

STATE OF MAINE

YORK, ss.

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

ROBERT ALMEDER et al.,)
)
Plaintiffs)
)
v.)
)
TOWN OF KENNEBUNKPORT and)
ALL PERSONS WHO ARE)
UNASCERTAINED,)
)
Defendants)

**ORDER ON PLAINTIFFS'
MOTION FOR ADDITIONAL
FINDINGS OF FACT**

I. PLAINTIFFS' MOTION FOR ADDITIONAL FINDINGS OF FACT

Plaintiffs move the Court for findings of additional facts to support the conclusions of law made in the Court's Partial Judgment dated October 16, 2012, pursuant to M.R. Civ. P.

52. Plaintiff asks that the Court make specific findings as to:

“each Plaintiff’s property as to the specific time period in which the Town and the TMF Group’s prescriptive claims ripened; the nature and the location; the extent and the duration of recreational uses that occurred during the Town or TMF Group’s claimed period; and which specific facts mentioned in this Court’s Partial Judgment pertain to which of the Plaintiff’s properties and what portion of those properties.”

II. STANDARD OF REVIEW

A Court must make findings of fact to provide a “sufficient basis to inform the parties of the reasoning underlying the court's conclusion,” *Sewall v. Saritvanich*, 1999 ME 46, ¶10, 726 A.2d 224, and to permit effective appellate review. Under M.R. Civ. P. 52(b), a party may make a motion “to seek specific fact-findings to support conclusions not already addressed by facts found in the court’s opinion.” *Wandishin v. Wandishin*, 2009 ME 73, ¶18, 976 A. 2d 949.

III. DISCUSSION

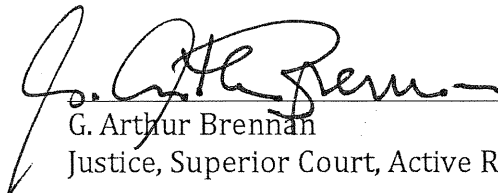
In the Partial Judgment, the Court held that the public holds a prescriptive easement to the beach for general recreational purposes. The Court has set forth in detail the reasoning behind its conclusions. The Court found that the Defendants showed that the public had used the beach, in the manner of property owners, for more than the 20-year prescriptive period. *See Maine Gravel Services, Inc., v. Haining*, 1998 ME 18, ¶ 3-4, 704 A.2d 417; *Great Northern Paper Co. Inc. v. Peter Eldridge*, 686 A.2d 1075, 1077 (Me. 1996); *Howe v. Natale*, 451 A.2d 1198, 1200 (Me. 1982). The Court made findings of fact as to the extent and duration of the public use of the beach as a whole over time citing to the testimony of specific witnesses during specific time periods. Plaintiffs' request for findings as to the exact location and nature of public use, and the precise time at which the prescriptive claims ripened as to each property is not required. *Eaton v. Town of Wells*, 2000 ME 176, ¶45, 760 A.2d 232. Mindful of the important interests at stake in this case, the court labored to provide thorough and reasonably detailed findings and conclusions to provide the parties with the rational for the decision and permit effective appellate review.

IV. CONCLUSION

Plaintiffs' Motion for Additional Findings of Fact is respectfully DENIED.

DATE:

11/29/12


G. Arthur Brennan
Justice, Superior Court, Active Retired