

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

T-PEG, INC and)
TIMBERPEG EAST, INC.,)
Plaintiffs,)
)
vs.) No. 03-CV-462-M
)
VERMONT TIMBER WORKS, INC.,)
and DOUGLAS FRIANT,)
Defendants.)

DEFENDANTS' MOTION TO REVIVE THEIR
MOTION FOR SUMMARY JUDGMENT (Document 126)
AS TO STANDING AND OWNERSHIP ISSUES
PER COURT'S MARCH 28, 2008 ORDER (Document 147)

Defendants respectfully move that the Court revive their motion for summary judgment (Document 126) as to standing and ownership issues, per the Court's March 28, 2008 Order (Document 147) at pp 11-12.

In support of this motion, defendants state:

In its March 28, 2008 Order the Court noted that plaintiffs' defense to the summary judgment motion seemed to be a "constantly moving target" and ordered the parties to brief four issues relating to the standing and ownership issues. The parties did so, in Documents 152 and 153.

It seems that the Court intended to revisit these issues after the briefs were in, but apparently this issue is not being tracked on the Court's docket, as Document 126 has been labeled as "terminated." Therefore defendants are making this motion so the matter will again be tracked. Defendants believe that was the Court's intention.

Local Rule 7.1 Statement/Certification

No memorandum of law is being submitted with this motion as the motion is straightforward and the requested relief is within the Court's discretion.

The undersigned counsel for defendants certifies that a good faith attempt was made to obtain concurrence in the relief sought, and plaintiffs do not assent.¹

WHEREFORE, defendants respectfully move the Court to schedule a hearing and oral argument on the pending motions and issues in the case.

Date: February 18, 2009

VERMONT TIMBER WORKS, INC.
and DOUGLAS FRIANT,
Defendants,

/s/ W. E. Whittington
W.E. Whittington

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¹ Apparently the disagreement is merely as to some details in the motion, not in the relief requested. Plaintiffs' counsel has stated "I don't object to your effort to seek confirmation that the pending briefs are in the consideration queue at the court" and "I don't disagree with what I think is your objective, but I can't assent to your motions as drafted."

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2009, I served the foregoing pleading on the following counsel of record, by causing it to be filed electronically via the CM/ECF filing system or mailed by first-class United States Mail, postage pre-paid, or in such other manner as may be indicated:

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