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November 9, 2012

Dianne Hill, Clerk
York County Courthouse
45 Kennebunk Road
P.O. Box 160
Alfred, ME 04002-0160

RE: *Almeder, et al. v. Town of Kennebunkport, et al.*
Docket No. RE-09-111

Dear Ms. Hill:

Enclosed for filing in the above referenced matter, please find the TMF Defendants' Motion for Entry of Final Judgment Pursuant to Rule 54(B), Conditional Stipulation of Dismissal, and Proposed Order.

Copies of the enclosed were served via email or U.S. Mail to the parties noted below. Thank you for your kind attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'André G. Duchette', written over a light blue horizontal line.

André G. Duchette

AGD/rl

Enclosure

cc: Sidney St. F. Thaxter, Esq. (electronically)
Amy K. Tchao, Esq. (electronically)
Neal L. Weinstein, Esq. (electronically)
Paul Stern, Esq. (electronically)
Christopher E. Pazar, Esq. (electronically)
Nicholas S. Strater, Esq. (electronically)
Alan Shepard, Esq. (electronically)
Robert E. Danielson, Esq. (electronically)
Alexander and Judith Lachiatto (electronically)
Richard and Margarete Driver (electronically)

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)

MOTION FOR ENTRY OF FINAL
JUDGMENT PURSUANT TO
RULE 54(B)

NOW COME TMF Defendants, by and through their undersigned counsel, and move, pursuant to Rule 54(b) of the Maine Rules of Civil Procedure, that this Court direct entry of a final judgment as to the claims of prescriptive easement asserted by TMF Defendants in Count I of their Counterclaim, and that the Court make an express determination that there is no just reason for delay. TMF Defendants support and join in the Town of Kennebunkport's Motion for Entry of Final Judgment, and in support of this Motion, TMF Defendants state as follows:

1. The only issue in dispute as it relates to the Plaintiffs and TMF Defendants is whether or not TMF Defendants as a class of persons have the right to use the entirety of Goose Rocks Beach, from the Batson River to the Little River on both the wet and dry sand for recreational purposes.
2. In pursuing this right, TMF Defendants asserted Counterclaims for easement by prescription, estoppel and implication. Only TMF Defendants' claim for easement by prescription was heard at trial. TMF Defendants' claims for easement by estoppel and

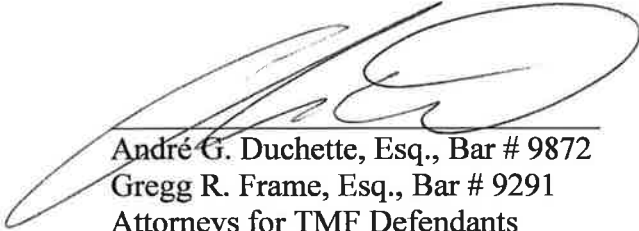
easement by implication were set to be heard during the trial regarding Plaintiffs' claims to quiet title.

3. TMF Defendants' claims for easement by estoppel and implication have been rendered moot based on this Court's findings, and provided the Court's findings are upheld on appeal, TMF Defendants have no desire to pursue their claims for easement by estoppel and implication.
4. TMF Defendants' claim for prescriptive easement is only impacted if this Court determines that the Town of Kennebunkport has title to Goose Rocks Beach. Given the Town of Kennebunkport's Motion for Entry of Final Judgment and the accompanying proposed Stipulation, there is no just reason for delay, and entry of final judgment is also warranted on TMF Defendants' claim for prescriptive easement, as the Town of Kennebunkport is willing to stipulate to Plaintiffs' title.
5. Having another trial to determine the TMF Defendants' claims as it relates to easement by estoppel and implication is not necessary unless the Law Court determines that this Court's ruling was decided wrongly.
6. Based on the Town's Motion and the entry of a stipulation that would preserve the claims if necessary, trying the issue of title as well as the TMF Defendants' remaining claims impose a substantial unnecessary drain on judicial resources, as well as foster costs on all parties.
7. Similar to the Town's filing, TMF Defendants have filed a conditional stipulation in which they have offered to dismiss their remaining claims for easement by estoppel and easement by implication if the Court's Order establishing a prescriptive easement for the TMF Defendants is affirmed on appeal.

8. This stipulation potentially eliminates the need for a costly and lengthy trial and permits the issue of a class prescriptive easement to be addressed on appeal without delay.

WHEREFORE TMF Defendants, for the reasons stated above, respectfully request this Court direct the entry of a final judgment as to TMF Defendants claim for prescriptive easement pursuant to Maine Rules of Civil Procedure Rule 54(b) and for such other relief this Court deems necessary and just.

DATED: November 9, 2012



André G. Duchette, Esq., Bar # 9872
Gregg R. Frame, Esq., Bar # 9291
Attorneys for TMF Defendants
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30 Milk Street, 5th Floor
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207-828-2005

IMPORTANT NOTICE

ANY MATTERS IN OPPOSITION TO THE WITHIN MOTION SUBMITTED PURSUANT TO RULE 7(c) OF THE MAINE RULES OF CIVIL PROCEDURE MUST BE FILED NO LATER THAN TWENTY-ONE (21) DAYS AFTER THE FILING OF THE WITHIN MOTION UNLESS ANOTHER TIME IS PROVIDED EITHER BY THE MAINE RULES OF CIVIL PROCEDURE OR SET BY THIS HONORABLE COURT. FAILURE TO FILE TIMELY OPPOSITION WILL BE DEEMED A WAIVER OF ALL OBJECTIONS TO THE WITHIN MOTION, WHICH MAY BE GRANTED WITHOUT FURTHER NOTICE OR HEARING.

STATE OF MAINE
YORK, ss.

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

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

CONDITIONAL STIPULATION
OF DISMISSAL


The TMF Defendants hereby offer the following stipulation of dismissal as to their remaining claims for easement by estoppel and easement by implication asserted by TMF Defendants in Count II and Count III of their Counterclaim, conditioned upon:

1. Final Judgment being entered on the prescriptive easement claim alleged in Count I of the TMF Defendants' Counterclaim and entry by this Court of an order pursuant to Maine Rules of Civil Procedure Rule 54(b)(1) directing final judgment on that claim; and
2. This Court's October 16, 2012 Partial Judgment as it relates to TMF Defendants' prescriptive easement claim being affirmed on appeal.

CONDITIONAL STIPULATION OF DISMISSAL

Upon the above conditions above being met, and pursuant to M.R.Civ.P. 41(a), TMF Defendants stipulate and agree to dismiss their claims for easement by estoppel and easement by implication, with prejudice, and with each party to bear its respective cost and fees.

DATED: November 8, 2012



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SUPERIOR COURT
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TMF DEFENDANTS, STATE OF)
MAINE, et al.,)
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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:

Justice, Superior Court.