

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

REPLY BRIEF OF APPELLANTS

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STATEMENT OF FACTS

The Statement of Facts (“SoF”) in the Red Brief filed by Nordic Aquafarms Inc. (“Nordic”) contains multiple material misstatements of fact and chronological errors, that obfuscate the timing and extent to which Nordic had *a high degree of awareness of the falsity* of its disparaging statements regarding Appellants’ title and property rights.¹ Appellants address the misstatements relevant to the issues in this appeal: (1) by providing Record references in the body of this Reply Brief; and (2) through submission of documents, *filed by Nordic*, posted on public websites for which Appellants request judicial notice be taken. These corrective citations establish the *actual* timing of relevant actions by Nordic’s principals, counsel, and agents, that reveal its “subjective intent” when publishing false statements disparaging Appellants’ title and property.

ARGUMENT

In 2018, Nordic proposed construction of an ambitious land-based aquaculture facility in Belfast, Maine. *See, Mabee v. Nordic Aquafarms Inc.*, 2023 ME 15, ¶2, 290 A.3d 79 (“*Mabee I*”). The project required running two saltwater intake pipes and a wastewater discharge pipe, from a proposed facility on the western side of U.S. Route 1, more than a half-mile into Penobscot Bay. *Id.* Nordic’s Alternatives Analysis (“AA”),² filed with

¹ Nordic’s factual errors and omissions mirror (and expand on) errors and omissions in the SoF and chronology in the trial court’s (“BCD’s”) 1-2-2026 and 3-4-2026 Orders entering judgment in Nordic’s favor in this case.

² See, Nordic AA, pp. 16-23, Attachment 2 to Nordic’s 5-24-2019 “NRPA” application, which remains posted on the DEP Major Projects website. The AA concluded that:

“Option 1 [the Little River Option] would involve numerous property owners, a lengthy pipeline and pipeline construction process that has significant environmental impact to the Little River and associated infrastructure and the intertidal area, and substantial cost and uncertainty.”

Indeed, both routes (the Little River and Eckrote Option (Option 2)) had the same legal problem: *both paths would require crossing intertidal land owned by Mabee-Grace*. *Mabee I*, Figure 5. The AA was filed *after* Mabee-Grace had established the Conservation Easement on their intertidal land, on 4-29-2019, and asserted

Department of Environmental Protection (“DEP”), concluded that the only viable location to place these pipes was over the residential parcel owned by Richard and Janet Eckrote (“the Eckrotes”) (Belfast Tax Map 29, Lot 36 (“Lot 36”)), located on the eastern side of Route 1. AA, pp. 16-23, Att. 2-6. However, Nordic had a problem: ***the Eckrotes did not own the intertidal land adjacent to their parcel and therefore did not have the legal capacity to grant Nordic an easement to use the intertidal land adjacent to Lot 36 for Nordic’s pipes.*** *Mabee I*, 2023 ME 15, ¶¶ 10, 17, 25-44, 52, 61, Figure 5.

Indeed, *all of the intertidal land adjacent to Lots 38, 37, 36 and 35 was owned by Jeffrey R. Mabee and Judith B. Grace* (“Mabee-Grace”) (*Id.*) and – once Mabee-Grace placed all their intertidal land under the protection of a Conservation Easement on 4-29-2019 (A400-11; *Mabee I*, ¶¶ 59-61) – Nordic had a bigger problem: ***how to get its three pipes into Penobscot Bay on land it did not own and had no legal right to use.*** Rather than finding a more suitable location, that could provide *legal* access to saltwater, Nordic chose to proceed with the project in Belfast, *as proposed*, by disparaging Appellants’ title and property rights under the Conservation Easement and a “residential purposes only” (“RPO”) servitude on Lot 36 (A466), enforceable by Appellants.

Phase I of this case removed *some* of the title clouds created by Nordic’s false and disparaging statements. In Phase II, Appellants seek to: (1) recover the damages and special damages incurred in Phase I to remove the clouds on title created by Nordic;

their ownership and right to enforce the 1946 servitude on Lot 36, on 5-1-2019, in DEP and BPL proceedings relating to Nordic. On 8-17-2026, Appellants moved for the Court to take judicial notice of the AA. That emergency motion is pending as of the date of filing this Reply Brief.
https://www.maine.gov/dep/ftp/projects/nordic/archive/applications/NRPA/Attachment%2002%20-%20Alternatives%20Analysis/NRPA_A2_AlternativesAnalysis_text.pdf

and (2) remove the *remaining* clouds on title created by deeds and instruments, recorded by Nordic in the Waldo County Registry of Deeds (“WCRD”) in 2020 and 2021, that contain false information disparaging Appellants’ title and property rights and purporting to grant Nordic (*and its successors*) rights, *in perpetuity*, on Lot 36 and the adjacent intertidal land. However, based on misstatements of the Record facts and law established by prior judicial determinations in Phase I, the BCD erroneously determined that: (1) Nordic had not acted with malice or reckless disregard in publishing false statements and recording deeds and instruments containing false information; and (2) Appellants had not submitted *sufficient* proof establishing damages and special damages. Both of these holdings are clearly erroneous and should be reversed.

I. The Record, including the Stipulated Facts, compels a finding that Nordic Acted with Malice or Reckless Disregard for Falsity

Nordic’s challenges to Mabee-Grace’s ownership of the intertidal land adjacent to Lot 36 were based on two theories: (1) that the Eckrotes owned the intertidal land adjacent to Lot 36 and had granted Nordic a valid easement to use Lot 36 and the adjacent intertidal land for industrial development; and (2) Nordic had obtained “partial [ownership] interest” in the intertidal land adjacent to Lots 36 and 35 through Release Deeds that Nordic obtained from ten out-of-state persons who Nordic falsely described as “heirs of Harriet L. Hartley.” Nordic’s reliance on these two *diametrically opposed* theories demonstrates malice or reckless disregard for falsity, because Nordic had a high degree of awareness, *no later than December 2018*, that both of these theories were false, based on: (i) two unambiguous deeds from 1946 and 1950, (ii) the 2012 and 2018 findings of

three surveyors (retained by Nordic or the Eckrotes), and (iii) Harriet Hartley's 1951 probate file (obtained by Nordic in December 2018 (A225-53; A299-303; A1244 ¶¶2)). Nordic's long concealment of the above-referenced information (A415, A1246 ¶¶ 1, 24) from Appellants, the public, and local and State permitting agencies, provides further evidence that Nordic acted with malice or reckless disregard for falsity.

A. What Nordic knew and when it knew it

1. False claims about the Eckrotes' intertidal ownership: At the outset of its undertaking, Nordic's principals and counsel demonstrated a high degree of awareness that *the Eckrotes did not own the intertidal land adjacent to their parcel (Lot 36)*, by drafting the boundaries of the easement option in Exhibit A of the 8-6-2018 Nordic-Eckrotes Easement Option Agreement ("EOA") to terminate at the high-water mark of the Eckrotes' lot (A254-267). Prior to drafting Exhibit A and executing the EOA, the Eckrotes provided Nordic with the *unrecorded* 8-31-2012 Good Deeds survey by Gusta Ronson, PLS – prepared for the Eckrotes prior to their purchase of Lot 36 (A296) and incorporated by reference into the 10-15-2012 deed from the Estate of Phyllis J. Poor to the Eckrotes (A503). Ronson's survey plan unambiguously depicts the eastern boundary of Lot 36 terminating "along" the high-water mark (A137; *Mabee I*, ¶¶37-40).

The fact that Exhibit A of the EOA depicts the easement option's eastern boundary as the high-water mark, establishes that, *in August 2018*, Nordic's principals and counsel knew that the Eckrotes' lacked the legal capacity to grant Nordic an easement to use the adjacent intertidal land. This limitation is consistent with Ronson's 2012 boundary determination and the 10-15-2018 survey prepared for Nordic by Clark

Staples, PLS (A416), which contains an admonition to obtain a legal assessment of whether Lot 36’s owners could grant an easement in the adjacent intertidal land based on the prior deeds (A417). Nordic also retained Surveyor James Dorsky, who advised Nordic, *in November 2018*, 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). Dorsky prepared a survey plan, dated 11-14-2018, and six revisions – *all unrecorded* and *all depicting the eastern boundary of Lot 36 as terminating along the high-water mark* (A394-99, 420). Nordic withheld the 11-14-2018 survey plan and all but the 6-4-2019 revision (A420) from Appellants, the public (A415), and administrative entities, until late July 2020 (10-07@P:68;L8-18).

Despite three surveyors (Ronson, Staples, and Dorsky) advising Nordic, *by November 2018*, that the Eckrotes did not own the intertidal land adjacent to Lot 36 (A296, 394-399, 416, 504-06, 562-65), Nordic filed the EOA with the DEP and Bureau of Parks and Lands (“BPL”), *in the Fall of 2018*, as proof of “*sufficient*” title, right or interest (“TRI”) to obtain permits, licenses, and leases, authorizing Nordic to bury its pipes in Lot 36 *and the adjacent intertidal land*.³ See, Red Br., pp. 16-17 (re: stamped survey plan reliance). Nordic’s publication of false statements regarding the validity of the EOA to obtain permits, licenses, and leases from DEP and BPL demonstrated Nordic’s malice or reckless disregard for the rights of the *actual* true owners of the intertidal land adjacent to Lot 36 – *regardless of whether or not Nordic knew those owners were Mabee-Grace*.

³ Nordic’s 10-19-2018 MEPDES permit application, DEP Major Projects website, pp. 46-59: https://www.maine.gov/dep/ftp/projects/nordic/archive/applications/MEPDES%20Permit%20Application_Final_Oct%202019,%202018.pdf

Nordic’s 9-26-2018 submerged lands and dredging lease application, BPL Major Projects website, pp. 6-10: <https://www.maine.gov/dacf/parks/docs/SL-2018-09-26-Nordic-Aquafarms-Application.pdf>

2. False claims about Nordic's ownership: In January 2019, DEP and BPL staff sent letters requiring Nordic to provide additional proof of TRI (A566-68), after Upstream Watch (“UW”) and the Maine Lobstering Union (“MLU”) challenged the sufficiency of the EOA to demonstrate TRI in the intertidal land required for Nordic’s pipes. *Id.* In March - July 2019, Nordic crafted documents to support an *alternative* theory of intertidal ownership to establish “sufficient” TRI to obtain permits for its project. This alternative theory was developed by Nordic’s counsel and Surveyor Dorsky (A170-75, 304-343; 420, 504-06, 545-65, 1253-61). Under Dorsky’s new theory, Harriet L. Hartley – the prior owner of Belfast Tax Map 29, Lots 39 through 27 (*Mabee I*, Figure 2) – supposedly had “inadvertently” retained ownership of the intertidal land adjacent to Lots 36 and 35, by using an “abutter’s description” in the 1950 Hartley-to-Butlers deed (conveying the last of Harriet Hartley’s Maine property). As a result, this intertidal land was allegedly owned by *unknown* “heirs of Harriet L. Hartley” – not the Butlers’ successors in interest (Mabee-Grace).

When Nordic solicited, drafted, and obtained Release Deeds, in March through July 2019, purporting to convey *unspecified* land once owned by Harriet Hartley to Nordic, Nordic had a high degree of awareness that Dorsky’s new theory was false, because Nordic had obtained Hartley’s probate file in **December 2018** (A1244 ¶24), which unambiguously stated that Hartley had sold all of her land during her life and showed that none of her actual heirs at law had received any real property in Maine from her estate (A239-43; *Mabee I*, n. 11). In May 2019, Mabee-Grace intervened in

permitting proceedings to prevent Nordic from clouding their title.⁴ In response, Nordic published statements in public forums and all local and State permitting proceedings that disparaged Appellants' title to the intertidal land adjacent to Lot 36 and property rights under the Conservation Easement and RPO servitude (A170-75, 304-343, 415, 420, 504-06, 545-61). Nordic's failure to amend EOA Ex. A and publication of these false ownership claims demonstrates malice or reckless disregard for falsity, based on Nordic's knowledge: (1) of the information in Hartley's probate file (A225-253; A1244 ¶ 2); and (2) that there are no recorded deeds in the WCRD in which Harriet L. Hartley, her heirs-at-law (Genevieve H. Bailey and Esther H. Woods), or their respective estates, is identified as a Grantor conveying title, right, or interest in any real property in Belfast, Maine, to any of the Release Deed Grantors (A1245 ¶¶ 10-11).

B. The legal standard for reversing a trial court's factual determinations as "clearly erroneous" compels reversal of the BCD's Final Judgment

Under Maine law, a trial court's conclusion that a defendant did not act with malice or reckless disregard for falsity in a slander of title action is treated as a factual finding and is reviewed on appeal for clear error.⁵ To establish that a factual finding is clearly erroneous, an appellant must demonstrate that the finding meets at least one of three strict criteria: "[1] 'there is no competent evidence in the record to support the finding, [2] the finding is based on a clear misapprehension by the trial court of the

⁴ On May 1, 2019, Mabee-Grace filed deeds and other documents with DEP and BPL, demonstrating that the intertidal land adjacent to Lot 36 was owned by Mabee-Grace, that they had placed all their intertidal land adjacent to Lots 38, 37, 36 and 35 under a Conservation Easement and filed the 1970 *Ferris v. Hargrave* Judgment.

⁵ *Gordon v. Cheskin*, 2012 ME 113, ¶ 12, 82 A.3d 1221; *Harvey v. Furrow*, 2014 ME 149, P26 (2014); *Young v. Lagasse*, 2016 ME 96, ¶ 8.

meaning of the evidence, or [3] if the force and effect of the evidence, taken as a total entity, rationally persuades to a certainty that the finding is so against the great preponderance of the believable evidence that it does not represent the truth and right of the case.’ *Violette v. Violette*, 2015 ME 97, ¶ 15, 120 A.3d 667 (quotation marks omitted).” *Amero v. Amero*, 2016 ME 150, ¶ 6 (2016).⁶ “A court’s misstatement of fact should be disregarded if it does not affect the substantial rights of the parties.”⁷

C. Irrational “Beliefs” do not provide immunity from liability for SOT

The BCD committed clear error by accepting Nordic’s defense to liability for SOT based on the premise that – because Nordic’s principals, counsel, and surveyor “‘never fathomed’ losing the quiet title litigation” (10-07@36:11-16, 94:16-25, 98:13-101:21, 102:24-104:3; Red Brief, p. 15),⁸ and “never believed” that Mabee-Grace owned this intertidal land adjacent to Lot 36 (10-07@P:229;L15 - P:230;L6; 10-07@P:36;L6 - P:37;L17) – Nordic could never be found to have the requisite “subjective state of mind” necessary to support a claim of “malice” or “reckless disregard of falsity.” Further, the BCD’s perfunctory and conclusory “findings” that Nordic’s “beliefs” relating to ownership of the intertidal land adjacent to Lot 36 were based on “common

⁶ See also, *Harmon v. Emerson*, 425 A.2d 978, 982 (1981), citing *Western Cottonoil Co. v. Hodges*, 218 F.2d 158, 161 (1954); *Morin v. Dubois*, 1998 ME 160, ¶ 3; *State v. Dhu*, 2003 ME 75, ¶ 15; *Guardianship of Grenier*, 2018 ME 66, ¶ 8.

⁷ *Gordon v. Cheskin*, 2013 ME 113, ¶ 12 (2013), citing *Sanders v. Sanders*, 1998 ME 100, ¶ 17, 711 A.2d 124, and M.R. Civ. P. 61.

⁸ This assertion by Nordic is belied by Nordic’s execution of the 4-21-2021 agreement with the City of Belfast (“City”) requiring that the “Necessary Project Rights [for Nordic’s Project] shall be acquired by Nordic ...through [use of the] best reasonable efforts by the City ... including, as necessary in the sole discretion of the City, through the exercise of its powers of eminent domain” (A1229, § 1 Necessary Project Rights). This Agreement was entered by Nordic and the City ***before the Waldo County Superior Court (“WCSC”) conducted the trial to resolve the title claims case, in June 2021 and this Court rendered its decision on the title claims appeal in Mabee I*** in February 2023.

sense” is unsupported by, and disregards, the Record – failing to address: (i) the contrary image and language in the EOA, findings of four surveyors, and the 1951 probate file; or (ii) this Court’s prior determinations that, *as a matter of law*, the 1946 Hartley-to-Poor deed and 1950 Hartley-to-Butlers deed were “*unambiguous*” (*Mabee I*, 2023 ME 15, ¶¶ 45 & 52).^{9/10} In sum, it was clear error for the BCD to hold that Nordic demonstrated “good faith” in ignoring unambiguous deeds, its own surveyors’ stamped plans, and determinations in a 75-year old probate file – reliable sources that provided Nordic with a high degree of awareness that its statements disparaging Appellants’ title were false.¹¹

Accordingly, the BCD’s judgment should be set aside as clearly erroneous because its

⁹ Specifically, the BCD Order states: “As a matter of common sense and physical appearances – to Nordic, any objective observer, *and to Mabee and Grace themselves* – it appeared highly unlikely that Mabee and Grace owned the flats in front of the [Eckrotes] lot, Lot 36, which was two lots to the northeast of Mabee and Grace’s lot.” (A69; emphasis supplied). ***This finding is not supported by any competent evidence in the Record.*** While Mabee acknowledged not knowing the extent of Mabee-Grace’s intertidal ownership prior to April 2019 (A176 & 551; I Tr. 2 70:8-71:11), there is ***not any Record evidence or testimony*** to support the BCD’s (and Nordic’s (Red Brf. P.8)) assertion that Mabee-Grace ever believed the Eckrotes owned this intertidal land – a claim contrary to all surveys by four surveyors (including Richards), the unambiguous deeds in the Eckrote and Mabee-Grace title chains, Hartley’s probate file, the 2019 Conservation Easement, and prosecution of this litigation.

¹⁰ Notably, the BCD’s Orders demonstrate a level of skepticism and dismissiveness, that approaches *antagonism*, toward prior judicial determinations by (i) the Philadelphia Probate Court in 1951; (ii) the WCSC in 1970 in *Ferris v. Hargrave*, in the 10-27-2021 Order (regarding the Release Deeds), and in its Amended Final Judgment; and (iii) this Court in the *Mabee I* decision, stating in relevant part that:

- “First, it is far from obvious that [the] Eckrotes did not hold title to the flats, nor that Mabee-Grace held a superior title.” (A63) [*This is obvious in the unambiguous deeds. Mabee I*, ¶¶10, 17, 25-44, 52]
- “Nordic’s belief that the Eckrotes owned the flats, or, at minimum, that Mabee-Grace did not, was consistent with this history, the parties’ own beliefs, and the judicial presumption that an upland owner also owns the abutting intertidal zone. *McGarvey v. Whittredge*, 2011 ME 97, ¶ 16, 28 A.3d 620.” (A63) [mischaracterizing and misconstruing *McGarvey*].
- “[T]he 1970 [*Ferris v. Hargrave*] judgment only applied to the deed conveyed to Mabee-Grace’s predecessor-in-interest, the interpretation of which was of significant dispute in Phase I. Nordic’s belief that Mabee-Grace did not own the flats would naturally mean they did not believe the [1970] quiet title judgment applied.” (A64) [Contradicted by the Record, *Mabee I*, ¶¶45 & 52; and Title Stips. at ¶¶45-54]
- “The [Philadelphia] probate court’s comment that Hartley sold all her land in Maine is also not conclusive. Statements made by another state’s probate court seventy-five years ago could reasonably be interpreted differently in the present day, especially as the laws governing intertidal zones have evolved substantially since 1951.” (A64) [Contra to 10-27-2021 Judgment, ¶¶13-14; *Mabee I*, ¶52, n. 11]

¹¹ “... [S]uch a stamp indicates that the plans represent the considered opinion of a qualified land surveyor and it would be reasonable for a client to rely on such an opinion ...” Red Br. p. 17.

conclusions are contrary to the *Mabee I* decision on matters of law and contrary to the Record, the Parties' Stipulated Facts, Nordic's surveys, and the testimony regarding what Nordic's principals, counsel, and surveyor(s) knew and when they knew it.

D. The BCD's Refusal to Take Judicial Notice of Stipulated Facts was Clear Error

Here, Appellants' substantial rights have been adversely affected by the BCD's misstatements and omissions of fact, in part attributable to the BCD's denial of Appellants' requests to take judicial notice of adjudicative facts prior to trial.¹² The BCD's misstatements: (i) fail to consider or include the Parties' Stipulated facts; (ii) are contrary to the Parties' Stipulated Facts relating to the Release Deeds and RD Grantors (A1234-52); and (iii) are contrary to prior judicial determinations by this Court and by the WCSC in 1970 (A297) and in Phase I (which squarely rejected the Release Deeds as invalid (*Mabee v. Nordic Aquafarms Inc.*, No. RE-2019-0018, 2021 Me.Super. LEXIS 103, *89-91, 2021 WL 6932428 (Me.Super. Oct. 27, 2021))).

During the 8-27-2025 Rule 26(g) conference, the BCD reiterated its denial of Appellants' request to file a summary judgment motion and stated Appellants could file requests for judicial notice to narrow the issues for trial (08-27-2025@P:33;L15-P:38,L15). On 9-2-2025 and 9-4-2025, Appellants filed multiple requests to take judicial

¹² The facts and chronology contained in the BCD's Orders granting judgment for Nordic fail to reference any of the Stipulated facts or exhibits and, as noted in footnotes 8 and 9, appear to violate the "law of the case" doctrine by rejecting prior judicial determinations of multiple courts, *including this Court*, relating to: (i) the lack of validity of the Release Deeds, (ii) the Release Deed Grantors' lack of title, right, or interest in any land once owned by Harriet Hartley (A1245 ¶10), (iii) whether, as a matter of law, the Release Deed Grantors were barred from asserting title, right, interest or estate, by, through, or under Genevieve Hargrave, by the 1970 *Ferris v. Hargrave* Final Judgment; (iv) Surveyor Dorsky's changing and contradictory opinions (*Mabee I*, n. 9); and (v) the *unambiguous* nature of the relevant deeds and instruments establishing Mabee-Grace's ownership in the intertidal land adjacent to Lots 37-35. *Blance v. Alley*, 404 A.2d 587, 589 (1979).

notice of adjudicative facts relating to three of the four elements of SOT (publication, falsity, and malice or reckless disregard of falsity), providing the Stipulations and relevant documents and/or URL citations (A52). However, the BCD abused its discretion and committed clear error by refusing to take judicial notice of any of the adjudicative facts and documents submitted by Appellants, including (i) prior judicial determinations in Phase I and *Mabee I*; and/or (ii) the Stipulated Facts and exhibits related to the publication, falsity, and malice elements of SOT (A53, 67, 1243-52).^{13/14}

Because a stipulation legally relieves the parties of the burden of presenting other evidence and removes those agreed facts from dispute, a trial court cannot disregard them. *State v. Onlette*, 2019 ME 75, ¶ 12. As this Court noted in *Gov't Emps. Ins. Co. v. Concord Gen. Mut. Ins. Co.*, 458 A.2d 1205, 1211 (Me. 1983): “When a stipulation is entered, we ‘must make our determination on the facts to which the parties have stipulated.’” Further, because Appellants filed a motion for amended and additional findings of fact under M.R. Civ. P. 52(b), this Court will not infer any findings of fact other than the ones the BCD actually articulated. *Guardianship of Grenier*, 2018 ME 66,

¹³ Under M.R. Evid. 201, a court is *required* to take judicial notice of an adjudicative fact – defined as a fact relevant to the particular proceeding that relates to the parties – upon a party’s request, provided that the requesting party has supplied the necessary information. *Seymour v. Seymour*, 2021 ME 60, ¶12.

¹⁴ The stipulated facts filed by the parties concerned: (i) the relevant deeds and title claims, (ii) Harriet Hartley’s estate, probate file, and the relationship of the Release Deed Grantors to Harriet Hartley and her heirs at law (A1234-42); (iii) survey contents; and (iii) Nordic’s solicitation and recording of the Release Deeds (A1243-52). Appellants also included a chart – indicating the Stipulated Facts relevant to the publication, falsity, and malice elements of SOT – with the Pretrial Statement (Ex. C), and Plaintiffs’ 9-29-2025 Pre-Trial and 10-24-2025 Post-trial briefs (A54-55). Yet the BCD’s Final Orders do not reference any of the relevant Stipulated Facts. In determining that Appellants failed to provide sufficient evidence to prove the “malice” element of SOT, the BCD never referenced the malice-related Stipulated Facts: Estate Stipulations: ¶¶ 8-10, 13-15, 49; and Release Deed Stipulations (A1243-52): ¶¶ 1, 2, 10-17, 23, 24, 26, 45; R.D.S. Exs: 1 (Nordic 004949-004972). This omission of stipulated facts constitutes clear and reversible error by the BCD.

¶7 (2018), citing *Tucker v. Associated Grocers of Me., Inc.*, 2008 ME 167, ¶ 29. Here, the adverse impact of the BCD’s refusal to accept the Stipulated Facts and prior judicial determinations is demonstrated by the BCD’s Orders, which also ignore Nordic’s active concealment of identifying information relating to the RD Grantors, impeding Appellants’ ability to effectively challenge Nordic’s false claims that the Grantors were “Hartley heirs” with TRI in Hartley’s property to convey to Nordic in 2019.

Despite Nordic’s principals and counsel having a high degree of awareness (from Hartley’s probate file and the unambiguous deeds) that Dorsky’s “inadvertent retention” theory was likely false – after obtaining the Release Deeds from ten persons who were neither “heirs” nor “descendants” of Harriet Hartley (as defined by 18-C M.R.S. §1-201(9) & (23)) – Nordic published *redacted versions* of the Release Deeds (*concealing all identifying information regarding the Grantors*) in local and State administrative proceedings to bolster their false claim that Nordic had obtained a “partial” ownership interest in the intertidal land adjacent to Lots 36 and 35 from “heirs of Harriet L. Hartley” (A550-61, A1253-61). Nordic’s malice or reckless disregard of the falsity of these claims is demonstrated by its failure to advise these administrative agencies that *none of the RD Grantors met the statutory definition of “heirs”* (A418-19, A545-50, A1253-61).

However, inexplicably, the BCD determined that Nordic’s conduct – *undertaken while Nordic simultaneously continued to claim the intertidal land adjacent to Lot 36 was owned by the Eckrotes and that Nordic had “sufficient TRI” to obtain permits, licenses and leases, based on the EOA* – demonstrated Nordic’s “good faith” (A65) and held that the fact that the

Grantors did not meet the technical definition of “heirs” was “immaterial” to a determination of whether Nordic acted with “malice” or “reckless disregard of falsity” (A64). Appellants submit that the BCD’s refusal, in its findings of fact, to consider and reference the Stipulated Facts and prior judicial determinations regarding lack of ambiguity, and its failure to apply the technical meaning of the terms “heirs” and “descendants” in its Orders to describe the RD Grantors, constitutes clear error which has resulted in the adoption of findings of fact that: (1) are not based on competent evidence in the Record; (2) misapprehend the meaning and import of the evidence (including the Stipulated Facts); and/or (3) clearly establish, when taken as a totality, that the BCD’s findings are so against the great preponderance of the *believable* evidence that they do not represent the truth and right of the case.

II. The Phase II Record also compels a finding that Appellants proved actual and special damages

In *Colquhoun v. Webber*, 684 A.2d 405 (Me. 1996),¹⁵ this Court established that a plaintiff could recover damages and attorneys’ fees “*incurred to remove clouds on their title*” created by false and disparaging statements published, with malice or reckless disregard for falsity, by a defendant. However, this Court has *not* limited recoverable attorneys’ fees in a SOT case to *only* those fees incurred in prosecuting a quiet title action. Although Appellants believe that *all* attorneys’ fees incurred to remove clouds on title by Nordic’s efforts to obtain local and State permits, licenses, and leases, authorizing use of

¹⁵ *Colquhoun v. Webber*, 684 A.2d 405, 410-11 (Me. 1996) (“...[A]ttorney fees incurred in removal of a cloud on title caused by a spurious, and vexatious deed do constitute proof of special damages in a slander of title action even in the absence of an impairment of vendibility.”). *See also, Massucco v. Kolodziej*, 2024 VT 76, P56.

Appellants' intertidal land should be recoverable¹⁶ – during the Phase II trial, the unrefuted testimony and exhibits establish that Appellants limited their requested special damages to litigation costs and professional fees incurred in the quiet title action and the *Mabee I* appeal (See, 10-06@P:122;L20-P133;L18). Thus, the BCD clearly erred in holding: “Mabee-Grace have not sufficiently delineated or allocated which fees were paid to clear the title as opposed to paid for other unrelated legal services (including representation in permitting proceedings and eminent domain litigation).” [A66]

This holding demonstrates clear error because it is unsupported by any Record evidence or testimony. Nordic only challenged Attorney Tucker's monthly stipend (10-06@P129; L23–P133; L17) as *possibly* relating to the eminent domain case; but the unrefuted testimony of Friends' treasurer, established that all professional fees and costs *claimed* in Phase II, *including the stipend*, were incurred and paid by Appellants for work performed to clear clouds on title done *in only the quiet title case and the Mabee I appeal* (10-06@P:122;L20-P133;L18); and the *hundreds of pages* of time sheets submitted for Attorney Strout and Paralegal Upham's fees verify Treasurer Daniels' testimony (A615-876, A881-944).¹⁷ Indeed, neither Nordic nor the BCD have referenced a single example of Appellants seeking fees for work performed outside the quiet title action or

¹⁶ Here, the Appellants were forced to file litigation and administrative challenges in multiple cases to clear clouds Nordic created on Appellants' title and property rights, by seeking and obtaining permits, licenses, and leases from administrative agencies, that purported to authorize Nordic to use Lot 36 and the adjacent intertidal land in ways that violated Mabee-Grace's ownership rights, the Conservation Easement, and the RPO servitude.

¹⁷ Nordic's Red Br., pp. 22-3, questions if Appellants continue to seek their “carrying costs” as actual damages. They do, because Nordic's clouds created too great a risk of third party litigation to sell Mabee-Grace's property until Nordic's clouds were cleared. Contrary to the BCD and Nordic's assertions, *Colquhoun* does not require proof of impairment of a particular sale or vendibility generally to recover costs incurred while clearing clouds.

Mabee I to clear clouds. Thus, the BCD's determination that Appellants did not prove the fourth element of SOT was clearly erroneous and should be reversed.

III. The Declaratory Judgment Claims are not barred by *res judicata*

Under Maine law, a judgment is generally not considered a final, appealable order – and, thus, does not carry preclusive effect for purposes of *res judicata* – unless it fully decides and disposes of the entire matter pending before the court, leaving no questions for the court's future consideration. *Estate of Kerwin*, 2020 ME 116, ¶ 8.¹⁸ Here, the Amended Final Judgment, entered on 6-26-2023 by the WCSC (A43; WCRD Bk 4947, Pg 198), *only related to the title claims in Phase I*, and was never intended nor contemplated to be a final (appealable) judgment of all claims in this case. Accordingly, Appellant had no right, *nor ability*, to appeal the WCSC's Amended Final Judgment and, thus, omissions in it had no preclusive effect. The WCSC clearly had this understanding, since it approved inclusion of Appellants' declaratory claims in the Fourth Amended Complaint submitted in 2024. Nordic also appeared to have this understanding previously, since it never raised *res judicata* as an affirmative defense.¹⁹ Pursuant to *Mabee I*, Appellants are entitled to a declaration that the Release Deeds, and subsequent deeds and instruments based on them, are null and void *ab initio*.²⁰

¹⁸ As stated in *Xamplas v. Xamplas*, 2025 ME 92, P16: "A final judgment is a decision that fully decides and disposes of the entire matter pending before the court[,] leaving no questions for the future consideration and judgment of the court. *Safety Ins. Grp. v. Dawson*, 2015 ME 64, ¶ 6, 116 A.3d 948 ... 'Accordingly, an interlocutory order that does not resolve all pending claims as to all of the parties in an action is not a final judgment for purposes of the rule.' *Est. of Dore v. Dore*, 2009 ME 21, ¶ 11, 965 A.2d 862."

¹⁹ Under Maine law, *res judicata* and collateral estoppel (which is the issue preclusion component of *res judicata*) are affirmative defenses. *Sargent v. Sargent*, 622 A.2d 721, 722 (1993); *Haskell v. Bragg*, 2017 ME 154, ¶ 20; *Gray v. TD Bank, N.A.*, 2012 ME 83, ¶ 10. Failing to timely plead an affirmative defense generally results in the waiver of that defense. *Haskell v. Bragg*, 2017 ME 154; *InfoBridge, LLC v. Chimani, Inc.*, 2020 ME 41.

²⁰ *Colquhoun v. Webber*, 684 A.2d at 411-412 ("...[T]he deed and all subsequent deeds [are] void *ab initio*.").

Dated this 20th day of August 2026

Respectfully submitted,

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