

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-21-131

HUMAN RIGHTS DEFENSE
CENTER,

Plaintiff,

v.

MAINE COUNTY
COMMISSIONERS ASSOCIATION
RISK POOL,

Defendant

ORDER ON MOTION TO DISMISS

The matter before the court is defendant Maine County Commissioners Association Risk Pool's (the "Risk Pool") motion to dismiss plaintiff Human Rights Defense Center's ("HRDC") complaint pursuant to M.R. Civ. P. 12(b)(6).

BACKGROUND

On June 18, 2021, HRDC made a FOAA request to the Risk Pool. (Am. Compl. Ex. 5.) The Risk Pool's representative, Malcom Ulmer, responded between June 18, 2021 and June 21, 2021. (Am. Compl. Ex. 7.) Mr. Ulmer made his final response on July 6, 2021. (Am. Compl. Ex. 9.) HRDC then informed the Risk Pool that it would interpret the failure to respond further as a denial of access to records under the Freedom of Access Act ("FOAA"). (Am. Compl. ¶ 56.)

HRDC filed this case on July 27, 2021, originally against Kennebec County and the Maine County Commissioners Association ("MCCA"). The Risk Pool was not named as a defendant. HRDC filed a motion to amend on October 1, 2021 to add the risk pool as a party, which the court granted on October 25, 2021.

The Risk Pool filed this motion to dismiss on the basis that HRDC's FOAA appeal is untimely. The original complaint was filed within the FOAA's 30-day appeal deadline, but the Risk Pool was not added until after October 25, which falls squarely outside the

statutory deadline. 1 M.R.S. § 409(1) (2021). HRDC objects to the motion, arguing that the amended complaint relates back to the original filing date pursuant to M.R. Civ. P. 15(c).

STANDARD OF REVIEW

When ruling on a motion to dismiss for failure to state a claim pursuant to M.R. Civ. P. 12(b)(6), the court views the "facts alleged in the complaint as if they were admitted." *Nadeau v. Frydrych*, 2014 ME 154, ¶ 5, 108 A.3d 1254 (*per curiam*) (quotation marks omitted). A complaint must set forth the "elements of a cause of action or allege[] facts that would entitle the plaintiff to relief pursuant to some legal theory." *Id.* Facts are read in the light most favorable to the plaintiff. *Id.* "Dismissal is warranted only when it appears beyond a doubt that the plaintiff is not entitled to relief under any set of facts that might be proved in support of the claim." *Halco v. Davey*, 2007 ME 48, ¶ 6, 919 A.2d 626 (quotation marks omitted). On the other hand, "a party may not . . . proceed on a cause of action if that party's complaint has failed to allege facts that, if proved, would satisfy the elements of the cause of action." *Burns v. Architectural Doors and Windows*, 2011 ME 61, ¶ 17, 19 A.3d 823. "Notice pleading requirements are forgiving; the plaintiff need only give fair notice of the cause of action by providing a short and plain statement of the claim showing that the pleader is entitled to relief." *Desjardins v. Reynolds*, 2017 ME 99, ¶ 17, 162 A.3d 228 (quotation marks omitted).

DISCUSSION

The Law Court strictly enforces the statutory deadline for FOAA appeals. *See, e.g., Guy Gannett Pub. Co. v. Maine Dep't of Public Safety*, 555 A.2d 474, 476 (Me. 1989). The parties do not dispute that the Risk Pool is the proper party, nor do they dispute that the amended complaint was filed outside the FOAA's 30-day deadline. If the amended

complaint does not relate back to the original filing date pursuant to M.R. Civ. P. 15(c), the court must dismiss HRDC's FOAA appeal as untimely.

M.R. Civ. P. 15(c) states:

Relation Back of Amendments. An amendment of a pleading relates back to the date of the original pleading when

(1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or

(2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the condition of paragraph (2) of this subdivision is satisfied and, within the period provided by Rule 3 for service of the summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

Subparagraph (3) is the part of M.R. Civ. P. 15(c) relevant to this case. There is no question that HRDC's claim arose out of the same conduct set forth in the original pleading as there is only one FOAA request at issue here. The Risk Pool was clearly aware of the lawsuit in time, as Mr. Ulmer received a copy of the complaint at the time of the original filing. The question is whether the Risk Pool "knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party." *Id.*

The Risk Pool argues that the amended complaint does not relate back, pointing to Law Court precedent that states "[a] conscious choice to sue one party rather than another, or a lack of knowledge of who is the correct defendant, is not a mistake concerning the identity of the proper party." *Garland v. Sherwin*, 2002 ME 131, ¶ 8, 804 A.2d 354 (quotation omitted). The Risk Pool argues that Attorney Zachary Heiden,

representing HRDC in this matter, was informed that the MCCA and Risk Pool were separate entities at least by July 28, so he must have made the conscious choice to sue the MCCA instead of the Risk Pool.

Mr. Ulmer did inform Attorney Heiden that the MCCA is a “separate entity from the Risk Pool,” by way of a July 28, 2021 email. (Heiden Aff. Ex. 3.) Mr. Ulmer also stated in this email that he is not employed by the MCCA. (*Id.*) However, as Attorney Heiden points out in his affidavit submitted with his opposition to the motion, there was good reason for his confusion. There is no organization going by the Risk Pool’s name registered as any kind of business entity with the Maine Secretary of State, unlike the MCCA, which is registered as a non-profit corporation. (Heiden Aff. ¶ 5.) The MCCA lists Mr. Ulmer as “staff” in their meeting minutes, and Risk Pool business is presented to the MCCA’s Board of Directors for discussion. (*Id.* ¶ 6.) Mr. Ulmer uses a “mainecounties.org” email address, the same one used by staff members of the MCCA. (*Id.* ¶ 3.)

Under these circumstances, the court finds that the requirements of M.R. Civ. P. 15(c) have been satisfied. The court is aware that 30-A M.R.S. § 2253(7) allows for entities like the Risk Pool to be set up as separate legal entities with the capacity to sue and be sued, “whether or not a body corporate.” However, the line between the MCCA and the Risk Pool is blurry at best.¹ The significant intermingling of Risk Pool and MCCA business, the lack of any public facing information that would inform a person that the Risk Pool is a distinct entity, and the fact that Attorney Heiden was actively seeking to

¹ The court notes that while the statute allows public self-funded risk pools like the Risk Pool to be formed and gives them capacity to sue and be sued without being formed as a body corporate, the Risk Pool is not identified any way that Attorney Heiden, or anyone outside of the MCCA and Risk Pool, would be able to tell from publicly available information that it is a legally separate entity from the MCCA.

determine whether the Risk Pool truly existed as a separate entity leads the court to conclude that this was not a “conscious choice to sue” the MCCA rather than the Risk Pool, but a clear “mistake concerning the identity of the proper party.” *Garland*, 2002 ME 131, ¶ 8, 804 A.2d 354; M.R. Civ. P. 15(c)(3). Because the Risk Pool had notice of the mistake from the inception of this lawsuit, it knew or should have known that, but for Attorney Heiden’s confusion as to its status as a separate entity, this FOAA appeal would have initially been filed against it.

CONCLUSION

Pursuant to M.R. Civ. P. 15(c), HRDC’s amended complaint adding the Risk Pool as a party relates back to the filing date of the original complaint. The Risk Pool’s motion to dismiss HRDC’s FOAA appeal as untimely is therefore DENIED.

DATED: April 22, 2022


Daniel I. Billings, Justice
Maine Superior Court