

STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. LIN-24-30

KELLY MITCHELL DAVIS (aka KELLY JO DAVIS),
HEIR OF SADIE RONCO MITCHELL (deceased),
Appellant

vs.

SQUIRREL ISLAND VILLAGE CORPORATION (SIVC),
SQUIRREL ISLAND ASSOCIATION (SIA),
and SQUIRREL ISLAND HISTORICAL SOCIETY (SIHS)
Appellee

ON APPEAL OF THE MOTION TO DISMISS
LINCOLN COUNTY SUPERIOR COURT ORDER OF DECEMBER 18,
2023

APPELLANT'S BRIEF

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Statement of Facts and Procedural History

The Complaint in this case was filed with the Lincoln County Superior Court on June 27, 2022. (Appendix, hereinafter referred to as App., pg. 1) On October 31, 2022 Counsel filed an Amended Complaint to replace the original and that was granted by the Court on December 6, 2022. (App., pg. 1) Motions for enlargement of time to serve parties were filed and granted. (App., pp 2-3). The parties were served with the Amended Complaint at various times in December 2022 and January 2023. (App., pg. 2)

On January 13, 2023 Appellee Squirrel Island Historical Society (hereinafter “ SIHS “) filed the first of two motions to dismiss in this matter. (App., pg. 2). Shortly thereafter, a second Motion to Dismiss was filed by co- Appellees Squirrel Island Village Corporation (hereinafter “ SIVC “) and Squirrel Island Association (hereinafter “ SIA). (App., pg. 3).

On August 8, 2023 a conference of counsel was held by Zoom at which the Motions were argued. (App., pg.4) On December 20, 2023 the Trial Court issued orders granting the Motions to Dismiss. (App. pg. 4) On January 9, 2024 a timely appeal was filed by Appellants in this matter. (App., pg. 4).

Statement of the Issues Presented

- I. Whether the Court Erred in Granting the Defendants' Motions to Dismiss.
- II. Whether the Lack of Analysis By the Superior Court Makes it Difficult to Determine What Facts, if any, Were Deemed Admitted and Which Were Not.
- III. Whether the Court Erred By Also Failing to Consider All of the Plaintiff's Well Established Claims.

Argument

I. The Court Erred in Granting the Defendants' Motions to Dismiss.

A. Legal Standard for a Motion to Dismiss

1. The Legal standard for Defendant's Motion to Dismiss is as follows:

*"In determining whether a motion to dismiss should be granted, the court considers "the allegations in the complaint in relation to any cause of action that may reasonably be inferred from the complaint." **Saunders v. Tisher**, 2006 ME 94, ¶ 8, 902 A.2d 830, 832.*

*The facts alleged are treated as admitted, and they are viewed "in the light most favorable to the plaintiff." Id. The court should dismiss a claim only "when it appears beyond a doubt that the plaintiff is not entitled to relief under any set of facts that he [or she] might prove in support of his [or her] claim." Id. (quoting **Johanson v. Dunnington**, 2001 ME 169, ¶ 5, 785 A.2d 1244, 1246). "**Cassandra Liberty v. Bennett**, Civil Action CV-09-459, at *1 (Me. Super. Dec. 19, 2011)*

2. A legal standard the Defendants are in no way is able to meet. (

In fact the motion filed by the Defendant SIHS cited no Maine Court cases, **NONE**, but relies instead on interpretations of **federal** civil procedure which is **not** the applicable law in this case in the Superior Court of Maine).

B. The Court's Decision Does Not Address or Apply the Legal Standard Appropriately. The Court Failed to Articulate and Apply the Appropriate Legal Standard.

“On appeal from an order granting a motion to dismiss a claim, we review the legal sufficiency of the complaint de novo. See *McCormick v. Crane*, 2012 ME 20, ¶ 5, 37 A.3d 295. ”

Fuhrmann v. Staples Office Superstore E., Inc., 58 A.3d 1083, 1093 (Me. 2012)

C. All Allegations in Plaintiff's Complaint are treated as admitted in a Motion to Dismiss.

D. That means the following allegations are all admitted:

1. The Plaintiff by virtue of her interest as an heir and the transfer and assignment of interests of all other heirs of Sadie Ranco Mitchell (deceased) to her, is the owner of the property on Squirrel Island, Southport, Maine that was popularly known as “The Indian Store”. Attached (to the Complaint) as Exhibit A are town maps over the last century. It is indicated thereon where the Plaintiff's property existed over the years.

2. The Plaintiff's great, great, great grandfather and his family lived in tents in the early 1840's on Squirrel Island. He

was also a State of Maine Legislative Representative from the Abenaki Indian Nation during that period. His wooden tent platform became the foundation of the family cottage and store.

Penobscot families had several seasonal camps on Squirrel Island, Maine. Plaintiffs' family camped, hunted, and fished from this small island for over 200 years, before the "summer colonists" flocked to rusticate on the coast after the end of the American Civil War. Many Penobscot families migrated to Squirrel Island for food year-round 100 years before the Squirrel Island Association (SIA) was chartered. The Penobscot Tribe had two famous athletes who represented one of the very first Squirrel Island baseball teams.

The Penobscot Tribe has a rich history of befriending early New England explorers and Christian pilgrims and is prominently recognized for such in many 19th and 20th Century history books. The Abenaki Nation developed a cooperative nature with the white settlers after enduring 200

years of war between the English and the French before the American Revolution.

The Mitchell family had a modest cottage on the island. Some think it was a dilapidated eyesore on the best beachfront and pales in comparison to all the other cottages. For Plaintiff's family, it was a legacy of simple comforts and a place where the family resided during the summer as other residents did and sold Indian baskets and moccasins.

Historically Plaintiffs' family spent quality time with family and hunted and fished. Plaintiffs' ancestral cottage lacked some of the nicer qualities, but it was clearly their home.

The building known as the Indian Store has been on the Island for many years. A lease dated August 27, 1906, between the SIVC and John T. Ranco purported to lease, for a period of three years, land that Ranco ***had*** been occupying "***for tenting***

purposes.” While called “tenting” it is more commonly known today as living there and having a residence there.

The lease authorized the continued use of the land for that purpose, as well as the erection of “a small wooden building,” conditioned on the appearance and use being satisfactory to the SIVC Board of Overseers (henceforth referred to as “BOO”). The lease was for three years, at an annual rent of \$5.00.

The SIA Lotholders Record Book contains three entries pertaining to what is referred to as “Unplotted Public Land, Indian Tent”:

—Located on unplotted land belonging to the Vill. Corp. by Assn. vote of Aug. 15, 1903 (Assn. records p. 129, Vill. Corp. records p. 9). See V.C. vote of August 8, 1903, Lease from Assn. to Vill. Corp of Aug. 29, 1903 rec. Linc. Co. R. of D. b. 312, p. 310.

—Now (1934) on land east of P.O., north of lot 5, & occupied by John Ranco of Old Town for a ground rent of \$5 annually.

—July 1, 1942. New lease for 99 years from SIA to SIVC replaces the old one that was canceled.

The original location of the Ranco tent is understood to have been near the east shore. At some point prior to 1934 the SIVC asked if the Plaintiff's family would relocate their residence to another part of the island so as to accommodate a town dump. The Plaintiff's family acquiesced and moved their residence and store accordingly.

This would explain the implication in the 1934 entry ("Now on land east of the P.O...") that the location had changed, as well as the use of a specific description placing the building where it was located until 2019 when the Defendants, without court action, took the Plaintiff's home and demolished it.

Other written evidence of authorized occupancy appears in the minutes of the BOO meeting of July 27, 1972. The minutes state as follows:

IT WAS VOTED UNANIMOUSLY: The Corporation will give Mrs. Sadie Mitchell extended a self-extending lease for periods of five years to a total of 100 years on the property she now occupies at a rent of \$1.00 per year.

Sadie Mitchell was understood to be the granddaughter and sole heir of John Ranco. She died in 1994. Sadie's heirs are her children Kimball, Christopher, and Harvey (now deceased and succeeded by a son (Kip) and daughter (Kelly Jo aka Kelly Mitchell Davis). Harvey operated the store until his death in 2004. Kip then did so sporadically for the next decade, but with health challenges, stopped altogether in 2013.

.....The land and building had passed by intestacy.

all the heirs have transferred and assigned their interests to the Plaintiff Kimberly Mitchell Davis aka Kelly Jo Mitchell.

3. The Squirrel Island Association (SIA) is a stock corporation established by special act of the Maine legislature in 1871.

SIA 's legal authority extends no further than what is contained in the legislation creating it. It issues long-term leases for individual residential lots to its shareholders. In 1903, the Maine legislature chartered the Squirrel Island Village Corporation (SIVC), which is the governing body for Squirrel Island. A village corporation is a specific type of municipal corporation under Maine law. However, unlike other kinds of municipal corporations, which have extensive authority under the Home Rule provisions of the Maine Constitution, a village corporation has only those powers that have been conferred expressly by statute or by necessary implication.

The 1903 legislation granted the SIVC the following specific and limited authority:

...[T]o raise money for the following purposes: To create and maintain a fire department with all necessary equipment, appliances and apparatus for the prevention and extinguishment of fires; to build, repair and maintain roads, streets and ways; sidewalks, sewers and other sanitary works; including the collection and removal of

offal and garbage; to care for and beautify that portion of the island which has been or may hereafter be reserved for and dedicated to public uses to be enjoyed in common by all the owners of lots on the island and to that end to build roads and walks upon and through said public lands and to plant and care for trees in the roads and streets and upon said public lands; to build, repair and maintain public wharves and landings; to build, repair and maintain such buildings or structures that may be necessary or desirable for general municipal, including recreational, purposes and for the common use and enjoyment of inhabitants of the Island; to establish and maintain police and night watch; to procure water for fire, domestic and other purposes and to produce or procure light for public use and for the use of inhabitants of the island, and for such purposes to contract with any individual, firm or corporation to furnish such water or light for either or both of the purposes named to establish reasonable rates to be paid by the inhabitants of the island using such water or light for domestic purposes; to construct, maintain and operate telephone or telegraph lines or to aid in such construction, maintenance and operation and to that end and for that purpose to contract with any corporation, firm or individual therefor and to defray any and all other necessary or proper corporate charges; and to purchase ice, coal, wood, lumber, teams and other necessary supplies and equipment, and employ labor, and to sell such supplies and furnish such teams and labor for hire to the members of the corporation or residents upon the island, and the overseers of the corporation may employ such agents as are necessary to carry out the provisions of this section.

This express grant of authority by the legislature demonstrated the tightly limited nature and scope of the SIVC's legal authority to act.

Importantly, language was added to the Charter in 1965 at the request of SIVC leadership, because it was not clear that the SIVC had the authority to raise money to build the original town hall.

4. And in fact, the state legislation creating the SIVC states in Section 6 of the law (a copy of the entire law is attached hereto to the Complain was and incorporated by reference therein as Exhibit B) states the following : *“For the purposes of taxation under this act the person or persons entitled to the use or occupation of any lot of land on said island shall be deemed the owner thereof and be taxed for said lot and the improvements, if any, thereon.”*

5. The defendants never had the legal authority to create two classes of landowners on Squirrel Island. One for the

Caucasian and one for the Native American. The Plaintiff's family were not vassals to be governed by the whims of this very limited authority municipal corporation. They were owners and occupiers of the land, and they were on an equal station as all other landowners on Squirrel Island.

6. Yet the pattern and practice of Squirrel Island's policies was to relegate the Native American as "guests" at best and all others as essentially owners and shareholders.

7. According to the SIVC By-Laws: "*The Association leases almost all of the platted lots on the Island to individuals for terms of 999 years for use as seaside residences for the families of the lessees.* Each lessee holds one or one-half share of the capital stock of the Association appurtenant to his Lease of Lot. Each Lease of Lot contains uniform covenants, and each Lease of Lot and share of stock is subject to uniform restrictions and conditions as set forth in the Bylaws." (emphasis added).

8. The Plaintiff's family was entitled, like every other inhabitant there, **AND** like every other inhabitant *residing there, with a lease to reside there from the town,* to have the same 999-year lease subject to the same benefits and conditions as

every other landowner there. (Parenthetically, the Maine Indian Land Claims Act of 1980 is inapplicable here since it only governs takings by settlers that predated December 1, 1873 and it does not affect an individual Native American rights to sue for normal remedies available to any person; from Public Law 96-420, Section 4 : “ That nothing in this section shall be construed to affect or eliminate the personal claim of any individual Indian (except for any Federal common law fraud claim) which is pursued under any law of general applicability that protects non-Indians as well as Indians”) .

9. The state law creating SIVC, from which its authority emanates from, never recognized 2 different types of leases to be given to inhabitants. And the Constitutions of the State of Maine and the United States of America forbid two classes of citizenship upon any American.

10. Defendant Squirrel Island Historical Society acted in concert with the other co defendants in assisting them in the taking and eventual demolition of the property. And the Defendant Squirrel Island Historical Society is the entity which now possesses this said property belonging to the Plaintiff.

11. Despite all those facts, the Defendants, acting in concert, took and demolished the Plaintiff's family home without ever going to court for eminent domain proceedings nor, in the alternative, enforce an eviction as is required under state law for the termination of any tenancy. The grant of title to the Defendant Squirrel Island Historical Society is legally null and void.

12. The Plaintiff repeats and realleges here all allegations contained in all preceding paragraphs.

13. The Defendants SIVC and SIA have violated the Plaintiff's rights under the U.S. Constitution to the equal protection of the laws.

14. The actions of these Defendants have caused grievous injury to the Plaintiff and has caused the Plaintiff to lose hundreds of thousands of dollars, if not more, in revenues and profits.

15. The Plaintiff repeats and realleges here all allegations contained in all preceding paragraphs .

16. The DefendantS SIVC and SIA's conduct have violated the rights of the Plaintiff under the Constitution of the State of Maine.

17. The actions of the Defendants SIVC and SIA have caused grievous injury to the Plaintiff and has caused the Plaintiff to lose hundreds of thousands of dollars, if not more, in revenues and profits.

18. The Plaintiff repeats and realleges here all allegations contained in all preceding paragraphs inclusive.

19. The Defendants SIVC and SIA's conduct have violated the rights of the Plaintiff to the due process of law pursuant to the Fourteenth Amendment of the U.S. Constitution.

20. The actions of the Defendants SIVC and SIA have caused grievous injury to the Plaintiff and has caused the Plaintiff to lose hundreds of thousands of dollars, if not more, by the taking, without any judicial authority, of land and buildings belonging to the Plaintiff.

21. The Plaintiff repeats and realleges here all allegations contained in all preceding paragraphs inclusive.

22. The Defendants SIVC and SIA's conduct have violated the rights of the Plaintiff to the due process of law pursuant to the Maine Constitution.

23. The actions of the Defendants SIVC and SIA have caused grievous injury to the Plaintiff and has caused the Plaintiff to lose hundreds of thousands of dollars, if not more, by the taking, without any judicial authority, of land and buildings belonging to the Plaintiff.

24. The Plaintiff repeats and realleges here all allegations contained in all preceding paragraphs inclusive.

25. The conduct of the Defendants SIVC and SIA to deprive the Plaintiff of their civil rights and their freedom to reside there and operate a business has caused the Plaintiff to lose hundreds of thousands, if not more in fair market value of the land and buildings thereon, by the taking, without any judicial authority, of land and buildings belonging to the Plaintiff.

26. The Plaintiff repeats and realleges here all allegations contained in all preceding paragraphs inclusive.

27. The conduct of the Defendants SIVC and SIA to deprive the Plaintiff of their civil rights and their freedom to reside there and operate a business has caused the Plaintiff to lose hundreds of thousands, if not more in fair market value of the land and buildings thereon, by the taking, without any judicial authority, of land and buildings belonging to the Plaintiff..

28. The Plaintiff repeats and realleges here all allegations contained in all preceding paragraphs inclusive.

29. The Defendants SIVC, SIA and SIHS deliberately and collectively, in concert with each other, sought to interfere with the Plaintiff's right to operate a business and to reside in their residence on Squirrel Island.

30. The conduct of the Defendants SIVC, SIA and SIHS to deprive the Plaintiff of their civil rights and their freedom to reside there and operate a business has caused the Plaintiff to lose hundreds of thousands, if not more in fair market value of

the land and buildings thereon, by the taking, without any judicial authority, of land and buildings belonging to the Plaintiff.

31. The Plaintiff repeats and realleges here all allegations contained in all preceding paragraphs inclusive.

32. The Plaintiff has been subjected to bullying, intimidation and harassment throughout the above referenced events by the efforts of the Plaintiff in taking their property, without judicial authority and then demolishing the then existing buildings thereon, then to appropriate to themselves all without any legal or judicial authority to do so.

33. The Plaintiff repeats and realleges here all allegations contained in all preceding paragraphs inclusive.

34. Despite the dictates of Maine law, namely 14 M.R.S. Section 6014 that no tenant may be dispossessed or denied access and possession to their premises, “ other than through proper judicial process.

35. The Defendants SIVC and SIA never sought or obtained nor even attempted to seek the use of proper judicial process in this case at any time.

36. The actions of the Defendants SIVC and SIA have denied the Plaintiff the fair use and enjoyment of their property and the fair market value of that property.

37. The Plaintiff repeats and realleges here all allegations contained in all preceding paragraphs inclusive.

38. The Fifth and Fourteenth Amendments of the U.S. Constitution prohibit the taking of private property for public use without just compensation. Similar prohibitions exist under Maine law.

39. Despite that the Defendants SIVC and SIA intentionally and willfully took the property belonging to the Plaintiff, without any judicial process and without any just compensation for their rights to the land under a 999 year lease accorded all other seasonal residents and to which they were entitled to.

40. The Plaintiff repeats and realleges here all allegations contained in all preceding paragraphs inclusive.

41. The actions of the Defendants', in concert and individually, were done intentionally and with malice towards the Plaintiff.

42. In addition to all legally compensable damages the Plaintiff requests this Honorable Court to enter an award of punitive damages against all Defendants while acting under authority of law to ensure that this type of racial and ethnic discrimination is not inflicted by the Defendants upon other individuals.

43. The Plaintiff repeats and realleges here all allegations contained in all preceding paragraphs inclusive.

44. Pursuant to Title 14 M.R.S.A. Section 5953 the Plaintiff asks this Honorable Court to declare the property and buildings

currently located on Plaintiff's property to belong to the sole right, title and interest of the Plaintiff. Currently the Defendant SIHS is the occupier of said land and is occupying said lands illegally.

E. The Trial Court Seems to Have Ignored All of the Facts

1. This history detailed in the Complaint is actually the understood history of the case. The history that has been admitted by the Town in an official notice given to townspeople approved by the Defendants' governing bodies and done by their attorney. That is about as clear cut an admission by a party opponent as one can get.
2. It should be helpful to counsel for all parties to know that most of the facts in Plaintiff's complaint have been admitted and stated by the Defendants' governing bodies to the residents.
3. Attached to our opposition to the motion to dismiss was a detailed legal notice published to the voters of Squirrel Island by the Defendants Squirrel Island Village Corporation's Board of Overseers in 2018 which itself supports the vast majority of the Complaint in terms of factual basis; and if we were dealing with a summary judgment motion it would constitute an admission by a party opponent pursuant to the **Maine Rules of Civil Procedure M.R. Evid. 801 (2)**.
4. Moreover to the point in this matter in the very first paragraph of the Complaint Plaintiff asserts her ownership of the property at issue. (And opposing counsel was made aware and provided copies of written assignments of all interest from the other 2 heirs- her brother and her uncle have already been executed to

the Plaintiff prior to the service of the Amended Complaint of all their right, title and interest).

II. **The Lack of Analysis By the Superior Court Makes it Difficult to Determine What Facts, If Any, Were Deemed Admitted and Which Were Not.**

"A motion to dismiss tests the legal sufficiency of the complaint, the material allegations of which must be taken as admitted"

Packgen, Inc. v. Bernstein, Shur, Sawyer & Nelson, P.A., 2019 ME 90, ¶ 16, 209 A.3d 116 .

When deciding a motion to dismiss pursuant to M.R. Civ. P. 12(b)(6), the complaint is viewed "in the light most favorable to the plaintiff to determine whether it sets forth elements of a cause of action or alleges facts that would entitle the plaintiff to relief pursuant to some legal theory." *Ramsey v. Baxter Title Co.*, 2012 ME 113, ¶ 6, 54 A.3d 710 (quotation marks omitted).

While the Court must accept as true all well-pleaded factual allegations in the complaint, it is "not bound to accept the complaint's legal conclusions." *Bowen v. Eastman*, 645 A.2d 5, 6 (Me. 1994) (citing *Robinson v. Washington Cnty.*, 529 A.2d 1357, 1359 (Me.

1987)). "A dismissal is only proper when it appears beyond doubt that [the] plaintiff is entitled to no relief under any set of facts that [it] might prove in support of [its] claim." *Packgen*, 2019 ME 90, ¶ 16, 209 A.3d 116 (alterations in original).

A complaint only needs to consist of a short and plain statement of the claim to provide fair notice of the cause of action. *Johnston v. Me. Energy Recovery Co., Ltd. P 'ship*, 2010 ME 52, ¶ 16, 997 A.2d 741. *Trs. of Berwick Acad. v. Mahoney*, No. BCD-CIV-2021-0017, at *1 (Me. Super. June 8, 2021)

On a motion to dismiss for failure to state a claim, the Court generally cannot consider documents outside the pleadings without treating the motion as one for summary judgment. See MR. Civ. P. 12(b); see also *Moody v. State Liquor & Lottery Comm'n*, 2004 ME 20, ¶ 8, 843 A.2d 43. However, the Court can consider "official public documents, documents that are central to the plaintiffs claim, and documents referred to in the complaint . . . when the authenticity of such documents is not challenged." *Id.* ¶ 11. When the Court does consider such documents, those documents merge into the pleadings. *Id.* ¶

Trs. of Berwick Acad. v. Mahoney, No. BCD-CIV-2021-0017, at *1
(Me. Super. June 8, 2021)

III. **The Court Erred By Also Failing to Consider All of the Plaintiff's Well Established Claims.**

1. Furthermore, a large part of this case is premised on the ultra vires actions of the Defendants whose authority to act are strictly limited by the state law passed and attached to the Complaint and from which all of Defendants' SIVC and SIA's authority come from.
2. The Law Court has held: "*[M]unicipal or state actions may be collaterally attacked as outside the jurisdiction or authority of an agency, when it is claimed that the ordinance or statute under which the administrative agency purported to act was unconstitutional on its face, thus rendering the administrative action beyond the lawful authority of the challenged agency.*" *Sold, Inc. v. Town of Gorham*, 2005 ME 24, ¶ 12, 868 A.2d 172 (citation omitted). Additionally, "*[s]ubject to equitable defenses including laches, a governmental action may be challenged at any time, as ultra vires, when the action itself is beyond the jurisdiction or authority of the administrative body to act.*" *Id.*

(citation omitted) (emphasis added). Subject to equitable defenses including laches, a governmental action may be challenged at any time, as ultra vires, when the action itself is beyond the jurisdiction or authority of the administrative body to act. See Girouard v. Bates Mfg. Co., 145 Me. 62, 65, 71 A.2d 682, 683 (1950) (stating that an administrative agency "cannot clothe itself with a jurisdiction it does not possess. . . . Jurisdiction may be conferred only by law").

3. Thus, municipal or state actions may be collaterally attacked as outside the jurisdiction or authority of an agency, when it is claimed that the ordinance or statute under which the administrative agency purported to act was unconstitutional on its face, thus rendering the administrative action beyond the lawful authority of the challenged agency. See *Fisher v. Dame*, 433 A.2d 366, 374 (Me. 1981). *Sold, Inc. v. Town of Gorham*, 868 A.2d 172, 176 (Me. 2005) *Dubois Livestock, Inc. v. Town of Arundel*, SUPERIOR COURT Civil Action No. AP-18-0003, at *9 (Me. Super. July 9, 2018).

4. This is a case that calls into question the even legal authority of the Defendants to do what they have done going back to the limited legal grant of authority given to the Defendants SIA and SIVC from the Maine Legislature.
5. The Law Court in the case of **Lehigh v. Pittston Co.**, 456 A.2d 355 (Me. 1983) had an extensive discussion of ultra vires in general, and how these illegal actions, without legal authority, invalidated the actions of the Town. The law has not changed since:

“The option agreement between the City of Eastport and Pittston and its amendments also run afoul of common law principles. Tracing back to the early days of statehood, contracts against public policy have been declared by this Court to be void and unenforceable.

Illustratively, in Groton v. The Inhabitants of Waldoborough, 11 Me. 306 (1834) this Court considered an action brought to recover monies the Plaintiff had expended in purchasing at auction the office of Constable of the Town of Waldoborough. In affirming the dismissal of the case below, the Court termed the sale unlawful and against public policy, and concluded that "if the money has been paid in pursuance of an act immoral in itself, or in violation of the general laws of public policy, the party paying can have no action to reclaim it." Id. at 307.

“The Court confronted a similar situation in Weld v. Lancaster, 56 Me. 453 (1868). That action involved a challenge to the validity of a contract for the carrying of the United States mail,

entered into in derogation of a previous contract between the postal authorities and a third party. Noting that the second contract violated "the spirit of the law, which provides that mail contracts shall be open to fair competition and awarded to the lowest bidder . . .," the Court refused to uphold this agreement, concluding that it "upon its face shows an attempted fraud upon the government, and is in violation of the policy of the post office law." Id. at 457-58.

In short, to conclude that a contract is against public policy and therefore void breaks no new legal ground. See Thacher Hotel, Inc. v. Economos, 160 Me. 22, 25-26, 197 A.2d 59, 61 (1964); Augusta Trust Company v. Augusta, Hallowell Gardiner Railroad Company, 134 Me. 314, 327, 187 A. 1, 7 (1936).

"See also County of Clark v. Bonanza No. 1, 96 Nev. 643, 615 P.2d 939, 945 (Nev. 1980); Council v. Texas Gas Transmission Corporation, 202 So.2d 916, 917 (Miss. 1967); McNutt v. Intratex Gas Company, 600 S.W.2d 947, 949 (Tex.Civ.App. 1980).

"Even without thus adverting to the violation of the federal statute, the option agreement and amendments contravene public policy. They attempt to convey to a private party an airport which, by virtue of its 1942 and 1959 agreements with the federal government, the City of Eastport expressly dedicated to the use and benefit of the public. If the option agreement and amendments thereto were to be validated, it would absolutely abrogate that public dedication. Such an abrogation violates public policy.

“Pertinent also is the doctrine that a contract which operates to breach a prior contract involving a third party is illegal. See Restatement (Second) of Contracts § 194 (1981); 6A Corbin on Contracts § 1470 (1962); 15 W. Jaeger, Williston on Contracts § 1738 (3d ed. 1972). If enforced, the option agreement not only would deprive the public of a facility developed for public use, but in so doing would breach the express terms of both the 1942 and 1959 grant agreements.

This doctrine in the law of contracts derives from the tort of interference with contractual relations. 6A Corbin § 1738. See generally 6. Alexander, Commercial Torts § 6.4 (1973); Note, Tortious Interference with Contractual Relations in the Nineteenth Century: The Transformation of Property, Contract, and Tort, 93 Harv.L.Rev. 1510 (1980). See also MacKerron v. Madura, 445 A.2d 680, 683 (Me. 1982); Sawyer v. Bailey, 413 A.2d 165, 168 (Me. 1980).

“The term of the 1942 agreement was the ‘useful life’ of the Eastport Airport, while the term of the 1959 agreement was the shorter of the airport's useful life or twenty years. The option agreement and amendments fell well within the twenty-year period, thus only if the useful life of the airport had ended would Eastport's agreements with the federal government not be breached.

“Of course, even if the option agreement and amendments fell outside the twenty-year period, they would conflict with the 1942 grant agreement unless the airport's useful life had ended. Although the Superior Court did not expressly find that the airport's useful life continued through the time of the option agreement, such a finding is implicit in the court's conclusions regarding the nonabandonment of the facility by the City of

Eastport. The condition of the airport had deteriorated and flight activity was limited by the time the option agreement was signed; nonetheless, the record clearly reveals that use of the airport continued. In light of the continued use of this facility for its fundamental purpose as an airport, we cannot conclude that by the time of the option agreement the useful life of the Eastport Airport had ended.

“In deciding that the City had not abandoned the airport — an issue integral to the Superior Court's ultra vires analysis — the court noted that the airport was licensed through this period and that use of the facility, if sporadic, continued.

In fact, the record reveals that officials and counsel of the Pittston Company flew in and out of the Eastport Airport between 1973 and 1980.

“Because the airport's useful life continued, the option agreement with Pittston and the two amendments extending its implementation, if enforced, would have breached the City of Eastport's two grant agreements with the federal government. Apart from the conflict with federal law and violation of public policy, such breaches constitute an independent reason supporting the Superior Court's conclusion that the option agreement and amendments were null and void, and unenforceable.”

6. Added to the clear problem of acting without legal authority is the reality that they were done on a historically discriminatory basis.

7. And finally to add the final touches are the actions of the Defendants SIVC and SIA in taking the Plaintiffs property without any legal process in court, whether it was a foreclosure or eviction, it required a specific court process, none of which took place.

CONCLUSION

The lower Court's Order granting the Defendants' Motions to Dismiss was erroneous, not justified or supported by the law or fact and should be vacated and the case remanded to Superior Court for further proceedings.

Respectfully submitted this 9th day of April, 2024.

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CERTIFICATE OF SERVICE

I, Joseph M. Baldacci, Esq. Attorney for the Appellant, in the above matter, hereby certify that I have made service of the foregoing Appellant’s Brief and Appendix upon the following party, by email and sending them two (2) copies via first class mail, postage prepaid, on this 9th day of April, 2024.

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