

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW HAMPSHIRE

Robin Foley, Gregory Vankooiman, J.P.
and V.P. *

Plaintiff *

v. *

Civil Action No. 10-CV-335-JL
JURY TRIAL DEMANDED

The Town/Municipality of Lee New
Hampshire; Lee Police Department
Chester Murch, Chief of Police;
Brian Huppe, Sergeant;
Scott Flanagan, Former Patrolman;
Raymond Pardy, Former Patrolman;
and
Brenda Tenaglia/Griffin *

Defendants *

DEFENDANTS' PRETRIAL STATEMENT

The Town of Lee, Lee Police Department, Chief Chester Murch, Sergeant Brian Huppe and Officers Scott Flanagan and Raymond Pardy, submit the following pretrial statement in accordance with Local Rule 16.2.

I. Brief Statement of Case

This case involves a dispute over the right of the plaintiffs to remain in a camper trailer at the Wellington Campground in Lee, New Hampshire. The plaintiffs entered into an agreement to purchase the camper from Barbara Griffin, now Tenaglia for \$3,500. They made an initial payment of \$1,600 cash and were to pay the balance by August 1, 2007. They did not make the August 1, 2007 payment. Thereafter, Ms. Griffin put a lock on the camper, which plaintiffs removed, and made complaints to the Lee Police Department. Various Police Officers became involved, first to mediate the situation, and then to instruct the plaintiffs to vacate the camper after a check presented by plaintiffs allegedly was unable to be negotiated by Ms. Griffin. Plaintiffs have brought suit seeking to recover for a violation of their constitutional rights on account of the police officers advising them that if they did not leave the camper, they could be subject to arrest, and have also sued Ms. Griffin for destruction of their property and for initiating the police involvement.

2. Stipulation of Contested Facts

All facts other than those listed as “uncontested” are believed to be contested.

3. Stipulation of Uncontested Facts

- On July 7, 2007 plaintiffs and Griffin-Tenaglia entered into a Bill of Sale for a 1990 Skamper Model #2950T camper located at Wellington Park in Lee, New Hampshire. Pursuant to the terms and conditions as stipulated in the Bill of Sale, the Plaintiffs paid \$1,600.00 in cash on July 7th and were to pay the balance on or before August 1, 2007 or else they would forfeit the initial payment and the contract would be void.
- Plaintiffs paid \$1,050.00 to Wellington Park Campground and executed a campground “space rental agreement” for the May 15 to September 15, 2007 season.
- Plaintiffs failed to pay the balance due on the camper purchase by August 1st.
- On August 1st, Defendant Griffin put a pad lock on the camper and a note for Plaintiff Foley to contact her. Griffin also notified the Lee Police Department that she did so and the Department made an entry into its records to that effect.
- On August 1st or 2nd, plaintiffs removed the lock from the camper.
- On August 3rd, Griffin requested the Lee Police go to the camper, where they found that the lock had been removed and Ms. Foley present. After some back and forth, Ms. Foley presented Sgt. Huppe with a check for \$1,700 who then gave the check to Griffin. Griffin accepted the check on the condition that it clear on August 4th. The check was on Mr. Vankooiman’s account, but was signed by Ms. Foley.
- On August 4th, Griffin advised the police that the bank would not negotiate the check given by Ms. Foley and that she wanted Foley et al. out of the camper. Sgt. Huppe went to the camper to look for Ms. Foley and Mr. Vankooiman. Eventually he found them advised them that the check was refused and that they had to vacate the camper by 16:00 hrs. The Police further advised Plaintiffs that a new lock would be put on the camper and if they removed it, they would be arrested. Plaintiffs attempted to raise cash to pay Griffin, but were unable to do so.
- At 16:10, the Police found Foley et al. moving out of the camper. Officer Flanagan extended the deadline to 18:00 and advised that if they did not vacate, they would be subject to arrest for criminal trespass.
- At 18:00, Officer Flanagan found the plaintiffs packed up (except for a few personal items including fish tanks with fish and a mattress set) and leaving the campground. A short time later, Officer Flanagan, upon advising Mr. Wellington that the matter had been resolved, learned that Mr. Wellington wanted the plaintiffs to leave the campground, and not stay with friends. Officer Flanagan found plaintiffs at a friends’

campground, advised them of Wellington's wishes, and plaintiffs then left the campground.

4. Stipulation of Applicable Law

As to the Municipal defendants (and based on the court's indication regarding the likely outcome of the pending motion for summary judgment), the applicable law will be:

- 5th and 14th Amendments of the United States Constitution jurisprudence regarding Due Process;
- law regarding constitutional damages and emotional distress
- law regarding procedure and evidence

5. Names and Addresses of Witnesses

- A. Robin Foley – 420 New Zealand Road, Seabrook, NH;
- B. Gregory Vankooiman - 420 New Zealand Road, Seabrook, NH;
- C. Brenda (Griffin) Tenaglia – 410 Salem Street, Wakefield, MA;
- D. Chester Murch, Chief of Police – c/o Lee Police Department;
- E. Sgt. Brian Huppe – c/o Lee Police Department;
- F. Officer Scott Flanagan – c/o Somersworth Police Department; and
- G. Officer Raymond Pardy – c/o Lee Police Department.

In addition, Lee Defendants reserve the right to call witnesses listed by the Plaintiff and Co-defendant, and to amend its list of witnesses upon notice to the Plaintiff, Co-defendant and the Court. Lee Defendants further reserve the right to call rebuttal witnesses or recall its witnesses for rebuttal purposes.

6. Waiver of Claims or Defenses (if any)

Lee Defendants do not waive any defenses.

7. List of Depositions To Be Read

Lee Defendants do not anticipate the need to read any of the depositions into evidence. However, Lee Defendants reserve the right, if necessary, to read into evidence the depositions and to use the corresponding exhibits taken before or during trial to the extent permitted by the Rules of Evidence and Procedure.

Depositions taken to date are:

- A. Robin Foley;
- B. Gregory Vankooiman;
- C. Brenda (Griffin) Tenaglia;
- D. Chester W. Murch, Chief of Police;
- E. Officer Raymond Pardy;

- F. Sgt. Brian Huppe;
- G. Officer Scott Flanagan; and
- H. Lawrence A. Vogelmann, Esquire.

8. **List of Exhibits**

A. **Expect to Offer**

- i. Lee Police Department Incident reports;
- ii. Bill of Sale;
- iii. Title to camper;
- iv. TD Banknorth, NA checking account statement of plaintiff Gregory Vankooiman;
- v. Summary of checking account statement;
- vi. Copies of checks written by Robin Foley and/or Gregory Vankooiman on the TD Banknorth NA account;
- vii. Wellington Campground Agreement;
- viii. Photographs of Camper and Campsite in question;
- ix. Durham District Court Documents from *Foley v. Wellington*

In addition, Lee Defendants intend to mark for identification any and all deposition exhibits, documents produced in response to interrogatories and requests for production and supplemental requests for production, pleadings and related court orders and exhibits listed by the Plaintiff and Co-defendant. Lee Defendants respectfully reserve any and all objections to the admission of exhibits for trial. Lee Defendants also respectfully reserve the right to amend their list of exhibits upon notice to the Plaintiff, Co-defendant and the Court.

B. **May Offer**

- i. Criminal records of Gregory Vankooiman;
- ii. Custody records relating to James Price; and
- iii. Exhibits for impeachment or rebuttal purposes, as yet unknown

9. **Itemized Special Damages**

See Plaintiffs' Pretrial Statement.

10. **Last offer and demand and ADR status**

Demand: \$150,000
Offer: \$25,000 plus reasonable fees as determined by court following submission of bills by plaintiffs and comment by defendants.

This last offer was rejected by plaintiffs but no counter demand was made. The Town, Huppe and Flanagan have this day made an offer of judgment under Rule 68 which they may file with the court as provided for in Rule 68.

11. **Estimated Length of Trial**

2-3 days.

12. **Accompanying Documents**

A. See Motion In Limine filed contemporaneously herewith.

Respectfully submitted,

**TOWN OF LEE (NH);
LEE POLICE DEPARTMENT;
CHESTER MURCH, CHIEF OF POLICE;
SGT. BRIAN HUPPE;
SCOTT FLANAGAN, FORMER PATROLMAN;
AND
RAYMOND PARDY, FORMER PATROLMAN**

By Their Attorneys

GALLAGHER, CALLAHAN & GARTRELL, PC

Dated: April 2, 2012

/s/ R. Matthew Cairns
R. Matthew Cairns (#411)
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this date via the Electronic Case Filing (ECF) system on all counsel of record.

Dated: April 2, 2012

/s/ R. Matthew Cairns