

STATE OF MAINE  
CUMBERLAND, ss

STATE OF MAINE SUPERIOR COURT  
CUMBERLAND, SS CIVIL ACTION  
CLERK'S OFFICE DOCKET NO. CV-00-085

Mar 12 12 37 PM '01 NM-Cum-3/12/2001

ALPHONSO JIMINO and  
PHYLLIS JIMINO,

Plaintiffs

vs.

ORDER ON DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT

TOWN OF YARMOUTH,

Defendant

In their complaint, the plaintiffs seek damages from the defendant based on a theory of promissory estoppel. See Def.'s SUMF, ¶ 16; Cottle Enterprises, Inc. v. Town of Farmington, 1997 ME 78, ¶ 17 n.6, 693 A.2d 330, 335 n.6. The plaintiffs' claims are not governed by the Maine Tort Claims Act. See Heber v. Lucerne-in-Maine Village Corp., 2000 ME 137, ¶ 15, 755 A.2d 1064, 1068; Mueller v. Penobscot Valley Hosp., 538 A.2d 294, 297-98 (Me. 1988); see also Def.'s Mem. at 7 n.3.

The issuance of a building permit by a code enforcement officer does not constitute a promise by the Town. See Sirois v. Town of Frenchville, 441 A.2d 291, 295 (Me. 1982); see also Tarbuck v. Jaeckel, 2000 ME 105, ¶ 18, 752 A.2d 176, 181 (absence of promise forecloses argument of promissory estoppel).

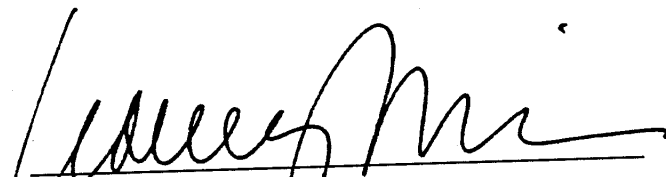
Finally, based on the factual determination of the Town's Planning Board, the plaintiffs' construction was located within 75 feet of the upland edge of a wetland. See Town of North Berwick v. Jones, 534 A.2d 667, 669-70 (Me. 1987); Def.'s SUMF, ¶ 9, Attachment E; but cf. Pls.' SDMF, ¶¶ 11-15, 17. The code enforcement officer did not have the authority to issue a building permit for construction within 75 feet of

the upland edge of a wetland. See Cottle, 693 A.2d at 331; Shackford & Gooch, Inc. v. Town of Kennebunk, 486 A.2d 102, 106 (Me. 1984); Def.'s SUMF, ¶¶ 8, 10-11.

The entry is

The Defendant's Motion for Summary Judgment is GRANTED. Judgment is entered in favor of the Defendant and against the Plaintiffs on the Plaintiffs' Complaint.

Dated: March 10, 2001

  
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Nancy Mills  
Justice, Superior Court

Date Filed\* 02-04-00

CUMBERLAND  
County

Docket No. CV 00-085

Action CONTRACT

ALPHONSO JIMINO and  
PHYLLIS JIMINO

TOWN OF YARMOUTH

vs.

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Date of  
Entry