

STATE OF MAINE
MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. BCD-26-128

**JEFFREY R. MABEE AND JUDITH B. GRACE, AND
FRIENDS OF THE HARRIET L. HARTLEY CONSERVATION AREA**
Plaintiffs-Appellants

v.

NORDIC AQUAFARMS, INC.
Defendant-Appellee

APPEAL
FROM THE BUSINESS AND CONSUMER COURT
Docket No. BCD-REA-2024-00009

PRINCIPAL BRIEF OF APPELLANTS

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INTRODUCTION

This appeal concerns Phase II of a declaratory judgment action to quiet title brought in July 2019 by Appellants, Jeffrey R. Mabee and Judith B. Grace (“Mabee-Grace”) and Friends of the Harriet L. Hartley Conservation Area (“Friends”) (collectively “Appellants”). Appellee, Nordic Aquafarms Inc. (“Nordic”), is a multi-national foreign corporation, incorporated in Delaware, registered to do business in Maine, with investors and a parent company located in Fredrikstad, Norway (A112 ¶¶18-19).¹

During, and *after the trial* in, Phase I,² Nordic created *new* clouds on Appellants’ title, by recording deeds and instruments in the Waldo County Registry of Deeds (“WCRD”) that contained (i) false information; (ii) false claims of ownership in the intertidal land adjacent to Lot 36; and (iii) false assertions that Nordic was released from the RPO servitude on Lot 36.

In Phase II, Appellants seek: (i) recovery, pursuant to slander of title (“SOT”), of damages and special damages, including attorneys’ fees, incurred

¹ In this Brief, citations to material in the Appendix (“A”) are made by reference to the relevant page numbers (e.g. A1-30). Citations to materials in the Trial and 8-27-2025 26(g) Conference Transcripts are by reference to the date, followed by the deposition page number and line(s) where relevant testimony appears (e.g. 10-06-25@P:1;L1-10). Citations to depositions filed in lieu of live testimony are by reference to the deponent’s surname followed by the deposition page number and line(s) where relevant testimony appears (e.g. Hunter@P:1;L1-10). Citations to Admitted Trial Exhibits are by reference to the designated exhibit number assigned at trial (e.g. J1, N1, or P1).

² During Phase I, Appellants sought declaratory relief to quiet title and remove clouds on title created by Nordic prior to June 2021. Phase I concerned enforcing: (i) Appellants’ ownership interests in, and Conservation Easement on, the intertidal land adjacent to the parcels designated as Belfast Tax Map 29, Lots 37, 36, and 35 (“Lots 37, 36 and 35”), based on the unambiguous deeds in the relevant chains of title; and (ii) the “Residential Purposes Only” (“RPO”) servitude on Lot 36, established in the 1946 Hartley-to-Poor deed (A465). On February 16, 2023, in *Mabee v. Nordic Aquafarms Inc.*, 2023 ME 15, 290 A.3d 79 (“*Mabee I*”), this Court ruled in Appellants’ favor on all title claims asserted in Phase I.

removing clouds on their title created by Nordic in Phase I; and (ii) declaratory relief to remove clouds that *still exist* on their title, from the deeds and instruments, containing false and disparaging information, recorded by Nordic in the WCRD (“the Challenged Instruments”);³ and (iii) punitive damages.

STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

A. Description of Appellants’ Title and Property Rights

Mabee-Grace’s parcel is a portion of a large tract of land, including intertidal land, on the eastern and western sides of U.S. Route 1, along the Little River and Penobscot Bay, in Belfast, Maine, once owned by Harriet L. Hartley and her husband Arthur Hartley (*Mabee I*, 2023 ME 15, ¶ 7, Figure 2 (attached hereto @ p. 49). Arthur acquired this land in 1924 (J8; A424), and – through a “strawman” transaction with Harriet’s sister, Genevieve Hargrave, consummated on August 27, 1934 – Arthur added Harriet as a joint tenant (J9-J10; A425-6). After Arthur’s death on 2-10-1935, Harriet, a physician and surgeon in Philadelphia, PA, became the sole owner of this land (A422).

Harriet sold all her land in Belfast prior to her death, in four conveyances in 1946-1950 (*Mabee I*, ¶¶ 8-12 & 25-52, n. 11 & Figure 5; (J11-J14); the last of those conveyances was the 1950 Hartley-to-Butlers deed (J14; A427).

³ The Challenged Instruments, concerning which Appellants seek declaratory relief in Phase II, are: (i) the Release Deeds (“RDs”) (from Grantors Nordic falsely identified as “heirs of Harriet L. Hartley”), represented by Nordic as conveying it “partial interest” in the intertidal land adjacent to Lots 36 and 35), recorded on 9-3-2020 (A268-85); (ii) the related 7-10-2021 Nordic-to-City deed, purporting to convey to the City whatever TRI in the intertidal land Nordic obtained from the 9-23-2020 RDs (A287-91); and (iii) the 9-3-2021 City-to-Nordic easement (A292-95), purporting to grant Nordic the right to industrially develop Lot 36 and the adjacent intertidal land in a manner that would violate the RPO servitude (J11; A466) and the 2019 Conservation Easement (A400-11).

Subsequent conveyances of the Butlers' parcel, which included the intertidal land adjacent to Lots 38, 37, 36 & 35, define the boundaries of Mabee-Grace's land, as well as Friends' Conservation Easement on all Mabee-Grace's intertidal land. *Mabee I*, ¶¶13-17, 52, Figure 5 (attached hereto @ p. 49). Friends holds an enforceable Conservation Easement on Mabee-Grace's intertidal land, which Mabee-Grace established on 4-29-2019 (*Mabee I*, ¶¶ 59-61; A400-11). Appellants are also beneficiaries of the RPO servitude on upland Lot 36, established in the 1946 Hartley-to-Fred R. Poor deed (J11, p.2; A466).⁴

In June 1970, the Waldo County Superior Court ("WCSC") entered a quiet title judgment on behalf of Mabee-Grace's predecessor in interest, Winston Ferris, based on the identical deed description in Mabee-Grace's 1991 deed, and in all deeds between Ferris' and Mabee-Grace's (J27-J32; A437-47). The recorded *Ferris v. Hargrave* judgment (i) declared Ferris the owner in fee simple of the described property, and (ii) barred the Defendants in that action, or anyone claiming by, through, or under those Defendants,⁵ from claiming "title, right, interest or estate" in the land described in Ferris' deed (J28; A297-98).

⁴ The RPO servitude in the 1946 Hartley-to-Poor deed (J11; A466) states:

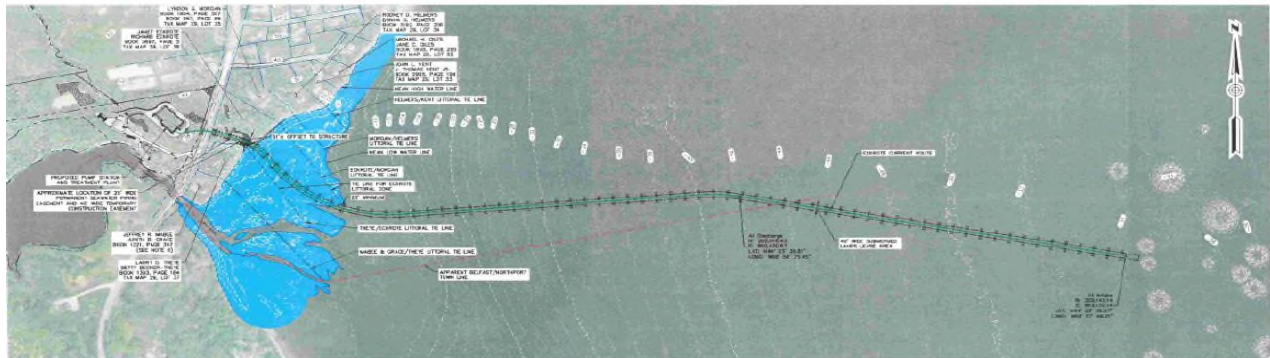
"The lot or parcel of land herein described is conveyed to Fred R. Poor with the understanding it is to be used for residential purposes only, that no business for profit is to be conducted there unless agreed to by Harriet L. Hartley, her heirs or assigns."

In *Mabee I*, this Court determined that the RPO servitude is "not unreasonable," runs with the land, is binding on successors of Fred Poor, and is enforceable by holders of land benefited by it, including Appellants. *Mabee I*, 2023 ME 15, ¶¶57-58, n. 13.

⁵ Nordic has stipulated (Estate Stipulations ("E.S.") A1239 ¶49) that the *Ferris v. Hargrave* Defendants are:

B. Nature of Nordic's Slander of Appellants' Title

On 1-30-2018, Nordic entered a contractual relationship with the City of Belfast ("City") and the Belfast Water District ("BWD"), for the construction of a land-based aquaculture facility (A115 ¶34). The main facility was to be constructed on the western side of U.S. Route 1, primarily on land owned by the BWD along the Little River. However, the project required placing two seawater intake pipes and a wastewater discharge pipe across Lot 36 (then owned by Richard and Janet Eckrote ("the Eckrotes")) and the adjacent inter-tidal land on the eastern side of Route 1, as shown on the image below submitted by Nordic in State permitting proceedings⁶ (A112 ¶19; A116 ¶41; A117 ¶42 & image).



1. Facts Relating to Nordic's Publication of False Claims that the Eckrotes Owned the Intertidal Land Adjacent to Lot 36

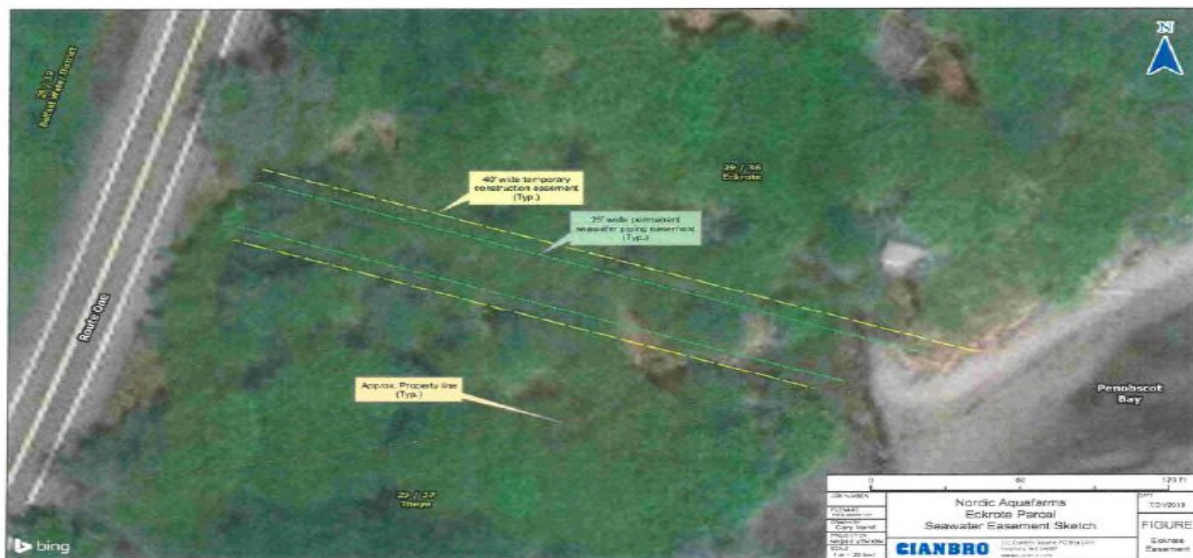
In all permit applications filed in local, State and federal agencies,

"GENEVIEVE E. HARGRAVE ... her heirs, legal representatives, devisees, assigns, trustees, in bankruptcy, disseizors, creditors, lienors and grantees, and any and all other persons unascertained, not in being or unknown or out of State, and all other persons whomsoever who claim or may claim any right, title, interest or estate, legal or equitable, in and within described land and real estate through or under said defendants." [See also, J28; A297].

⁶ DEP Major Projects website for the Nordic Project:

<https://www.maine.gov/dep/ftp/projects/nordic/applications/SLODA/Intake%20and%20Discharge%20Pipeline%20Engineering%20Drawings/2019.05.02%20-%200231714.00%20Cianbro%20-%20Maine%20Aquaculture.pdf>

beginning in September 2018, Nordic claimed to have “sufficient title, right or interest” (“TRI”) – to obtain necessary permits, licenses, and leases to construct and operate its proposed land-based aquaculture facility – based on an Agreement from the Eckrotes, dated 8-6-2018, allegedly granting Nordic an option to acquire an easement on Lot 36 (“8-6-2018 EOA”; A254-67). By its own terms, the boundaries of the easement to be acquired were not defined by metes and bounds but by an image in Exhibit A to the 8-6-2018 EOA (A267), drafted by CIANBRO, which showed the easement’s eastern boundary ***terminating at the high-water mark of Lot 36***. The 8-6-2018 EOA’s text likewise failed to grant Nordic any right to use the adjacent intertidal land (A254-67). Nevertheless, Nordic falsely claimed in all permit applications and



proceedings that the 8-6-2018 EOA granted it an option for an easement that included use of Lot 36 and the intertidal land adjacent to Lot 36.

At the time Nordic filed its State permit and lease applications in 2018

and 2019 – asserting “sufficient TRI” based on the 8-6-2018 EOA – Nordic had *unrecorded* survey plans from three licensed surveyors (Gusta Ronson, Clark Staples, and James Dorsky), *retained by Nordic or the Eckrotes*, all advising that ***the Eckrotes did not own the intertidal land adjacent to Lot 36*** (A296; A394-98; A416; A562-5) and ***depicting the eastern boundary of Lot 36 as: “425’± ALONG HIGH WATER.”***⁷ In Phase II trial testimony, Surveyor Dorsky and Brenda Chandler (Nordic’s former CEO, President, and CFO), revealed that, ***in November 2018***, Dorsky told Nordic that ***the Eckrotes did not own the intertidal land adjacent to Lot 36*** (10-06@P:168;L14 - P:169;L4; 10-07@P:68;L8-18). However, Nordic omitted all these unrecorded surveys from its applications, concealing that the Eckrotes lacked the legal capacity to grant it an easement to use the intertidal land adjacent to Lot 36, according to Nordic’s own surveyors’ interpretations of the 1946 Hartley-to-Poor deed (J11). In December 2018, local lobstermen and Upstream Watch (“UW”), a nonprofit group opposing the Nordic project, challenged the sufficiency of the 8-6-2018 EOA to establish TRI because the boundaries of the easement, *as defined in Exhibit A*, terminated at the high-water mark. Staff of the Department of Environmental Protection (“DEP”) and Bureau of Parks and Lands (“BPL”) agreed with the lobstermen and UW, and directed Nordic to provide additional

⁷ Indeed, Surveyor Staples “suggest[ed]” Nordic obtain a legal opinion regarding the “ability” of the owner of Lot 36 to “grant an easement below the high water mark” (A137-38 ¶124(b); A296).

proof of TRI in the adjacent intertidal land (A119 ¶¶49-54; A566-68).

In supplemental filings and applications, submitted in March through June 2019, Nordic: (i) continued to rely on the 8-6-2018 EOA, without amending Exhibit A or the EOA text, as the basis for its right to use the intertidal land adjacent to Lot 36; and (ii) continued to claim that the Eckrotes owned the intertidal land adjacent to Lot 36.⁸ On 3-27-2019, Nordic filed a letter from its then-President Erik Heim to the Eckrotes stating that it had the same right to place its pipes in the intertidal land adjacent to Lot 36 *that the Eckrotes had* (A170-75) – without revealing the Eckrotes had no such right.⁹ Nordic’s supplemental filings withheld Dorsky’s 11-14-2018 survey plan and revisions stating that the Eckrotes’ property terminated at the high-water mark (A415; 10-07@P:68;L8-18). Because the 3-3-2019 letter was so oddly worded, in April

⁸ DEP Major Projects website from the Nordic project:

<https://www.maine.gov/dep/ftp/projects/nordic/archive/applications/TRI%20supplement/>

⁹ Erik Heim’s letter was dated 3-3-2019 (A174), but had an acknowledgement attached to it, dated 2-28-2019, from the Eckrotes, acknowledging a letter from Nordic employee Ed Cotter (not acknowledging the 3-3-2019 Heim letter to which it was attached) (A175). The text of the 3-3-2019 Letter Agreement states, in relevant part, that:

... The [8-6-2018 EOA] P&S is clear that as long as Nordic Aquafarms avoids the driveway and the barn as agreed in the P&S, Nordic Aquafarms could build and site its pipes and related equipment in the wet sand (“intertidal zone”) and within US Route 1 adjacent to or within your upland property (so long as the limits on the impacts such as your driveway are respected). You intended a broad easement over your property, including any rights you have to US Route 1 and the intertidal zone such that Nordic Aquafarms can build and site its pipes anywhere in those areas where you have rights. ...

By signing the acknowledgement on the accompanying page, this letter clarifies that the easement area delineated in the P&S includes the entirety of your rights in the intertidal zone and US Route 1 and amends the Closing Date.

[A174 (parentheses in original)]. Notably, “the easement area delineated in the P&S” to which the 3-3-2019 letter refers, depicts the Eckrotes’ property terminating at the high-water mark in Exhibit A of the 8-6-2018 EOA *and Exhibit A is not amended by the 3-3-2019 letter. Id.*

2019, UW retained experts to review the relevant deeds, which revealed that: (i) Mabee-Grace, *not the Eckrotes*, owned the intertidal land adjacent to Lot 36 (and Lots 38, 37 and 35), and (ii) Mabee-Grace had a right to enforce the 1946 RPO servitude on Lot 36, which prohibits conducting for-profit business on Lot 36 (J11, p.2; A466).

UW advised Mabee-Grace of the extent of their ownership of intertidal land and their property rights under the RPO servitude (A551). In response, to protect their intertidal land from damage, misappropriation, and unauthorized use by Nordic (*id.*), Mabee-Grace established a Conservation Easement on all their intertidal land, held initially by UW, and recorded it in the WCRD on 4-29-2019 (J74; A400-11).¹⁰

In May and June 2019, Mabee-Grace advised the Eckrotes, Nordic, the City, DEP, and BPL of their ownership claims and that they objected to Nordic's proposed placement of pipes across Lot 36 and the adjacent intertidal land pursuant to: (i) the 1946 RPO servitude on Lot 36; and (ii) their ownership of, and Conservation Easement on, the adjacent intertidal land (A176-77).

Despite being served with all relevant deeds, the *Ferris v. Hargrave* Judgment, and survey plans by Surveyor Donald Richards, Nordic continued to publish false statements in public meetings, on Facebook (P3; A415), and in all permitting proceedings, disparaging Appellants' title to the intertidal land

¹⁰ Friends has held that Conservation Easement since 11-05-2019 (J75).

adjacent to the parcel conveyed to Fred Poor (now Lots 36 and 35) and their property rights under the RPO servitude and Conservation Easement by:

- (i) falsely claiming that the Eckrotes owned the intertidal land adjacent to Lot 36 and had given Nordic a valid easement option (dated 8-6-2018) to use upland Lot 36 and the adjacent intertidal land to bury industrial pipes (A254-67; A545-50); and
- (ii) falsely claiming that the 7.2-acres of intertidal land adjacent to Lots 35 and 36 was owned by the “Heirs of Harriet L. Hartley” and that Nordic had obtained “partial interest” in that intertidal land based on Release Deeds (“RDs”) Nordic solicited and obtained, in March through July 2019, from ten out-of-state persons Nordic falsely identified as “Heirs of Harriet L. Hartley.” (A133-34 ¶¶ 113-15; A418-19; A504-6; A545-550).

In September 2019, Surveyor Gusta Ronson advised Janet Eckrote by phone that: (i) the meaning of Ronson’s 8-31-2012 survey plan (A296), incorporated by reference in the 10-15-2012 deed to the Eckrotes from the Estate of Phyllis J. Poor (A503), was that the eastern boundary of Lot 36 was the high-water mark; and (ii) Ronson intended to give Appellant’s surveyor, Donald Richards, an affidavit so stating. Shortly after that call, Ronson was summoned to a meeting by her employers,¹¹ with counsel for Nordic (David Kallin) and the Eckrotes (Sara Gilbert), who “scolded” Ronson for calling Janet Eckrote and told Ronson it was “not appropriate” for her to provide any affidavit to Surveyor Richards. As a result of that meeting, Ronson never provided an affidavit to Surveyor Richards because she believed, if she did so,

¹¹ Appellants first learned about this meeting on 7-7-2023 during Ronson’s deposition taken in the then-pending SOT case against the Eckrotes filed in federal court, and later included in the Fourth Amended Complaint (A139-40 ¶¶127-137). Appellants dismissed those claims after the Eckrotes filed corrective deeds removing the clouds from those deeds on Mabee-Grace’s title. (P32-P33).

her employers “would be sued” (*see*, 10-06@P:105;L2 - P:111;L25).

2. Facts Relating to Nordic’s Publication of False Claims Relating to the Release Deeds and Instruments it Recorded in the WCRD

While Nordic never amended its applications to assert TRI based on the RDs it obtained in March-July 2019, on 6-10-2019, Nordic filed (in City, DEP, and BPL proceedings) heavily redacted versions of five of those RDs and falsely asserted that these RDs: (i) were from “Heirs of Harriet L. Hartley;” and (ii) conveyed “partial interest” in the intertidal land adjacent to Lots 36 and 35 to Nordic (A552-61; Release Deed Stipulations (“R.D.S.”) Ex.2 (A1253-61)).¹² Those five redacted RDs concealed all identifying information regarding the RD Grantors – thwarting Appellants’ ability to challenge their legitimacy and Nordic’s claims relating to them.¹³ All the RDs state that the named Grantor:

...RELEASES to **NORDIC AQUAFARMS INC.**, ... all of the Grantor’s right, title and interest in and to certain lands in Belfast, Waldo County, described in a deed from Genevieve E. Hargrave to Arthur Hartley and

¹² To bolster these false claims in the permitting proceedings, Nordic filed: (i) an opinion letter from Surveyor Dorsky, dated 5-16-2019, stating that the 7.2 acres of intertidal land adjacent to Lots 35 and 36 had been *retained* by Harriet Hartley (“HLH”) (not conveyed by the Hartley-to-Butlers abutters deed in 1950) and was now owned by HLH’s “heirs” (A504-06); (ii) an opinion letter from Attorney David Kallin, opining that Nordic need only demonstrate “sufficient” TRI (A545-49) and the 1946 RPO servitude “cannot deprive an Applicant of TRI” (A549-550); and (iii) a survey plan revision by Dorsky, dated 6-4-2019, stating that Nordic had a “partial interest” in the intertidal land adjacent to Lots 36 and 35, based on unrecorded RDs allegedly from “the Heirs of Harriet L. Hartley” (A418 & A420). Surveyor Dorsky testified he had never seen Harriet Hartley’s probate file or the unredacted RDs prior to drafting the 6-4-2019 survey plan revision or his 5-16-2019 opinion letter and did not know who the RD Grantors were (10-06@P:175;L8 - P:178;L3).

¹³ Appellants submitted invoices detailing the significant costs incurred, which are still an outstanding liability they owe, to have a genealogical expert attempt to determine the identities of persons who could have executed the Release Deeds, since HLH’s probate file made clear she had sold all her land prior to death and neither her intended beneficiaries nor heirs-at-law received any real property at her death or from her estate (A570-86; 10-06@P:116;L25 - P:123;L5).

Harriet L. Hartley dated August 27, 1934 and recorded in the Waldo County Registry of Deeds in Book 386, Page 453. ...

Meaning and intending to convey, and hereby conveying all right, title and interest which I may hold in and to said lands...

(A268; A270; A272; A274; A276; A278). Thus, the Release Deeds describe and purport to convey any interest in *all the land depicted in Mabee I, Figure 2 (infra @ p. 49)*, and do *not* specifically state they convey the intertidal land adjacent to Lots 36 or 35.^{14/15}

Nordic did not provide Appellants the six unredacted RDs until August 2020 (A1246 ¶24). These Deeds and Instruments and the other Challenged Instruments (and the related RETTDs (A344-54) contain false information relating to Nordic's false claims that: (i) the Grantors are "Heirs of Harriet L. Hartley" (A284 ¶2; A286 ¶6); (ii) Patricia Bell Burger was an heir-at-law of HLH (A268/270/272; A1245 ¶¶15-16); (iii) Genevieve Hargrave Bailey was the great-grandmother of Grantor Stockunas (A284 ¶3); (iv) the RDs convey 0.05-acres of the intertidal land adjacent to Lot 36 (§5 of RETTDs @ A344-56); and (v) Nordic acquired "partial interest" in the intertidal land adjacent to Lots 36

¹⁴ Although the RDs do not reference the Grantors' intent to convey the intertidal land adjacent to Lot 36 or 35, the contemporaneously-filed Real Estate Transfer Tax Declarations ("RETTDs") state that the deeds convey "0.05-acres of intertidal land" (§5 of RETTDs @ A344-56) – implying the RDs conveyed a portion of Mabee-Grace's intertidal land to Nordic – clouding Appellants' title.

¹⁵ By 6-13-2019, DEP had determined Nordic had demonstrated "sufficient TRI" to obtain permits and licenses that would authorize Nordic to place industrial pipes in Lot 36 and the adjacent intertidal land, stating that **"only a Court" could determine Appellants' ownership claims and the validity and enforceability of the 2019 Conservation Easement and 1946 RPO servitude**. 6-13-2019 Applications Acceptance letter is posted on the DEP Major Projects website at: <https://www.maine.gov/dep/ftp/projects/nordic/archive/NAF%20Consolidated%20Acceptance%20Letter.pdf>

and 35 from the RDs (J64; A420). On 9-23-2020, Nordic recorded the six Release Deeds it had solicited in March thru July 2019 (A268-85; A1246 ¶ 25). Nordic has stipulated that, prior to recording the RDs and two supporting Affidavits in the WCRD, it did not file any ancillary proceedings to have a probate court or the WCSC determine whether (i) any of the Grantors were eligible “Heirs” of Harriet Hartley, pursuant to the definition of “Heir” in the Maine probate code; and/or (ii) had any legitimate claim of TRI in any land once owned by Harriet Hartley (A1245 ¶12; A268-85).¹⁶

C. Procedural History

1. Phase I Litigation: On July 15, 2019, Appellants filed a declaratory judgment action in the WCSC to quiet title and clear clouds created by Nordic’s false statements disparaging their title and property rights (A11; A74-107 @102 ¶75).¹⁷ In February 2020, Nordic and the Eckrotes filed counterclaims for damages against Mabee-Grace, UW, and Friends, for trespass, intentional interference with an advantageous relationship, and slander of title (*Mabee I*, ¶19). In February 2020, Nordic also objected to all discovery requests relating to the Release Deeds and surveys (Objections ¶¶ 1-4, 9-13, 15, 19-21, 25-26).

¹⁶ Failure to have such determinations made prior to recording the Release Deeds was contrary to the process established by the version of Maine Title Standard (“MTS”) 707 in effect from 7-22-2014 to 8-13-2024 (P36).

¹⁷ With the initial Complaint, Appellants served Nordic with discovery requests seeking unredacted copies of the RDs and all surveys in Nordic’s possession (R.D.S. ¶ 29). Nordic thwarted response to this discovery by filing an anti-SLAPP special motion to dismiss (A012). After Nordic’s anti-SLAPP and 12(b)(6) motions to dismiss were denied, Nordic filed objections to Appellants’ discovery requests based on various claims of privilege – again delaying Appellants from obtaining unredacted RDs revealing the identities of the RD Grantors.

Dorsky's 1-14-2018 survey (A394) and his 11-15-2018, 1-25-2019, 2-22-2019, 5-14-2019, and 7-24-2020 survey plan revisions (A395-8) were not produced until 7-27-2020 (before Dorsky's 7-29-2020 deposition) (10-07@P:68;L8-18).

In November 2020, the WCSC bifurcated the trial of the title claims from pending counterclaims for damages filed by Nordic and the Eckrotes against Appellants and UW – staying consideration of the Defendants' damage claims until resolution of the title claims. At that time, Appellants had no claims for damages pending against Nordic (A29-31). In December 2020, Nordic belatedly produced discovery responses that revealed Nordic had obtained Harriet Hartley's 1951 probate file *in December 2018* (A1244 ¶2; A299-303).¹⁸ Nordic's discovery response also contained communications revealing its coercive solicitation¹⁹ of *twelve* out-of-state persons, to execute RDs purporting

¹⁸ (A1243-44 ¶¶1, 2; R.D.S. Ex. 1). Yellow highlighting on Schedule D from that probate file, *contained in the 12-15-2020 discovery response* (A302), demonstrates that Nordic had a high degree of awareness – *prior to identifying Grantors to solicit* in March-July 2019 – that Pennsylvania probate authorities and HLH's executrices (Ruth Hartley Weaver and Genevieve Hargrave Bailey) had determined that HLH had sold all her land in Belfast, referenced in her 1945 Will, during her life – rendering her Will "ineffective" and resulting in an intestacy (A239; A242). As a result, HLH's two sisters – Genevieve Hargrave Bailey ("GHB") and Esther Hargrave Woods ("EHW") – were named her "heirs-at-law." *Id.* Neither HLH's heirs-at-law, nor the intended beneficiaries of her Will (her nephew Samuel Nelson Woods, Jr. and HLH's sister-in-law Ruth Hartley Weaver (A243)), received any land in Maine upon her death or from HLH's estate and no one ever contested this result (A1235 ¶¶6-8).

¹⁹ The Solicitation letters Nordic sent to prospective Grantors asserted that Nordic would be "compelled" to sue any potential Grantors who refused to sign a release deed, stating:

Unfortunately, the choice of language used by Harriet that expressly references the "high water mark," creates a "cloud" on the title to this tidal land between the high and low water marks in Belfast, Maine. In order to remove the "cloud" on title to this tidal area, we need to either obtain release deeds from the surviving heirs of Harriet Hartley or file a "quiet title" court action naming those heirs as parties in a Maine court where the land is located. In order to clear title, we would be compelled to join those known heirs from whom we do not obtain a deed in a court action to clear title to the tidal area. This joinder would be accomplished by serving process on those heirs together with a summons to appear in the

to grant Nordic “partial interest” in whatever TRI, if any, those persons held in the land described in the 1934 deed from Genevieve Hargrave to Arthur and Harriet Hartley (A304-343).²⁰

Although Nordic attached HLH’s probate file Schedule A (showing HLH owned no real property) and Schedule D (stating HLH had sold all her land during her life creating an intestacy) to the communications with the Grantors it solicited (A308-43; A1246 ¶17), Nordic never advised the Grantors of Appellants’ ownership claims or the 1970 *Ferris v. Hargrave* quiet title judgment (*Id.*; 10-07@P:34;L6 - P:37;L17). At the time Nordic solicited and then published these RDs, Nordic knew or had a high degree of awareness that:

- (i) PA probate authorities had concluded HLH had sold all her land during her life, as attested *under oath* by her Executrix Ruth Hartley Weaver

Maine court action and defend any interest they may claim to the tidal land. Even if Harriet’s heirs had inherited some interest in the property at one time, and some of those heirs choose to defend that interest in a Court proceeding, it is still likely that the Court would conclude that the longstanding open and exclusive use of that intertidal area by the owners of the upland and cottage resulting in title to the tidal land rejoining the upland lot. This is all part of the “cloud” on the title that would need to be cleared. We would much prefer to obtain release deeds and avoid the need to go to court, however we realize that we may not be successful in reaching all known heirs. ...

We appreciate your decision and return of the release deed as soon as possible. As already discussed with Brenda [Chandler], the company is actively seeking permits for their project and timely response by early next week is much appreciated.

May 9, 2019, letter from Attorney Colleen Tucker to Marcia Woods Gribble (J46-B; italics in original). This letter was sent *after* Mabee-Grace filed challenges to Nordic’s TRI claims in DEP and BPL on 5-1-2019, with all relevant deeds, a surveyor’s opinion from Don Richards and the recorded 4-29-2019 Conservation Easement. Thus, *when Nordic solicited the RD Grantors*, it had a high degree of awareness that Mabee-Grace claimed ownership of the intertidal land that Nordic’s surveyors had already told them (in *or before* November 2018) was not owned by the Eckrotes. See similar solicitation language at: A309-10; A321; A328-29; A332-33; A337-37; A340-41.

²⁰ Solicitation of the Grantors was done directly by Nordic’s then-President Erik Heim, its then-CFO and later President, Brenda Chandler, and Attorney Colleen Tucker. Nordic only obtained Release Deeds from 10 of the 12 persons they solicited. (A268-83; A1246 ¶¶20-22).

(A239; A242-3) and established by the unambiguous language of the Hartley-to-Butlers deed (*Mabee I*, ¶52);

- (ii) None of the persons solicited had any recorded title, right, interest, or estate in any Maine land once owned by HLH pursuant to the 1934 GHB-to-Hartleys deed and the WCRD (A1245 ¶10-12);
- (iii) All of the persons solicited were barred by the unambiguous *Ferris v. Hargrave* Judgment from claiming title, right, interest, or estate, by, through, or under Genevieve Hargrave, in the land described in Mabee-Grace's deed (A297), which is a portion of the land described in the Hargrave-to-Hartleys deed see, *Mabee I*, Figure 2 (*infra*, p. 49); and
- (iv) None of the persons solicited as RD Grantors meet the statutory and/or technical definition of "Heir" or "Descendant" in Maine probate law (18-C M.R.S. § 1-201(9) & (23)) and none of the RD Grantors have ever been determined to be an heir or heir-at-law of HLH, GHB or EHW, although Nordic published statements claiming they were to disparage Mabee-Grace's title claims (A1245 ¶¶12 & 16 and A1253-61; A1321-31).²¹

The testimony in the Phase II trial – from Nordic's real estate attorney, Colleen Tucker, and a title searcher, Elizabeth Hunter, who Attorney Tucker retained to identify potential Grantors, through Ancestry.com and public sources, to solicit them, and obtain executed RDs (Tucker and Hunter Depos. A1262-A1331) – states that:

- Attorney Colleen Tucker is not an expert in probate law and failed to consult with lawyers in her firm who are experts in probate law to determine whether any persons identified by Elizabeth Hunter (a) were "heirs" of HLH, or (b) had any title, right or interest in intertidal land adjacent to Lots 36 and 35, prior to having ten of the twelve persons solicited execute Release Deeds in March through July of 2019 (CTucker@P:27;L21-24 – P:28;L19-24; A1270 @ L: 21-24; A1271 @ L: 19-24; A1245 ¶¶10-16).

²¹ "Heirs," except as provided in section 2-711, means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent. "'Descendant,' as it relates to an individual, means all of the individual's descendants of all generations. The relationship of parent and child at each generation is determined by the definition of 'parent' and 'child' contained in this Code." *Ibid*.

- Colleen Tucker did not instruct Elizabeth Hunter to limit the persons identified by her to only those persons, *if any*, who met the definition of “Heir” in then 18-A (now 18-C) M.R.S. §1-201(23) (CTucker@P:26;L1-20; A1270 L:1-20).
- Attorney Tucker stated that she believed “any relative” of Harriet or her sisters identified by Hunter could grant an RD (CTucker@P:28;L3-8; A1271 L:3-8), although not every relative can inherit when an intestacy exists under ME law.
- Elizabeth Hunter testified that (i) she is not an expert in genealogy (Hunter@P:16;L15-17; A1288 L:15-17) – although she claimed expertise in genealogy in a statement filed with the City “confirming” that “those persons executing the [RDs] are heirs of Harriet L. Hartley” – and (ii) she did not consider eligibility for land ownership or inheriting land in identifying persons as “Heirs of Harriet L. Hartley” (Hunter@P:55;L19 to P:57;L24 (A1298); Hunter@ P:58;L24 - P:59;L5 (A1299); Hunter@P:63; L16-24 & @P:64;L4-6 (A1300 & 1330); and A1253-61).

Further, Nordic has stipulated that Harriet Hartley and Genevieve Hargrave Bailey had no children by birth or adoption (A1234 ¶1; A1235 ¶10). Thus, ***HLH and GHB had no “descendants”*** – as defined in 18-C M.R.S. § 1-201(9).

In March 2021, the WCSC granted Appellants’ 8-13-2020 motion to file a Third Amended Complaint, but rejected the draft Complaint filed with that motion (A23; A32). Appellants timely filed a revised draft of the Third Amended Complaint that included an SOT claim for damages, based on the proof contained in the belatedly produced discovery, revealing that *Nordic had HLH’s probate file prior to soliciting the RD Grantors*. On 5-18-2021, over Nordic’s objection, the WCSC accepted the Third Amended Complaint including the SOT claim – which would not be considered until Phase II (A33; *Mabee I*, ¶20).

In the June 2021 Phase I bench trial, Nordic and the Eckrotes asserted

that the Eckrotes owned the intertidal land adjacent to their property, based on revised opinion testimony by Surveyor Dorsky. In the Phase I trial, Nordic did not claim “partial interest” in the intertidal land based on the RDs. Post-trial, Appellants moved, pursuant to M.R. Civ. P. 50(d), for judgment declaring the RDs had conveyed nothing to Nordic.

As evidence of Nordic’s awareness of the falsity of its claims (and the error of Dorsky’s revised opinion that the Eckrotes did own the intertidal land adjacent to Lot 36) (*Mabee I*, n. 9),²² on 8-12-2021 (before the WCSC ruled on Phase I), pursuant to agreements with Nordic (J55; A1227-33), the City used eminent domain to: (i) take Mabee-Grace’s title to the intertidal land adjacent to Lot 36; (ii) terminate the Conservation Easement; and (iii) extinguish the right to enforce the RPO servitude on Lot 36 held by Mabee-Grace and owners of Lots 35, 34, 33, 32 and 31 (A358-75).²³

²² Surveyor Dorsky claimed that he changed his opinion prior to the 2021 trial regarding the Eckrotes’ ownership of the intertidal land adjacent to Lot 36, based on this Court’s decision in *Almeder v. Town of Kennebunkport*, 2019 ME 151, entered in October 2019. *Mabee I*, ¶20, n. 8 & 9.

²³ The City’s actions were in furtherance of a scheme to use eminent domain to preemptively nullify any judgment in Appellants’ favor in Phase I by extinguishing Appellants’ title and property rights relating to Lot 36 and the adjacent intertidal land, i.e., the property that Nordic needed for its proposed project. Nordic and the City memorialized their eminent domain scheme in two contractual agreements: (1) a Fourth Amendment (dated 4-21-2021) to the contract between the City, BWD and Nordic (A1227-33), and (2) a Purchase and Sale Agreement, between the City and Nordic, dated 7-9-2021 (J55). The 7-10-2021 Nordic-to-City deed (A287-91) (purporting to convey whatever TRI in Lot 36 and the adjacent 0.05-acres of intertidal land that Nordic obtained from the 9-23-2020 RDs (A356)) and the 9-3-2021 City-to-Nordic easement (A292-95) (purporting to grant Nordic the right to industrially develop Lot 36 and the adjacent intertidal land, in contravention of the 1946 RPO servitude and the Conservation Easement) were recorded in the WCRD, pursuant to the 7-9-2021 Nordic-City Purchase and Sale Agreement terms. These instruments created more clouds on Appellants’ title, remain uncorrected, and are the subject of Count III, at issue in this appeal.

On 10-27-2021, the WCSC entered judgment primarily in favor of Nordic and the Eckrotes. (*Mabee v. Nordic Aquafarms Inc.*, No. RE-2019-0018, 2021 Me. Super. LEXIS 103, 2021 WL 6932428 (Me.Super. Oct. 27, 2021); *accord*, *Mabee I*, ¶21). The WCSC Order also concluded that:

(¶13) “[a]t the time of her death on October 18, 1951, Harriet L. Hartley owned no real property in Belfast, and her estate conveyed no real property to her intended heirs or heirs at law”; and

(¶14) “[n]one of the quitclaim deeds executed by the [RD Grantors] ... conveyed title to the intertidal flats appurtenant to Lots 37, 36, or 35 to Nordic, as these individuals did not have title to convey.”

2021 Me.Super. LEXIS 103 at *89-90. Thus, in the 10-27-2021 Judgment, the WCSC entered “a partial judgment in favor of Plaintiffs on Count I and Count II of the Complaint” *Id.*, 2021 Me. Super. LEXIS 103, *91. Neither Appellants, the City (which had been added as a Phase I defendant), nor Nordic appealed the WCSC’s rulings relating to the 9-23-2020 RDs.

On 2-16-2023, this Court ruled in Appellants’ favor on all claims raised in Phase I and vacated the 10-27-2021 WCSC Judgment.²⁴ In May 2023, this Court remanded Phase I of this case to the WCSC for further proceedings consistent with *Mabee I*. The parties submitted proposed amended final judgments to the

²⁴ In *Mabee I*, this Court determined that “once it is understood that the [1946] Hartley-to-Poor deed did not convey the disputed intertidal land, under the relevant legal principles, the language in the [1950] Hartley-to-Butlers abutters’ deed unambiguously conveyed the disputed land to Mabee and Grace’s predecessors in interest (*Mabee I*, ¶ 52 (emphasis supplied)) and “observe[d] that Hartley’s probate file contains a note indicating that she conveyed all her real property during her life.” (*Mabee I*, n. 11). In its filings in the BCD, Nordic has characterized footnote 11 as merely “dicta,” rather than a binding judicial determination relating to the *unambiguous* Hartley-to-Butlers abutters deed (*Mabee I*, ¶¶ 8-12). See Chandler testimony referenced in footnote 29, *infra*.

WCSC (A43). Based on the plain effect of this Court’s determinations in *Mabee I*, Appellants requested that the Amended Final Judgment declare the Challenged Instruments “null and void *ab initio*.” Nordic opposed this request, ostensibly on the grounds that the Phase I proceedings had not considered several of those instruments because they were executed and recorded *after the Phase I trial*. On 6-26-2023, the WCSC entered an Amended Final Judgment that omitted the above-referenced declaratory relief and, thus, did not remove the clouds on title created by the Challenged Instruments. That Order was recorded on 10-25-2023 in the WCRD.²⁵

On 8-14-2023 and 8-21-2023, Nordic submitted filings to DEP falsely asserting a right to *retain* the permits and licenses granted by BEP in 2020, based on the 9-23-2020 Release Deeds and the 9-3-2021 City-to-Nordic easement (A376-93; A1249 ¶47). These filings demonstrate Nordic’s ongoing use of the Challenged Instruments to continue to disparage and cloud Appellants’ title and property rights, even after entry of the *Mabee I* decision.

2. Phase II Litigation: Phase II began in June 2023, with Appellants seeking to reopen discovery and file a summary judgment motion relating to their SOT claims (A43). Over Nordic’s objections (*Id.*), the WCSC *granted* Appellants the right to take SOT-related discovery and file a summary judgment

²⁵ See, BPL Major Projects website on the Nordic Project, “NORDIC AQUAFARMS, INC. RESCISSION OF FINAL FINDINGS AND DECISION DATED 9-4-2020, entered on 9-7-2023, at p. 3: <https://www.maine.gov/dacf/parks/about/documents/NordicRecisionOfFinalFindingsSept-7-2023.pdf>

motion (A44). In granting Appellants' discovery request, the WCSC noted this request was "appropriate" ***because the Appellants had never had an opportunity to take any discovery relating to slander of title***, because that claim was only added after the close of the discovery and dispositive motions deadlines. *Id.* After discovery commenced, Nordic and the Eckrotes changed counsel (A44) – delaying completion of discovery and the filing of a summary judgment motion. *Id.*

On 4-1-2024, Appellants filed a Fourth Amended Complaint with the consent of Defendants Eckrotes and Nordic, and approval of the WCSC (A38; A108-177). Nordic's answer, filed on 5-3-2024 (A46), asserted defenses to liability for SOT damages based on its alleged reliance on the advice of Surveyor Dorsky (A46, Defense #5).

All pending litigation was transferred to the Business and Consumer Court ("BCD") on 9-5-2024 (A46). After transfer, the BCD:

- (i) Denied Appellants' motion to compel discovery (A51);
- (ii) Denied Appellants' requests to obtain SOT-related discovery from Nordic's real estate counsel, Surveyor Dorsky, and the consultant from CIANBRO who drafted the image depicting the easement boundaries in Exhibit A of the 8-6-2018 EOA, and others, based on attorney-client privilege and work-product doctrine (*Id.*);
- (iii) Denied Appellants access to the written advice provided to Nordic and/or its counsel by Surveyor Dorsky, after an *in camera* inspection of Surveyor Dorsky's emails to Nordic, despite Nordic's assertion of reliance on that advice as a defense to all SOT liability (A73);
- (iv) Reversed the 2023 WCSC Order and denied Appellants leave to file a summary judgment motion relating to their SOT claims, advising

Appellants' counsel to file Requests for Judicial Notice on prior relevant judicial determinations in Phase I and *Mabee I* and other adjudicative facts (8-27-25@P:33;L15 - P:39;L3); and

- (v) Denied *all* of Appellants' requests to take judicial notice of: (a) adjudicative facts resolved by prior judicial determinations by the WCSC and/or this Court in *Mabee I*, (b) adjudicative facts resolved by the parties' prior-filed Stipulations relating to the 9-23-2020 Release Deeds, (c) adjudicative facts relating to the RDs; and (d) adjudicative facts relating to the advice provided to Nordic by at least three surveyors including Surveyor Dorsky (A53-54).

In October 2025, the BCD conducted a bench trial on Appellants' Phase II SOT claims (A54-55; 10-06 & 10-07 Transcripts).²⁶ On 1-2-2026, the BCD entered judgment in Nordic's favor on the SOT claims. The 8-page Order correctly acknowledged that the first two elements for SOT (publication of disparaging statements that are false) were established by the judicial determinations in Phase I (A59-66). However, the BCD erroneously determined that Appellants failed to: (i) demonstrate that Nordic acted with malice or reckless disregard of falsity (the 3rd SOT element) (A59, A63-65); and (ii) failed to file any proof of damages and special damages (the 4th SOT element) (A65-67). Further, the 1-2-2026 Order stated that Nordic had no duty to remove the clouds on title created by the Challenged Instruments, but the BCD made no ruling on Count III regarding Appellants' request for a Declaratory Judgment,

²⁶ Phase II trial testimony revealed that Nordic Aquafarms Inc. is no longer a going concern in Maine or California. Nordic: (i) no longer has any employees; (ii) its former President and CEO, Brenda Chandler, appeared at trial under an hourly contract compensated by a Norwegian entity that is not incorporated in the U.S. nor registered to do business in Maine; and (iii) Nordic's only assets were land it acquired in Belfast for its now defunct project. (10-07@P:5;L4 - P31;L14; 10-07@P:79;L21 - P:80;L10).

declaring the Challenged Instruments null and void *ab initio*, based on the judicial determinations of the WCSC regarding the RDs and this Court in *Mabee I*. Appellants timely filed Motions to amend the Facts and Judgment pursuant to M.R. Civ. P. 52(b) and 59(e) (A178-219) and a Renewed motion to take judicial notice relating to the RDs. The BCD denied those motions on 3-3-2026 and 3-4-2026 (A67-72), again making no express ruling on the declaratory relief claims in Count III. Appellants timely filed this appeal.²⁷

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether the BCD erred in determining that Appellants failed to demonstrate that Nordic acted with malice or reckless disregard of falsity.
2. Whether the BCD erred in determining that Appellants failed to file any evidence demonstrating damages and special damages incurred during Phase I and *Mabee I* in removing clouds created by Nordic on Appellants'

²⁷ On 5-14-2026, in the related eminent domain case, BCD-REA-2024-00007, the BCD entered judgment on Counts II and III of the Consolidated Amended Complaint ("CAC"), filed on 5-5-2025. Those Counts seek the same declaratory relief regarding the identical Challenged Instruments that is sought in Count III of the Fourth Amended Complaint in this case. In the 5-14-2026 Order, the BCD states that:

... Under the guise of seeking declaratory judgment that certain deeds and instruments pertaining to intertidal land are void *ab initio*, Plaintiffs in effect ask the Court to give them judgment for slander of title. This Court has already decided Plaintiffs' actual slander of title claim against them, however, and the Law Court and [WCSC] have quieted title to the intertidal land in question. There is presently no controversy regarding Plaintiffs' ownership of the intertidal land; Plaintiffs lack standing to bring their declaratory judgment claims; and in any event Plaintiffs can point to no legally cognizable injury. Thus, ... the Court DENIES Plaintiffs' request for entry of judgment on Counts II and III and enters judgment on those counts for Defendants.

Plaintiffs cannot use their declaratory judgment action as a second bite at the fraud apple, or as an alternative *soto voce* pathway to a slander of title finding. ...

No final appealable judgment has yet been entered in BCD-REA-2024-00007.

title and property rights.

3. Whether the BCD erred by applying the wrong standard for recovery of SOT damages.
4. Whether the BCD erred in failing to declare the Challenged Instruments Nordic recorded in the WCRD null and void *ab initio*, pursuant to judicial determinations by the WCSC in 2021 and this Court in *Mabee I*.
5. Whether Nordic's conduct warrants punitive damages.

SUMMARY OF THE ARGUMENT

First, Appellants satisfied the *third* SOT element by demonstrating that Nordic acted with malice or reckless disregard of falsity in: (1) publishing slanderous false statements disparaging Appellants' title and property rights, including statements claiming (a) the Eckrotes own the intertidal land adjacent to Lot 36 and gave Nordic a valid easement option to use upland Lot 36 and the adjacent intertidal land to conduct its for-profit business; and (b) "heirs" of Harriet Hartley own the intertidal land adjacent to Lots 36 and 35 and Nordic acquired "partial interest" in that intertidal land from RDs executed by Grantors who are Heirs of Harriet Hartley; (2) recording deeds and instruments that contain disparaging information determined to be false in *Mabee I*; and (3) even after *Mabee I* was entered in 2023, (a) failing to record an acknowledgement that those deeds and instruments are null and void *ab initio*, and (b) claiming, in proceedings in the DEP and BPL, that Nordic had a right to *retain* permits,

licenses, and leases granted to it in 2020, based on the RDs and the 9-3-2021 City-to-Nordic easement (A292-95).

Second, Appellants satisfied the *fourth* SOT element (damages and special damages) by presenting voluminous documentary evidence and testimony demonstrating that they incurred actual damages and special damages removing clouds on title during Phase I and the *Mabee I* appeal and are entitled to recover those damages and special damages, including attorneys' fees, now.

Third, the BCD applied the wrong standard for recovery of SOT damages, erroneously requiring "proof of a lost sale" rather than damages and special damages incurred to remove clouds on title in Phase I and *Mabee I*.

Fourth, the BCD erred by failing to declare the Challenged Instruments referenced in Count III null and void *ab initio*, pursuant to the prior judicial determinations by the WCSC in Phase I and this Court in *Mabee I*. Such a declaration, pursuant to 14 M.R.S. § 5954, is independent of the resolution of the SOT claims.

Finally, Nordic's weaponization of the litigation process and use of slander, deception, concealment, and eminent domain to misappropriate a portion of the homestead property of an elderly couple of modest means, who have lived on, and loved, this land for more than four decades – warrants the imposition of punitive damages.

ARGUMENT

A. Relevant Record Facts

The Record Facts establish that Nordic had a high degree of awareness that the disparaging statements it was publishing were false, because:

- (i) Nordic knew, *no later than November 2018*, that at least three surveyors retained by Nordic or the Eckrotes concluded, based on the *unambiguous* Hartley-to-Poor deed, that the Eckrotes did not own the intertidal land adjacent to Lot 36 and, thus, *the Eckrotes had no legal capacity to grant Nordic an easement to use that intertidal land*;²⁸
- (ii) Nordic knew, *no later than December 2018*, that Pennsylvania probate authorities had determined that Harriet Hartley had sold all her land prior to her death in 1951 – a determination consistent with the *unambiguous* Hartley-to-Butlers deed – and neither her intended devisees, nor her heirs-at-law, received any land in Maine at her death or from her estate nor contested this result (A1235 ¶¶6-7);
- (iii) Nordic knew, or had a high degree of awareness, *prior to soliciting, publishing, or recording the Release Deeds on 9-23-2020*, that: (a) Harriet Hartley's probate file stated she had sold all her land prior to her death,²⁹ (b) none of the Grantors solicited by Nordic was an "Heir" or "Descendant" of HLH or either of her heirs-at-law, as those terms are defined in 18-C M.R.S. §1-201(9) & (23) and prior precedents of this Court,³⁰ (c) none of the Grantors had recorded title, right, interest, or estate in any land once owned by Harriet Hartley in Belfast, Maine (A1245 ¶¶10-11),³¹ (d) all of the RD Grantors were barred by the 1970 *Ferris v. Hargrave* judgment from claiming title, right, interest, or estate in the land described in Mabee-Grace's deed which was a portion of the

²⁸ "One can not convey land, nor create an easement in it, unless he owns it." *Gravison v. Fisher*, 2016 ME 35, ¶59, citing *Dorman v. Bates Mfg. Co.*, 82 Me. 438, 448, 19 A. 915 (1890).

²⁹ At trial, former President, CEO and CFO for Nordic Aquafarms Inc., Brenda Chandler, has twice acknowledged under oath that neither she nor "Nordic Aquafarms Inc." **ever** had **any basis to claim that, at the time of Harriet Hartley's death, she owned any land in the State of Maine** (6-25-21@P: 98;L3-6; 10-07-25@P:45;L18 - P:46;L24 (emphasis added)). Rather, in Phase II testimony, Chandler described the RDs as "*the just in case*" and "*secondary*" (10-07-25@P:46;L22-24; 10-07@P:97;L13-19).

³⁰ 10-07-25@P:40;L11-24; Hunter@P:56;L3 - P:59;L5 & Exs. 4-6 & Nordic-11 (A1298-9; A1321-31).

³¹ *Almeder v. Town of Kennebunkport*, 2019 ME 151, ¶38, citing *Eaton v. Town of Wells*, 2000 ME 176, ¶19, 760 A.2d 232 ("[A] person can convey only what is conveyed into them."). See also, *Calthorpe v. Abrahamson*, 441 A.2d 284, 287 (Me. 1982), citing *May v. Labbe*, 114 Me. 374, 96 A. 502 (1916) ("A grantor can convey effectively by deed only that real property which he owns.").

land described in the 1934 Hargrave-to-Hartleys deed referenced in all RDs (A297), and (e) based on their deeds, Mabee-Grace believed they owned the intertidal land adjacent to Lots 38, 37, 36 & 35 (A551) and had a Conservation Easement on it that – if valid – could not be amended or terminated by eminent domain (P30; *Mabee I*, ¶¶59-61);

- (iv) Nordic knew, or had a high degree of awareness, no later than 6-13-2019, that Mabee-Grace would not agree to Nordic conducting its for-profit business on Lot 36, pursuant to the RPO servitude, based on the written notice Mabee sent to the Eckrotes on that date (A176-77).³²

Nordic’s prolonged concealment of the contents of Surveyor Dorsky’s multiple survey revisions, and the identifying information relating to the RD Grantors, demonstrates a conscious effort by Nordic (A415), its agents, and counsel, to prevent Appellants from unearthing the dubious and dishonest nature of Nordic’s false and disparaging statements regarding: (i) the Eckrotes’ ownership of the intertidal land adjacent to Lot 36; (ii) Appellants’ title to, and valid and enforceable Conservation Easement on, that same intertidal land; (iii) Appellants’ rights under the RPO servitude on Lot 36; (iv) Nordic’s false claims regarding the RD Grantors’ being “heirs” of HLH; and/or (v) Nordic’s alleged “partial interest” in the intertidal land adjacent to Lot 36 based on the RDs Nordic recorded on 9-23-2020.

³² Nordic demonstrated similar disregard for deed restrictions on a 12.5-acre portion of the property it acquired on the west side of Route 1 from BWD, on which Nordic proposed to put the primary industrial structure for its proposed land-based aquaculture facility – a building the size of Gillette Stadium – despite deed restrictions, that run with the land, imposed by the State of Maine in 1973, prohibiting any structures on or alteration of this parcel from its natural condition. *Block, et al. v. City of Belfast, et al.*, BCD-CIV-2024-41 (“12.5-Acre Case”); WCRD Book 710, Page 1153. Notably, although the 12.5-Acre Case was transferred to the BCD Judge presiding over this SOT case, the 1-2-2026 Order in this SOT case erroneously states that: “Phase I ... [arose] out of Nordic’s desire to use the flats to develop an *offshore aquaculture facility*.” (A60, emphasis added).

Nordic's efforts to conceal facts relating to the extent and timing of its awareness of the falsity of its claims regarding ownership of the intertidal land adjacent to Lot 36 even included: (1) Nordic's counsel, with the knowledge and *participation* of Nordic's then-President and CFO, coercing ten out-of-State persons to execute RDs drafted by Nordic and its counsel, for payments to each Grantor of \$3,000 to \$8,000 (totaling \$50,000) (A344-55; A1248 ¶34), using thinly veiled threats that Nordic would be "compelled" to file "quiet title" litigation in Maine, against any "heirs" who failed to sign the RDs;³³ and (2) counsel for Nordic and the Eckrotes intimidating Surveyor Ronson (in September 2019) into not providing Appellants' surveyor with an affidavit confirming that her unrecorded 8-31-2012 survey plan of Lot 36, done for the Eckrotes in 2012, meant the Eckrotes did not own the adjacent intertidal land. Nordic compounded the harm done by its knowing publication of false and disparaging statements by citing the RDs and the 9-3-2021 City-to-Nordic easement as a basis for retaining permits, licenses, and leases that purported to grant Nordic a right to use Lot 36 and the adjacent intertidal land, in a manner contrary to Mabee-Grace's ownership rights, the RPO servitude, and the protections and prohibitions in the 2019 Conservation Easement (A376-93).

³³ Although Nordic threatened the RD Grantors with a "quiet title" action in Maine, if they did not execute the RDs, when it made those threats, Nordic did not meet the statutory requirements in 14 M.R.S. §6651 to file a quiet title action (lacking four years of "uninterrupted" possession of this land); and it did not file any action against the two non-signers. However, one of the non-signers (Elizabeth Cooper Rankin of PA) was named in the City's 8-12-2021 Condemnation Order (J54, pp.1, 8) and paid \$1,200 *by the City* (J54, p.12).

B. Standard of Review

1. Elements of Slander of Title: Where, as here, the trial court has found that a party with the burden of proof fails to meet that burden, this Court reviews the “*entire record to ascertain whether the record compels a finding contrary to that made by the trial court.*” *In re Adoption of T.D.*, 2014 ME 36, ¶ 12, 87 A.3d 726 (emphasis supplied); *Harvey v. Furrow*, 2014 ME 149, ¶24. This Court will uphold a trial court’s findings that the elements [of slander of title] have not been met if those findings are supported by the record. See *Harvey*, 2014 ME 149, ¶25, citing, *Rose v. Parsons*, 2013 ME 77, ¶13, 76 A.3d 343.

2. For Deed and Easement Interpretation: “The standard of review in the Law Court is *de novo* as to the interpretation of a deed [or easement] and clear error as to questions of fact.” *Matteson v. Batchelder*, 2011 ME 134, ¶12, 32 A.3d 1059, 1062; *Snyder v. Haagen*, 679 A.2d 510, 513 (Me.1996).

3. Effect of Denial of Motions pursuant to 52(b) and 59(e): In *Ehret v. Ehret*, 2016 ME 43, ¶14, 135 A.3d 101, this Court summarized the effect a motion for findings pursuant to M.R. Civ. P. 52 has on the standard of review:

... [A]fter the entry of a judgment, if an affected party timely moves for findings pursuant to M.R. Civ. P. 52, the trial court must ensure that the judgment is supported by express factual findings that are based on record evidence, are sufficient to support the result, and are sufficient to inform the parties and any reviewing court of the basis for the decision. In the absence of a motion for specific factual findings, we ordinarily assume that a trial court found all of the facts necessary to support its judgment. However, when a motion for findings has been [timely] filed and denied, we cannot infer findings from the evidence in

the record. In these circumstances, if the judgment does not include specific findings that are sufficient to support the result, appellate review is impossible and the order denying findings must be vacated.

Id. ¶9 (alteration in original) (footnote omitted) (citations omitted). *McLean v. Robertson*, 2020 ME 15, P10-P11, 225 A.3d 410. “[W]hen a motion for findings of fact and conclusions of law is denied, we cannot assume that the court implicitly found facts sufficient to support its ultimate determination.” *See McLean v. Robertson*, 2020 ME 15, ¶¶ 11, 14.³⁴

C. Relevant Legal Standards

1. Slander of Title: This Court established the elements for slander of title in *Colquhoun v. Webber*, 684 A.2d 405, 409-411 (Me. 1996), stating:

³⁴ In its 3-4-2026 Order, the BCD erroneously asserts that: (i) it “partially granted” Appellant’s 52(b) motion “*because the Court [made] further findings*” (A68); and (ii) this Court’s recent decision in *H.A.T., LLC v. Greenleaf Apartments, LLC*, 2026 ME 20, ¶ 13, stands for the proposition that:

“[w]hen the trial court partially grants the [timely-filed 52(b)] motion and makes additional findings, the Law Court applies the normal assumption that the trial court made all the necessary findings, whether explicitly stated and even if the additional findings are not those requested and do not change the judgment.” (A69 (Standard of Review Section))

However, (i) no portion of Appellants’ 52(b) or 59(e) motions was granted by the 3-4-2026 Order; and (ii) this Court’s recent decision in *H.A.T.* does not support the BCD’s proposition regarding the effect of an Order denying a 52(b) motion but making additional findings not requested by the movant. Rather, in *H.A.T.*, this Court (i) affirmed a BCD decision, based on “the trial court’s *extensive findings of fact*, which are supported by competent evidence in the record” (*H.A.T.*, 2026 ME 20, ¶ 2 (emphasis supplied)); and (ii) reaffirmed prior precedents regarding the standard of review by this Court, citing *H&B Realty, LLC v. JJ Cars, LLC*, 2021 ME 14, ¶¶ 2, 10, 246 A.3d 1176, which holds that:

“... Where, as here, a party’s motion for further findings has been denied, we do not infer findings from the evidence in the record. See M.R. Civ. P. 52(b); *Douglas v. Douglas*, 2012 ME 67, ¶ 27, 43 A.3d 965. Rather, we confine our review to the trial court’s explicit findings and determine whether those findings are supported by the record. *See Ehret v. Ehret*, 2016 ME 43, ¶ 12, 135 A.3d 101. ...

In sum, *H.A.T.* did not create a loophole for a trial court to effectively nullify the purpose of Rule 52(b), by merely *claiming* to have “partially granted” a 52(b) motion by adopting additional findings not requested by the 52(b) movant. Here, because the BCD denied Appellants’ 52(b) and 59(e) motions, this Court’s precedents hold that the Law Court will not infer findings from the evidence in the Record but will confine its review to the BCD’s explicit findings and determine whether those findings are supported by the Record.

“An action of slander of title ... is a sort of metaphorical expression.... Slander of title ordinarily means a statement of something tending to cut down the extent of title....” *Pater v. Baker*, 3 C.B. 831, 869, 136 Eng.Rep. 333, 348 (1847). Thus “slander of title” is a form of the tort of **injurious falsehood** that protects a person’s property interest against words or conduct which bring or tend to bring the validity of that interest into question. **To prove slander of title a claimant must prove (1) there was a publication of a slanderous statement disparaging claimant’s title; (2) the statement was false; (3) the statement was made with malice or made with reckless disregard of its falsity; and (4) the statement caused actual or special damages.**

[emphasis added]. In *Colquhoun*, the plaintiff’s slander of title claim arose from the defendant *recording a quitclaim deed in the Registry of Deeds, that purported to convey land that the defendant knew was claimed by the plaintiff* (as in this case). In *Colquhoun*, citing the Restatement (Second) of Torts §§ 624 and 633(1), the Law Court: (i) determined that attorneys’ fees, incurred in removal of a cloud on a title caused by a “spurious, and vexatious deed,” constitute proof of special damages in a slander of title action, *even in the absence of an impairment of vendibility*; and (ii) affirmed entry of a declaratory judgment directing the Registry of Deeds to mark the “frivolous” deed *and any deed related to that deed* “NULL AND VOID” *ab initio*. *Colquhoun*, 684 A.2d at 411-412.

In 2024, the Vermont Supreme Court, citing *Colquhoun*, imposed damages and special damages, pursuant to SOT, against a defendant who solicited and recorded a *deed from heirs of the prior owners of a disputed parcel* of land, although *the defendant had no evidence that the heirs owned the disputed*

land and the heirs had no belief they owned the land subject to the deed. *Massucco v. Kolodziej*, 2024 VT 76, ¶36.

The facts in *Massucco*, 2024 VT 76, ¶49-¶53, are particularly relevant in assessing whether Nordic’s recording of the Challenged Instruments (A268-95), constitutes publication of false statements with malice or reckless disregard of falsity. Notably, in *Massucco*, the trial court found that the defendant “persuaded the Adams heirs to sign a warranty deed to him and his wife, purporting to transfer the disputed parcel.” The *Massucco* trial court concluded that the mere ***recording of the deed constituted publication of a false statement concerning plaintiff’s title*** and the Vermont Supreme Court agreed. *Massucco*, 2024 VT 76, ¶42-P43.

Thus, in both *Colquhoun* and *Massucco*, the recording of quitclaim deeds falsely disparaging the plaintiffs’ title was sufficient to demonstrate the elements of SOT, *including malice*, warranting an award of damages and special damages incurred in clearing title clouds.

2. Malice or Reckless Disregard of Falsity: This Court has defined ‘malice’ as either actual malice, i.e., ill will, see *Tuttle v. Raymond*, 494 A.2d 1353, 1361 (Me. 1985), or implied malice, i.e., reckless disregard for the truth or falsity of the slanderous element of a statement, see *Gautschi v. Maisel*, 565 A.2d 1009, 1011 (Me. 1989); *Saunders v. VanPelt*, 497 A.2d [1121 (Me.1985), at 1124-25; Restatement (Second) of Torts § 600 comment b (‘Reckless disregard

as to truth or falsity exists when there is a high degree of awareness of probable falsity or serious doubt as to the truth of the statement’). See, *Onat v. Penobscot Bay Medical Ctr.*, 574 A.2d 872, 874 (Me. 1990).

In *Harvey v. Furrow*, 2014 ME 149, ¶26, this Court noted that: “Knowledge or disregard of falsity is a purely subjective state of mind.” See *Lester v. Powers*, 596 A.2d 65, 71 (Me. 1991); and held that: “***A reckless disregard for the truth exists only if the speaker had a high degree of awareness of the probable falsity or serious doubt as to the truth of the statement.*** Inadequate investigation into the truth of the statement is not enough to establish malice,” citing, *Morgan v. Kooistra*, 2008 ME 26, ¶ 34, 941 A.2d 447 (emphasis supplied).

In *Massucco*, the VT Courts found “malice” based on the fact the defendant knew the plaintiffs *believed* they owned the land, but, without speaking to them or obtaining a title search by a lawyer, defendant arranged for an heir to deed him the parcel even though the heir signing the deed at no time thought he owned the parcel. *Massucco*, 2024 VT 19, ¶¶ 49-53. The VT Courts concluded the defendant’s “conduct essentially amounted to a knowing disregard of the likelihood” that plaintiffs “might have legal claims to the property.”

In 2002, the Texas Supreme Court, citing the U.S. Supreme Court’s decision in *Harte-Hanks Communications v. Connaughton*, 491 U.S. 657, 692 (1989), described the standard for establishing “actual malice” in *Bentley v. Bunton*, 94 S.W.3d 561, 596 (2002), stating:

... [T]he actual malice standard requires that a defendant have, subjectively, significant doubt about the truth of his statements at the time they are made. To disprove actual malice, a defendant may certainly testify about his own thinking and the reasons for his actions, and may be able to negate actual malice conclusively. ***But his testimony that he believed what he said is not conclusive, irrespective of all other evidence. The evidence must be viewed in its entirety.*** The defendant's state of mind can – indeed, must usually – be proved by circumstantial evidence. A lack of care or an injurious motive in making a statement is not alone proof of actual malice, but care and motive are factors to be considered. ***An understandable misinterpretation of ambiguous facts does not show actual malice, but inherently improbable assertions and statements made on information that is obviously dubious may show actual malice. A failure to investigate fully is not evidence of actual malice; a purposeful avoidance of the truth is. Imagining that something may be true is not the same as belief.*** [emphasis added].

D. The Record Demonstrates that Nordic Acted with Malice or Reckless Disregard of Falsity

Nordic has attempted to evade liability for slandering Appellants' title by stating that it relied on Surveyor Dorsky and he "never believed" that Mabee-Grace owned the intertidal land adjacent to Lot 36 (10-07@P:229;L15 - P:230;L6; 10-07@P:36;L6 - P:37;L17). However, applying the standards enumerated in Section C to the Record Facts detailed in Section A and the Facts Section of this Brief, confirms that Nordic acted with malice and reckless disregard of falsity in publishing slanderous statements disparaging Appellants' title and property rights. Those Record Facts confirm that:

- Nordic demonstrated a knowing disregard for Appellants' property rights that has persisted even after the *Mabee I* decision was entered (A383, f.n.2; A390, f.n.3).

- Nordic relied on inherently improbable assertions and statements, made based on obviously dubious information concerning the interpretation of the language in unambiguous deeds (*Mabee I*, ¶¶ 44-45 & 52) and the 1951 Hartley probate file. That dubious information was provided to Nordic by persons, retained by Nordic, who lacked the necessary expertise to give the requisite legal opinions on which Nordic claims to have relied including: (1) Surveyor Dorsky (with his shifting opinions and changing plans); (2) Elizabeth Hunter (a title searcher who (a) had no expertise in genealogy or probate law, (b) did not use the statutory definition of “heir”³⁵ to identify potential grantors, and (c) did not consider eligibility-to-inherit relevant to her identification of Grantors); and (3) real estate attorney Colleen Tucker (who (a) had no expertise in probate law and failed to consult attorneys in her firm who did when she solicited Grantors and drafted the RDs, (b) failed to confine the persons solicited as RD Grantors to only those who met the statutory definition of “Heirs” and, thus, had any legal capacity to inherit property from HLH, (c) did not follow MTS 707 to verify the Grantors’ eligibility and status (A412-14).
- Nordic recorded deeds and instruments containing false information, executed by persons who (a) Nordic coerced with threats of “quiet title” litigation that Nordic had no actual legal capacity to file; (b) had no TRI in the property described; (c) were barred by the *Ferris v. Hargrave* Judgment from claiming title, right, interest, and estate in the land described in Mabee-Grace’s deed (A297); and (d) did not meet the technical or statutory definition, in Maine law, of “Heirs” or “Descendants” of Harriet Hartley, Genevieve Hargrave Bailey, or Esther Hargrave Woods;³⁶

³⁵ Colleen Tucker, Elizabeth Hunter, and Brenda Chandler, testified that in describing the RD Grantors as “Heirs of Harriet L. Hartley,” they were not using the technical and statutory definition of “Heir” in 18-C M.R.S. § 1-201(23). In the 1-2-2026 Order, the BCD erroneously concluded that: “Colleen Tucker Esq., real estate counsel, identified *Hartley’s living descendants* who could plausibly trace an interest in the flats, and Nordic obtained and recorded release deeds from those parties.” (A61; emphasis added). However, as a matter of law, none of the RD Grantors meet the statutory definition of “descendant” in 18-C M.R.S. § 1-201(9) either, since Harriet and Genevieve had no child by birth or adoption (A1234 ¶1; A1235 ¶10; A1245 ¶¶13-14).

³⁶ The word “heirs” is recognized as a *technical* term in Maine law, generally used to designate individuals who would, by statute, succeed to an estate in the event of intestacy. This technical meaning is *presumed* unless there is clear evidence or context indicating a broader or different intent by the testator. In *Lord v. Bourne*, 63 Me. 368, 379-380 (Me. 1873), the court explained that the term “heirs” has a technical meaning, referring to those who succeed by descent to an estate of inheritance. It emphasized that, in the absence of contrary evidence, *the term must be interpreted in its strict, technical sense, designating those who would take under the laws of intestacy*. In *Lyon v. Lyon*, 88 Me.

- *For years*, Nordic concealed Dorsky’s surveys and identifying information regarding the RD Grantors, as well as information regarding ***when*** Nordic obtained Hartley’s probate file and Dorsky’s opinion that the Eckrotes did not own the intertidal land adjacent to Lot 36;
- Nordic intimidated Surveyor Ronson into withholding an Affidavit from Appellants’ Surveyor, which would have attested that her 2012 survey plan showed that the Eckrotes did not own intertidal lands adjacent to Lot 36 and exposed Nordic’s September 2019 awareness of that fact;
- Nordic continued to claim a right to retain permits, licenses, and leases obtained in 2020 based on the improperly recorded RDs and 9-3-2021 easement, even after the *Mabee I* decision was entered (A376-93).
- In August 2021, even before the WCSC ruled on Phase I, Nordic persuaded the City to condemn Mabee-Grace’s intertidal land adjacent to Lot 36 (A1227-33), ***including intertidal land located outside the municipal boundaries of Belfast established in 1813*** – property in which Nordic has claimed TRI since 8-6-2018, and a completely pointless act *if* Nordic actually believed it had the requisite TRI.

Accordingly, this Court should determine that Appellants established that Nordic acted with malice and reckless disregard of falsity.

E. The BCD Applied the Wrong Standard for Recovery of SOT Damages

The BCD erred by applying the wrong legal standard for recovery of SOT damages and special damages – asserting that Appellants could not obtain damages and special damages without evidence of a “loss of sale” or impairment of vendibility (A65-66).³⁷ However, all the damages and special

395, 405 (Me. 1896), this Court reiterated that the words “heir” and “inherit” have a peculiar and invariable legal meaning, confined to those who take intestate estates. It distinguished heirs, who take by descent, from devisees or legatees, who take by will, and confirmed that the technical meaning of “heir” applies unless the context indicates otherwise.

In contrast, Attorney Colleen Tucker stated that she believed “any relative” of Harriet or her sisters identified by Elizabeth Hunter could grant a Release Deed (CTucker@P:28;L:3-8; A1271).

³⁷ Specifically, the BCD’s 1-2-2026 Order erroneously cites Restatement 2nd of Torts § 633, cmt. (g) for the proposition that: “plaintiff ‘must establish his case by evidence that some specific person was

damages Appellants have claimed were *incurred to remove clouds on title* by prosecuting the Phase I litigation, as permitted by this Court's decision in *Colquhoun, supra*, and Restatement (Second) of Torts, § 633(1)(b), cmt. k. Accordingly, the BCD applied the wrong standard and should be reversed.

F. Appellants Submitted Proof of Damages and Special Damages

The BCD's assertion that: "Mabee-Grace ... failed to establish any actual damages or special damages" (A65) is clearly erroneous and not supported by the Record. Appellants presented hundreds of pages of evidence detailing damages and special damages, including: (i) dated time sheets stating tasks performed by attorneys and paralegals in Phase I litigation to remove clouds on title; (ii) invoices from a surveyor and a genealogist; (iii) receipts for expenses, supplies, and litigation fees and costs; and (iv) cancelled checks and bank records showing payments actually made by Appellants for those costs and fees (A569-1226). The dates of performance and payment of the attorney, paralegal, and other professional services on those invoices, including time and bank records, demonstrate the damages and special damages were incurred during Phase I and not during the Phase II SOT litigation or eminent domain litigation.³⁸ The BCD erroneously asserts that none of the attorneys' fees

substantially influenced by the publication in refusing to make a purchase that he otherwise would have made.'" (A66).

³⁸ The BCD gave no explanation why all the \$288,285.45 in attorney's fees and costs paid to Dana Strout (A877; A881-944) were not compensable special damages. Strout (i) was not retained to do work in any permitting proceedings, as confirmed by Friends' Treasurer Eleanor Daniels' testimony

claimed as special damages are compensable because “Mabee-Grace have not sufficiently delineated or allocated which fees were paid to clear the title as opposed to paid for other unrelated services (including representation in permitting proceedings and eminent domain litigation).” (A66). However, in this SOT action, all attorneys’ fees claimed were for work performed in Phase I of *this case* to remove clouds on title and *are compensable*. As noted in the Facts Section, *supra*, the permitting agencies stated in the 6-13-2019 DEP TRI letter that “only a Court” could determine the validity of Appellants’ claims relating to title and property rights. Here, Nordic’s intentional and calculated actions, undertaken to disparage Appellants’ title, left Appellants with only one course of action: *that is, litigation to remove the clouds created by Nordic*.³⁹

Appellants are now entitled to their attorneys’ fees as special damages. Appellants’ damage-related evidence was also supported by corroborating testimony from Friends’ Treasurer Daniels (10-06@P:121:L10 - P:142;L25;

(10-06@ P:124;L2 - P:125;L14); (ii) his invoices (dated from 7-25-2019 to 4-29-2021) which include detailed time sheets (A881-944) confirm he only was paid for work on Appellants’ title claims litigation; and (iii) he was no longer working on this case after April 2021, *before* eminent domain became an issue. *Id.* Similarly, Treasurer Daniels’ testified that the monthly stipend paid to Appellants’ attorney, Kim Ervin Tucker, was for work done only in the title claims case and she has not been compensated (at all) for work performed in other matters, including permitting proceedings and the eminent domain case (10-06@P:125;L15 - P:126;L13) – a fact the BCD should know because of the separate requests for her fees filed in the eminent domain case, BCD-REA-2024-00007.

³⁹ See, e.g. the Nevada Supreme Court’s decision in *Horgan v. Felton*, 123 Nev. 577, 585-586 (Nev. 2007), quoting the Washington Supreme Court’s decision in *Rorvig v. Douglas*, 123 Wn.2d 854, 873 P.2d 492, 497 (Wash. 1994), stating:

“... [A]ttorney fees are permissible as special damages in slander of title actions because ‘the defendant . . . by intentional and calculated action leaves the plaintiff with only one course of action: that is, litigation. ... Fairness requires the plaintiff to have some recourse against the intentional malicious acts of the defendant.’”

A570-1121) and Appellant Grace (10-06@P:145;L3 - P: 166;L24; A1122-1226), who detailed the damages and special damages that Appellants incurred to clear the clouds on their title and property rights.

Additionally, the BCD erred in stating that: “Mabee-Grace cannot recover damages for actions not taken because of a fear of litigation [from a buyer].” (A66). Nothing in Maine law or precedents, nor the Restatement 2nd of Torts: (i) immunizes a tortfeasor who has made injurious falsehoods about someone’s title, by recording deeds and instruments containing false information, from liability for the property owners’ costs in maintaining their property until the clouds on their title have been cleared; or (ii) requires a property owner to sell their property and/or demonstrate an impairment on vendibility or loss of proceeds from a sale in order to obtain damages *incurred to remove clouds*.

Based on the Record evidence and testimony, Appellants proved the fourth element of slander of title – i.e. actual damages and special damages.

G. The BCD Erred in Failing to Grant the Requested Declaratory Relief

The prior judicial determinations made by the WCSC in 2021 and by this Court in *Mabee I* establish that the Challenged Instruments were null and void *from their inception* – purporting to convey land that the Grantors had never received and grant rights to Nordic to use Lot 36 and the adjacent intertidal land in ways prohibited by the RPO servitude and Conservation Easement.

An order declaring the Challenged Instruments null and void *ab initio*,

pursuant to 14 M.R.S. § 5954, does not require a determination that Nordic committed fraud or acted with malice or reckless disregard of falsity. Simply, the Challenged Instruments are null and void *ab initio* because they purport to convey interests not ever held by the Grantors – as has been determined by this Court in *Mabee I*. In the absence of a Court Order invalidating them, the Challenged Instruments continue to cloud Appellants’ title and property rights. The BCD should have entered a declaratory judgment **based on the determination made by the WCSC on 10-28-2021 and this Court in *Mabee I***.⁴⁰ The BCD’s failure to do so was clear error, based on a misapprehension regarding the facts and controlling case law. *Colquhoun v. Webber*, 684 A.2d at 411-412, provides express precedent for entering a declaratory judgment, pursuant to 14 M.R.S. § 5954, declaring vexatious deeds, like the Challenged Instruments, null and void *ab initio*. This Court should direct the BCD to enter such an order to clear the clouds on Appellants’ title.

H. Punitive Damages Are Warranted

Finally, this case raises the important question of punitive damages. “[T]he primary concern of the doctrine of punitive damages is to deter misconduct, not to benefit plaintiffs.” *Tuttle v. Raymond*, 494 A.2d at 1363. “Under Maine law, punitive damages may be awarded for tortious conduct only

⁴⁰ A court order is the only means by which the clouds created by the Challenged Instruments can be removed now, since Nordic is no longer a going concern and lacks any officer with the legal capacity to execute a corrective instrument.

if the defendant acted with malice.” *Haworth v. Feigon*, 623 A.2d 150, 159 (Me. 1993) (citations omitted). “Punitive damages are available if the plaintiff can establish by clear and convincing evidence that the defendant's conduct was motivated by actual ill will or was so outrageous that malice is implied.” *Fine Line, Inc. v. Blake*, 677 A.2d 1061, 1065 (Me. 1996). Appellants have met this burden and request punitive damages be awarded to deter other entities, like Nordic, from similarly abusing Maine’s citizens, Courts, and permitting agencies, by seeking to use the permitting process to obtain authorization to use land the entity does not own nor have a lawful right to use.

Imposing punitive damages is important where, as here, the disparity in the litigants’ respective power and resources has allowed Nordic and its lawyers to weaponize the litigation process. Holding Nordic to account for that cynical ploy, will discourage other similarly situated tortfeasors from abusing the process in the future. The preservation of the rule of law demands such misconduct be punished by the imposition of punitive damages.

CONCLUSION

Accordingly, the BCD’s 1-2-2026 and 3-4-2026 Orders should be vacated and the case remanded to the BCD with directions to: (i) enter judgment for Appellants on Counts I and III; (ii) award Appellants’ requested damages and special damages; (iii) order the Challenged Instruments be marked NULL and VOID *ab initio* in the WCRD; and (iv) award punitive damages.

Dated this 18th day of June 2026

Respectfully submitted,

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ATTACHMENTS

Mabee I, 2023 ME 15, Figures 2 and 5 are attached to Appellants' Principal Brief pursuant to M.R. App. P. 7A(f)(2)

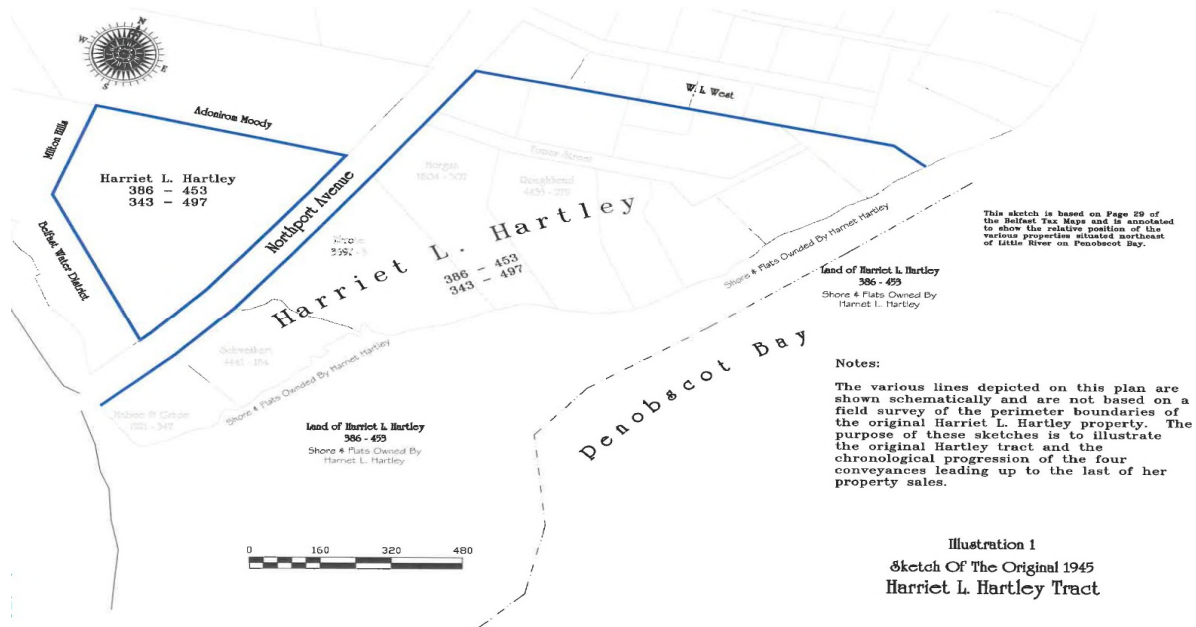


Figure 2 (A1764)

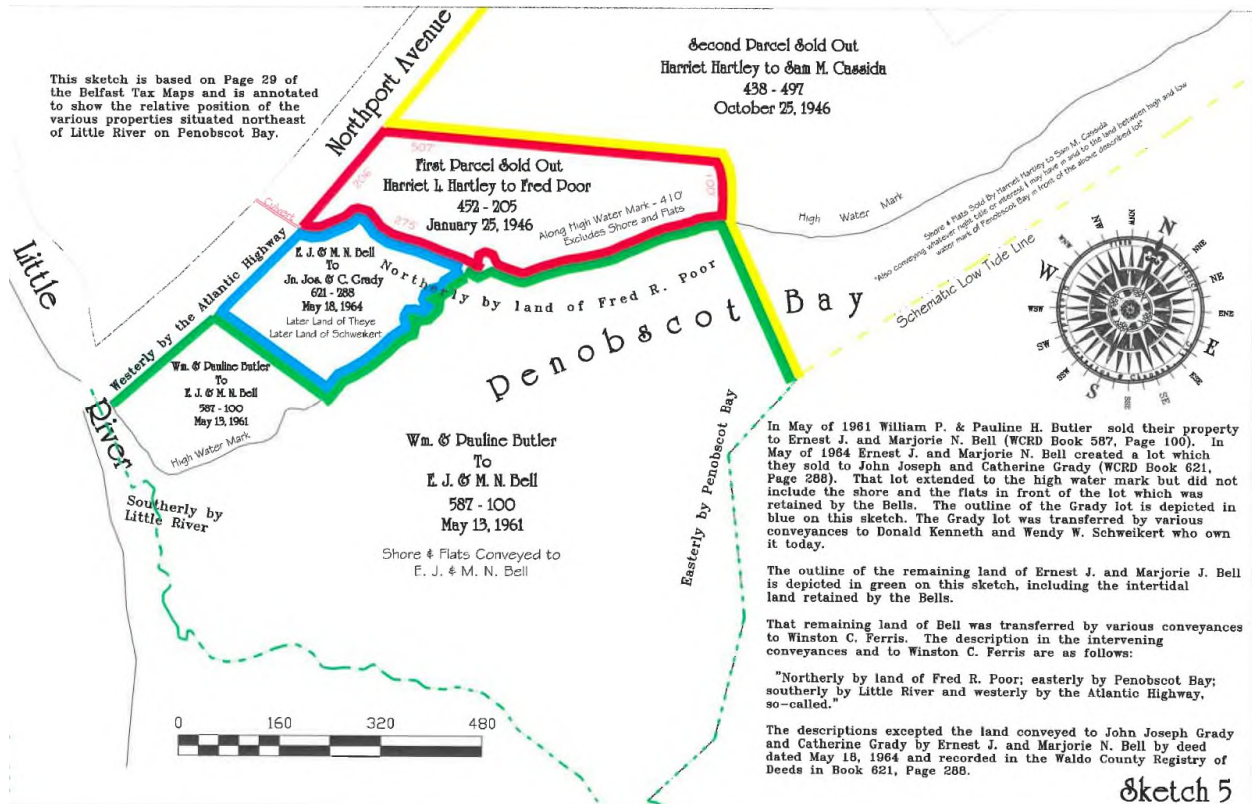


Figure 5 (A0269)