

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 24-CV-01960

TOWN OF ALBURGH, a Vermont
Municipality,
Plaintiff

v.

EDWARD and MAUREEN MURPHY, JOHN
and LEANN MORISSETTE, THE ESTATE
OF MARY V. MOONEY, MAURA KELLEY-
PIZZIGNO, EILIS MOONEY, and CALEB
COUTURE,
Defendants/Third-Party Plaintiffs

v.

STATE OF VERMONT,
Third-Party Defendant

DECISION ON MOTION

RULING ON STATE'S MOTION TO DISMISS

This action arises out of a dispute between Plaintiff Town of Alburgh and Defendants over a parcel of land that the Town calls Center Bay Beach and Defendants identify as Parcel ID CB038 and SPAN 009-003-10311 (the "Property"). In its Amended Complaint, the Town claims that it has legal title to the Property and a road running across it, or alternatively, that it has acquired the right to public use or ownership. In their Amended Answer to the Amended Complaint, Defendants Edward and Maureen Murphy, John and Leann Morissette, Eilis Mooney, and Caleb Couture (hereinafter "Third-Party Plaintiffs") filed counterclaims against the Town, including a request for a declaratory judgment against a new party, the State of Vermont, concerning an easement held by the State on the Property. The State now moves to dismiss or strike the third-party claim as improperly asserted. Third-Party Plaintiffs oppose the motion, arguing that the State is a necessary party to their litigation with the Town. Third-Party Plaintiffs are represented by Thomas C. Nuovo, Esq. and the State is represented by AAG Sara Moran. For the reasons discussed below, the State's motion to dismiss is GRANTED.

Factual and Procedural Background

In May 2024, the Town of Alburgh brought this action to resolve a dispute concerning ownership and use of the Property, which is a shoreline parcel on Lake Champlain. The Town contends that the Property is part of a historic Town Highway, and has asserted claims to quiet

title in its favor, or alternatively for a declaration that it has acquired public use and ownership through adverse possession or prescriptive easement. Defendants are neighboring landowners Edward and Maureen Murphy and John and Leann Morrisette, and Maura Kelley-Pizzigno, Eilis Mooney, and Caleb Couture, who are heirs at law of the Estate of Mary V. Mooney.¹ Defendants claim ownership or easement interests in the Property and have challenged the Town's claim to the Property. Specifically, the Mooney Heirs contend that they, and not the Town, own the Property.

In May 2025, Third-Party Plaintiffs filed their First Amended Answer to the Town's Amended Complaint, asserting counterclaims against the Town and also purporting to assert a claim for a declaratory judgment against the State of Vermont, which was not previously a party to the action, as "Count IV" of the filing. The third-party claim asserts that the State is the current fee holder of a 130-acre parcel of land in Alburgh on the east side of Mud Creek. Neither the Town nor Third-Party Plaintiffs assert any rights with respect to these 130 acres. The State obtained the parcel, which is part of the State's Mud Creek Wildlife Management Area, in 1997 by way of warranty deed. The warranty deed includes an appurtenant easement (the "Easement") dating back to 1961 that crosses over the Property. Third-Party Plaintiffs assert that the Easement has not been used since it was created because it requires crossing Mud Creek and there is no bridge or other access across Mud Creek. Accordingly, they seek a declaratory judgment that the State has abandoned the Easement and may not convey or dedicate it to the Town.

On May 15, 2026 (nearly a year later), the State moved to dismiss or strike the third-party claim as procedurally improper.² Third-Party Plaintiffs cite no rule of civil procedure or other authority to support adding the State as a defendant in this action. Accordingly, the State first argued that, because Third-Party Plaintiffs do not seek indemnity, contribution, or any other form of secondary liability from the State, the State could not be added to this action as a third-party defendant under Rule 14 of the Vermont Rules of Civil Procedure. *See* V.R.C.P. 14(a) ("At any time after commencement of an action in a superior court, a defendant as a third-party plaintiff may cause to be served a summons and complaint upon a person not a party to the action who is or may be liable to such third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff."). In their opposition to the motion to dismiss, Third-Party Plaintiffs clarified that they were seeking to add the State as a necessary party pursuant to Rule 19. They assert that "[t]he determination of the extent and nature of the easement that traverses the property owned by the Mooney Heirs could impact the rights of the other Defendants as well as the State of Vermont." *Opp.* at 1. According to Third-Party Plaintiffs, the State "is a necessary party to this litigation because the dispute" includes the Town's "assertion that it can take control of the State of Vermont's easement and make it a public highway." *Id.* at 2.

¹ Defendant Maura Kelley-Pizzigno does not appear to have joined in the claims of the Third-Party Plaintiffs. Accordingly, for purposes of this Decision, only Eilis Mooney and Caleb Couture are referred to as the "Mooney Heirs."

² On June 26, 2025, the State filed an Answer to the third-party claim. However, Third-Party Plaintiffs have not argued that the State waived its arguments for dismissal, and therefore the Court does not reach this issue. *See also* V.R.C.P. 21 ("Parties may be dropped or added by order of the court on motion of any party . . . at any stage of the action . . .").

In its Reply, the State counters that it can only be added as a necessary party by court order upon the filing of a motion under either Rule 12(b)(7) or Rule 21, which Third-Party Plaintiffs did not file. Moreover, notwithstanding Third-Party Plaintiffs' failure to follow the proper procedure, the State argues that it is not a necessary party because the Easement is "a separate property interest affecting only a portion" of the Property and "the Town's claims may be adjudicated . . . without determining whether the State's alleged easement is valid, was abandoned, or may be conveyed." Reply at 4. Notably, the State represents the following:

The State takes no position regarding the merits of the Town's claims against Defendants, does not contend that adjudication of those claims requires resolution of the State's alleged easement rights, and is prepared to abide by the Court's determination of the claims asserted between the Town and Defendants. The State does not claim that its interests will be impaired if Count IV is dismissed and will not contend that any judgment resolving the Town's claims is invalid, unenforceable, or otherwise defective because the State was not joined as a party to [this action].

Id. at 5.

Discussion

As an initial matter, the Court addresses the procedural posture of the third-party claim. According to Third-Party Plaintiffs, their claim against the State was not brought under Rule 14, but rather under Rule 19 relating to joinder of necessary parties. Opp. at 1. However, as the Reporter's Notes make clear, Rule 19 requires that a motion first be made by the affected party. V.R.C.P. 19 – Reporter's Notes ("If such a party has not been joined and can be served with process, the court, on defendant's motion under Rule 12(b)(7) or Rule 21, or on its own motion, must order him joined."). Upon the filing of such a motion, the court then determines whether the party must be joined. Under Rule 19, persons subject to service shall be joined:

if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the person's claimed interest.

V.R.C.P. 19(a). If the court determines that the person in question is necessary to the action under Rule 19, "the court shall order that the person be made a party." *Id.* Third-Party Plaintiffs did not file a Rule 19 motion seeking an order from the Court to join the State as a necessary party. Alternatively, Third-Party Plaintiffs could have moved to dismiss the action under Rule 12(b)(7), or for the State to be added as a party pursuant to Rule 21, which provides: "Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." V.R.C.P. 21. Thus, because Third-Party

Plaintiffs failed to follow the rules of civil procedure in attempting to add the State as a party to this action, Count IV is properly dismissed.

However, in the interests of judicial efficiency and economy, and given that the parties have briefed the issue, the Court considers whether the State is a necessary party to this litigation. Rule 19 “is designed to protect those who already are parties by requiring the presence of all persons who have an interest in the litigation so that any relief that may be awarded will effectively and completely adjudicate the dispute.” *Daiello v. Town of Vernon*, 2018 VT 17, ¶ 28, 207 Vt. 139 (quoting 7 Charles A. Wright, et al., *Fed. Prac. & Proc. Civil* § 1604 (3d ed.)). This analysis involves considering “whether joinder will avoid multiple actions and potentially inconsistent verdicts,” and also whether “a person’s absence may prejudice either that person or those already before the court.” *Id.* (quotation omitted). “Joinder is required if the action might detrimentally affect a party’s or the absentee’s ability to protect his property or to prosecute or defend any subsequent litigation in which the absentee might become involved.” *Id.* (quotation omitted). The party moving for joinder of a necessary party under Rule 19 has the burden of demonstrating “why the absent party is needed to prevent inconsistent or inadequate judgments.” *Grassy Brook Vill., Inc. v. Richard D. Blazej, Inc.*, 140 Vt. 477, 482, 439 A.2d 273, 276 (1981) (noting that “the court must be presented with clear and concise grounds for determining the status of the absent party”). “If the moving party is unable to satisfy this initial burden, the motion for joinder should be denied.” *Id.*

Here, Third-Party Plaintiffs have presented no “cogent argument” or “clear and concise grounds” to establish that the State is a necessary party to this action. *Id.* At its core, this action involves a dispute between the Town and Defendants over title to a parcel of property. The State’s Easement that is the focus of the third-party claim passes over the Property to which both the Town and Defendants assert title. However, the ownership of the Property does not depend on the Easement, which is a separate property interest completely unrelated to the question of who ultimately owns the Property. And contrary to Third-Party Plaintiffs’ suggestion, the Town has not put the validity or conveyance of the Easement at issue through any claim in the Amended Complaint.³ Thus, the parties can obtain complete relief without the State’s participation in this action. Moreover, the resolution of the issues involves separate documents and events. Third-Party Plaintiffs’ claim against the State would be the same regardless of whether the Town prevails against Defendants or whether Defendants prevail on some or all of their counterclaims against the Town. In other words, the Town’s and Defendants’ claims against each other can be adjudicated without determining, or even considering, whether the State’s Easement is valid, was abandoned, or may be conveyed.

Further, the State has been clear that it “takes no position regarding the merits of the Town’s claims against Defendants, does not contend that adjudication of those claims requires resolution of the State’s alleged easement rights, and is prepared to abide by the Court’s determination of the claims asserted between the Town and Defendants.” Reply at 5. Nor does the State “claim that its interests will be impaired if Count IV is dismissed and [it] will not

³ Likewise, Third-Party Plaintiffs’ speculative concern that the Town may at some future date attempt to take control over the State’s Easement has no bearing on the adjudication of the legal claims asserted by the Town and Defendants in this action.

contend that any judgment resolving the Town's claims is invalid, unenforceable, or otherwise defective because the State was not joined as a party" to the litigation. *Id.* Thus, the State's interests will not be impaired by its nonparticipation in this action, and Third-Party Plaintiffs have failed to demonstrate any substantial risk of inconsistent obligations.

Additionally, any argument advanced by Third-Party Plaintiffs that joinder should be granted because it would be more efficient to resolve all competing claims to any part of the Property at one time, even if the additional party is not needed for just adjudication of the existing claim(s), has previously been rejected by the Supreme Court. *See Nowakowski v. City of Rutland*, Case No. 2019-174, 2019 WL 6049892, at *2 (Vt. Nov. 2019) (unpub. mem.) (affirming denial of Rule 19 motion to intervene where "[i]ntervenor's issues were unrelated" to central claim to invalidate election results, noting that intervenor "retained whatever ability he had to separately sue the City to address his concerns and adjudicate his right to his requested relief, which was beyond the scope of what plaintiff sought").⁴ As the Court explained, "[j]oinder under Rule 19 is not designed as an opportunity for every person having a claim against the named defendant to join the existing suit. It is for 'persons needed for just adjudication.'" *Id.* (quoting V.R.C.P. 19). As discussed above, the State is not needed for "just adjudication" of the claims and counterclaims between the Town and Defendants.

Third-Party Plaintiffs' reliance on *Daiello v. Town of Vernon*, 2018 VT 17, is misplaced. *See* Opp. at 3. In *Daiello*, 2018 VT 17, ¶¶ 3-4, two neighbors with abutting properties disputed whether the plaintiff had the right to use a town road to access his property where the road passed through the defendant's property. The defendant obtained a ruling that the town road had not been officially laid out as a public road and, therefore, the plaintiff had no right to access the road that would have survived the town's later discontinuance of the road. *Id.* ¶ 6. In a later action by the plaintiff against the town, the town sought to prove that it had properly laid out the road that was at issue in the prior action between the neighbors. The town argued that it was not bound by the earlier decision that the road had not been properly laid out because it was not a party to the earlier action. *Id.* ¶ 8. The Supreme Court agreed. *Id.* ¶ 21.

The *Daiello* opinion primarily focused on the doctrine of issue preclusion, but the Court also addressed Rule 19, stating:

[B]y not joining the Town in their earlier action seeking to prevent plaintiff from accessing his property through their property based on a claim that the Town had failed to properly lay out the public road crossing their property, the [defendants] ran the risk that issues resolved in that action would be subject to relitigation in any later action involving the Town and themselves as indispensable parties.

Id. ¶ 29; *cf. Lamare v. N. Country Animal League*, 170 Vt. 115, 118-20, 743 A.2d 598, 600-01 (1999) (stating court should have ordered town be joined as necessary party where plaintiff

⁴ Trial courts are free to "consider three-justice decisions from [the Vermont Supreme] Court for their persuasive value, even though such decisions are not controlling precedent." *Washburn v. Fowlkes*, Case No. 2015-089, 2015 WL 4771613, at *3 (Vt. Aug. 2015) (unpub. mem.) (citing V.R.A.P. 33.1(d)).

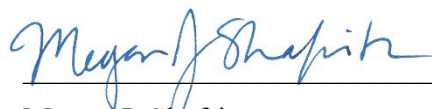
challenged constitutionality of dog control ordinance); *Griffith v. Nielsen*, 141 Vt. 423, 427, 449 A.2d 965, 967 (1982) (concluding trial court erred in determining extent of town road in resolving right-of-way dispute between neighbors where town was not joined as necessary party). The Court concluded that the defendants “had the greater obligation to join the Town in the earlier action, insofar as they brought the action to exclude plaintiff from ingress and egress across their property and they were the party claiming that the Town had not properly laid out the road that was the subject of their lawsuit.” *Daiello*, 2018 VT 17, ¶ 29.

Thus, unlike *Daiello*, where the parties ran the risk of inconsistent verdicts by not joining the town as a party, the parties here run no such risk. The Town does not rely on the status of the State’s Easement for its claim that it owns or has acquired the rights to the Property. And the determination of whether the Town or the Mooney Heirs are the rightful owner of the Property is entirely independent of the existence of the State’s Easement. As such, the Town and Defendants will be able to obtain an effective and complete adjudication of their claims without the State’s joinder, and the State’s absence will not prejudice its interests or those of the Town or Defendants. *Cf. Daiello*, 2018 VT 17, ¶ 28. Accordingly, the State is not a necessary party to this litigation, and the third-party claim must be dismissed. *See* V.R.C.P. 21.⁵

Order

For the foregoing reasons, the State of Vermont’s Motion to Dismiss Third-Party Complaint (Mot. # 19) is GRANTED. The State’s Motion to Extend Time to Respond to Discovery (Mot. # 20) is DISMISSED as moot.

Electronically signed on August 7, 2026 at 9:26 AM pursuant to V.R.E.F. 9(d).



Megan J. Shafritz
Superior Court Judge

⁵ Third-Party Plaintiffs’ confusing argument that their claim cannot be dismissed because it seeks a declaratory judgment is unavailing. *See* Opp. at 3-6. Under Rule 19, the issue is not the type of claim asserted by the party, but whether the party sought to be joined is a necessary party to the action, such that adequate and effective relief cannot be rendered without it.