

STATE OF MAINE

BUSINESS AND CONSUMER COURT

Cumberland, ss.

JAY McLAUGHLIN,

Plaintiff

v.

Docket No. BCD-CV-15-14

EMERA MAINE, f/k/a Bangor Hydro-Electric Company,
and **HAWKEYE, LLC**

Defendants

**ORDER ON PLAINTIFF'S REQUEST
FOR FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

Pursuant to Rule 52 of the Maine Rules of Civil Procedure, Plaintiff Jay McLaughlin has filed Plaintiff's Request for Findings of Facts and Conclusions of Law, along with a proposed Order. Defendants Emera Maine and Hawkeye, LLC have both filed objections.

One of the objections is based on the 36-page length of the Plaintiff's Request. To the extent the Rule 7(f) page limits apply to Rule 52 motions, Plaintiff has filed a motion to enlarge the page limits in response to Defendants' objections, and that motion will be granted.

A more substantive objection is that the Plaintiff's Request for Findings of Fact and Conclusions of Law does not set forth, at least in any express fashion, the findings of fact and conclusions of law that the Plaintiff is requesting the court to adopt. Because the court has already made detailed findings in its Decision, Plaintiff's Request is a motion for amended or additional findings under Rule 52(b) rather than a motion for initial findings under Rule 52(a). Both kinds of motion are required to "include the proposed findings of fact and conclusions of law requested." M.R. Civ. P. 52(a), 52(b). A Rule 52(b) motion that does not include the requested findings and conclusions is not proper and may be denied on that basis alone. *See*

Eremita v. Marchiori, 2016 ME 160, ¶3, ___ A.3d ___, ___, 2016 Me. LEXIS 179; *Dalton v. Dalton*, 2014 ME108, ¶22, 93 A.3d 723, 728.

Plaintiff's Request for Findings of Facts and Conclusions of Law consists of 55 numbered paragraphs, each asking a question such as, "Upon what facts did the Court find . . ." or "Did the court consider . . ." Some of the numbered paragraphs do refer to evidence and the law, but none of them asks the court to adopt these references as findings and conclusions.

Plaintiff's proposed order also is 36 pages long and appears to be a somewhat reworked version of the Request, in that it enumerates the points of evidence and law that the court supposedly failed to consider, and concludes:

56. As a result, the Court will consider all of these facts and the Law, and recalculate Plaintiff's damages to include each element that was erroneously missed in the decision, using Plaintiff's damages numbers requests.

Plaintiff's proposed Order at 72.

The court is not required to answer the Plaintiff's series of questions as to the basis and reasoning underlying its rulings. In *Wandishin v. Wandishin*, the Law Court addressed a similar situation, in which a party filed a Rule 52 motion requesting the court to explain its basis for certain decisions. 2009 ME 73, ¶¶7-9, 976 A.2d 949, 952-53. Pointing out that the motion was "couched in language better suited to interrogatories that might be directed to a hostile party, rather than a request for findings of fact directed to a court," the Law Court noted, "It was within the court's discretion to summarily deny such inappropriate demands to explain the rationale for its opinion." *Id.*

The court plainly did not evaluate the evidence or view the law as Plaintiff does. As the court's Decision indicated, the court accepted much of the Plaintiff's evidence about damage to the road, about earth material being deposited into ditches and wooded areas

next to the road, and about some damage to trees along the road. However, in three significant respects, the court did not accept the Plaintiff's evidence.

First, the court deemed Hawkeye's remediation efforts, including the work of Sunset Development, to have repaired most of the road damage beyond "normal wear and tear," and to have adequately addressed the effect of sediment on culverts, wetlands and woodlands.

Second, the court deemed Mr. Kolenik's analysis of tree damage to have covered any entitlement to damages Plaintiff may have, and did not accept the additional evidence regarding the 4,448 "stems" as translating to actual money damages.

Third, the court did not accept Plaintiff's evidence that whatever sediment remains in wooded areas needs to be removed, nor that it is causing or has caused loss of trees or harm to trees.

For these reasons, the court does not adopt the unspecified findings and conclusions that the Plaintiff's Motion appears intended to elicit, with one exception. The court erred in finding that Plaintiff accepted the tendered payment of \$1,433.18 for tree damage as Mr. Kolenik calculated it, so the Amended Decision being issued herewith finds that he did not. Accordingly, the damages award to Plaintiff has been modified to include the double damages available by statute for trees damaged negligently or without fault, which was the case here. ¹

IT IS HEREBY ORDERED AS FOLLOWS:

¹ The court has also modified the Decision in response to Hawkeye's Rule 59(e) motion to reconsider, by ruling for the Defendants on Plaintiff's claim under the trespass statute, 14 M.R.S. § 7551-B. Because Defendants entered onto Plaintiff's property pursuant to written permission (and oral permission with respect to the Spur Road), and because section 7551-B applies only when the entry onto a plaintiff's property is a trespass, i.e. without permission, Defendants are not liable under section 7551-B. The outcome on Plaintiff's section 7552 claim differs because section 7552 does not require that a defendant have entered a plaintiff's property without permission.

1. Plaintiff's Request for Findings of Facts and Conclusions of Law is granted in part, to the extent set forth in this Order and in the Amended Decision issued herewith, and is otherwise denied.

2. Plaintiff's Motion for Enlargement of Page Limit for his Rule 52 Request is hereby granted.

Pursuant to M.R. Civ. P. 79(a), the Clerk is hereby directed to incorporate this Order by reference in the docket.

Dated November 1, 2016

_____/s_____

A. M. Horton, Justice