

STATE OF MAINE  
KENNEBEC, ss.

SUPERIOR COURT  
CIVIL ACTION  
Docket No. CV-07-242  
NM-41 N-7/13/2007

WANDA WYMAN and  
JOHN WYMAN

Plaintiff

v.

DECISION AND ORDER

DIANE ROGERS and  
SMOKERISE, INC.  
d/b/a THE BIRCHES  
FAMILY CAMPGROUND

Defendants

DONALD L. GARBRECHT  
LAW LIBRARY

The defendants move for summary judgment pursuant to M.R. Civ. P. 56. The defendants filed a statement of material facts (DSMF). The plaintiffs responded (PRSMF) and filed a statement of additional material facts (PSAMF), to which the defendant did not file the required response. See M.R. Civ. P. 56(h)(2) & (3).

### Facts

In approximately May 2006, defendant Diane Rogers discussed with the plaintiff Wanda Wyman, the purchase by defendant Smokerise, Inc. of the plaintiffs' 2000 Breckenberg Park Model 1238 camper. (DSMF ¶ 1; PRSMF ¶ 1.) On or about January 22, 2007, defendant Rogers sent the plaintiffs a letter of intent to purchase the camper. (DSMF ¶ 2; PRSMF ¶ 2.) Defendant Rogers would buy the camper and all of its accessories, including an 8' x 34' deck, screened-in porch, awning, and detached shed for \$25,500.00. (DSMF ¶ 3; PRSMF ¶ 3.)<sup>1</sup>

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<sup>1</sup> The defendants' argument that, at the very least, there is no individual liability on the part of defendant Rogers does not make sense in light of her own affidavit: "The arrangement was that I would buy the Camper . . ." DSMF ¶ 3; Rogers Aff. ¶ 4.

Defendant Rogers later notified the plaintiffs that because of potential foreclosure on the campground at which the camper was located, defendant Rogers would be unable to complete purchase of the camper. (DSMF ¶ 6; PRSMF ¶ 6.) On February 9, 2007, the plaintiff sent defendant Rogers an email stating:

What a blow, I was thinking of you and thought I would see how you were doing? I wish there was a way the bank would be more cooperative with you. What jerks not to cut you some slack. I also suffered a blow also, since we could not sell the camper I will not be able to purchase dads home. I'm not telling you this to make you feel bad, Please don't feel bad I know you would have honored your agreement if at all possible and I don't hold you responsible in any way. Maybe the new owner of the campground might be interested would it be to much to ask that you let who ever know that we are still interested in selling it. I hope the sale goes smoothly for you and that you come out ahead I fell so bad that you have to sell it, I know you were going to some day as part of your retirement but not now. If there is anything I can do even to lend an ear do not hesitate to call me ok.

Thinking of you,  
Love Wanda

(DSMF ¶ 8; PRSMF ¶ 8.; Wyman Aff. Ex. V.)

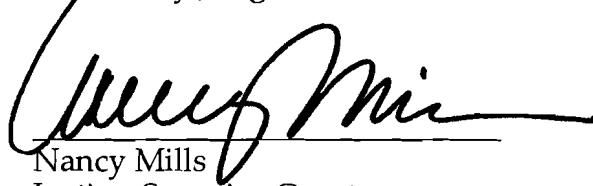
### **Discussion**

The defendants argue that any contract was terminated by mutual agreement of the parties. A mutual agreement to rescind a contract is itself a contract. Drinkwater v. Patten Realty Corp., 563 A.2d 772, 775 (Me. 1989). The plaintiffs have raised issues of material fact regarding whether the parties mutually assented to rescind the contract. Id.; PRSMF ¶ 8; PASMFF ¶¶ 22-28.

The entry is

The Defendants' Motion for Summary Judgment is DENIED.

Date: May 13, 2008

  
Nancy Mills  
Justice, Superior Court

WANDA E WYMAN - PLAINTIFF

Attorney for: WANDA E WYMAN  
JED DAVIS - RETAINED 08/22/2007  
MITCHELL & DAVIS  
86 WINTHROP STREET  
AUGUSTA ME 04330

SUPERIOR COURT  
KENNEBEC, ss.  
Docket No AUGSC-CV-2007-00242

**DOCKET RECORD**

JOHN K WYMAN - PLAINTIFF

Attorney for: JOHN K WYMAN  
JED DAVIS - RETAINED 08/22/2007  
MITCHELL & DAVIS  
86 WINTHROP STREET  
AUGUSTA ME 04330

vs

DIANE ROGERS - DEFENDANT  
PO BOX 17,  
WINDHAM ME 04062  
Attorney for: DIANE ROGERS  
SONIA J BUCK - RETAINED  
LINNELL CHOATE & WEBBER LLP  
83 PLEASANT STREET  
PO BOX 190  
AUBURN ME 04212-0190

SMOKERISE INC - DEFENDANT  
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Attorney for: SMOKERISE INC  
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Filing Document: COMPLAINT  
Filing Date: 08/22/2007

Minor Case Type: CONTRACT

**Docket Events:**

08/22/2007 FILING DOCUMENT - COMPLAINT FILED ON 08/22/2007

08/22/2007 Party(s): WANDA E WYMAN  
ATTORNEY - RETAINED ENTERED ON 08/22/2007  
Plaintiff's Attorney: JED DAVIS

08/22/2007 Party(s): JOHN K WYMAN  
ATTORNEY - RETAINED ENTERED ON 08/22/2007  
Plaintiff's Attorney: JED DAVIS

08/22/2007 CERTIFY/NOTIFICATION - CASE FILE NOTICE SENT ON 08/22/2007

08/22/2007 Party(s): DIANE ROGERS  
SUMMONS/SERVICE - CIVIL SUMMONS SERVED ON 08/04/2007

SERVED ON DIANE ROGERS

- 08/22/2007 Party(s): SMOKERISE INC  
SUMMONS/SERVICE - CIVIL SUMMONS SERVED ON 08/07/2007  
SERVED ON DIANE ROGERS FOR SMOKERISE, INC.
- 09/20/2007 Party(s): DIANE ROGERS, SMOKERISE INC  
RESPONSIVE PLEADING - ANSWER FILED ON 08/21/2007  
Defendant's Attorney: SONIA J BUCK
- 09/20/2007 Party(s): DIANE ROGERS  
ATTORNEY - RETAINED ENTERED ON 08/21/2007  
Defendant's Attorney: SONIA J BUCK
- 09/20/2007 Party(s): SMOKERISE INC  
ATTORNEY - RETAINED ENTERED ON 08/21/2007  
Defendant's Attorney: SONIA J BUCK
- 09/27/2007 DISCOVERY FILING - DISCOVERY DEADLINE ENTERED ON 06/01/2008  
  
ASSIGNMENT - SINGLE JUDGE/JUSTICE ASSIGNED TO JUSTICE ON 09/26/2007  
NANCY MILLS , JUSTICE
- 09/27/2007 ORDER - SCHEDULING ORDER ENTERED ON 09/26/2007  
NANCY MILLS , JUSTICE  
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO  
PARTIES/COUNSEL
- 12/04/2007 Party(s): WANDA E WYMAN, JOHN K WYMAN  
DISCOVERY FILING - NOTIFICATION DISCOVERY SERVICE FILED ON 12/04/2007  
Plaintiff's Attorney: JED DAVIS  
WANDA WYMAN'S REQUEST FOR ADMISSIONS TO DEFS SERVED ON SONIA BUCK, ESQ., ON 11/30/07.
- 12/04/2007 Party(s): DIANE ROGERS, SMOKERISE INC  
DISCOVERY FILING - NOTIFICATION DISCOVERY SERVICE FILED ON 12/04/2007  
BY ATTY CONWAY AND BUCK FOR DEFS'S...FIRST REQUEST FOR ADMISSIONS SERVED ON JED DAVIS ESQ  
ON 11/20/07.
- 12/06/2007 Party(s): WANDA E WYMAN  
ADR - NOTICE OF ADR PROCESS/NEUTRAL FILED ON 12/04/2007  
Plaintiff's Attorney: JED DAVIS  
MEDIATION WITH MATTHEW DYER, ESQ. ON 01/14/08.
- 12/06/2007 Party(s): WANDA E WYMAN, JOHN K WYMAN  
DISCOVERY FILING - NOTIFICATION DISCOVERY SERVICE FILED ON 12/06/2007  
Plaintiff's Attorney: JED DAVIS  
WANDA WYMAN'S INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS TO DIANE ROGERS,  
SERVED ON S. BUCK, ESQ. ON 12/05/07.
- 12/18/2007 Party(s): DIANE ROGERS, SMOKERISE INC  
MOTION - MOTION SUMMARY JUDGMENT FILED WITH AFFIDAVIT ON 12/17/2007  
Defendant's Attorney: SONIA J BUCK  
W/ AFFIDAVIT OF DIANE ROGERS, MEMORANDUM OF LAW, STATEMENT OF MATERIAL FACTS, PROPOSED

ORDER, REQUEST FOR HEARING

- 12/20/2007 Party(s): WANDA E WYMAN,JOHN K WYMAN  
MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 12/18/2007  
Plaintiff's Attorney: JED DAVIS
- 01/02/2008 Party(s): DIANE ROGERS,SMOKERISE INC  
OTHER FILING - OPPOSING MEMORANDUM FILED ON 12/31/2007  
Defendant's Attorney: JOHN CONWAY  
DEFTS' OPPOSITION TO PLTF'S MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO DEFTS' MOTION FOR SUMMARY JUDGMENT
- 01/02/2008 Party(s): DIANE ROGERS,SMOKERISE INC  
MOTION - MOTION STAY OF PROCEEDINGS FILED ON 12/31/2007  
Defendant's Attorney: SONIA J BUCK  
DEFTS' MOTION TO STAY DISCOVERY PENDING RULING ON DEFTS' MOTION FOR SUMMARY JUDGMENT AND DEFTS' MOTION FOR RULE 11 SANCTIONS. PROPOSED ORDER.
- 01/02/2008 Party(s): DIANE ROGERS,SMOKERISE INC  
MOTION - MOTION FOR SANCTIONS FILED ON 12/31/2007  
Defendant's Attorney: SONIA J BUCK  
DEFTS' MOTION FOR SANCTIONS AGAINST PLTF'S PURSUANT TO RULE 11
- 01/04/2008 Party(s): WANDA E WYMAN  
DISCOVERY FILING - NOTIFICATION DISCOVERY SERVICE FILED ON 01/03/2008  
Plaintiff's Attorney: JED DAVIS  
PLT WANDA WYMAN'S RESPONSE TO DEF ROGERS REQUEST FOR ADMISSIONS SERVED ON ATTY BUCK ON 1/2/08
- 01/07/2008 Party(s): DIANE ROGERS,SMOKERISE INC  
DISCOVERY FILING - NOTIFICATION DISCOVERY SERVICE FILED ON 01/07/2008  
Defendant's Attorney: JOHN CONWAY  
DEF'S RESPONSES TO REQUEST FOR ADMISSIONS SERVED ON ATTY DAVIS ON 1/4/08.
- 01/07/2008 Party(s): WANDA E WYMAN,JOHN K WYMAN  
OTHER FILING - OPPOSING MEMORANDUM FILED ON 01/04/2008  
Plaintiff's Attorney: JED DAVIS  
PLTF'S OPPOSITION TO DEFTS' MOTIONS TO STAY DISCOVERY AND FOR RULE 11 SANCTIONS, AND REPLY IN SUPPORT OF MOTION FOR ENLARGEMENT OF TIME
- 01/10/2008 Party(s): DIANE ROGERS,SMOKERISE INC  
OTHER FILING - REPLY MEMORANDUM FILED ON 01/10/2008  
Defendant's Attorney: SONIA J BUCK  
DEFTS' REPLY TO PLTF'S OPPOSITION TO MOTION TO STAY DISCOVERY
- 01/10/2008 Party(s): DIANE ROGERS,SMOKERISE INC  
MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 01/10/2008  
Defendant's Attorney: SONIA J BUCK  
DEFTS' MOTION TO EXTEND DEADLINE FOR COMPLETION OF ADR PENDING RULING ON DEFTS' MOTION FOR SUMMARY JUDGMENT. PROPOSED ORDER.
- 01/16/2008 Party(s): DIANE ROGERS,SMOKERISE INC  
MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 01/15/2008

NANCY MILLS , JUSTICE  
COPY TO PARTIES/COUNSEL. ADR DEADLINE WILL BE WITHIN 15 DAYS AFTER COURT'S RULING ON  
DEFT'S MOTION FOR SUMMARY JUDGMENT

01/16/2008 Party(s): DIANE ROGERS,SMOKERISE INC  
MOTION - MOTION FOR SANCTIONS DENIED ON 01/15/2008  
NANCY MILLS , JUSTICE  
COPY TO PARTIES/COUNSEL

01/16/2008 Party(s): DIANE ROGERS,SMOKERISE INC  
MOTION - MOTION STAY OF PROCEEDINGS DENIED ON 01/15/2008  
NANCY MILLS , JUSTICE  
COPY TO PARTIES/COUNSEL

01/16/2008 Party(s): WANDA E WYMAN,JOHN K WYMAN  
MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 01/15/2008  
NANCY MILLS , JUSTICE  
COPY TO PARTIES/COUNSEL

02/07/2008 Party(s): DIANE ROGERS,SMOKERISE INC  
DISCOVERY FILING - NOTIFICATION DISCOVERY SERVICE FILED ON 02/01/2008  
DEFS FIRST REQUEST FOR DOCUMENTS FROM PLT. AND DEFS RESPONSES TO PLTS REQUEST FOR  
PRODUCTION OF DOCUMENTS SERVED ON ATTY. DAVIS ON 1/31/08

02/12/2008 Party(s): DIANE ROGERS,SMOKERISE INC  
DISCOVERY FILING - NOTIFICATION DISCOVERY SERVICE FILED ON 02/07/2008  
Plaintiff's Attorney: JOHN CONWAY  
DEF'S ANSWERS TO PLT'S REQUEST FOR INTERROGATORIES SERVED ON ATTY DAVIS ON 2/6/08.

02/27/2008 Party(s): WANDA E WYMAN,JOHN K WYMAN  
OTHER FILING - OPPOSING MEMORANDUM FILED ON 02/26/2008  
Plaintiff's Attorney: JED DAVIS  
PLTFS' OPPOSITION TO DEFTS' MOTION FOR SUMMARY JUDGMENT, REPLY STATEMENT OF MATERIAL  
FACTS, AFFIDAVIT OF WANDA WYMAN, EXHIBITS A-W.

03/05/2008 Party(s): DIANE ROGERS,SMOKERISE INC  
RESPONSIVE PLEADING - RESPONSE FILED ON 03/04/2008  
Defendant's Attorney: SONIA J BUCK  
DEF'S REPLY TO PLT'S OPPOSITION TO DEF'S MOTION FOR SUMMARY JUDGMENT.

03/14/2008 Party(s): WANDA E WYMAN,JOHN K WYMAN  
LETTER - FROM PARTY FILED ON 03/13/2008  
Plaintiff's Attorney: JED DAVIS  
RE: DEFTS FAILED TO RESPOND TO PLTFS' STATEMENT OF ADDITIONAL MATERIAL FACTS.

03/20/2008 Party(s): WANDA E WYMAN,JOHN K WYMAN  
LETTER - FROM PARTY FILED ON 03/13/2008  
Plaintiff's Attorney: JED DAVIS  
RE: DEFT'S MOTION FOR SUMMARY JUDGMENT

03/20/2008 Party(s): DIANE ROGERS,SMOKERISE INC  
LETTER - FROM PARTY FILED ON 03/17/2008  
Defendant's Attorney: SONIA J BUCK

RE: ATTORNEY DAVIS'S LETTER OF MARCH 11, 2008

04/02/2008 Party(s): WANDA E WYMAN,JOHN K WYMAN  
LETTER - FROM PARTY FILED ON 03/31/2008  
Plaintiff's Attorney: JED DAVIS  
IN RESPONSE TO SONIA BUCK, ESQ.'S LETTER OF 03/14.

04/02/2008 Party(s): DIANE ROGERS,SMOKERISE INC  
OTHER FILING - REQUEST FOR HEARING FILED ON 04/01/2008  
Defendant's Attorney: SONIA J BUCK

05/15/2008 Party(s): DIANE ROGERS,SMOKERISE INC  
MOTION - MOTION SUMMARY JUDGMENT DENIED ON 05/13/2008  
NANCY MILLS , JUSTICE  
COPY TO ATTYS DAVIS AND BUCK

A TRUE COPY

ATTEST: \_\_\_\_\_

Clerk