

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 26-CV-03449

Trichome VT LLC,
Plaintiff

v.

City of Essex Junction and Essex Junction
Local Cannabis Control Commission,
Defendants

DECISION ON MOTION

RULING ON MOTION TO DISMISS

This case concerns a cannabis cultivation business operating in a residential area of Essex Junction. Jason Struthers owns the property where Trichome VT LLC (“Trichome”) is located. In a letter dated November 24, 2025, the Vermont Cannabis Control Board informed Struthers that he was required to “halt all licensed cultivation activities” due to the revocation by the Essex Junction Local Cannabis Control Commission (“LCCC”) of the license that had been granted to Trichome. On December 5, 2025, Trichome appealed that decision to this Court pursuant to Rule 74 of the Vermont Rules of Civil Procedure. On March 31, 2026, the Court granted the City of Essex Junction’s motion to dismiss the appeal, concluding that it lacked subject matter jurisdiction under Rule 74. *See Trichome VT LLC v. Essex Junction Local Cannabis Control Comm’n*, Docket No. 25-CV-05477, 2026 WL 1050356, at *1 (Vt. Super. Ct. Mar. 31, 2026). On June 12, 2026, Trichome filed the instant action, again seeking review of the LCCC’s November 2025 decision revoking its municipal cannabis license, relying on Rule 75 as the basis for the appeal. Pursuant to Rule 12(b)(6), the City moves to dismiss this appeal, asserting it is time-barred. The City is represented by Claudine C. Safar, Esq., and Trichome appears through Mr. Struthers, who is not a licensed attorney, but was provisionally granted permission to represent the business in this action. For the reasons discussed below, the City’s motion to dismiss is GRANTED.

Discussion

In deciding a motion to dismiss pursuant to Rule 12(b)(6), the court considers whether “it appears beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief.” *Davis v. Am. Legion, Dep’t of Vt.*, 2014 VT 134, ¶ 12, 198 Vt. 204 (quoting *Alger v. Dep’t of Labor & Indus.*, 2006 VT 115, ¶ 12, 181 Vt. 309). “The purpose of a motion to dismiss is to test the law of the claim, not the facts which support it.” *Powers v. Office of Child Support*, 173 Vt. 390, 395, 795 A.2d 1259, 1263 (2002). The time limitations for filing a Rule 75 action are similar to a statute of limitations. *Herrera v. Union No. 39 Sch. Dist.*, 2006 VT 83, ¶ 19, 181

Vt. 198 (noting that “Rule 75’s time limitations are not jurisdictional,” but rather, like the statute of limitations, are “avoidance defenses [that] must be pled as affirmative defenses, or else they are waived” (quotation and citation omitted)). “Since averments of time and place are material for testing the sufficiency of a complaint, defenses based on a failure to comply with the applicable statute of limitations are properly raised in a motion to dismiss.” *Bethel v. Mount Anthony Union High Sch. Dist.*, 173 Vt. 633, 634, 795 A.2d 1215, 1217 (2002) (mem.) (citing *Fortier v. Byrnes*, 165 Vt. 189, 193, 678 A.2d 890, 892 (1996)).

Municipal decisions that are not subject to review under Rule 74 may be reviewed pursuant to Rule 75. However, a complaint seeking review of a municipal decision “must be filed within 30 days after notice of any action . . . of which review is sought unless the court enlarges the time in accordance with Rule 6(b).” V.R.C.P. 75(c). Here, Trichome’s complaint alleges that it was notified of LCCC’s decision to cease its cannabis cultivation activities on November 24, 2025. However, Trichome failed to file its Rule 75 appeal within 30 days of the decision, nor has it requested an extension of time to file under Rule 6(b). Accordingly, Trichome’s appeal is time-barred.

Trichome opposes the motion to dismiss, arguing that the 30-day clock should not start running until May 18, 2026, when the Vermont Cannabis Control Board (“CCB”) refused its petition for review that was filed pursuant to 7 V.S.A. § 847. According to Trichome, its Rule 75 appeal was not ripe until after it sought review from, and failed to obtain relief by, the Environmental Division, the Civil Division (pursuant to Rule 74), and the Vermont Cannabis Control Board (“CCB”). Trichome contends that “[o]nly when the CCB refused Petitioner’s § 847 petition on May 18, 2026, did it become clear, for the first time, that no other remedy remained.” Opp. at 1. This argument is unavailing.

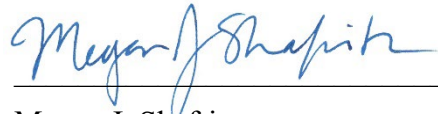
Trichome cites no authority for the proposition that the availability of Rule 75 relief requires a petitioner to first exhaust other procedural avenues or depends on the decisions of other courts or agencies, nor has the Court found any. On the contrary, the question of whether review of a governmental action is available under Rule 75 is governed by statute and the relief generally available at common law. *See, e.g., Garbitelli v. Town of Brookfield*, 2011 VT 122, ¶ 5, 191 Vt. 76 (“Rule 74 applies when a statute specifically provides for review. Where legislation is silent as to review, an appeal may be taken under Rule 75.” (citation omitted)); *Rheume v. Pallito*, 2011 VT 72, ¶ 5, 190 Vt. 245 (because no statute provided for review of decision at issue, question was whether it fell “within the class of decisions appealable at common law under one of the extraordinary writs,” i.e., “proceedings in the nature of certiorari, mandamus, or prohibition” (quoting V.R.C.P. 75 – Reporter’s Notes)). Thus, Trichome’s lack of success in other proceedings before the Environmental Division and the CCB, or before this Court, has no bearing on the availability of review under Rule 75 or the running of the 30-day window for appeal. Trichome’s petition pursuant to Rule 75 was ripe immediately following notice of the LCCC’s decision on November 24, 2025. It is now too late to seek such review.

Accordingly, because Trichome failed to file its Rule 75 complaint within the requisite 30-day period set forth in the rule, its petition must be dismissed.

Order

For the foregoing reasons, the City of Essex Junction's Motion to Dismiss (Mot. #4) is GRANTED.

Electronically signed on September 3, 2026 at 1:07 PM pursuant to V.R.E.F. 9(d).



Megan J. Shafritz
Superior Court Judge