

STATE OF RHODE ISLAND
DIVISION OF PUBLIC UTILITIES AND CARRIERS

IN RE: RHODE ISLAND FAST FERRY, INC.:

Docket No.: D-13-51

MOTION TO QUASH SUBPOENA

Pursuant to the Rhode Island Superior Court Rule of Procedure 45 sections (c) (2) (B) and (3) (A) (B), Bluewater, LLC moves to quash the subpoena issued by Town of New Shoreham on September 12, 2015.

Mr. Filippi, who has not been a party to these proceedings during the two years they have been progressing, was issued a subpoena by the Town one day after he submitted materials in compliance with Division Order issued August 11, 2015. The subpoena commanded Mr. Filippi to produce nineteen requests for documents and appear for an oral deposition in less than five (5) working days. This is a plain violation of Division Rules of Practice and Procedure 19, 21 and Super. R. Civ. P 45 (A) and (B). Therefore, we respectfully request an Order from the Division quashing the subpoena and ruling on the scope of discovery in this matter, pursuant to Division Rule 19 (d), 21 (c) (3), and R.Civ.P.45 (c).

As a preliminary matter, counsel for Bluewater, LLC was retained approximately four (4) working days ago. Yet I do attest that in that short time I have, in good faith, conferred with opposing counsel for the Town of New Shoreham and Interstate Navigation in an attempt to resolve this discovery dispute without the need of the Division's involvement. However, opposing counsel for both Interstate and the Town of New Shoreham have stated that their position is that they are unwilling to alter the timing of the deposition or scope of request unless RIFF abandons opposition to extending the discovery in this matter into January. As I do not represent RIFF, I am in no position to affect the change they seek, and therefore was forced to

file this motion in order to ensure that Mr. Filippi is afforded the same procedural and substantive protections enjoyed by all other parties in this proceeding.

Finally, I also attest that in accordance with Division Rules and Article II, Rule 9 of the Supreme Court of Rhode Island, I will be submitting my Miscellaneous Petition for Admission Pro Hac Vice this week. It is my hope that, due to the emergency timing of this matter, the Division will allow for this written submission on behalf of my client while my application is finalized, as I have only been retained in this matter for approximately four (4) days. I am a member in good standing of the State Bar of New York, and will identify a member of the Rhode Island Bar to work in conjunction with on this matter, as per the rule.

Super. R. Civ. P 45 (c) (1) states that, "(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena" If such steps are not taken, those subject to a subpoena may motion under Super. R. Civ. P 45 (c) (3) (A) and (B) which state that,

- (A) "On a timely motion, the Court by which a subpoena was issued shall quash or modify the subpoena if it
 - (i) fails to allow reasonable time for compliance;
 - (ii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
 - (iii) subjects a person to undue burden.
- (B) If a subpoena
 - (i) requires disclosure of a trade secret or other confidential research, development, or commercial information or
 - (ii) requires disclosure of an unretained expert opinion or information not describing specific events or occurrences in dispute and resulting from the experts study made not at the request of any party the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order an appearance or production only upon specified conditions.

I Failure to Allow Reasonable Time

Therefore, the subpoena failed to allow reasonable time for compliance both practically and procedurally by violating Division Rule 21 (b), which states that, “objection to the deposition, if any, shall be made in accordance with Rule 19 (d).” Rule 19 (d) states, “any party objecting to a written motion filed pursuant to this rule shall, within ten (10) calendar days of the service of the motion, file an objection thereto in writing setting forth in detail the grounds for the objection.”

In addition, the same ten (10) day period is permitted for objection to written requests under 21 (c) (3) which states, “objection to a data request in whole or in part on the ground that the request is unreasonable and/or the material is not relevant or not permitted or required by law shall be made by motion filed as soon as practicable and in no event later than ten (10) calendar days after service of the request.”

Therefore, in the instant case, per Division rules, Bluewater, LLC has ten (10) days to object to the noticing of a deposition and document production. Yet in this case, opposing counsel issued a subpoena on a Saturday and served process sometime thereafter. This left Mr. Filippi less than less than five (5) working days to receive notice of his involvement in the action, find counsel, and produce nineteen categories of voluminous, unreasonable, and privileged data requests.

Therefore, the subpoena does not allow for a reasonable time to comply and requests information far outside the scope of the Division inquiry into the availability of a dock site. Consequently, pursuant to Division Rules, we make this written objection within the ten (10) day period to both the deposition and the scope of the documentary request. We, “respectfully request that as per the Rule 21 (C) (3) that, “the relevancy of a request shall be determined under the standards established for such determinations under Rule 26 of the Superior Court Rules of

Procedure” and the “Hearing Officer shall thereupon determine the validity of the request and shall establish a date for compliance.”

In addition to Division Rules, the issuance of subpoenas are governed by Rule 45 which also has procedural safeguards, specifically section (c)(2)(B). The section states that when, “a person commanded to produce and permit inspection and copying may, within fourteen (14) days after service of the subpoena or before the time specified for compliance if such time is less than fourteen (14) days after service, serve upon the self-represented litigant party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises.” The rule continues that, “if objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued.” Therefore, while we have not had the benefit of the full fourteen (14) days to proffer our response, consider this our written objection to the request which will be duly served upon the attorney designated in the subpoena prior to the time for compliance.

As a final note regarding timing, we regret any confusion the filing of this motion will cause to opposing counsel, served the day the deposition has been noticed. However once again this is not a situation of our making, and after conferring with counsel Friday, necessity and rule provisions dictated that we draft and submit this objection prior to the deposition. We continue to desire to work in good faith with opposing counsel to find an amicable, measured approach to this inquiry

II Undue Burden

The sum of this process has exposed Mr. Filippi to an invasive data request and an oral deposition within a week, all occurring prior to any ruling issued by the Division as to the relevance of the items requested.

As to the scope of this inquiry, the Division stated in the August 11, 2015 Order that, “it is true that the Division has routinely granted applications that seek authority to operate as ferry companies in Rhode Island subject to conditions subsequent.” Furthermore, “it is also true that the finality of matters related to dock access, construction, or repair work has been treated by the Division as a post-application-approval condition for the issuance of the CPCN.” “However, the Division is not aware of a single ferry “CPCN application” case where the Division has approved the application without a *de facto* record of the proposed docking facility (ies).” Therefore, the Division instructed RIFF to declare on or before September 11, 2015 which dock it is planning to use on Block Island and offer proof of the docks availability.

Mr. Filippi complied with the Division Order on September 11, 2015. Bluewater submitted an executed lease for the proposed facility, maps, and dock plans, drawn up by the town of New Shoreham’s own engineer. In addition, Bluewater, LLC began the regulatory process with the Army Corps of Engineers at a meeting that was held on Sept 8th.

In response to this, opposing counsel filed a Motion, claiming that Bluewater, LLC was a “sham” which they claim was, “designed to purportedly comply with the division order demonstrating the docks availability.” As evidence of their contention, they have proffered several irrelevant and erroneous facts which we will address in turn.

Yet once again, as stated by the Division, the only facts pertinent to this preliminary investigation are those relating to proof of the docks “availability.” Against this standard a

review of the facts demonstrates that Bluewater, LLC is very real, and Mr. Filippi has begun efforts in good faith, at his own expense, to render the dock space available.

Specifically, the following facts support the contention that the dock is available.

- 1) Contrary to opposing counsels claim, Mr Filippi has secured the riparian rights to Lot 158 Plat 6 in the Town of New Shoreham. As proof of this, a copy of the Agreement was filed with the Division on Thursday September 17, 2015. In addition, acquisition of riparian rights is not even required by the Army Corps of Engineers process that Bluewater has initiated.
- 2) Second, Mr. Filippi has previously filed a lease for the proposed facility for Lot 158 Plat 6 between Bluewater, LLC and RIFF with the Division.
- 3) Third, in the late spring of 2014, Mr. Filippi contracted the Town of New Shoreham's own marine engineer to design a viable dock plan for Lot 158 Plat 6 and several other potential sites.
- 4) Fourth, Mr. Filippi submitted an affidavit, he had begun exploring the Army Corps of Engineers process for dock approval. Specifically, Mr. Filippi went farther than mere research, taking the first step in the Army Corps process by holding a pre-coordination meeting and presentation with Army Corps of Engineers representatives on September 8th, 2015.

These facts clearly demonstrate that, as the Division Ordered, a "de facto record of the proposed docking facility(ies)" in Old Harbor has been successfully produced. Bluewater, LLC is an entity, duly formed under the laws of Rhode Island, holding the riparian rights to Lot 158 Plat 6, that has evidenced a viable docking plan designed by the Town of New Shoreham's marine engineer, and initiated the long approval and construction process regulated by the Army Corps

of Engineers. We can think of no other criteria a dock development company could or should have to produce at this preliminary stage in order to demonstrate the availability of a dock site.

However, opposing counsel has continued to expand the common definition of “availability” to include a seemingly endless list of irrelevant, embarrassing, and harassing discovery requests which have no bearing on these proceedings.

First, opposing counsel claimed a shared a business address with Ballard’s Inn, another business owned by the Filippi family, directly adjacent to the dock site at issue, served as indicia of the “sham”. Yet in their motion, opposing counsel cited no statute, regulation, rule, or provision in either Rhode Island General Laws or Division Rules which require a potential dock developer to have an address not shared with another business.

Secondly, opposing counsel stated that, “Mr. Filippi does not own any real estate whatsoever on Block Island.” Yet in their motion, opposing counsel cited no statute, regulation, rule, or provision in either Rhode Island General Laws or Division Rules which require a potential dock developer to possess title to property being considered as a dock location. We are aware of no rule that requires dock developers to enter into binding legal arrangements for the purchase of land in the hope that the site gains Division approval for a license, and approval of the Army Corps of Engineers.

However, while once again not a requirement for dock availability, in reality Mr. Filippi has very deep roots on Block Island. Mr. Filippi does own property on Block Island, including a percentage of Ballards Inn Realty LLC, and Overlook Realty LLC, and percentage of Ballards Wharf Realty LLC. Mr. Filippi is also registered to vote on Block Island.

Finally, opposing counsel offers a correspondence from Mr. Filippi’s brothers Mr. Steven Filippi and Mr. Blake Filippi, regarding riparian rights on the various plats owned by the Filippi

family, including those owned by Ballard's Inn Realty, L.L.C, T&C Holdings, and Ballard's Wharf Realty, LLC, respectively.

The first from Mr. Steven Filippi on September 11, 2015, states that "is also clear that no riparian rights have been obtained at any property." While this statement was true at the time it was made, it was not true after September 16, 2015, when Marion Filippi executed the agreement for the riparian rights to Lot 158 Plat 6.

The second is from Mr. Blake Filippi, stating that Ballard's Wharf Realty, LLC has not allowed Bluewater, LLC any riparian rights or access to connect a proposed pier with BWR's existing marine facility on Lot 159 Plat 6. However, Mr. Paul Filippi holds one-third of the property interest in the existing BWR facility, and feels he will be able to present an acceptable plan to make use of his property interest to allow access to the proposed dock or provide access through the public access that were deeded to the CRMC in 2005.

Therefore, while Mr. Filippi will continue to try to convince his family members of the value of this project, he requests that that opposing counsel cease involvement of his family in this matter. Mr. Filippi's family have clearly expressed their lack of support for the project and, unless their opinions are somehow relevant on to the availability of Lot 158 Plat 6, continued involvement of any of Mr. Filippi's family members in this proceeding is simply intended to embarrass and harass.

III. Disclosure of protected or privileged material; disclosure of a trade secret or other confidential research, development, or commercial information; requires disclosure of an unretained expert opinion

As discussed, the subpoena is filled with document requests which are irrelevant to these proceedings and also request privileged, confidential, developmental, and unretained expert information. As such, while we await a ruling by the Division on the scope of the

allowable inquiry, we will withhold our specific objections to the document requests until we gain clarity from the Division on which, if any, of the nineteen document requests, are even relevant to these proceedings.

IV Closing

Once again we feel that the facts clearly demonstrate that, as the Division Ordered, a “de facto record of the proposed docking facility(ies)” in Old Harbor has been successfully produced. Bluewater, LLC is an entity, duly formed under the laws of Rhode Island, holding the riparian rights to Lot 158 Plat 6, that has evidenced a viable docking plan designed by the Town of New Shoreham’s marine engineer, and has initiated the approval and construction process regulated by the Army Corps of Engineers. As such, the subpoena was both procedurally and practically inappropriate, adding yet another layer of irrelevant, embarrassing, and harassing discovery requests intended to unnecessarily obfuscate and delay these proceedings.

Respectfully submitted,

BLUEWATER, LLC

By its Attorneys,



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Dated: September 20, 2015

CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2015, I delivered a true copy of the foregoing document via electronic mail to the parties on the attached service list.

Stephen Overdorf (Amicus)