

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 24-CV-05314

John Hughes Sr. vs Robert Marsh, et al

DECISION ON MOTION

Defendants Robert Marsh and Kari Marsh filed a motion requesting a court trial on their remaining counterclaim in dispute with Plaintiff, John Hughes, Sr. The Court issued an entry order yesterday requesting that counsel for Mr. Hughes, Sr. file their response by noon today as the Court would otherwise need to mail parking passes to the jury pool that was summoned to appear for jury draw on October 8th. The Court did not receive a response from Mr. Hughes, Sr. Nevertheless, the Court has engaged in the legal analysis of the issue raised here as if the motion was opposed by Mr. Hughes, Sr.

To ensure the right to a jury trial, Vermont Rule of Civil Procedure 38 provides:

Any party may demand a trial by jury of any issue triable of right by a jury by (1) serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 14 days after the service of the last pleading directed to such issue, and (2) filing the demand as required by Rule 5(d). Such demand may be indorsed upon a pleading of the party.
Vt. R. Civ. P. 38(b).

A counterclaim should also include a demand for a jury trial no later than 14 days after the service of pleading related to the issue raised on the counterclaim. Likewise, if a party fails to “serve and file a demand as required by this rule,” the failure constitutes as a waiver by the party of trial by jury. Vt. R. Civ. P. 38(d).

The Vermont Supreme Court has consistently enforced the waiver provision throughout its jurisprudence. See *My Sister’s Place v. City of Burlington*, 139 Vt. 602, 433 A.2d 275 (holding that the trial court did not err by refusing to grant request for trial by jury after amended complaint was filed); *Bloomer v. Gibson*, 180 Vt. 397, 912 A.2d 424 (holding that amended complaint did not revive right to a jury trial); *Wells Fargo Bank, N.A. v. Ndibalema*, 2021 WL 3020740 (while party demanded a jury trial but participated fully at trial and did not object to a lack of jury).

Vermont case law consistently outlines that an amended complaint with a jury demand after a defendant's answer that does not include a demand or original complaint lacking a jury demand is not sufficient to uphold the right to a jury trial. *My Sister's Place v. City of Burlington*, 139 Vt. 602, 433 A.2d 275; *Bloomer v. Gibson*, 180 Vt. 397, 912 A.2d 424.

Here, neither party made a written demand for a jury trial on the Defendants' counterclaim for breach of contract involving a prior residential lease agreement between the parties. Although the Plaintiff, Mr. Hughes, Sr., and Defendants, Robert Marsh and Kari Marsh, both demanded in writing a jury trial on the negligence claim, their previous demand on a dismissed claim does not survive and extend to the unresolved counterclaim.

The Vermont Supreme Court did address the right to a jury trial on a counterclaim in the foreclosure proceeding realm. *Merchants Bank v. Thibodeau*, 143 Vt. 132, 135 (1983). There, the Supreme Court held that the trial court erred in granting a jury trial on a counterclaim. *Id.* "...[c]ounterclaims which, independently brought, would be triable by jury as a matter of right shall be tried by a jury, **if requested**. This holding is consistent with the general rule that the right to a jury trial is dependent upon the relief requested, and when the request is for equitable relief no such right exists." *Id.* Both Plaintiff and Defendants have a right to a jury trial on the counterclaim. However, neither party requested a jury trial in writing consistent with V.R.C.P. 38(b) for the counterclaim and as such, their right to a jury trial is waived.

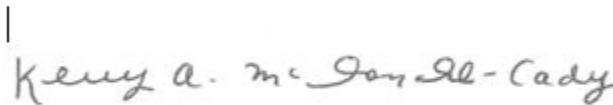
The motion is Granted.

The Court will proceed with a court trial commencing on October 13th at 9 a.m. The Court will use the remaining three days for the court trial on October 14th, the morning of October 15th and October 16th as necessary to complete the evidence, and if appropriate, issue its findings and decision on the record.

The jury draw for October 8th is canceled.

Dated September 23, 2026.

Electronically signed pursuant to V.R.E.F. 9(d).

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Kerry A. McDonald-Cady, Superior Court Judge