STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
BUSINESS AND CONSUMER COURT
LOCATION: PORTLAND
DOCKET NO. BCD-CV-2017-05

HAROLD MACQUINN, INC., et. al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	ORDER STAYING PROCEEDINGS
	)	TO ALLOW ATTORNEY GENERAL
TOWN OF LAMOINE	)	AN OPPORTUNITY TO RESPOND
	)	
Defendant.	)	

This case was presented to the Court for decision without trial on a stipulated record and based on the written arguments of the parties. Plaintiffs Harold MacQuinn, Inc., Doug Gott and Sons, Inc., and John W. Goodwin, Jr., Inc., (collectively, "Plaintiffs") filed their brief on October 2, 2017, and Defendant Town of Lamoine ("Lamoine") filed its brief on November 13, 2017. Plaintiffs timely replied.

PROCEDURAL POSTURE

Plaintiffs' Complaint for Declaratory Judgment (hereafter the "Complaint") was filed in Hancock County Superior Court on January 27, 2016. The case was transferred here to the Business and Consumer Court upon judicial recommendation and accepted by this Court on February 23, 2017. The first Case Management Conference was held in this Court on April 6, 2017. By that time, the case had been pending for over a year and discovery was substantially complete. The parties agreed to work toward compiling a joint statement of facts and stipulated record for the case to be decided without trial and on briefs to be filed by the parties. On August 8, 2017, the Court held a telephonic Status Conference. Edmond Bearor, Esq., attorney for Plaintiffs, was unable to participate, but Daniel Pileggi, Esq., attorney for Lamoine, informed the

Court that Ms. Bearor had asked him to convey the parties' agreement on deadlines, *viz*: the parties would have ten days to finalize the stipulated record; Plaintiffs brief would be due September 30, 2017; Defendants' brief would be due November 15, 2017; and Plaintiffs' reply brief would be due November 29, 2017. The parties' joint statement of material facts was filed electronically with this Court concurrently with Plaintiffs' brief on October 2, 2017.

DISCUSSION

In addition to arguing against the merits of Plaintiffs' claim for declaratory relief, Lamoine raises two procedural concerns that this Court must address before the merits can be decided. First, Lamoine claims that Plaintiffs' brief and the final version of the joint statement of material facts were untimely filed. Second, Lamoine claims that Plaintiffs have failed to comply with 14 M.R.S.A. § 5963 of Maine's Declaratory Judgments Act. Lamoine argues that either of these purported lapses requires dismissal of the Complaint with prejudice.

I. PLAINTIFFS' SUBMISSIONS WERE TIMELY

At the August 8 Status Conference, Mr. Pileggi conveyed to the Court that the parties had reached an agreement on scheduling and that Plaintiffs' brief would be due on September 30, 2017. The Court adopted this deadline in its order on the conference record entered August 8, 2017. Plaintiffs brief was filed with this Court on October 2, 2017. Lamoine claims that this renders Plaintiffs' filing untimely and argues that this procedural lapse requires dismissal with prejudice.

Under M.R. Civ. P. 6(a), "[t]he last day of the period so computed [by order of the court] is to be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a holiday." As Plaintiffs point out, September 30, 2017 was a Saturday. Monday, October 2, 2017 was the next day which was not a Saturday, a Sunday, or a holiday. Plaintiffs' submission was therefore timely under Rule

6, and contrary to Lamoine's assertions, Plaintiffs therefore were not required to request an enlargement of time from this Court. *See* M.R. Civ. P. 6(b).

II. THE ATTORNEY GENERAL MUST BE AFFORDED AN OPPORTUNITY TO RESPOND

Plaintiffs' Complaint seeks relief pursuant to Maine's Uniform Declaratory Judgments Act, 14 M.R.S.A. § 5951-5963. "To obtain relief pursuant to the Uniform Declaratory Judgments Act, a party must comply with the statute. In a declaratory judgment action involving the validity of a municipal ordinance, the plaintiff is required to serve a copy of the proceedings on the Attorney General." *Ferraiolo Constr. Co. v. Town of Woolwich*, 1998 ME 179, ¶ 8, 714 A.2d 814 (citations omitted). *See also* 14 M.R.S.A. § 5963 ("When declaratory relief is sought . . . [i]n any proceeding which involves the validity of a municipal ordinance . . . if the [ordinance] . . . is alleged to be unconstitutional, the Attorney General shall be served with a copy of the proceeding and be entitled to be heard.").

Plaintiffs first argue that they were not required to serve a copy of the Complaint on the Attorney General because the Complaint challenges the constitutionality of a municipal ordinance, not a State statute. Regardless of the grammatical merits of this argument, our Law Court has held that 14 M.R.S.A. § 5963 requires the Attorney General be served when the constitutionality of a municipal ordinance is challenged. *McNicholas v. York Beach Vill. Corp.*, 394 A.2d 264, 268 (Me. 1978); *Ferraiolo Constr. Co.*, 1998 ME 179, ¶ 8, 714 A.2d 814.

Next, Plaintiffs argue that they were not required to notify the Attorney General because Plaintiffs do not allege the ordinance is unconstitutional "on its face," but rather "as applied" to them. The Court does not find this argument persuasive. The language of the statute does not restrict the service requirement to "facial" constitutional challenges. Rather, by its terms, it applies whenever a statute or ordinance is alleged to be unconstitutional.

This Court thus rules that Plaintiffs are required to notify the Attorney General of these proceedings in order to obtain relief under Maine's Uniform Declaratory Judgment Act. In their reply brief, Plaintiffs informed the Court that notwithstanding their position that service on the Attorney General was not required, out of an abundance of caution they nonetheless served a copy of the Complaint on the Attorney General concurrently with their filing of that brief on November 29, 2017. With this in mind, the Court must determine the proper procedure to follow to cure this procedural default.

In *Ferraiolo Constr. Co.*, the Law Court held that the trial court "should have dismissed Ferraiolo's claim for declaratory judgment[]" because it challenged the constitutionality of a municipal ordinance in its suit and Ferraiolo had failed to serve a copy of the proceedings on the Attorney General. *Ferraiolo Constr. Co.*, 1998 ME 179, ¶ 8, 714 A.2d 814. The Law Court reasoned that dismissal was required because otherwise the Attorney General's opportunity to intervene, which the Legislature "undoubtedly intended," would be "forclose[d]." *Id*. The trial court had decided the issue of service on the Attorney General was moot because that court had determined the ordinance in question was constitutional. *Id*. The Law Court noted that this reasoning "overlook[ed] the possibility of appeal." *Id.* Nonetheless, the Law Court did not find this failure to dismiss at the trial level a "barrier to appellate review" because "in the interest of judicial economy," the better solution was to "require Ferraiolo to notify the Attorney General of the pendency of the appeal." *Id*. The Attorney General was notified but declined to file a brief or otherwise participate in the appeal, and the Law Court proceeded to reach the merits of Ferraiolo's appeal. *Id*. *See also McNicholas*, 394 A.2d at 268 (reaching merits of constitutional challenge to municipal ordinance despite plaintiffs' failure to serve the Attorney General); *Currier Builders, Inc. v. Town of York*, Docket No. 01-68-P-C, 2001 U.S. Dist. LEXIS 10268, at *6-7 (D. Me. July

20, 2001) (declining to dismiss case where plaintiffs initially failed to serve a copy of their complaint on the Attorney General but belatedly complied).

Plaintiffs here have already served a copy of the Complaint on the Attorney General. The Court thus rules that dismissal is neither required nor appropriate. Like our Law Court in *Ferraiolo Constr. Co.*, this Court instead rules that in the interest of judicial economy, recognizing the long pendency of this case, that discovery is complete and that the case fully briefed, the best use of our scarce judicial resources would be to stay this matter to provide Plaintiffs with an opportunity to ascertain whether the Attorney General wishes to participate in the case. Staying the case allows the Attorney General an opportunity to participate in this case here or on appeal, thereby ensuring that the legislative intent of the service requirement of 14 M.R.S.A. § 5963 is realized.

The Court thus **orders** that this matter be stayed for thirty days to allow Plaintiffs an opportunity to attempt to ascertain whether the Attorney General wishes to participate in this case. Plaintiffs are **ordered** within thirty days to inform the Court of whether they have been able to ascertain whether the Attorney General will be filing a brief or otherwise participating in the case. If the Attorney General declines to participate, the Court will consider Plaintiffs in compliance with the service requirement of 14 M.R.S.A. § 5963 and proceed to decide this case on the merits. If the Attorney General indicates that she will be participating in the case, a Scheduling Conference will be scheduled to determine deadlines and procedure moving forward.

CONCLUSION

Based on the foregoing, IT IS HEREBY ORDERED

That this matter be stayed for 30 days to allow Plaintiffs an opportunity to attempt to ascertain whether the Attorney General wishes to participate in the case.

The Clerk is instructed to enter this Order on the docket for this case incorporating it by reference pursuant to Maine Rule of Civil Procedure 79(a).

Dated: December 7, 2017

___/s_____
Richard Mulhern
Judge, Business and Consumer Court