

Gina Turcotte, Paralegal
3924 W. River Rd, Sidney, Maine 04330
(207) 209-1767 Email: gina@mittchellanddavis.com

August 17, 2021

Michele Lumbert, Clerk
Augusta District Court
Capital Judicial Center
1 Court Street
Augusta, Maine 04330

RE: Turcotte v. Fesenmaier
Docket No. CV-2020-41

Dear Michele,

Enclosed please find the following documents for filing in this matter:

1. Plaintiff's Motion to Dismiss without Prejudice
2. Gina Turcotte's Affidavit in Support of Plaintiff's Motion to Dismiss
3. Email from Rob Overton to Gina Turcotte 10-09-2020
4. Email from Stephen Langsdorf to Gina Turcotte 10-30-2020
5. Maine Judicial Branch Order pmo-sjc-2, August 16, 2021
6. Affidavit of Jed Davis in Support of Plaintiff's Motion to Dismiss
7. Affidavit of Danny Daniels in Support of Plaintiff's Motion to Dismiss
8. Draft Order on Plaintiff's Motion to Dismiss without Prejudice

There is a trial management conference scheduled in this matter on August 24. Please bring these filings to the attention of the judge before that conference.

Thank you.

Respectfully Submitted,



Gina Turcotte

Enclosure

Cc: Daniel Bernier, Esq.

STATE OF MAINE
KENNEBEC, ss.

DISTRICT COURT
LOCATION: Augusta
Docket No.: CV-2020-41

GINA TURCOTTE,
Plaintiff,
v.
SUSAN FESENMAIER
Defendant.

**PLAINTIFF'S MOTION TO DISMISS
WITHOUT PREJUDICE**

NOW COMES Plaintiff, Gina Turcotte, and hereby moves the Court to dismiss this case without prejudice, and reserve Plaintiff's right to refile at a later date, for the following reasons:

1. On February 4, 2020, Plaintiff filed her Complaint with this Court pursuant to normal, pre-pandemic court procedures.
2. "On May 27, 2020, the State of Maine Judicial Branch issued its COVID-19 Phased Management Plan in response to the novel coronavirus pandemic that had engulfed the country and rendered normal judicial proceedings impossible."
3. As of October 21, 2020, "To enter a Judicial Branch building or Maine state court: Any person over age two must wear a face covering or mask..."
4. On February 22, 2021, Plaintiff notified the Court that the Parties completed discovery.
5. "Effective July 1, 2021, individuals who are fully vaccinated are not required to wear face coverings while inside a courthouse or other Judicial Branch facility. Any person who is not fully vaccinated must continue to wear an approved face covering or mask..."

<https://www.courts.maine.gov/covid19/pmp-final-addendum.pdf>

<https://www.courts.maine.gov/courts/alerts.shtml>

6. Plaintiff is not, and will not be, vaccinated due to pre-existing medical conditions, including asthma, *inter alia*, that prohibit the use of face coverings. See Plaintiff's Affidavit.
7. Because of the Judicial Branch's July 1, 2021 Order, Plaintiff will not be allowed to enter any Maine courthouse while the mask mandate and vaccine requirement are in effect.
8. If the mask mandate had been effective when Plaintiff filed her Complaint in February 2020, Plaintiff would not have filed at that time; instead, Plaintiff would have waited until the pandemic court rules were lifted, or before expiration of the statute of limitations.
9. If this Court holds the trial while the mask mandate is effective, Plaintiff will be unable to participate in the trial, properly examine and cross-examine witnesses or present evidence.
10. In June 2021, WGME TV reported, "Statewide, there are 28 percent, or nearly 6,000, more cases pending this May over last." District Attorney Maeghan Maloney was quoted saying that Kennebec County has 9% more cases pending in June 2021 than the same time last year.
<https://wgme.com/news/local/maine-courts-still-battling-case-backlog>
11. Today, the Maine Judicial Branch announced that due to an increase in the number of infections statewide, the Supreme Judicial Court has issued a revised Post-Pandemic Management Order (PPMO) effective August 16, 2021 reinstating the requirement for all visitors to wear a face covering or mask at all times while in a courthouse regardless of vaccination status. Any person who refuses to wear a face covering will be refused entrance and provided with a contact number for assistance. See Exhibit E.
12. Due to the severe backlog of civil and criminal trials for Maine courts, it is in the interest of justice and judicial economy to dismiss this case without prejudice and reserve the Plaintiff's right to refile at a later date after pandemic court rules and mask mandates are lifted.

WHEREFORE, the Plaintiff respectfully moves this Court to dismiss this case without prejudice and reserve the Plaintiff's right to refile at a later date.

Date: August 17, 2021



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IMPORTANT NOTICE

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STATE OF MAINE
KENNEBEC, ss.

DISTRICT COURT
LOCATION: Augusta
Docket No.: CV-2020-41

GINA TURCOTTE,
Plaintiff,
v.
SUSAN FESENMAIER
Defendant.

**AFFIDAVIT OF GINA TURCOTTE IN
SUPPORT OF PLAINTIFF'S MOTION
TO DISMISS WITHOUT PREJUDICE**

Gina Turcotte, being duly sworn, deposes and says:

1. I am the Plaintiff in this matter.
2. I submit this Affidavit in support of Plaintiff's Motion to Dismiss without prejudice.
3. When I was a child, I was raised in a physically and emotionally abusive environment that resulted in my suffering from lifelong Post-Traumatic Stress Disorder.
4. Because of this trauma, I have refused – for the entirety of my life – to cover my nose or mouth with any type of covering, including my bed sheets and blankets.
5. When I sleep – even to this day – I never cover my nose and mouth if I bring blankets over my head; I always make sure my nose and mouth are exposed.
6. Having to wear a mask or use any type of face covering causes me to suffer traumatic anxiety like that of a person who has been forcibly and physically muzzled during an attack.
7. When I was a child, I endured weekly clinical testing in Lewiston Maine related to my dermatological and breathing problems.
8. When I was in the 8th grade, I was diagnosed with asthma with several allergies which required me to use an inhaler and undergo weekly dermatological treatments.
9. At the age of 17, with my father's consent, I tried to enlist with the US Air Force; to that end, I took Armed Services Vocational Aptitude Battery of tests and passed with high scores.
10. After the Air Force recruiter received and reviewed my medical records, he determined I was not qualified to enlist with the Air Force because of my diagnosis of asthma.
11. Other than antibiotics and medications for PTSD symptoms, I resolutely and consistently refused to inject any chemicals into my body and have rejected all vaccinations, including flu.

12. Into my middle-adulthood, I was receiving treatment for PTSD and was prescribed many medications through the years; in August 2006, I stopped taking all prescription medications.
13. Other than taking a single dose of antibiotics for a mouth infection in 2011, I have not taken any prescription or over-the-counter medications for any ailment I have had since 2006.
14. Since 2006, when I have an internal infection or flesh injury, I only use organic cures which include, but are not limited to, baking soda, coconut oil, spices and herbs; I have cured mouth infections and flesh injuries many times with coconut oil.
15. When I filed my Complaint with this Court on February 4, 2020, I filed it pursuant to normal, pre-pandemic court procedures.
16. At that time, I had no reason to believe the COVID-19 pandemic would materialize, that the Governor would mandate the wearing of masks in all public places, or the Judicial Branch would modify the court schedule and its procedures.
17. It was not until May 27, 2020 that the Maine Judicial Branch issued its COVID-19 Phased Management Plan in response to the COVID-19 pandemic.
18. The Governor and Judicial Branch still require the wearing of masks to enter any Judicial Branch building or Maine state court.
19. When the Governor first implemented the statewide mask mandate earlier in 2020, I stopped going into public stores and businesses completely; instead, I hired friends and family to shop for me, or I ordered by phone and online and received delivery or curbside pickup.
20. From October 6 – 9, 2020, I negotiated with City of Augusta Code Enforcement to provide me with access to very old public records that were stored only on microfiche without having to enter the building because the mask mandate was in effect. See Exhibits A and B.
21. I have never entered a public business with a mask on my face.
22. When going to my office to retrieve my paychecks, they were taped to the outside of the door; or else, they were mailed to my home. See Exhibits C and D.
23. I am not, and will not be, vaccinated due to my aforementioned medical conditions, *inter alia*, and I cannot use of any type of face covering for the same reasons.

24. Because of the Judicial Branch's July 1, 2021 Order requiring all unvaccinated people to wear a mask when entering a Maine courthouse, I will not be allowed to enter any Maine courthouse while the vaccine requirement and mask mandate are in effect.

25. If the mask mandate and/or the vaccine requirement had been effective when I filed my Complaint in February 2020, I would not have filed at that time; instead, I would have waited until the pandemic court rules were lifted, or before expiration of the statute of limitations, whichever was expected to occur first.

26. If this Court holds the trial while the mask mandate is effective, I will not be able to participate in the trial, properly examine and cross-examine witnesses or present evidence.

Date: August 17, 2021



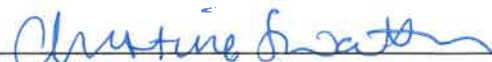
Gina Turcotte
3924 W. River Rd
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(207) 209-1767
gina@mitchellanddavis.com

STATE OF MAINE
KENNEBEC, ss.

Date: 

Personally appeared before me the above-named Gina Turcotte who made oath that the above statements are true and accurate to the best of her knowledge, information and belief.

Before me,


Notary Public

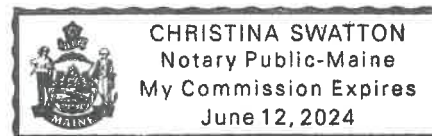


EXHIBIT C

STATE OF MAINE
KENNEBEC, ss.

DISTRICT COURT
LOCATION: Augusta
Docket No.: CV-2020-41


GINA TURCOTTE,
Plaintiff,
v.
SUSAN FESENMAIER
Defendant.

AFFIDAVIT OF JED DAVIS IN SUPPORT OF PLAINTIFF'S MOTION TO DISMISS WITHOUT PREJUDICE

Jed Davis, Esq., being duly sworn, deposes and says:

1. I submit this Affidavit in support of Plaintiff's Motion to Dismiss without prejudice.
2. I have owned and operated Jim Mitchell and Jed Davis, P.A. in Augusta, Maine for more than 50 years, and I have worked with the Plaintiff in this matter as my full-time paralegal since January 1, 2019.
3. The Plaintiff has received weekly paychecks since she began working with my office, has come into the building every week to get her checks and to talk with me and office staff.
4. When the pandemic began and mask mandates went into effect, our office complied with those mandates which caused the Plaintiff not to come into the building for any reason.
5. The Plaintiff said she had medical conditions that proscribed the wearing of masks.
6. While the mask mandate was in effect, the Plaintiff never entered my private office, unlike before when she would occasionally come to visit and talk.
7. Since the mask mandate was lifted, the Plaintiff again comes into the building.

Date: August 17, 2021



Jed Davis, Esq., Maine Bar No. 001686
Jim Mitchell and Jed Davis, P.A.
86 Winthrop Street, Suite One
Augusta, Maine 04330
(207) 622-6339
jed@mitchellanddavis.com

STATE OF MAINE
KENNEBEC, ss.

Date: 8/17/21

Personally appeared before me the above-named Jed Davis, Esq. who made oath that the above statements are true and accurate to the best of his knowledge, information and belief.

Before me,

Christina Swatton
Notary Public

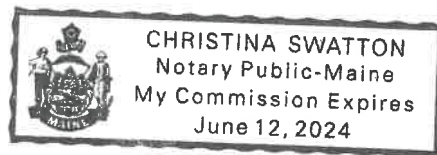


EXHIBIT D

STATE OF MAINE
KENNEBEC, ss.

DISTRICT COURT
LOCATION: Augusta
Docket No.: CV-2020-41

GINA TURCOTTE,
Plaintiff,
v.
SUSAN FESENMAIER
Defendant.

AFFIDAVIT OF DANNY DANIELS IN SUPPORT OF PLAINTIFF'S MOTION TO DISMISS WITHOUT PREJUDICE

Danny Daniels, being duly sworn, deposes and says:

1. I submit this Affidavit in support of Plaintiff's Motion to Dismiss without prejudice.
2. I have been employed by Jim Mitchell and Jed Davis, P.A. in Augusta Maine as the office Accountant for more than 20 years, and have worked with the Plaintiff since January 1, 2019.
3. The Plaintiff has received weekly paychecks since she began working with our office and has come into the office to get her paychecks; at that time, she would spend time chatting with myself and other office staff, sometimes for more than an hour.
4. When the pandemic began and mask mandates went into effect, our office complied with those mandates which caused the Plaintiff not to come into the office for any reason.
5. The Plaintiff said she had medical conditions that prevented her from wearing a mask.
6. When the Plaintiff told us that she was on the way to the office to get her check, either I or another staff would tape the check to the outside of the door where Plaintiff would get it.
7. During the entire time that the mask mandate was in effect, the Plaintiff never entered the office of Jim Mitchell and Jed Davis.
8. Since the mask mandate has been lifted, the Plaintiff now comes into the office and chats with me and other staff when she gets her paychecks.

Date: August 17, 2021



Danny Daniels
Jim Mitchell and Jed Davis, P.A.
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STATE OF MAINE
KENNEBEC, ss.

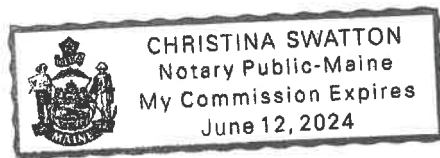
Date: 8/17/21

Personally appeared before me the above-named Danny Daniels who made oath that the above statements are true and accurate to the best of his knowledge, information and belief.

Before me,

Christina Swatton

Notary Public/Attorney at Law



STATE OF MAINE
KENNEBEC, ss.

DISTRICT COURT
LOCATION: Augusta
Docket No.: CV-2020-41

GINA TURCOTTE,
Plaintiff,
v.
SUSAN FESENMAIER
Defendant.

**ORDER ON PLAINTIFF'S MOTION TO
DISMISS WITHOUT PREJUDICE**

Based on Plaintiff's Motion to Dismiss Without Prejudice,

IT IS HEREBY ORDERED that the Motion is GRANTED.

The Court ORDERS that this matter is hereby **DISMISSED WITHOUT PREJUDICE**.

The Court ORDERS that the Plaintiff may refile her Complaint at a later date in either District or Superior Court, provided that it is filed within the statute of limitations from the date the Plaintiff moved out of the Defendant's property, specifically October 31, 2019.

It is further ORDERED that all discovery documents and information that was obtained by, and exchanged between, both parties shall be preserved in full by each party for use in the subsequent proceedings, and that evidence shall not be discarded, damaged or destroyed until expiration of the statute of limitations referenced herein.

The Court hereby ORDERS the Clerk to record this Order in the Docket Record.

Date: _____, 2021

Judge, District Court

STATE OF MAINE
KENNEBEC, ss.

DISTRICT COURT
LOCATION: Augusta
Docket No.: CV-2020-41

GINA TURCOTTE,
Plaintiff,
v.
SUSAN FESENMAIER
Defendant.

**PLAINTIFF'S 2nd MOTION IN LIMINE TO
PRECLUDE DEFENDANT FROM ASSERTING
AFFIRMATIVE DEFENSES OR COUNTERCLAIMS
AGAINST PLAINTIFF DURING TRIAL
MRCivP 15(a)**

NOW COMES Plaintiff, Gina Turcotte, and hereby moves the Court pursuant to Maine Rules of Civil Procedure Rule 15(a), to preclude Defendant and her attorney from asserting affirmative defenses or counterclaims against the Plaintiff during trial.

Plaintiff filed her Complaint with this Court, and served Defendant's attorney via email on February 4, 2020. More than 20 days later, on March 11, Defendant filed her Answer with this Court and served Plaintiff via email.

Defendant's Answer categorically denied all facts and allegations, except the first fact, in the Plaintiff's Complaint, and provided no affirmative defenses, nor alleged any counterclaims against the Plaintiff.

This court issued the Scheduling Order on March 18.

On August 20, 2020, Defendant's attorney filed a Witness and Exhibit List estimating the length of trial as one day and the issues for trial were:

1. The Plaintiff asserts six counts against defendant. The defendant disputes all six counts in full.

Later, on February 18, 2021, Defendant's attorney filed another Witness and Exhibit list (that was not marked as the 2nd list), and which was exactly identical to the first list except that the Defendant is now claiming there are more issues for trial, to wit:

2. Estoppel, mitigation of damages, and waiver.

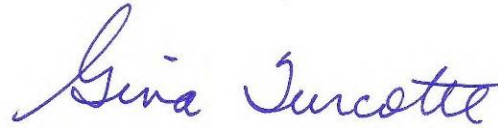
Defendant's claim that they are going to raise the aforementioned issues for trial was never brought to the Plaintiff's or the Court's attention before February 18, 2021.

Moreover, the Defendant's time to amend the Answer to include any affirmative defenses or counterclaims has long expired.

WHEREFORE, Plaintiff moves this Court to grant this Motion in Limine to:

1) preclude the Defendant or her attorney from asserting any affirmative defenses or counterclaims against the Plaintiff during trial.

Date: August 13, 2021



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STATE OF MAINE
KENNEBEC, ss.

DISTRICT COURT
LOCATION: Augusta
Docket No.: CV-2020-41

GINA TURCOTTE,
Plaintiff,

v.

SUSAN FESENMAIER
Defendant.

**PLAINTIFF’S MOTION IN LIMINE TO
EXCLUDE IRRELEVANT EVIDENCE
RELATING TO PLAINTIFF’S PRIOR
LAWSUITS PURSUANT TO RULES 401,
402 and 406 OF RULES OF EVIDENCE**

NOW COMES Plaintiff, Gina Turcotte, and hereby moves the Court pursuant to Maine Rules of Evidence Rules 401, 402 and 406, to prevent the Defendant from introducing as evidence all court orders and other filings from prior state and federal lawsuits to which Plaintiff has been a party.

Rule 401, Test for Relevant Evidence, says “*Evidence is relevant if (a) [i]t has any tendency to make a fact more or less probable than it would be without the evidence; and (b) [t]he fact is of consequence in determining the action.*”

Rule 402, General Admissibility of Relevant Evidence, says “*Irrelevant evidence is not admissible.*”

Rule 406, Habit; Routine Practice, says “*(a) Admissibility. Evidence of a person’s habit or an organization’s routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice...*” and “*(b) Method of proof. Habit or routine practice may be proved by proof of a sufficient number of instances of conduct to support a finding that the habit existed or that the practice was routine.*”

Here, Plaintiff made a six-count complaint against Defendant: Count 1, Violation of the Implied Warranty and Covenant of Habitability; Count 2, Violation of Maine Unfair Trade Practices Act; Count 3, Wrongful Retention of Security Deposit; Count 4, Treatment of Security Deposit; Count 5, Breach of Contract; and Count 6, Negligence.

Plaintiff filed her Complaint and served Defendant on or about February 4, 2020. Defendant accepted service on March 6 and Answered the Complaint on March 11.

The parties have since been conducting their discovery and attended a Rule 26g hearing on September 9, 2020 because of Defendant's objections and insufficient responses. This Court ordered Defendant to provide certain documents to Plaintiff within 14 days.

Defendant has been untimely and negligent with providing responses to Plaintiff's requests for discovery thereby causing more than a 3-month delay in finishing the discovery process.

Therefore, Defendant has been rescheduled to be deposed on October 8, 2020, and her 3 witnesses will be deposed directly thereafter. Plaintiff is awaiting this Court's ruling on her motion to extend the discovery deadline due to Defendant's delays.

To date, the Defendant has not filed any motions to dismiss or for summary judgment in this case.

On September 16, Defendant's counsel sent Plaintiff and the Court a letter with an attached Order on Pending Motions and After Review Pursuant to 28 U.S.C. § 1915 and Cok Warning, from United States District Court, District of Maine in the case *GinA v. City of Augusta, et al*, Docket No. 1:16-cv-100-NT.

Defendant's letter says they are adding the federal court Order to their Exhibits List to "...show that you have been warned by Court's [sic] before that groundless and frivolous filing [sic] will not be tolerated." Defendant's letter is attempting to show that Plaintiff has a habit or routinely practices the act of filing "groundless and frivolous filings".

Under Rule 401(a), the Order from *GinA v. City of Augusta*, or any other prior lawsuit, fails the test for relevancy as it has absolutely no tendency to make any fact in this case against either party more or less probable than it would be without admission of those Orders, and under (b), because those Orders will have absolutely no consequence in determining the action against Defendant in this case.

Rule 402 clearly prohibits admission of evidence that is not relevant.

Defendant has not filed any motions to dismiss or for any other purpose with this Court claiming Plaintiff's lawsuit, or any claims she has made therein, are groundless and frivolous.

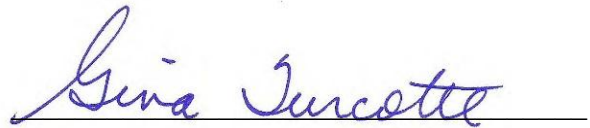
If Defendant believed Plaintiff's claims, or any one of them, are frivolous and groundless, this Court must ask why Defendant has not filed any motions to have this case dismissed or for summary judgment, either in part or in whole.

WHEREFORE, Plaintiff moves this Court to grant this Motion in Limine to:

1) exclude the Order on Pending Motions and After Review Pursuant to 28 U.S.C. § 1915 and Cok Warning in the case *GinA v. City of Augusta, et al*, Docket No. 1:16-cv-100-NT, and

2) exclude all Orders and filings from all prior lawsuits to which Plaintiff was a party.

Date: September 18, 2020



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