

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ARTHUR D. GOLDSTEIN,)
)
 Plaintiff)
)
v.) Civil No. 98-0103-B
)
MARGOT JOLY, et al.,)
)
 Defendants)

RECOMMENDED DECISION

This action arises out of a contract between Plaintiff and James Boutilier under which Boutilier was to perform remodeling upon Plaintiff’s property in Rangeley Plantation, Maine. In the most general terms, Plaintiff became dissatisfied with Boutilier’s progress and billing, and the situation worsened to the point Boutilier contacted the police and complained that Plaintiff was refusing to permit Boutilier to collect his belongings from the job site. Plaintiff’s home was searched, and items were seized. Some of the items belonged to Plaintiff and were thereafter returned to him. Plaintiff was charged with theft, which charges were later dismissed.

Defendants Franklin County, Niles Yeaton, Raymond Meldrum, Lee Dalrymple, David Simpson, Thomas White, and Steven Lowell move for summary

judgment on the entirety of Plaintiff's Complaint. The individual Defendants are all members of the Franklin County Sheriff's Department.¹

Discussion

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The Court views the record on summary judgment in the light most favorable to the nonmovant. *Levy v. FDIC*, 7 F.3d 1054, 1056 (1st Cir. 1993). "A trialworthy issue exists if the evidence is such that there is a factual controversy pertaining to an issue that may affect the outcome of the litigation under the governing law, and the evidence is 'sufficiently open-ended to permit a rational factfinder to resolve the issue in favor of either side.'" *De-Jesus-Adorno v. Browning Ferris Ind. Of Puerto Rico*, 160 F.3d 839, 841-42 (1st Cir. 1998) (quoting *National Amusements v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir. 1995)).

However, summary judgment is appropriate "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's

¹ The remaining Defendants were granted judgment on separate motions by Order Affirming the Recommended Decisions, filed September 21, 1999.

case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the moving party has presented evidence of the absence of a genuine issue, the nonmoving party must respond by "placing at least one material fact in dispute." *Anchor Properties*, 13 F.3d at 30 (citing *Darr v. Muratore*, 8 F.3d 854, 859 (1st Cir. 1993)).

Plaintiff has not responded to Defendants' Motion for Summary Judgment. In this District, a party's failure to timely respond to a motion is generally construed to waive objection to the motion. D. Me. R. 7(c). However, the Federal Rules of Civil Procedure require us to examine the merits of a motion for summary judgment regardless of the opposing party's failure to object. *FDIC v. Bandon Assoc.*, 780 F. Supp. 60, 62 (D. Me. 1991). Accordingly, we will examine the merits of Defendants' Motion for Summary Judgment based on Defendants' Statement of Material Facts, which reads in its entirety as follows:

Statement of Facts

Sometime before July of 1995, Plaintiff and James Boutilier entered into some type of arrangement whereby Boutilier was to perform renovations on Plaintiff's Rangeley Plantation residence and Plaintiff was to pay Boutilier for those renovations. That relationship soured and eventually, on July 9, 1995, Goldstein and Boutilier disagreed as to whether Boutilier was entitled to recover his construction tools and certain other material from Goldstein's residence.[] Goldstein made a complaint to the Franklin County Sheriff's Office to the effect that he had refused Boutilier's request to retrieve his (Boutilier's) carpentry

tools and materials and that Boutilier had stated that he would break Goldstein's door down to get the tools if necessary.[]

Sheriff's Deputy Raymond Meldrum responded to Goldstein's complaint and was met at Goldstein's residence by Goldstein and by Boutilier and Nathan Bean, a police officer from the Rangeley Police Department. Meldrum spoke with Goldstein and Goldstein stated that he had placed a "lien" on Boutilier's tools and that Boutilier had no right to remove them until the disagreement between Goldstein and Boutilier was resolved.[]

Meldrum used his cellular phone to call Franklin County District Attorney Norman Croteau and was advised by Croteau to tell Goldstein that if he did not release Boutilier's tools, Goldstein could be charged with theft.[] Meldrum relayed this message to Goldstein, and Goldstein became irate and threatened to sue Meldrum, Croteau, and others.[] Goldstein then stated that Boutilier could have *his* (Boutilier's) tools, but that he (Goldstein) would not allow anybody onto the property to remove the tools and would not bring them out himself.[]

Because of Goldstein's refusal to relinquish control over Boutilier's property, and because of the remote location and lack of assistance, Meldrum left the Goldstein residence.[] Meldrum communicated to his superior, Det. Sgt. Niles Yeaton, all that had transpired.[]

On approximately July 11, 1995, Yeaton advised Sheriff's Deputy Steven Lowell of the information furnished by Meldrum, and asked Lowell to go to the Goldstein residence and explain to Goldstein that if he did not release Boutilier's tools, Goldstein would likely be charged with theft.[] Lowell did so, but Goldstein continued in his refusal to turn over Boutilier's tools.[] Lowell reported to Yeaton what had transpired.[]

Yeaton met with Boutilier and Boutilier provided a specific list of each item of property that was left at the Goldstein residence, including specific descriptions of each such item of property.[] Additionally, Boutilier provided a statement as to the value of each item of property.[] Yeaton subsequently advised Boutilier that Goldstein claimed that certain items of property were actually Goldstein's (some building materials, pump jacks and roof brackets). Boutilier

subsequently reaffirmed that all of the items on the personal property list were his.[]

Yeaton knew Deputies Lowell and Meldrum to be reliable sources of information. Each of those individuals reported to Yeaton that Goldstein had admitted, implicitly and expressly, that he was holding Boutilier's tools.[] With the exception of the three categories of property referenced above, Goldstein never claimed ownership to the items on Boutilier's list, and never denied that Boutilier owned those items, but rather insisted that he had a right to retain control over them pursuant to some sort of "lien" until his dispute with Boutilier was resolved.[] Additionally, Yeaton believed that Boutilier's statement was reliable because (1) Boutilier was able to describe the items in question with specificity and (2) Boutilier gave a written statement to Yeaton acknowledging, in writing, that any false statements were punishable pursuant to 17-A [M.R.S.A.] § 453.[]

Based upon this information Yeaton believed that Goldstein was committing the crime of theft as defined by 17-A M.R.S.A. § 353.[] Based upon this belief, and following the advice and recommendation of the District Attorney's Office, Yeaton prepared an Affidavit requesting a search warrant.[]

Prior to presenting the application for search warrant to a Justice of the Peace, Yeaton submitted it to the Franklin County District Attorney's Office for review.[] Yeaton was thereafter advised by the District Attorney's Office that the Affidavit was proper and it was then presented to Justice of the Peace Charles LaVerdiere.[] LaVerdiere thereafter issued a search warrant.[]

On July 18, 1995, the search warrant was executed by representatives of the Franklin County Sheriff's Office, Lee Dalrymple, Niles Yeaton, David Simpson, Thomas White, and Steven Lowell.[] During the search, the items identified in exhibit 1 were located, photographed, logged, and secured by members of the search team.[] Goldstein was provided with a signed copy of the search warrant and a copy of the handwritten inventory of property seized.[] During the search, Goldstein's spouse, Muriel, told Yeaton that she had told Goldstein not to withhold Boutilier's property, but that he continued to do so against her better judgment.[]

After the search, all of the evidence seized was transported to the Franklin County Sheriff's Department. Because of its bulk and the lack of adequate storage space, Det. Yeaton was uncertain what to do with the property.[] Yeaton therefore contacted the District Attorney's Office and spoke with Assistant District Attorney Margot Joly and requested advice as to how to handle the evidence that had been seized.[] Joly advised Yeaton that the property should be photographed and could then be returned to Boutilier as long as Boutilier signed a receipt which identified the individual items of property given to him and as long as Boutilier understood and agreed that he might have to produce the items at a later date for use as evidence at trial.[] Accordingly, Yeaton had Boutilier come to the Sheriff's Department to identify the property and sign a receipt for the items that were given to him.[] While there, Boutilier identified certain items that were not his and those were then returned to Goldstein by the Sheriff's Department.[] Goldstein signed a receipt for those items.[]

During the search, Goldstein asserted ownership of certain items that were identified in the search warrant. Specifically, he claimed some sort of ownership interest in materials underneath a tarpaulin, pump jacks that were apparently supporting a portion of the Goldstein residence, and roof brackets that were affixed to the roof for the apparent purpose of assisting in work being done on the roof.[] Because of questions regarding ownership of this equipment and possible damage that it might cause to the Goldstein residence if it were removed, the District Attorney's Office was consulted during the search as to whether the items of contested ownership should be seized. It was determined that the items should not be seized and they were not.[]

Def. Memo. at 2-6 (citations and footnotes omitted).

Plaintiff's Complaint alleges in Count I that these Defendants violated his constitutional rights by: 1) seizing property from his residence without first conducting a full adversarial hearing to determine ownership; 2) by obtaining a warrant, and searching his residence and seizing property, without probable cause;

and 3) by taking property from his residence without just compensation. The remainder of Plaintiff's claims arise under state law.

Defendants first argue that they are entitled to judgment as a matter of law on the merits of Plaintiff's constitutional claims. In the alternative, they argue that Defendant Franklin County is not liable to Plaintiff because there is no evidence of a custom or policy that led to any constitutional violation. Finally, they assert qualified immunity on behalf of the individual Defendants.

1. Search and Seizure.

Defendants assert that the procurement of the search warrant did not violate Plaintiff's rights because Defendant Yeaton had probable cause to believe a crime had been committed, and the facts underlying that belief were adequately set forth in his affidavit in support of the application for the warrant. The Court agrees.

Defendant Yeaton's affidavit in support of his application for a search warrant is attached as Exhibit B to his Affidavit filed in support of this Motion for Summary Judgment. Exhibit B reveals, among other things, that Plaintiff told Deputy Meldrum he was holding Boutilier's tools and would not permit Boutilier to retrieve them. When Deputy Lowell asked Plaintiff if he would move the tools to the end of his driveway so Boutilier could collect them without entering Plaintiff's property, Plaintiff refused. Maine law provides that a person is guilty of the crime of theft if

“he obtains or exercises unauthorized control over the property of another with intent to deprive him thereof.” 17-A M.R.S.A. § 353. This truthful information is clearly sufficient to provide the issuing magistrate with a “substantial basis” for concluding the search would uncover evidence of a crime. *Illinois v. Gates*, 462 U.S. 213, 236 (1983) (quoting *Jones v. United States*, 362 U.S. 257, 271 (1960)).

The Court also agrees that there is no evidence that the search was executed in a manner violative of Plaintiff’s rights. The items included in the search warrant to which Plaintiff claimed ownership were not seized. Defendants are entitled to judgment as a matter of law to the extent Plaintiff’s claims rest upon the search of his property.

2. Due Process.

In addition, the Court is satisfied that there is no evidence supporting any claim that Plaintiff was deprived of his property without due process. First, the evidence reveals that Plaintiff did not contest Boutilier’s ownership of any of the property seized during the search of his home. Some of the items that were seized were nevertheless returned to Plaintiff when Boutilier disclaimed ownership of them. In addition, Plaintiff has not alleged, and there is no evidence to suggest, that the State of Maine fails to offer Plaintiff an adequate post-deprivation remedy. *Cronin v. Town*

of *Amesbury*, 81 F.3d 257, 260 (1st Cir. 1996). Defendants are entitled to judgment as a matter of law on this claim.

3. *Taking without Just Compensation.*

Plaintiff's claim that Defendants effected a "taking" without just compensation in violation of his rights under the fifth amendment is equally unavailing. In addition to the lack of proof that Defendants seized any property belonging to Plaintiff, there is a complete lack of evidence that Plaintiff tried and failed to obtain "just compensation." See *Gilbert v. City of Cambridge*, 932 F.2d 51, 65 (1st Cir. 1991) ("a plaintiff seeking to invoke the Takings Clause in a federal court without first exhausting state remedies has the burden of proving the inadequacy of those remedies"). Defendants' Motion for Summary Judgment should be granted on this claim as well.

In light of our conclusion with respect to the merits of Plaintiff's federal claims, there is no need to address Defendants' alternative arguments in support of their request for judgment as a matter of law. Further, Plaintiff's state law claims are properly dismissed for lack of subject matter jurisdiction. *Astrowsky v. First Portland Mort. Corp.*, 887 F. Supp. 332, 337 (D. Me. 1995).

Conclusion

For the foregoing reasons, I hereby recommend Defendants' Motion for Summary Judgment be GRANTED on the merits of Plaintiff's claims in Count I of the Complaint, and that Plaintiff's state law claims be DISMISSED.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated on: October 15, 1999