

STATE OF MAINE
YORK, ss.

SUPERIOR COURT
Civil Action
Docket No. CV-17-0278

BRITT McNIFF and SHAWN McNIFF

Plaintiffs,

v.

**ORDER ON PENDING
MOTIONS**

LIGHTHOUSE CONSTRUCTION, LLC
and PETER ANDERSEN

Defendants.

Plaintiffs Britt and Shawn McNiff filed this action against Lighthouse Construction, LLC and Peter Andersen seeking compensatory and punitive damages arising out of allegedly defective work performed in renovating their property in Cape Neddick. The complaint alleges breach of contract (count I), unjust enrichment (count II), negligence (count III), violation of the Maine Home Construction Contracts Act (count IV), and violation of the Maine Unfair Trade Practices Act (count V).

Defendants filed a motion to dismiss and an answer/counterclaim. The motion seeks dismissal of Peter Andersen in his individual capacity because the complaint "sets forth no claims or assertions that would justify any claim of liability on the part of the individual Defendant, Peter Andersen." 2/15/2018 *Motion to Dismiss*, at 1-2. The counterclaims for malicious prosecution¹ and abuse of process are the subject of plaintiffs' subsequently-filed motion to dismiss.

Defendants' motion to dismiss Peter Andersen will be granted. Even viewed in the light most favorable to plaintiffs, the facts set forth in the complaint do not establish

¹ Because this is a civil case, the court considers this claim to be one of wrongful use of civil proceedings. See *Pepperell Trust Co. v. Mountain Heir Fin. Corp.*, 1998 ME 46, ¶ 16, 708 A.2d 651.

a basis for liability of Peter Andersen individually. The dismissal is without prejudice. Should discovery elicit a factual basis for individual liability of Peter Andersen, plaintiffs may file a motion to amend under M.R. Civ. P. 15.

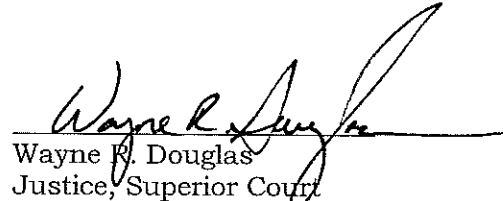
Plaintiffs' motion to dismiss the malicious prosecution (wrongful use of civil proceedings) and the abuse of process counterclaims is also granted. *See Pepperell Trust Co. v. Mountain Heir Fin. Corp.*, 1998 ME 46, ¶ 16, 708 A.2d 651; *Potter, Prescott, Jamieson & Nelson, P.A. v. Campbell*, 1998 ME 70, ¶ 7, 708 A.2d 283.

Accordingly, the entry shall be: "Defendants' motion to dismiss as to Peter Andersen is granted without prejudice. Plaintiffs' motion to dismiss counterclaims for malicious prosecution (wrongful use of civil proceedings) and abuse of process is granted without prejudice."

SO ORDERED

The clerk may incorporate this order by reference on the docket pursuant to Rule 79(a).

Dated: April 17, 2018


Wayne R. Douglas
Justice, Superior Court

ENTERED ON THE DOCKET ON: 4/18/18

ALFSC-CV-2017-278

BRITT McNIFF, ET AL V. LIGHTHOUSE CONSTRUCTION, LLC, ET AL

PLAINTIFFS: BRITT AND SEAN MCNIFF REPRESENTED BY
GREGORY ORSO, ESQ.

ORSO LAW PA

18B YORK ST

YORK, ME 03909

DEFENDANTS: LIGHTHOUSE CONSTRUCTION, LLC AND PETER ANDERSEN
REPRESENTED BY:

BRADLEY LOWN, ESQ.

COUGHLIN, RAINBOTH, MURPHY & LOWN

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