

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

**WAYNE A. BROWN,** )  
 )  
 **PLAINTIFF** )  
 )  
 **v.** )  
 )  
 **TOWN OF SOUTH THOMASTON,** )  
 **ET AL.,** )  
 )  
 **DEFENDANTS** )

**CIVIL No. 08-308-P-H**

**ORDER ON DEFENDANTS' MOTION TO  
DISMISS STATE LAW CLAIMS**

The defendants have moved to dismiss the remaining state law claims without prejudice because I have granted summary judgment on the only federal claim. Defs.' Mot. to Dismiss State Law Claims (Docket Item 47). I observe, first, that this case was removed from state court to federal court, and thus the appropriate relief would be remand, not dismissal. In any event, as the parties recognize, the court has discretion under 28 U.S.C. § 1367(c) on whether to retain jurisdiction or send the matter back to state court. Here, discovery has been completed in federal court, and the case was on a trial list until the defendants filed their motion for summary judgment. At this point, this federal court has invested substantial time and effort in resolving that dispositive motion on the eve of trial and is familiar with the case. Moreover, as I recognized in affirming the Magistrate Judge's decision to grant summary judgment to the defendants on the

federal claim, the plaintiff has a plausible argument for persuading the First Circuit to overrule its governing precedent. Order Affirming Recommended Dec. of the Magistrate Judge (Docket Item 46). Under these circumstances, I exercise my discretion to retain jurisdiction. The motion is **DENIED**. The Clerk shall place the matter back on a trial list and pretrial conference list.

**SO ORDERED.**

**DATED THIS 29TH DAY OF SEPTEMBER, 2009**

/s/D. Brock Hornby  
**D. BROCK HORNBY**  
**UNITED STATES DISTRICT JUDGE**

**U.S. DISTRICT COURT  
DISTRICT OF MAINE (PORTLAND)  
CIVIL DOCKET FOR CASE #: 2:08cv308 (DBH)**

**WAYNE A BROWN,**

**Plaintiff**

represented by **DAVID G. WEBBERT**

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**v.**

**TOWN OF SOUTH THOMASTON,**

**and**

**JOHN SPEAR,** *individually and in his  
official capacity as Selectman for the  
Town of Thomaston,*

**and**

**JEFFREY NORTHGRAVES,**  
*individually and in his official  
capacity as Selectman for the town of  
South Thomaston,*

**and**

**PENELOPE ALLEY,**  
*individually and in her official  
capacity as Selectman for the Town of  
South Thomaston,*

**Defendants**

represented by **ANNE M. CARNEY**

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