

STATE OF MAINE
YORK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-09-111

ROBERT F. and VIRGINIA S.)
ALMEDER, et al.,)
)
Plaintiffs)
)
v.)
)
TOWN OF KENNEBUNKPORT,)
TMF DEFENDANTS, STATE OF)
MAINE, et al.,)
)
Defendants)

ORDER

Upon review of TMF Defendants' Motion for Entry of Final Judgment pursuant to Rule 54(b) in Count I of its Counterclaim and TMF Defendants' Conditional Stipulation filed therewith, the Court hereby FINDS that there is no just reason for delay and DIRECTS entry of final judgment in favor of TMF Defendants on Count I of their Counterclaim, which judgment shall incorporate TMF Defendants' Conditional Stipulation filed with their aforementioned Motion.

Pursuant to the Law Court's instruction in *Guidi v. Town of Turner*, 2004 ME 42, ¶ 9, 845 A.2d 1189 that "[i]n its certification, the trial court must make specific finding and a reasoned statement explaining the basis for its certification under M.R.Civ.P. 54(b)(1)" the Court hereby finds as follows:

1. For the convenience of the parties, and in particular, many of the Plaintiffs who are summertime residents of the area, the Court scheduled issues relating to prescriptive easement for trial before issues of title between the Town of Kennebunkport and the Plaintiffs were resolved.

2. The Court ruled in the Partial Judgment dated October 16, 2012 that TMF Defendants, as a class, had acquired a right to use the entirety of Goose Rocks Beach for recreational purposes by prescriptive easement and the Plaintiffs have stated that they plan to appeal the Court's decision to the Maine Supreme Judicial Court.

3. In order to expedite the process of getting that issue to the Law Court on appeal so that the dispute between TMF Defendants and the Plaintiffs may be finally resolved without undue delay, TMF Defendants have filed a Conditional Stipulation, in which they have agreed to dismiss their remaining claims with prejudice if this Court's Partial Judgment is affirmed on appeal, which Conditional Stipulation has been incorporated into the final judgment entered here in accordance with M.R.Civ.P. 54(b)(1).

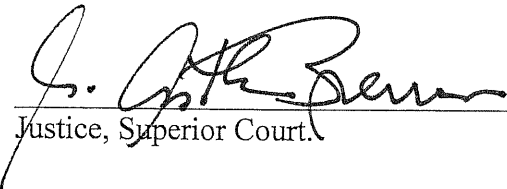
4. Applying the factors in *Chase Home Finance LLC v. Higgins*, 2008 ME 96, 953 A.2d 1131, the Court hereby finds as follows:

- a. The adjudicated prescriptive easement claims and the unadjudicated easement by estoppel, easement by implication and the title claims in this case rest on very different factual underpinnings;
- b. No future decision by the trial court could moot the need for review. In fact, the TMF Defendants' claim for prescriptive easement would not be impacted with a finding that the Plaintiffs have title to the low water mark;
- c. In light of TMF Defendants' Conditional Stipulation, there is no likelihood that the Law Court will face the same issues more than once;
- d. An immediate appeal would expedite the trial court's work because TMF Defendants' Conditional Stipulation to dismiss with prejudice their remaining claims may obviate the need for a trial on all remaining issues;

- e. The legal questions on appeal with respect to a class prescriptive claim are not close with respect to the TMF Defendants' claims for easement by estoppel and easement by implication;
- f. All parties would be better off economically by avoiding the need for a costly and time-consuming trial on the remaining Counterclaims by TMF Defendants and the pending title claims between the Town of Kennebunkport and the Plaintiffs; and
- g. Judicial economy weighs in favor of entering final judgment and all parties would benefit from an expedited resolution.

5. Finally, in addition to promoting judicial efficiency and economy, no party is prejudiced by this certification. The Plaintiffs lose nothing because the Conditional Stipulations puts the Plaintiffs in the same position on appeal that they would be if they tried – and won- all of the remaining claims by TMF Defendants and the remaining title claims. Accordingly, it is in the best interest of all involved that the Partial Judgment be certified.

DATED:

11/29/12 
Justice, Superior Court.