Vermont Superior Court
Filed 08/24/26
Windham Unit

STATE OF VERMONT

SUPERIOR COURT
WINDHAM UNIT

CIVIL DIVISION
Docket No. 26-CV-520

NORTH BRANCH FIRE DISTRICT #1,
Plaintiff

vs.

THOMAS FERRAZZA,
Defendant and Third Party Plaintiff

vs.

STEVEN MONTELLO, JONATHAN L. PRIAL,
and KENNETH WESTBY,
Third Party Defendants

Decision: Defendant's Motion to Strike

Plaintiff North Branch Fire District #1 (hereinafter "North Branch") asserts two causes of action, malicious prosecution and abuse of process, in this suit against Defendant Thomas Ferrazza. North Branch seeks compensation for expenses incurred in two prior lawsuits Mr. Ferrazza brought against it. Mr. Ferrazza, in defending this suit, has filed a special Motion to Strike the complaint as a violation of 12 V.S.A. § 1041, Vermont's anti-SLAPP (Strategic Lawsuit Against Public Participation) statute. Oral argument was heard on the Motion to Strike on July 20, 2026. Plaintiff was represented by Attorney James A. Valente and Defendant was represented by Attorney Lance C. Shader, who confirmed at the hearing that the Motion to Strike applies to both causes of action asserted. The court now concludes as follows.

The following facts are a summary of allegations in North Branch's Complaint in this case

North Branch Fire District #1 is a municipal entity in West Dover, Vermont. It is responsible for operating and maintaining a wastewater treatment system serving properties in West Dover. It is managed by a Prudential Committee elected by property owners within its district.

Mr. Ferrazza, a resident of West Dover, has had a home in the District since 2001and is a member of the District and pays for its municipal services. He had contentious interactions with the Committee in 2001-2005 concerning a property he developed that needed to be connected to the wastewater system. He ran twice for a seat on the Committee and lost, but was elected in 2012 and was on the Committee for 9 years, including being its Chair from 2019 to 2021. In 2021 he lost his bid for reelection. Since then he has made claims against the Committee. In 2023 he ran for a seat on the Committee and lost. He sued to challenge the election in *Ferrazza v. North Branch Fire District #1*, 23-CV-2438. (*Ferrazza I).* The suit was dismissed by the trial court.

Mr. Ferrazza filed a second suit in 2024 alleging illegal and improper acts on the part of the Committee and seeking declaratory judgment and other remedies, including the appointment of a receiver. *Ferrazza v. North Branch Fire District #1*, 24-CV-2110. (*Ferrazza II).* The trial court dismissed the case based on a ruling that he lacked standing to bring such an action because he had not shown harm to himself personally. A three justice panel of the Vermont Supreme Court affirmed the judgment. *North Branch Fire District #,1,* 25-AP-008 (Entry Order), July 11, 2025.

In this lawsuit, North Branch seeks recovery for malicious prosecution and abuse of process. It claims that as a result of these two cases, it incurred monetary damages, including but not limited to attorney's fees and litigation expenses.

The Anti-SLAPP Motion to Strike

Vermont's anti-SLAPP statute is intended to provide protection against "lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and freedom to petition government for the redress of grievances." 2005, No. 134 (Adj. Sess.), § 1(1).

The statute broadly protects:

> (1) any written or oral statement made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law;
>
> (2) any written or oral statement made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law;
>
> (3) any written or oral statement concerning an issue of public interest made in a public forum or a place open to the public; or
>
> (4) any other statement or conduct concerning a public issue or an issue of public interest which furthers the exercise of the constitutional right of freedom of speech or the constitutional right to petition the government for redress of grievances.
>
> 12 V.S.A. § 1041(i).

The statute authorizes a defendant who has been sued due to, or in anticipation of, the exercise of those rights (freedom of speech and freedom to petition government for the redress of grievances) "in connection with a public issue," to file a special motion to strike the lawsuit at the outset of the case. 12 V.S.A. § 1041(a).

If a motion to strike is filed and the defendant shows that one of the forms of protected statement is at issue, the burden shifts to the plaintiff to prove that:

> (A) the defendant's exercise of his or her right to freedom of speech and to petition was devoid of any reasonable factual support and any arguable basis in law; and

(B) the defendant's acts caused actual injury to the plaintiff.

12 V.S.A. § 1041(e)(1). If the plaintiff cannot make such a showing, the court grants the motion and the defendant is entitled to attorney fees and costs. *Id.* § 1041(f)(1). If the motion was frivolous, the plaintiff is entitled to fees and costs. *Id.*

Whether the statute applies to protect the subject matter of Mr. Ferrazza's lawsuits

The initial issue for analysis is whether the allegations in Mr. Ferrazza's lawsuits qualify as "concerning an issue of public interest" (§ 1041(i)(3)).[1] See *Felis v. Downs Rachlin Martin PLLC*, 2015 VT 129, ¶ 35, 200 Vt. 465 (holding that "the statute requires all actions to be 'in connection with a public issue'").

Following are the descriptions by North Branch of Mr. Ferrazza's allegations against it in each lawsuit.

Ferrazza I, 23-CV-2438

North Branch describes this as a lawsuit filed by Mr. Ferrazza to challenge the results of the Prudential Committee election in June 2023, which Mr. Ferrazza lost. (Complaint, ¶ 40.) North Branch alleges that Mr. Ferrazza claimed that the election results should be thrown out because "the 'staggering' of terms for members of the Prudential Committee, which was modified due to COVID-19 related vacancies when Defendant had been Chair, was illegal." *Id.* at ¶ 42. North Branch alleges that there were no legal grounds for an overturn of the election and that Mr. Ferrazza knew this, and that his only purpose was to damage North Branch. The suit was dismissed. North Branch claims that the suit was dismissed for lack of jurisdiction and failure to state a claim for which relief could be granted.[2]

Ferrazza II, 24-CV-220

North Branch describes this second suit as one in which Mr. Ferrazza alleges that it had acted illegally and improperly with a purpose to damage Plaintiff. (Complaint, ¶ 47-48.) Mr. Ferrazza claimed in the suit that the North Branch Prudential Committee

- Had improperly moved funds loaned by the State into its general account in violation of state statute
- Had improperly billed property owners other than himself

[1] The allegations in the two lawsuits were made in pleadings filed in court and therefore qualify as the type of statement subject to protection as they were made in a judicial proceeding (12 V.S.A. § 1041(i)(1). As to the element of "whether the defendant's acts caused actual injury to the plaintiff" (12 V.S.A. § 1041(e)(1)), Mr. Ferrazza acknowledges that his lawsuits caused North Branch to spend money on attorney fees and litigation expenses and does not contest this element.

[2] Mr. Ferrazza claimed in his Complaint in *Ferrazza II* that it was dismissed because it became moot because of compliance by North Branch. (Complaint, Exhibit A, page 4, footnote 1.) This court has reviewed the ruling dismissing the case. It was dismissed because administrative remedies had not been exhausted and therefore the court lacked jurisdiction. It was dismissed without prejudice. *Ferrazza I,* 24-CV-2438, Decision on Motion, December 2, 2024.

- Had improperly staggered the terms of its members
- Had held abatement board meetings without its Clerk "in violation of the law"
- Had failed to provide sufficient detail in abatement decisions
- Had improperly appointed an interim treasurer in violation of state law
- Had failed to administer the oath of office to the Clerk in violation of state law
- Had made illegal use of executive session in 2011 and 2023, and
- Had not elected a moderator for its annual meeting in violation of the law

North Branch also alleges that Mr. Ferrazza knew that he had no standing to seek relief.

North Branch filed a Motion to Dismiss which was granted by the trial court for lack of standing for the reason that Mr. Ferrazza had not alleged individual personal injury. The decision was affirmed by a three-justice panel of the Vermont Supreme Court in an Entry Order.

The question for analysis is whether the allegations in each case concern a matter of public interest.

Fire Districts are established under 20 V.S.A. Chapter 171 to address fire, water, and sewer issues within the district. Powers and obligations are set forth in subchapters 1 and 3. In addition, "North Branch Fire District No. 1 shall have all the powers granted to fire districts and municipal corporations by the Constitution and laws of this State and this chapter, together with all the implied powers necessary to carry into execution all the powers therein granted." 24 App. V.S.A. c. 509 § 2.

Prudential Committees are the governing bodies of fire districts and members of the Committee are elected by the voters. They are the equivalent of a selectboard or city council for the governance of their district. 24 V.S.A. ¶ 2485. Thus Committee members have obligations to the constituents in their district under Chapter I, Article 6 of the Vermont Constitution: "That all power being originally inherent in and consequently derived from the people, therefore all officers of government, whether legislative or executive, are their trustees and servants; and at all times, in a legal way, accountable to them."

Total strangers to the district would not be able to file suit to hold members of the Prudential Committee accountable for these responsibilities, but members of the District, who pay fees for the services provided and are the ones authorized to vote on District matters, have an interest in the proper functioning of the Prudential Committee in its roles of conducting elections, conducting public meetings, and handling public funds, among other responsibilities.

In *Soares v. Barnet Fire District #2,* 217 VT 49, ¶ 15 (2022), the Vermont Supreme Court affirmed a trial court ruling granting declaratory judgment relief to Mr. Soares--like Mr. Ferrazza, a voter in the prudential district--who successfully sued the Prudential Committee for failure to observe the requirements of the Open Meeting Law. While the Court also affirmed the trial court ruling that the Prudential Committee action taken in violation of the Open Meeting Law, a bond vote, was subsequently validated by properly following separate legal requirements for validation of an action initially undertaken improperly, it did not reverse the declaratory judgment ruling in favor of Mr. Soares on the Open Meeting violation.

Mr. Ferrazza's challenge in *Ferrazza I* was a claim that the election of Prudential Committee members was invalid. This is the type of claim that affects the public interest significantly, and members of a public body affected by such action are entitled to bring actions under Rule 75. *Petition of Fairchild,* 159 Vt. (1992)(Mandamus relief under Rule 75 granted in citizen suit to require Town to comply with non-discretionary duty to enforce zoning regulations.)

The allegations in *Ferrazza II* include mishandling of district funds in violation of 24 V.S.A. ¶ 2804(a), improper billing in violation of 32 V.S.A. ¶ 5136, adjustments to statutorily required terms of office in violation of 20 V.S.A. ¶ 2485, failure to document reasons for abatement decisions in violation of 24 V.S.A. ¶ 1535(c), improper appointment of a treasurer in violation of 17 V.S.A. ¶ 2647, illegal use of executive sessions in violation of 1 V.S.A. ¶ 313(a), and failure to appoint a moderator in violation of 17 V.S.A. ¶ 2646(1). These are all matters of public interest as they affect the proper functioning of the Prudential Committee as a public governmental body with statutorily defined responsibility for conducting itself in conformance with legal requirements.

For purposes of the Motion to Strike, it is not a matter of whether Mr. Ferrazza prevailed on his claims in those suits, but whether the issues he raised were matters of public interest deserving of the protection provided by the anti-SLAPP law.

The court concludes that the claims made by Mr. Ferrazza in both suits were matters of public interest.

Whether the allegations in the lawsuits were "devoid of any reasonable factual support and any arguable basis in law."

Once a defendant has shown that the protections of the statute apply because the statements at issue affect matters of public interest, the burden shifts to the plaintiff to show that the statements (in this case, the complaints in the lawsuits) are "devoid of any reasonable factual support and any arguable basis in law." 12 V.S.A. § 1041(e)(1).[3] Plaintiff had the opportunity to submit affidavits to meet its burden on factual issues pursuant to 12 V.S.A. § 1041(e)(2), but has not done so. The analysis is thus made on the basis of the pleadings, motion, and oral argument.

North Branch alleges that *Ferrazza I* was dismissed for lack of jurisdiction. As to proof of facts, North Branch has not argued, much less shown, that Mr. Ferrazza's factual allegations were false. The dismissal was on legal, not factual grounds, and was dismissed without prejudice. The fact that a party loses a case on a legal procedural ruling does not automatically mean that there was no arguable basis in law. Moreover, many legal rulings have to be made when there are precedents and/or policy arguments on both sides. It is up to North Branch to make the showing that there was *no* arguable basis in *both* fact and law for the claim in *Ferrazza I*, and it has not done so.

[3] As noted in Footnote 1, Mr. Ferrazza does not dispute that North Branch incurred expenses in opposing his lawsuits and thus is not claiming that Plaintiff cannot prove actual injury, the second element on which a plaintiff bears a burden of proof once the applicability of the anti-SLAPP law is shown.

With respect to *Ferrazza II,* again no factual findings were ever made in the case and North Branch has made no showing that there was no basis for factual allegations. North Branch alleges in its Complaint in this case that "Any objectively reasonable person would have known that Defendant's claims lacked factual and legal support and were made by Defendant without standing." Complaint, ¶ 49.[4] The ruling in *Soares* shows that that is not the case, as Mr. Soares' standing to challenge the Prudential Committee's failure to observe Open Meeting requirements in connection with a bond vote was recognized and resulted in a declaratory judgment favorable to Mr. Soares. One of the claims made by Mr. Ferrazza in *Ferrazza II* as a member of the prudential district was illegal use of executive session, which is similar to the claim in *Soares.*

As to whether North Branch has shown no arguable basis in law for Mr. Ferrazza to have standing, the issue of standing in suits brought by taxpayers against public bodies is frequently litigated and the result can hinge on specific facts as well as close questions of law.[5] The mere fact that a citizen lawsuit was dismissed on the issue of standing is insufficient to meet the plaintiff's burden to *prove* that the suit was "devoid of any reasonable factual support and any arguable basis in law." In this case, North Branch has not shown that there are no facts that could have supported standing for Mr. Ferrazza.

At oral argument, North Branch urged the court to conclude that because Mr. Ferrazza's suits did not survive motions to dismiss, that automatically signified that there was no arguable basis in law for the lawsuits. That is not the standard. A case may be dismissed for a variety of reasons but that does not necessarily mean that the claim asserted lacked a basis in statutory or common law.[6] It is up to North Branch in this case to prove that there was no arguable basis in law for the claims Mr. Ferrazza made in his two lawsuits. Proof is not made by reliance on the fact of a dismissal ruling.

The purpose of the anti-SLAPP statute is to protect citizens from being fearful that if they bring a claim against the government for redress of grievances on the exercise of public duties and wind up losing, they will face retribution such as liability for the government's legal fees.

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[4] North Branch also alleges in its Complaint that Mr. Ferrazza "knew he had no standing to seek relief" (*Id.* at ¶ 53) and "knew he lacked standing" (*Id.* at ¶ 54).

[5] E.g., Open Meeting Law standing: *Severson v. City of Burlington*, 2019 VT 41 (standing denied because allegations were of injuries that were only speculative); *Blum v. Friedman*, 172 Vt. 622 (2001) (taxpayer alleged sufficient injury based on inability to hear negotiations for town contracts that would affect taxpayer's fees and charges); *Soares v. Barnet Fire District #2, supra* (the harm in the Open Meeting violation was subsequently cured under a statutory validation process but taxpayer had nonetheless obtained declaratory relief).
Waste of Public Funds standing: *Baird v. City of Burlington*, 2016 VT 6 (standing denied due to no showing of either direct pecuniary loss or improper waste of municipal assets); *Cent. Vermont Pub. Serv. Corp. v. Town of Springfield*, 135 Vt. 436 (1977)(taxpayer action appropriate to test allegation of improper waste of municipal assets), *Schievella v. Dep't of Taxes*, 171 Vt.591 (2000)(no standing for non-constitutional challenge to tax provision where no alleged impact on plaintiff's property taxes);
Improper conduct of Election standing: See 17 V.S.A. ¶ 2603 (a): "The result of an election for any office, other than for the General Assembly, or public question may be contested by any legal voter entitled to vote on the office or public question to be contested."

[6] Plaintiff cites *Dudley v. City of Burlington*, 25-CV-4318, Ruling on Defendant's Motion to Dismiss and to Strike, March 17, 2026, page 10, in arguing that a dismissal automatically indicates 'no arguable basis in law.' The ruling in that case, which involved facts and circumstances very different from those in this case, is not persuasive authority. Moreover, the standard is the one set forth in the anti-SLAPP law.

Where the governmental body can meet its burden of proof of lack of any legitimacy of the suit, such liability is available under the law and may be warranted. However, once the initial prerequisites of an anti-SLAPP case are shown, the governmental body has the burden to prove both lack of reasonable factual support and lack of arguable basis in law. Plaintiff has failed to meet that burden in this case as to both fact and law. Moreover, the declaratory ruling obtained by the taxpayer plaintiff in *Soares* and not disturbed by the Vermont Supreme Court undermines Plaintiff's argument that 'anyone would know' that a member of a prudential district would not have standing to sue the Prudential Committee for alleged violations of its statutory duties.

The court concludes that the claims made in both *Ferrazza I* and *Ferrazza II* affect matters of significant public interest. They are the types of claims that represent the importance of protecting the freedom of citizens to seek redress from their government. The anti-SLAPP statute is designed to provide protection against "lawsuits brought primarily to chill the valid exercise of the rights of citizens to seek redress from their government." 2005, No. 134 (Adj. Sess.), § 1(1).The prerequisites have been found that shift the burden to Plaintiff to prove lack of both factual and legal support, and North Branch has not shown that the complaints in *Ferrazzas I* and *II* were devoid of any reasonable factual support and any arguable basis in law.

ORDER

The Motion to Strike is *granted* and the Complaint is *dismissed.*

Defendant's counsel represented at oral argument that if Defendant prevailed on this Motion to Strike, his Third Party Claim against three individuals would be dismissed. Therefore, the Complaint against the Third Party Defendants filed January 27, 2026 is *dismissed.*

As a consequence of the dismissal of the Third Party Complaint, Plaintiff's Motion to Dismiss filed March 2, 2026 is *moot.*

Any motion for legal fees shall be filed within 14 days.

Mary Miles Teachout

Superior Judge (Ret.), Specially Assigned
August 24, 2026