

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS.

WESTERN HOUSING COURT
C.A. NO. 23H79CV000971

TOWN OF SANDISFIELD, by and through
its Board of Health,

Plaintiff

v.

JENNIFER PILBIN,

Defendant

PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS

Now comes the Plaintiff, the Town of Sandisfield and hereby opposes the Defendant's Motion to Dismiss the above-captioned case¹. As grounds for this Opposition, the Town states that the Defendant's assertion that this Court lacks jurisdiction over this matter as a result of her filing a Chapter 13 Bankruptcy Petition is without merit because, as an action to enforce a governmental unit's police and regulatory power, this action is exempt from the automatic bankruptcy stay pursuant to 11 U.S.C. 362(b)(4). As further grounds for this Opposition, the Town relies on the following statement of reasons.

STATEMENT OF REASONS

1. This is an action brought by the Town of Sandisfield, by and through its Board of Health (the "Board"), against the owner of a property, located at 12 West Hubbard Road in the Town of Sandisfield, Massachusetts (the "Property"), to enforce the Board's October 3, 2023

¹ In her Motion to Dismiss, the Plaintiff seeks the return of all items removed from the subject property by the Town pursuant to this Court's March 18, 2024 Second Amended Preliminary Injunction. Without waiving any claims or defenses with respect to the above-captioned case and any appeal from the orders of this Court, the Town assents to this request and states that the Defendant may claim her property from the Town at a mutually agreeable time, provided that it will not brought back to the property at 12 W. Hubbard Road and the Defendant certifies in writing to the location to which the property will be brought.

Condemnation Order, which was issued after a hearing that was conducted on September 13, 2023.

2. The Board's Condemnation Order was issued pursuant to the Massachusetts State Sanitary Code, the enforcement of which is within the Town's governmental police and regulatory powers.
3. As a result of the Defendant's refusal to comply with the Board's Order and the continuing serious threat to the health and safety of the occupants of the Property and the surrounding area, the Town initiated the above-captioned case in equity for enforcement of the Board's Order.
4. On or about September 25, 2023, twelve days after the Board of Health condemnation hearing, the Defendant in this action initiated a Voluntary Petition for Bankruptcy pursuant to Chapter 13 of the United States Bankruptcy Code in the matter docketed as In Re: Jennifer Pilbin, United States Bankruptcy Court, District of Massachusetts, C.A. No. 23-30394.
5. The Defendant now claims that this action is barred by the automatic bankruptcy stay in 11 U.S.C. §362(a) of the Bankruptcy Code.
6. The Defendant's contention is without merit. Section 362(b)(4) of the Bankruptcy Code provides that the automatic stay contained in 11 U.S.C. 362(a) does not operate in the event of the "commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power." 11 U.S.C. 362(b)(4).

7. Municipalities can continue to enforce regulations to promote health and safety against a debtor during the automatic stay of bankruptcy actions. See Cournoyer v. Town of Lincoln, 790 F.2d 971, 977 (1st Cir. 1986) (holding that “the provisions of 11 U.S.C. § 362(b)(4) and (5) exempt the Town’s enforcement of its zoning ordinance from the automatic stay provision of 11 U.S.C. § 362(a)”).
8. This exception discourages debtors from submitting bankruptcy petitions either primarily or solely for the purpose of evading impending governmental efforts to invoke the governmental police powers to enjoin or deter ongoing debtor conduct which would seriously threaten the public safety and welfare (e.g., environmental and/or consumer protection regulations). In Re: McMullen, 386 F.3d 320, 324-5 (1st Cir. 2004).
9. Thus, the automatic stay does not apply when a governmental entity is acting for the primary purpose of protecting public health, safety and welfare, as opposed to protecting its pecuniary interest in the debtor's property. Parkview Adventist Medical Center v. United States on behalf of Department of Health and Human Services, 842 F.3d 757, 764 (1st Cir. 2016).
10. The Town is a governmental unit and this action is to enforce the provisions of the State Sanitary Code and the orders of the Board of Health issued pursuant thereto, which is a matter that is in furtherance of the Town’s police and regulatory power. The Town does not have any pecuniary interest in the Property nor would it acquire any as a result of this action.
11. Where the Defendant filed a Bankruptcy petition just twelve days after the Board of Health condemnation hearing, it is clear that the Defendant’s primary motivation in filing for Bankruptcy was to thwart the Board’s enforcement efforts, placing this case squarely within the police and regulatory powers exception to the automatic stay.

12. Therefore, because this action is exempt from the automatic stay provision of the Bankruptcy Code, the Defendant's Motion to Dismiss should be denied.

PLAINTIFF,
SANDISFIELD AND THROUGH ITS
BOARD OF HEALTH,
By its attorneys,

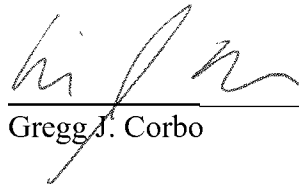


Gregg J. Corbo (BBO #641459)
KP Law, P.C.
Town Counsel
101 Arch Street, 12th Floor
Boston, MA 02110
(617) 556-0007
gcorbo@k-plaw.com

Dated: May 10, 2024

CERTIFICATE OF SERVICE

I, Gregg J. Corbo, hereby certify that on the below date a true copy of Plaintiff's Opposition to Motion to Dismiss was served upon the defendant, Jennifer Pilbin, by email at jeljones@icloud.com.


Gregg J. Corbo

Dated: May 10, 2024