

STATE OF MAINE
YORK, ss.

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

ROBERT F. ALMEDER and VIRGINIA S. ALMEDER, et al.,)	
)	
)	
Plaintiff,)	DEFENDANT TOWN OF
)	KENNEBUNKPORT'S OPPOSITION
v.)	TO RULE 52 MOTION FOR
)	ADDITIONAL FINDINGS OF FACT
TOWN OF KENNEBUNKPORT, et al.,)	
)	
Defendant)	

Defendant Town of Kennebunkport hereby opposes Plaintiffs' Rule 52 Motion for Additional Findings of Fact as follows:

"The purpose of motions for findings of additional facts pursuant to M.R. Civ. P. 52(b) is to seek specific fact-findings to support conclusions not already addressed by facts found in the court's opinion. Such motions should...suggest particular facts to be found that are supported by the record and are relevant to the conclusion at issue." *Wandishin v. Wandishin*, 2009 ME 73, ¶ 18, 976 A.2d 949, 954. The Court is "not required to explain the rationale used to support each finding of fact or conclusion of law," and so "requests for additional fact-findings pursuant to M.R. Civ. P. 52(b) should not be used to...reargue points that were contested at trial." *Id.* at ¶ 19, 976 A.2d at 954. The test for setting aside a Court's findings of fact is "clear error." *Eaton v. Town of Wells*, 2000 ME 176, ¶ 33, 760 A.2d 232, 244.

Here, Plaintiffs assert incorrectly that the Court "did not make any specific findings of fact with regard to each individual Plaintiff's property." To the contrary, in its October 16, 2012 opinion, the Court made specific findings based on the evidence and testimony presented at trial that members of the public have been using all of Goose Rocks Beach for general recreational

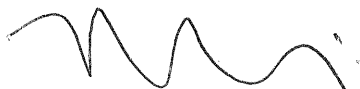
purposes from the Batson River to the Little River, including both the dry sand and intertidal zone, from the late 1800s to the present with the knowledge and acquiescence of Plaintiffs and their predecessors in title. Those findings are specific to each Plaintiffs property.

Furthermore, Plaintiffs request additional findings “as to each Plaintiffs’ property” without suggesting the particular facts to be found in accordance with Rule 52. In essence, Plaintiffs are not requesting specific findings not already addressed by the Court but are instead essentially rearguing points that were contested at trial, specifically whether the Town was somehow required, as Plaintiffs assert, to identify members of the public on Goose Rocks Beach next to the property of each Plaintiff (and Party-in-Interest) for each day of each year during that same twenty year period – it is not.

In this case, the Town had the burden demonstrating by a preponderance of the evidence that the elements of a public prescriptive easement claim have been met with regard to each Plaintiff (and Party-in-Interest), *see Androkites*, 2010 ME 133, ¶ 14, 10 A.3d at 681, and the Town met its burden by introducing extensive direct and circumstantial evidence, as well as reasonable inferences that could be drawn therefrom, of the public’s recreational use of Goose Rocks Beach with the knowledge and acquiescence of Plaintiffs and their predecessors in title since the late 1800s. *See Eaton*, 2000 ME 176, ¶¶ 32-42, 760 A.2d at 244-46 (upholding the Court’s findings regarding over a century of public recreational use of the beach on non-contiguous parcels based on evidence similar to that presented in this case).

In its October 16, 2012 opinion, the Court found based on the evidence and testimony presented at trial that members of the public have been using all of Goose Rocks Beach for general recreational purposes from the Batson River to the Little River, including both the dry sand and intertidal zone, from the late 1800s to the present with the knowledge and acquiescence

of Plaintiffs and their predecessors in title. Thus, no further findings are necessary, and Plaintiffs' Rule 52 Motion for Additional Findings of Fact should be denied.



Dated: November 8, 2012

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