. Blais filed a motion for summary judgment and the town filed a motion to dismiss. So, there was little to discuss.” Given the need for the court to address the pending motions before any next steps in this case can be intelligently discussed, the request to redo the January 29, 2024 status conference is denied.

### **3. Defendant’s motion to dismiss**

The Town’s motion to dismiss argues that Mr. Blais is not the real party-in-interest in this case, given that the property is owned by GGR, and that the complaint accordingly should be dismissed or GGR joined or substituted as a party.

Rule 17 of the Vermont Rules of Civil Procedure provides in relevant part that “[e]very action shall be prosecuted in the name of the real party in interest,” but that “[n]o action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.” V.R.C.P. 17(a).

The record reflects that the property is owned by GGR. Accordingly, GGR is the taxpayer for purposes of the Town’s grand list and the real party-in-interest under Rule 17. Although GGR was represented by Mr. Blais and Linda Green before the Town’s Board of Civil Authority, it is not clear that either individual—neither of whom appear to be attorneys—may represent GGR before this court.

A Vermont court may only permit a nonattorney to represent a corporation in a case before the court if the proposed representative establishes that:

- (1) the organization cannot afford to hire counsel, nor can it secure counsel on a pro bono basis, (2) the proposed lay representative is authorized to represent the organization, (3) the proposed lay representative demonstrates adequate legal knowledge and skills to represent the organization without unduly burdening the opposing party or the court, and (4) the representative shares a common interest with the organization.

*Vermont Agency of Nat. Res. v. Upper Valley Reg’l Landfill Corp.*, 159 Vt. 454, 458, 621 A.2d 225, 228 (1992); *see also* 11A V.S.A. § 30.02(1) (“A court or other adjudicative body shall permit a corporation to appear through a nonattorney representative if: (A) the proposed nonattorney representative is authorized to represent the corporation; (B) the proposed nonattorney representative demonstrates adequate legal knowledge and skills to represent the organization without unduly burdening the opposing party or the court; and (C) the proposed nonattorney representative shares a common interest with the corporation.”).

In accordance with Rule 17 and the legal requirements described above, the court will permit GGR to substitute as plaintiff for Mr. Blais in this action if, within 30 days, GGR appears through counsel or Mr. Blais can demonstrate that he (or someone else) satisfies the necessary requirements to serve as GGR's nonattorney representative.

Accordingly, the Town's motion to dismiss is granted in part and denied in part.

**Order**

Plaintiff's motion for summary judgment is DENIED.

Plaintiff's motion for rehearing is DENIED.

Defendant's motion to dismiss is GRANTED IN PART and DENIED IN PART. The case will be dismissed unless GGR files a motion to substitute GGR for Mr. Blais as the plaintiff in this action within 30 days. That motion must be filed by counsel for GGR or include an explanation of why a nonattorney should be permitted to represent GGR in this case. The Town may file an opposition to the motion to substitute within 14 days of GGR's filing. *See* V.R.C.P. 78(b)(1).

Electronically signed on: 2/21/2024 pursuant to V.R.E.F. 9(d)



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Benjamin D. Battles  
Superior Court Judge