

STATE OF MAINE
KENNEBEC, SS.

SUPREME JUDICIAL COURT
Sitting As The Law Court
Law Docket No. KEN-20-134

KIMBERLY LAMARRE ET AL

PLAINTIFF-APPELLEE

v.

THE INHABITANTS OF THE TOWN OF CHINA ET AL

DEFENDANTS-APPELLANTS

APPEAL FROM THE KENNEBEC COUNTY SUPERIOR COURT

BRIEF OF DEFENDANT-APPELLANT
NICHOLAS NAMER

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STATEMENT OF FACTS

This is an appeal from the judgment entered in *Kimberly (Houle) LaMarre et al v. the Town of China et al*, Kennebec County Superior Court, Docket No. AP-19-50.

Appellant Nicholas Namer owns property on China Lake in China, Maine designated as Lot 22 on Tax Map 63. He purchased the lot in 2018. The lot is a non-conforming lot and has five seasonal camps located on it. The prior owner also located a “camper” on the southeasterly section of the lot. A photograph of the camper is part of the record. See Appendix at 152 (hereinafter App at ___). Mr. Namer replaced the camper with a “Park Model” trailer which he had purchased shortly after purchasing the lot - but placed the “Park Model” trailer on the southwesterly section of the lot. See App at 160. He later obtained an after-the-fact permit from the then Code Enforcement Officer, Paul Mitnik. See App at 159. The LaMarres, who had not been notified of the after-the-fact application nor the issuing of the permit, complained to the then new Code Enforcement Officer, William Butler. Mr. Butler agreed with Mr. Mitnik’s decision but, because the LaMarres had not been notified of the application for the permit, allowed them to appeal the decision. The LaMarres did so. The Board of Appeals denied the appeal (see App at 20-21) and the Lamarres filed an 80B complaint. See App at 15. The Superior

Court decided the appeal upon the briefs, overturning the decision of the Board of Appeals. See App at 3. Both the Town and Nicholas Namer have appealed.

STATEMENT OF ISSUES

Whether or not the Park Model trailer is a “recreational vehicle” within the meaning of the Land Use Ordinance of the Town of China.

SUMMARY OF ARGUMENT

The definition of a recreational vehicle in China’s Land Use Ordinance is clear. It sets forth four specific criteria that an attachment to a vehicle needs to meet to be deemed a recreational vehicle. Mr. Namer’s Park Model trailer meets all four of the criteria and thus, by definition, is a recreational trailer. It was, therefore, neither necessary nor appropriate to invoke the doctrine of *ejusdem generis* to interpret the ordinance language defining a recreational vehicle.

ARGUMENT

The Court erred in determining that the Park Model Trailer was not a “recreational vehicle” within the meaning of the China Land Use Ordinance.

The Superior Court’s decision is based solely on its determination that the Park Model trailer is not a “recreational vehicle”, as defined in the China Land Use Ordinance, and thus may not be placed on the non-conforming lot. See Decision and Order at 7-11 (App at 9-13). For the reasons set forth below, that determination is incorrect.

China's Land Use Ordinance defines a "Recreational Vehicle" as follows:

"RECREATIONAL VEHICLE: A vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered a vehicle and not a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles." See Decision and Order at 7 (App at 9) and App at 131.

The part of the "definition" which actually *defines* the criteria necessary to be considered a "recreational vehicle" is the following:

A vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, ... In order to be considered a vehicle and not a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles."

The remainder of the definition ("... and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home") simply provides some examples of what *may* be included in the definition of recreational vehicles.

The Superior Court, however, took a different view. In regard to that part of the definition referring to "... an attachment to a vehicle designed to be towed ...", the Court opined that "[a]nother way of looking at that phrase ... is that it was intended to describe those trailers/attachments to a vehicle designed for the very purpose of being towed from place to place *with relative ease*" (emphasis supplied). App at 12. It, therefore, concluded that "the definition of 'recreational vehicle' in

the China Land Use Ordinance is reasonably susceptible to more than one interpretation and is, therefore, ambiguous.” See Decision and Order at 10. App at 12. Invoking the maxim of *ejusdem generis*, it determined that the Park Model trailer was not a recreational vehicle as defined by Gardiner’s Land Use Ordinance. It reasoned that the examples set forth in the definition of Recreational Vehicle (the motor home (a vehicle in its own right) and the pick-up camper, travel camper, tent trailer and camp trailer (attachments to be towed by a motor vehicle) were all either easily driven (the motor home) or easily towed (the trailers) “from location to location on the public ways.” App at 12. It then went on to conclude that the Park Model trailer was not similar to those illustrations because it was larger and was “not ‘designed to be towed’ *in the same way* as the pick-up camper, travel trailer, tent trailer or camp trailer are” (emphasis supplied). Decision and Order at 10; App at 12. Based on the maxim of *ejusdem generis* it then concluded that the Park Model trailer did not meet the definition of a Recreational Vehicle in the China Land Use Ordinance, reversed the decision of the Town’s Board of Appeals, and vacated the permit allowing Mr. Namer to place the Park Model trailer on his property. App at 13-14.

Ejusdem generis is a rule of construction by which “a general term followed by a list of illustrations is *ordinarily* assumed to embrace only concepts similar to

those illustrations¹” (emphasis supplied). *Penobscot Nation v. Stilphen*, 461 A.2d 478, 489 (Me. 1983). This case, however, is not a case to which the maxim of *ejusdem generis* applies. The definition of Recreational Vehicle in the Town’s Land Use Ordinance is not a “general” term. It requires four specific things: (1) the unit must be either a vehicle or “an attachment to a vehicle designed to be towed”, (2) the unit must be “designed for temporary sleeping or living quarters for one or more persons”, (3) “the unit must remain with its tires on the ground”, and (4) the unit “must be registered with the State Division of Motor Vehicles.” See App at 131. These are very specific, not general, criteria. The Park Model trailer which Mr. Namer placed on his lot met all four of those specific criteria. It was (1) constructed on a permanent chassis with a trailer hitch (thus it is designed to be towed), (2) designed for temporary sleeping or living quarters for one or more persons, (3) parked with its tires on the ground, and (4) registered with the State Division of Motor Vehicles. App at 22-23. It, therefore, meets *exactly* the definition of a recreational vehicle as set forth in the Town’s Land Use Ordinance.

As referenced above, the doctrine of *ejusdem generis* only applies when a general term is followed by a list of specific illustrations or when specific words are followed by general words. Also, as explained above, the definition of a recreational

¹ The rule can also apply when the specific words are followed by the general words. See *State v. Ferris*, 284 A.2d 288, 290 (Me. 1971).

vehicle set forth in China's Land Use Ordinance sets forth four specific requirements to qualify as a recreational vehicle. The definition is not a "general" term. It is clear and unambiguous, setting forth four specific criteria. As the Superior Court recognized in its opinion, citing *Young v. Greater Portland Transit Dist.*, 535 A.2d 417, 418, n.2 (Me. 1987), the maxim of *ejusdem generis* has "no application to an unambiguous statute" Nor should it have any application to an unambiguous ordinance. The principle is the same. The doctrine of *ejusdem generis* should never have been invoked by the Superior Court. The Park Model trailer meets each of the four specific criteria defining a recreational vehicle.

The Court also noted that the LaMarres (1) pointed "to the fact that the Town recognizes that 'RV' manufacturers are building products that more closely resemble manufactured homes, which was not the type of trailer intended to be treated as a recreational vehicle under the Land Use Ordinance" and (2) "emphasize that CEO Mitnik himself originally believed the Park Model trailer was a mobile home, before changing his opinion." See Decision and Order at 9; App at 11. Neither of these "facts", even if true, have any bearing on the determination of whether the definition of Recreational Vehicle in the Town's Land Use Ordinance includes the Park Model trailer. The meaning of a statute or ordinance is a matter of law to be determined by

the court.² See *Rockland Plaza Realty Corp. v. City of Rockland*, 2001 ME 81, ¶ 7, 772 A.2d 256. In this case, the language of the ordinance is clear, the criteria defining a recreational vehicle is clear, and it is clear that the Park Model trailer purchased by Mr. Namer meets the definition of a recreational vehicle. There is no need to invoke the doctrine of *ejusdem generis* to aid in interpreting the Town's ordinance.

CONCLUSION

For all the reasons stated above, the judgment should be reversed.

Dated: July 28, 2020

Respectfully submitted,

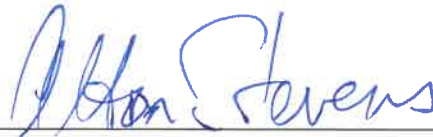


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² Although the interpretation of an ordinance is a matter of law to be determined by the Court, the Court accords the Board's "characterizations and fact-findings as to what meets the ordinance standards" substantial deference. See *Jordan v. City of Ellsworth*, 2003 ME 82, ¶ 9, 828 A.2d 768; and *Bizier v. Town of Turner*, 2011 ME 116, ¶ 8, 32 A.3d 1048. In this case, both the Code Enforcement Officer and the Board of Appeals determined that Appellant met the requirements of the Town's Land Use Ordinance and was entitled to a permit. See App at 20-23.

CERTIFICATE OF SERVICE

I hereby certify that two copies of the within Appellant's brief and one copy of the Appendix have been served upon the Appellees, Kimberly (Houle) LaMarre and Anthony LaMarre, by depositing said copies in the United States mail, postage prepaid, addressed to Stephen W. Wagner, Esq., Rudman Winchell, P.O. Box 1401, Bangor, ME 04402-1401 on July 28, 2020; and that two copies of the within Appellant's brief have been served upon Appellant Town of China by depositing said copies in the United States mail, postage prepaid, addressed to Theodore A. Small, Esq., Skelton Tainter & Abbott, 95 Main Street, Auburn, ME 04210, attorney for Appellant Town of China. No copy of the Appendix was served upon Appellant Town of China because the Town of China prepared the Appendix.



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STATE OF MAINE
KENNEBEC, SS.

Dated: July 28, 2020

Subscribed and sworn to before me,



Notary Public/Attorney at Law

Print Name: William P. Dubord