

STATE OF MAINE
PENOBSCOT. ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.: CV 2006-165
AMM - PEN - 11/21/2006

)
DOUGLAS M. MYERS, and SUE ELLEN)
F. MYERS, CO-TRUSTEES U/A/D)
MAY 7, 1997,)

)
Plaintiffs/Counterclaim Defendants)

)
JOSEPH P. WALSH and ELIZABETH)
R. WALSH,)

)
Defendants/Counterclaim Plaintiffs)

DONALD L. GARBRECHT
LAW LIBRARY
JAN 10 2007

ORDER ON
MOTION TO DISMISS

FILED & ENTERED
SUPERIOR COURT
NOV 21 2006
PENOBSCOT COUNTY

Defendants Joseph P. Walsh and Elizabeth R. Walsh move to dismiss all counts plaintiffs' complaint, which alleges that defendants do not have a right of way over and to the southerly boundary of plaintiffs' property. Plaintiffs also seek injunctive relief preventing defendants' further use of the right of way, as well as damages for trespass over the right of way.

This claim was made in an earlier action in this court. John Wilson, et al. v. Land Use Regulation Commission and Douglas M. Myers, et al. v. Michael W. Deschenes, et al. (Pen. Cty AP-04-006). This Court found "Count IV – The right-of-way over lots other than Lot 13 was not extinguished by later deeds or conveyances." *Decision and Judgment*, filed and entered October 19, 2004, In re: John Wilson, et al. v. Land Use Regulation Commission and Douglas M. Myers, et al. v. Michael W. Deschenes, et al. (Pen. Cty. AP-04-006).

Plaintiffs then filed a Motion to Reconsider Count IV on November 15, 2004, which motion was denied. *Decision and Judgment*, Filed and Entered December 23, 2004, In re: John Wilson, et al. v. Land Use Regulation Commission and Douglas M. Myers, et al. v. Michael W. Deschenes, et al. (Pen. Cty AP-04-006).

Plaintiffs then filed a Motion for Certification on January 5, 2005, seeking an entry of final judgment on various counts of their appeal, including Count IV and this court granted that motion. *Order*, filed and entered January 18, 2005, In re: John Wilson, et al. v. Land Use Regulation Commission and Douglas M. Myers, et al. v. Michael W. Deschenes, et al. (Pen. Cty. AP-04-006).

Plaintiffs then appealed, *inter alia*, the Superior Court's decision on Count IV to the Maine Law Court. The Law Court affirmed the Superior Court's decision in Douglas

M. Myers et al. v. Michael W. Deschenes, et al., Docket No. Pen-05-40 (Mem. Dec.) (September 29, 2005).

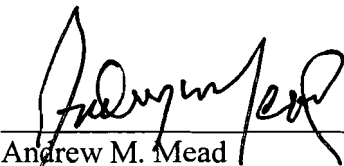
Plaintiffs also seek injunctive relief preventing Defendant Walsh's further use of the right of way (Count II), as well as damages for trespass over the right of way (Count III). These counts must also be dismissed because they are premised on the argument that defendants have no right of way over and to the southerly boundary of Plaintiff Myers' property (i.e., Lot No. 1).

The prior action involved the same parties, was reduced to final judgment, and the same claims were either presented for decision in the earlier action or could have been joined. Camps Newfound/Owatonna v. Town of Harrison, 705 A.2d 1109, 1115 (Me. 1998). Therefore, this action is barred by the doctrine of *res judicata* and must, therefore, be dismissed.

The entry is: Motion to dismiss *granted*. All counts of Plaintiff's complaint are dismissed with prejudice.

The Clerk may incorporate this Order upon the docket by reference.

Dated: November 21, 2006



Andrew M. Mead

JUSTICE, MAINE SUPERIOR COURT

11/30/2006

MAINE JUDICIAL INFORMATION SYSTEM
PENOBSCOT COUNTY SUPERIOR COURT
CASE PARTY ADDRESS BOOK

ksmith
mjxxi048

DOUGLAS M MYERS ET AL VS JOSEPH P WALSH ET AL

UTN:AOCSSr -2006-0087950

CASE #:BANSC-CV-2006-00165

DOUGLAS M. MYERS PL

ATTY KURTZ, THEODORE Tel# (207) 743-5921

ATTY ADDR:9 MARKET SQUARE PO BOX J SOUTH PARIS ME 04281

SUE E. MYERS PL

ATTY KURTZ, THEODORE Tel# (207) 743-5921

ATTY ADDR:9 MARKET SQUARE PO BOX J SOUTH PARIS ME 04281

JOSEPH P. WALSH DEF

ATTY HUBER, ROGER Tel# (207) 990-3314

ATTY ADDR:PO BOX 738 BANGOR ME 04401-0738

M=More, Space = Exit:M

Select the EXIT KEY for page selection line.