

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  
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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).

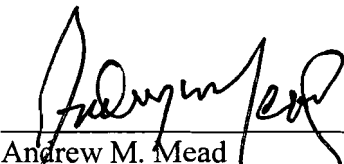
Plaintiffs also seek injunctive relief preventing Defendant Walsh's further use of the right of way (Count II), as well as damages for trespass over the right of way (Count III). These counts must also be dismissed because they are premised on the argument that defendants have no right of way over and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

  
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Andrew M. Mead

JUSTICE, MAINE SUPERIOR COURT

11/30/2006

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DOUGLAS M MYERS ET AL VS JOSEPH P WALSH ET AL

UTN:AOCSSr -2006-0087950

CASE #:BANSC-CV-2006-00165

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