

STATE OF VERMONT

SUPERIOR COURT
Chittenden County Unit

CIVIL DIVISION
Docket No. ____ - 11-20 Cncv

CONNECTICUT ATTORNEYS TITLE)
INSURANCE COMPANY,)

Plaintiff,)

v.)

TOWN OF BOLTON, AMY GROVER, in her)
official capacity as Municipal Clerk for the)
TOWN OF BOLTON, the TOWN OF)
GEORGIA, CHERYL LETOURNEAU in her)
official capacity as Municipal Clerk for the)
TOWN OF GEORGIA, TOWN OF LINCOLN,)
SALLY OBER, in her official capacity as)
Municipal Clerk for the TOWN OF LINCOLN,)
TOWN OF MILTON, SHERYL PRINCE, in)
her official capacity as Municipal Clerk for the)
TOWN OF MILTON, TOWN OF)
NORTHFIELD, KIM PEDLEY in her official)
capacity as Municipal Clerk for the TOWN OF)
NORTHFIELD, TOWN OF PLAINFIELD,)
CAROL SMITH, in her official capacity as)
Municipal Clerk for the TOWN OF)
PLAINFIELD, TOWN OF SHREWSBURY,)
MARK GOODWIN, in his official capacity as)
Municipal Clerk for the TOWN OF)
SHREWSBURY, CITY OF SOUTH)
BURLINGTON, DONNA KINVILLE, in her)
official capacity as Municipal Clerk for the)
CITY OF SOUTH BURLINGTON, TOWN OF)
WHITING, HEATHER BOUCHARD in her)
official capacity as Municipal Clerk for the)
TOWN OF WHITING,)

Defendants.)

COMPLAINT TO MANDATE MUNICIPAL ACTION PURSUANT TO V.R.C.P. 75
AND REQUEST FOR EXPEDITED HEARING

Plaintiff Connecticut Attorneys Title Insurance Company (“CATIC”), by and through its attorneys, Downs Rachlin Martin PLLC, hereby requests, pursuant to Rule 75 of the Vermont Rules of Civil Procedure, that the Court mandate certain municipal action as required by statute. More particularly, plaintiff seeks a mandate that the municipalities and municipal clerks named herein take all reasonable steps necessary to ensure that their municipal land records are fully available for inspection and copying by the public during the municipalities’ previously-established customary hours. **CATIC further requests that this matter be set for hearing on an expedited basis given the time sensitivity of the issues involved.** To that end, plaintiff alleges as follows:

1. CATIC is a title insurance company domesticated under the laws of the State of Vermont with its principal place of business in Rocky Hill, Connecticut.
2. CATIC is licensed to operate in nineteen states including all New England states.
3. As part of the enterprise and through a network of licensed attorney agents, CATIC provides title insurance policies for both owners and lenders.
4. CATIC has a branch office in South Burlington, Vermont (the “Vermont Office”).
5. As a branch office of CATIC, the Vermont Office provides a range of title and support services to CATIC’s attorney agents throughout Vermont. The attorney agents represent clients engaged in the acquisition and/or financing of real estate.
6. As one component of legal representation, the attorney agent provides title insurance to their client. Issuance of title insurance is the culmination of an examination of the land records and a determination that title is marketable and insurable.

7. Defendant Town of Bolton is a Vermont municipal corporation located in the County of Chittenden. Defendant Amy Grover is the municipal clerk for Defendant Town of Bolton.

8. Defendant Town of Georgia is a Vermont municipal corporation located in the County of Franklin. Defendant Cheryl Letourneau is the municipal clerk for Defendant Town of Georgia.

9. Defendant Town of Lincoln is a Vermont municipal corporation located in the County of Addison. Defendant Sally Ober is the municipal clerk for Defendant Town of Lincoln.

10. Defendant Town of Milton is a Vermont municipal corporation located in the County of Chittenden. Defendant Sheryl Prince is the municipal clerk for Defendant Town of Milton.

11. Defendant Town of Northfield is a Vermont municipal corporation located in the County of Washington. Defendant Kim Pedley is the municipal clerk for Defendant Town of Northfield.

12. Defendant Town of Plainfield is a Vermont municipal corporation located in the County of Washington. Defendant Carol Smith is the municipal clerk for Defendant Town of Plainfield.

13. Defendant Town of Shrewsbury is a Vermont municipal corporation located in the County of Rutland. Defendant Mark Goodwin is the municipal clerk for Defendant Town of Shrewsbury.

14. Defendant City of South Burlington is a Vermont municipal corporation located in the County of Chittenden. Defendant Donna Kinville is the municipal clerk for Defendant City of South Burlington.

15. Defendant Town of Whiting is a Vermont municipal corporation located in the County of Addison. Defendant Heather Bouchard is the municipal clerk for Defendant Town of Whiting.

16. Venue is proper in this Court pursuant to 12 V.S.A. § 402(a).

17. Pursuant to 24 V.S.A. § 1154(a), Vermont municipalities and their clerks:

“**shall** record in the land records, at length or by accurate, legible copy, in books to be furnished by the town: deeds; instruments or evidences respecting real estate; writs of execution, other writs or the substance thereof, and the returns thereon; hazardous waste site information and hazardous waste storage, treatment, and disposal certifications established under 10 V.S.A. chapter 159; underground storage tank information under 10 V.S.A. chapter 59; municipal land use permits (as defined in section 4303 of this title) or notices of municipal land use permits as provided for in subsection (c) of this section, notices of violation of ordinances or bylaws relating to municipal land use, and notices of violation of municipal land use permits; denials of municipal land use permits; permits, design certifications, installation certifications, and other documents required to be filed by the provisions of 10 V.S.A. chapter 64 and the rules adopted under that chapter; [and] other instruments delivered to the town clerk for recording.”

(Emphasis added).

18. Pursuant to 24 V.S.A. § 1165, “[t]he files and records in the office of the clerk **shall** be available for inspection upon proper request **at all reasonable hours.**” (Emphasis added).

19. Vermont’s public records law further provides that, “[f]or any agency, board, committee, department, instrumentality, commission, or authority of a political subdivision of the State, a person **may inspect a public record during customary business hours.**” 1 V.S.A. § 316(a)(2) (emphasis added).

20. Parties to all real estate-related transactions in Vermont depend upon access to the public land and zoning records maintained by Defendants for those transactions and to take place.

21. CATIC, through its attorney agents and employees, depends upon access to the public land and zoning records maintained by Defendants in order to conduct the title abstract work necessary for the issuance of title insurance.

22. The issuance of title insurance is frequently a precondition for the closing of real estate-related transactions.

23. On June 15, 2020, Governor Phil Scott issued Amended and Restated Executive Order No. 01-20 (the “Amended and Restated EO”). Section 9(d) of the Amended and Restated EO stated that, “[f]or the sake of clarity, municipal services *shall* be made available to Vermonters seeking to perform authorized functions, *such as recordings required for real estate, financial and other legal transactions . . .*” (Emphasis added).

24. As of the date of this Complaint, many Vermont municipal clerks, including those named herein as party defendants, have restricted access to municipal land and zoning records beyond any restrictions imposed by way of the Governor’s Executive Orders¹ related to the COVID-19 pandemic. This has resulted in a scattershot approach to the opening of municipal land records that is highly inconsistent across the State, with access to many municipal land records not being available during reasonable or customary hours.

¹ On March 13, 2020, Vermont Governor Phil Scott issued Executive Order 01-20 (the “EO”) declaring a state of emergency in response to the ongoing COVID-19 pandemic. Since that date, Governor Scott has issued, and he continues to issue, amendments to the Order.

25. Defendants, as well as other municipalities and municipal clerks, have failed to make their land and zoning records available for inspection upon proper request “at all reasonable hours” as mandated by 24 V.S.A. § 1165

26. Furthermore, Defendants, as well as other municipalities and municipal clerks have failed to allow the public, including CATIC and its agents and employees, to inspect the land and zoning records during “customary business hours” as mandated by 1 V.S.A. § 316(a)(2) and as conducted prior to the issuance of Executive Order 01-20.

27. Upon information and belief, Defendants are committing one or more of the following restrictive practices: reduced hours of operation; reduced hours to conduct searches; reduced access to physical portions of the clerk’s office including, specifically, the vault where records are stored; reduced access to indexing systems; and reduced access to physical touching of the recorded public instruments.

28. Restricted access to land and zoning records has had a significant, adverse effect on the ability of users of the municipal land and zoning records, including CATIC, and its agents and employees, to perform public records researches in the timely fashion required to allow real estate-related transactions to proceed as needed.

WHEREFORE, CATIC requests that the Court schedule this matter for a merits hearing as soon as practicable and issue the requested mandate requiring Defendants to take all reasonable steps necessary to ensure that their municipal land and zoning records are fully available for inspection and copying by the public during the municipalities’ previously-established customary hours, consistent with State of Vermont protocols and guidance relating to the COVID-19 pandemic.

Dated in Burlington, Vermont this 13th day of November, 2020.

DOWNS RACHLIN MARTIN PLLC

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