

Maine

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AMY OLFENE AND ED BENJAMIN RECEIVE SUMMARY JUDGMENT FOR THE CITY OF EASTPORT IN LAWSUIT BROUGHT BY CANADIAN BOATBUILDER



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Justice Duddy of the Maine Superior Court Business and Consumer Docket granted summary judgment in favor of the City of Eastport in a lawsuit involving claims of tortious interference, misrepresentation, and negligent infliction of emotional distress brought by a Canadian businessman who operated a boatbuilding operation out of the City's Guilford Mill between 2013 and 2016. The lawsuit named the City, former City Manager Elaine Abbott, five current and former City Councilors, the County of Washington, and Washington County Manager Betsy Fitzgerald as defendants, and described a contentious landlord-tenant relationship between Plaintiffs Millennium Marine USA and Cory Guimond and the City. Plaintiffs claimed more than \$642,000 in damages.

In late 2012, Mr. Guimond, who owned boatbuilding operations in Canada, decided to open a boatbuilding facility in the US. Mr. Guimond selected Eastport, Maine in large part because of the presence of a \$1.2 million Economic Development Administration (EDA) grant issued to Washington County, which was designed to increase economic activity and job development in the area. The County used the EDA grant funds to renovate the Guildford Mill, a property owned by the City of Eastport, with the remaining funds going to purchase \$524,000 worth of boat molds from Mr. Guimond for their use in Millennium Marine's US operations. The City in turn leased two units in the Guilford Mill to Millennium Marine beginning in 2013.

Between January 2014 and May 2015, the City leased Millennium Marine a 36,000 square-foot unit where he could build boats rent-free. Shortly after boatbuilding operations began, a fire caused by the spontaneous combustion of volatile

materials left inside one of Millennium Marine's boats caused \$300,000 in damage to the Mill, which stifled Millennium Marine's ability to use the space to build boats. By March 2015, the company was in arrears totaling \$21,000; by October 2016, it was \$59,500 in arrears. Mr. Guimond claimed that the City owed him money for installation of his personal equipment, delays in the restoration of the Mill following the fire, and employee time spent cleaning up from the fire, which offset what he owed in back-rent. The City rejected Mr. Guimond's rationale for Millennium Marine's failure to pay rent when due, which was a breach of its leases with the City. Nonetheless, the City attempted to work with Mr. Guimond and support his business, which the City hoped would continue to train and employ local workers.

However, by the spring of 2016, the relationship between the Plaintiffs and the City had devolved, and the City sought to evict Millennium Marine from the Mill. Then, in October 2016, Plaintiffs filed their lawsuit. Both the County and the City filed counterclaims against the Plaintiffs. The County countersued Millennium Marine for failure to pay matching funds it was obligated to contribute under the EDA grant, while the City cited breach of the lease agreements and failure to pay personal property taxes on equipment stored by Millennium Marine in the Guildford Mill. The County settled their claims with Plaintiffs in 2017; the City's counterclaim remain pending.

While the Plaintiffs' lawsuit included four tort claims, they argued that the complaint was actually for breach of contract, a claim for which the Maine Tort Claims Act did not apply. The Court rejected this argument and agreed with Attorneys Benjamin and Olfene that, not only did the Act apply, but afforded the City, its employees, and elected officials immunity from suit. Under the Act, governmental entities are, with limited exception, immune from tort claims seeking recovery of damages, and grants governmental employees and elected officials absolute immunity when performing a legislative or discretionary acts. In his order, Justice Duddy found that no exception to immunity applied to the Plaintiffs' claims as to the City, and that the acts complained of as to the City Manager and Councilors were discretionary acts, for which they were entitled absolute immunity.

Plaintiffs filed a notice of appeal to the Maine Supreme Judicial Court, which the parties will brief over the summer.