

STATE OF MAINE  
OXFORD, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. RE-08-37

ROBERT LAUX  
and CYNTHIA A. MORAN-LAUX,

REC'D JUN 10 2011

Plaintiffs

v.

**DECISION AND ORDER**

RALPH HARRINGTON  
and JAMES SYSKO,

Defendants

The nonjury trial in this case came on to be heard on March 22 through March 25, 2011.

Plaintiff Robert Laux and Cynthia A. Moran-Laux were represented at trial by Frank Chowdry, Esq. Defendant Ralph Harrington was represented at trial by Robert Kline, Esq., and defendant James Sysko was represented at trial by Thomas Mundhenk, Esq.

Plaintiffs Laux, in their complaint, seek a declaratory judgment as to the extinguishment of an easement benefiting defendant Harrington, damages for trespass over and injury to the Laux property, and damages for the cutting of trees on their property. The Lauxes also seek injunctive relief barring any further trespass on their property by defendants Harrington and Sysko.

Defendant Harrington, in his counterclaim, seeks declaratory and injunctive relief, and damages for interference by Robert Laux with his right-of-way. Harrington also presents a claim for nuisance.

Defendant Sysko's position is that the easement remains in existence, and that he is not liable for any damages. He asserts that he has been authorized by Harrington to

go onto the easement or right-of-way and use and make improvements to the right-of-way.

## I. BACKGROUND

In 1962, by deed from Ralph Richardson, defendant Harrington was granted an easement over the land that was then owned by Richardson and is currently owned by plaintiffs Laux. That deed was recorded in the Oxford County Registry of Deeds at Book 614, Page 469. The easement was granted to allow Harrington to access his land, land that is located in Newry, north of Stoney Brook and north of the land then owned by Richardson, and now owned by the Lauxes. The fee conveyed to Harrington by Richardson is in the same deed creating the easement. Harrington was the son-in-law of Richardson. The Lauxes' land, then owned by Richardson, over which the easement runs, is located in Newry *and* in Hanover.

This language creating the easement reads as follows:

Included in this conveyance [to Gerald Harrington] is a right of way over and across my Cow Pasture which is partly in the Town of Hanover and partly in said Town of Newry for access to and from said lot [conveyed to the grantee in the same deed creating the easement], and is on the condition the said right of way is subject to said Harrington's keeping the gates and bar closed while livestock is being pastured there.

The case involves a dispute over whether that easement still exists, or has been extinguished, and the use of and improvements to that easement by Harrington and by Sysko, and if the easement has been extinguished, the damages to the Laux land caused by Harrington and/or Sysko, by use and maintenance and repair of the easement. If the easement has not been extinguished, the court has to determine its location and whether its use by Harrington and/or Sysko is consistent with the purpose of the easement, and if the easement has been overburdened. Also at issue is whether Harrington has

incurred any damages caused by Robert Laux's interference with Harrington's use of the easement.

The Lauxes assert that the easement in favor of Harrington has been extinguished by a quitclaim deed from Gerald Harrington and Linda Harrington to Erik Nelson and Pamela Nelson, dated April 6, 1990, and recorded in the Oxford County Registry of Deeds at Book 1723, Page 290.

The language of the quitclaim deed reads as follows:

QUITCLAIM DEED  
(WITHOUT COVENANT)

GERALD HARRINGTON and LINDA J. HARRINGTON, husband and wife, both of Newry, County of Oxford and State of Maine, for consideration paid, release to ERIK R. NELSON and PAMELA NELSON, husband and wife, both of Hanover, County of Oxford and State of Maine, as joint tenants, land in Newry, County of Oxford and State of Maine.

A certain lot or parcel of land situated Northerly of, but not adjacent to Route 2 in the Town of Newry, County of Androscoggin and State of Maine, being any right, title or interest that I may own in land Southerly of the following described property line:

Beginning at a point in the center of Stoney Brook opposite a pile of stones on the northerly bank of said Stoney Brook, said point beginning being the easterly corner of land now or formerly of P. H. Chadbourne Co.; thence easterly along the center line of said Stoney Brook, 400 feet, more or less, to the land now or formerly of Bruce and Shirley Powell.

Reference is made to a plan entitled "Plan of Land on Route 2 Hanover/Newry, Maine for Erik Nelson" by Owen Haskell, Inc. and dated Feb. 13, 1989. (3 sheets)

All bearings are magnetic in 1988.

Title of the grantors derives from a deed of Ralph Richardson dated 4 June 1962 and recorded in Oxford County Registry of Deeds in Book 614, Page 469.

The plaintiff Lauxes contend that, as a matter of law, the quitclaim deed released the cow pasture easement conveyed to defendant Gerald Harrington that burdened the land of the plaintiffs, and that the easement has been extinguished and no longer exists.

The plaintiffs motion for a summary judgment based on that contention was denied by this court on February 5, 2010.

Defendants contend that the quitclaim deed from Gerald and Linda Harrington to the Nelsons did not release or affect the easement, and that the easement over the plaintiffs' land remains in existence.

For the following reasons the court finds that the quitclaim deed did not release the easement in favor of Harrington over the Laux land. First, the quitclaim deed does not unambiguously release the easement. It contains no language mentioning the easement. The deed purports to affect only land in Newry, and makes no reference to land in Hanover, even though the easement benefiting Harrington's land burdens the Laux land in Hanover, as well as in Newry. As this court mentioned in the February 5, 2010 Order on the Motion for Summary Judgment: "If the intent of the quitclaim deed was to release the easement that runs over the land of the plaintiffs [Laux] that is located in Hanover as well as Newry, the deed certainly would refer to the entire length of the easement, including that part located in Hanover."

Moreover, there is other convincing evidence showing that the quitclaim deed was intended, not to release an easement, but rather to establish a more certain boundary between the land now owned by the Lauxes (then owned by the Nelsons), and the Harrington land northerly of the Nelson land, to which the easement in question runs.

A survey was done on the land in the area by a James Barker, a surveyor. That survey disclosed that there was a discrepancy between the descriptions in the deeds relating to land in that area, and what the survey revealed to exist on the face of the earth. Barker recommended corrective deeds be exchanged to establish true boundaries between the land now owned by the Lauxes (then owned by the Nelsons), and

Harrington's land to the north, and between the Laux land and the land to the east, owned by Powell. The Lauxes predecessor in title, the Nelsons and their neighbor to the east, Powell, did exchange quitclaim deeds to clarify the boundary between them. Those deeds are both recorded in the Oxford County Registry of Deeds. Harrington's quitclaim deed to the Nelsons dated April 6, 1990, and recorded at Book 1723, Page 290, which the Lauxes assert extinguishes Harrington's easement, was intended to clarify the boundary between the Nelsons (now Lauxes) and Harrington, and was not intended to release Harrington's easement over the land now owned by the Lauxes.

The quitclaim deed from the Nelsons intended to clarify the boundaries between their property and the property of Harrington is recorded in the Oxford County Registry of Deeds at Book 1782, Page 43. That deed, however, runs to First Mutual Bank for Savings, because the Nelsons had financial difficulties and the bank was very involved in the affairs of the Nelsons.

That the quitclaim deed from Harrington to the Nelsons is not a release of the Harrington easement is further demonstrated by the fact that it describes a property line of 400 feet, the boundary between the Lauxes and Harrington, and does not describe the remainder of the Laux property, nor refer to any easement. Moreover, evidence as to the intent of the Nelsons does not show any intent or awareness of the Nelsons that the easement over land that they then owned was being extinguished.

The court denies the motion of plaintiffs for reconsideration of the court's earlier rulings, its February 5, 2010 decision on the plaintiffs' motion for summary judgment, and its granting of a M.R. Civ. P. 50(d) motion of defendants made during the trial for judgment as a matter of law on the issue of extinguishment of the easement.

The easement remains in existence, and the evidence showed that Robert Laux was aware of the existence of the easement and impermissibly interfered with

Harrington's right to use the easement. The court was required to issue a temporary order on January 3, 2011, enjoining the Lauxes from interfering with Harrington's right to use the easement.

## II. THE EASEMENT

The easement in favor of Gerald Harrington runs across property now owned by the Lauxes. The Laux property is described in a deed dated February 12, 1993, and recorded in the Oxford County Registry of Deeds at Book 1989, Page 310, and in deeds dated December 14, 1981, and recorded in the Oxford County Registry of Deeds at Book 1145, Page 087, and dated November 9, 1988, and recorded in the Oxford County Registry of Deeds at Book 1615, Page 153. The easement consists of a gravel woods road which starts at a northern point along Chamberlain Way contiguous with the Lauxes property, and continues in a northwesterly direction and then in a northeasterly direction to the northeast corner of Lauxes' property following the course shown by a dotted red line on the plan attached to this decision and order as Exhibit A.

The easement runs with the land and may be used by Harrington and his successors and assignees to move pedestrian and vehicular traffic on and across the easement area, including tractor trailer wood haulers, and any less intrusive vehicle use.

Maintenance of the easement including, at Harrington's sole discretion, the clearing of snow by plowing or other means in order to keep it passable, is the responsibility of Harrington.

No portion of the easement has been gifted or dedicated to the general public or for the benefit of the general public or for any public purpose.

The court is not persuaded that at the time the easement was created, considering the circumstances of its creation, that the easement included an implied right to install utilities.

The use of the easement by Harrington and by Sysko has been consistent with the purposes for which the easement was created, and has not overburdened the easement. The Laux property has not been damaged by the use or repair or maintenance of the easement by Harrington or Sysko. Moreover, any use and/or maintenance or repair of the easement by Sysko was with the permission of Harrington.

There is no credible evidence that Harrington has abandoned the easement, or that the easement been extinguished in any other way.

The historical course of the easement across the property now owned by the Lauxes has been somewhat altered by necessity, and by acquiescence of the parties and their predecessors in two minor respects to conform to current usage.

The first alteration is at the southern section of the easement where the easement initially began behind the former Richardson Farm barn, and then went uphill to a pasture which is currently occupied by a portion of what is known as the Chamberlain Condominium Development. The current course, some of which travels over land not owned by the Lauxes, follows the Chamberlain Way, a paved road starting on the north side of Route 2, and then travels northward on a 200 to 300 foot section of woods road which departs from the northerly apex of Chamberlain Way and passes to the east of a garage constructed by the Lauxes. From there, the easement connects with the historical course adjacent to the western property line of the former Richardson Farm.

The second alteration is at the northeastern end of the easement. Historically the easement had crossed Stoney Brook over a wooden bridge, the position of which is shown on Harrington Exhibit 33 (the 1989 Plan), admitted at trial. While it is not known when this bridge ceased to exist, it was used extensively in the 1950s and probably up into the 1970s, when a road was constructed over the Chadbourne land to the north and west of Stoney Brook.

The current course of the easement was created by necessity and as part of the development undertaken by the Nelsons in clearing this section of land they owned at the time. Instead of going to the site of the old bridge crossing, the current course of the easement now extends to the boundary with the Powell property to the east, where the travel way extends over approximately 75 feet of the Powell property to cross a concrete bridge erected by Sysko, as permitted by the right-of-way granted Sysko by Powell by easement deed dated November 9, 1981, and recorded in the Oxford County Registry of Deeds at Book 1140, Page 157.

These minor alterations of the historical route of the easement as it existed at the time of its creation in 1962 make use of the existing course employed by the Lauxes, including when the Lauxes logged their land. Further, following the current altered course minimizes disturbance to the Laux property along the south border of Stoney Brook.

Failure to recognize these minor alterations would involve the removal of trees and create an additional and unnecessary crossing of Stoney Brook with potential Department of Environmental Protection involvement and an expense of approximately \$30,000 for the construction of a new bridge.

Moreover, failure to recognize these minor changes would result in more damage to a more scenic and pristine area of the Laux property running along the south of Stoney Brook.

### III. HARRINGTON'S MOTION FOR CONTEMPT

On January 3, 2011, this court entered a temporary order allowing Harrington to use the easement over the Laux property as shown in red on attached exhibit A, to haul out timber using trucks and to smooth out the first grade encountered when traversing



the easement from south to north as necessary to make the easement useable for timber hauling, and prohibited the Lauxes from interfering with that use.

Plaintiff Robert Laux informed Bruce Powell, his neighbor to the east, of the court's order, and of the fact that Harrington, in using the easement, as altered, over the Lauxes land to reach Harrington's land to the north, would be crossing over a section of Powell's land. Powell then told Harrington that he, Harrington, could not cross that portion of the Powell land to reach the concrete bridge constructed by Sysko that allows access to the Harrington land to the north of the Laux land.

Harrington testified at trial that Powell told him that Robert Laux did not want Harrington crossing the Laux property, and that Powell was doing what Robert Laux asked him to do. Powell, however, testified, consistent with the testimony of Robert Laux, that Robert Laux did not request Powell to stop Harrington from crossing Powell's land but merely informed Powell of the January 3, 2011 court order so that he would be aware of that order. Powell testified that his decision to prevent Harrington from using that part of Powell's land was based on Powell's reluctance to become involved in the dispute between the Lauxes and Harrington. The court understood that Powell's decision to prohibit Harrington from crossing his land was not necessarily a permanent decision.

The court is not persuaded to a high probability (by clear and convincing evidence) that Robert Laux is in contempt of the court's January 3, 2011 Order by his contact with Powell. Accordingly, Harrington's motion for contempt is denied.

The court has excluded evidence proffered by Harrington as outlined in the proposed findings of facts Harrington submitted to the court, in particular Harrington's proposed findings 95 through 104. The court's ruling to exclude the evidence is based on M.R. Evid. 502(b), that the evidence would intrude on attorney client privilege, and

M.R. Evid. 403, that the probative value of that evidence was substantially outweighed by the danger of unfair prejudice, confusion of the issues, undue delay, or waste of time. The court hereby reiterates its ruling that the evidence was property excluded.

#### IV. DAMAGES

The court finds that plaintiffs Laux have suffered no damages resulting from the use, maintenance, or repair of the easement by Harrington or by Sysko.

The court finds that defendant Harrington has suffered nominal damages only, in the amount of \$100, from Robert Laux's interference with Harrington's use of the easement. The court imposes no punitive damages

#### V. INJUNCTIVE RELIEF

The court grants injunctive relief to defendant Harrington. Plaintiffs Robert and Cynthia Moran-Laux are prohibited from interfering in any way with Harrington's use of his easement to cross the Laux property, and from erecting any chains, gates, bars, blocks, boulders, or other obstructions which would in any way impede Harrington's use of the easement, except that a gate may be used, when appropriate and necessary, to keep cows in a portion of the Laux property if it is used for the pasturing of cows. Harrington is to be provided with the means to open the gate to use the easement at any time.

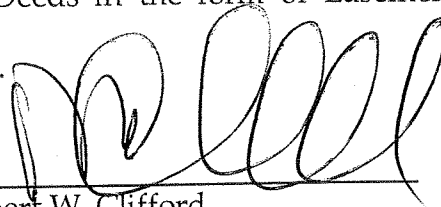
The entry is:

1. On the complaint of plaintiffs Robert Laux and Cynthia A. Moran-Laux, judgment for the defendants Ralph Harrington and James Sysko.
2. On the complaint of defendant Ralph Harrington, judgment for the defendant with damages in the amount of \$100 against Robert Laux for interference with the use of Harrington's easement over the property of Laux. No damages on the claim for nuisance.

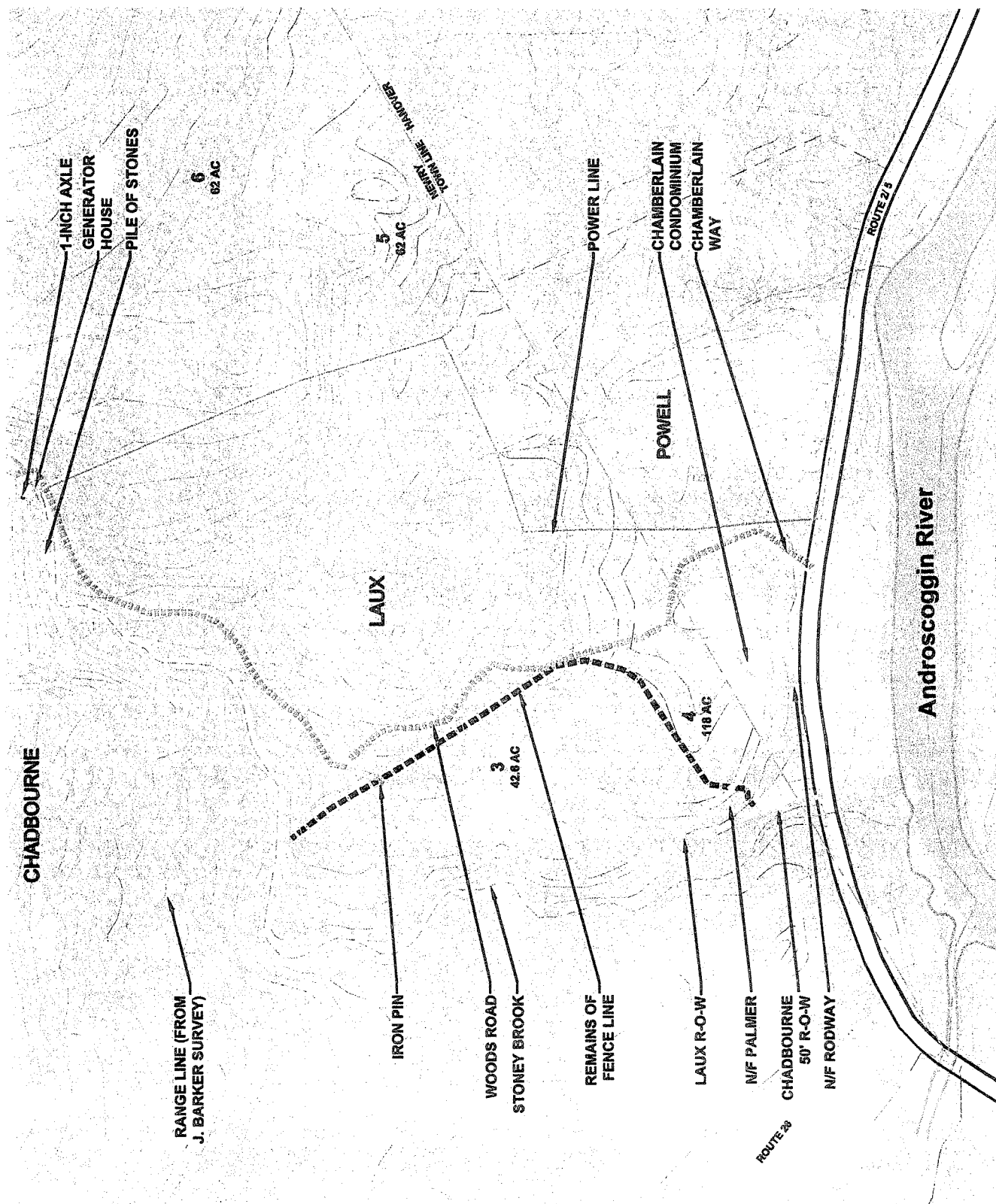
This Decision and Order, as it pertains to declaratory and injunctive relief, may be recorded in the Oxford County Registry of Deeds in the form of Easement by Declaratory Judgment, attached hereto as Exhibit B.

DATED:

June 8, 2011

A handwritten signature in black ink, consisting of a series of loops and flourishes, positioned above a horizontal line.

Robert W. Clifford  
Active Retired Justice



## **EXHIBIT B**

### **EASEMENT BY DECLARATORY JUDGMENT**

**THIS EASEMENT IS ENTERED ON A CLAIM FOR DECLARATORY RELIEF** pursuant to 14 Maine Revised Statute §5955 and other provisions against ROBERT J. LAUX and CYNTHIA A. MORAN-LAUX, P.O. Box 997, Bethel, Maine 04217 (hereafter owners of the "Servient Estate" as more particularly defined below), and in favor of RALPH HARRINGTON, of 91 Monkey Brook Road, Newry, Maine 04261 (hereafter owner of the "Dominant Estate" as more particularly defined below) after trial held in Oxford County Superior Court March 22 through March 25, 2011 in Oxford County Superior Court Civil Action Docket Number RE-08-37.

**WHEREFORE, THE COURT ORDERS AND FINDS AS FOLLOWS:**

#### **RECITALS**

A. The Servient Estate consists of certain real property partly in the Town of Hanover and partly in the Town of Newry, Maine both in the County of Oxford and State of Maine and more particularly described in the Deed from Richard J. Keenan to owners of the Servient Estate dated February 12, 1993 and recorded in the Oxford County Registry of Deeds at Book 1989, Page 310, being the same premises comprised by and conveyed by Deed from Theodora Russell to Erik Nelson dated December 14, 1981 and recorded in the Oxford County Registry of Deeds at Book 1145, Page 087 and by Deed from P.H. Chadbourne & Co. to Erik R. Nelson and Pamela J. Nelson dated November 9, 1988 and recorded in the Oxford County Registry of Deeds at Book 1615, Page 153 which real property in its entirety is hereafter referred to as the "Servient Estate" upon which is situated a gravel woods road (hereafter "Woods Road") which starts at a northern point along Chamberlain Way contiguous with the Servient Estate and continuously progressing from there first in a north-northwesterly direction and then in a northeasterly direction to the northeast corner of the Servient Estate' Property following the course shown by a dotted red line on the plan attached as **Exhibit A**.

B. Owner of the Dominant Estate is the owner of certain real property in said Newry (hereafter "Owner of the Dominant Estate's Property") located northerly of the Servient Estate and more particularly described in the Deed of Distribution from Linda J. Harrington, Personal Representative of the Estate of Gerald H. Harrington, to Ralph B. Harrington dated December 2, 1994 and recorded in the Oxford County Registry of Deeds at Book 2181, Page 285, being the same premises conveyed by Deed from Ralph Richardson to Gerald Harrington dated June 4, 1962 and recorded in the Oxford County Registry of Deeds at Book 614, Page 469 (hereafter "Richardson Deed") which deed included an easement to cross a portion of what is now the Servient Estate.

C. These findings are intended to resolve a dispute that has arisen regarding the scope of Owner of the Dominant Estate's easement attributable in part to a Quitclaim Deed from Gerald Harrington and Linda J. Harrington to Erik R. Nelson and Pamela Nelson dated April 6, 1990 and recorded in the Oxford County Registry of Deeds at Book 1723, Page 290 which owners of

the Servient Estate have asserted constituted a release and extinguishment of any easement held by the owner of the Dominant Estate and which the Owner of the Dominant Estate and which Court finds was intended solely to clarify a shared boundary.

#### **SECTION ONE. INCORPORATION OF RECITALS**

The foregoing recitals are incorporated in this Declaration of Easement as if fully rewritten here.

#### **SECTION TWO. GRANT OF ACCESS, INGRESS AND EGRESS EASEMENT**

The Servient Estate is subject to the right of the owner of the Dominant Estate, his successors, and assigns forever, the perpetual nonexclusive right to move pedestrian and vehicular traffic over, on and across the Woods Road, including tractor trailer wood haulers and any less intrusive vehicle use.

Owners of the Servient Estate are prohibited from interfering in any way with owner of the Dominant Estate's use of this easement, and from erecting any chains, gates, bars, blocks, boulders, or other obstructions which would in any way impede use of this easement, except that two gates may be erected by owners of the Servient Estate, when appropriate and necessary, to keep cows in a portion of the Servient Estate if it is used for the pasturing of cows. In such event, owner of the Dominant Estate is to be provided with the means to open the gate to use the easement at any time.

#### **SECTION THREE. MAINTENANCE AND USE OF EASEMENT**

Except if dedicated as a public way or used by owners of the Servient Estate as part of the development of the Servient Estate, owner of the Dominant Estate shall be responsible for maintaining the Woods Road, including, at his sole discretion, clearing it of snow by plowing or other means in order to keep it passable for use by the Dominant Estate.

#### **SECTION FOUR. NOT A PUBLIC DEDICATION**

Nothing contained in this Easement shall be deemed to be a gift or dedication of any portion of the Woods Road to the general public or for the benefit of the general public or for any public purpose.

Provided further that if in conjunction with the Owner of the Servient Estate's development or subdivision of the Servient Estate all or a portion of the Woods Road shall be designated, dedicated or accepted as a public way this shall not alter any rights of the Owner of the Dominant Estate.

#### **SECTION FIVE. BINDING EFFECT**

The terms of this Declaration of Easement are intended to and shall run with the land and shall benefit the Dominant Estate and burden the Servient Estate.

## SECTION SIX. MUTUAL INDEMNIFICATION

Owner of the Servient Estate shall indemnify, defend and hold harmless Owner of the Dominant Estate from any and all claims, expenses, losses, causes of action or liabilities, including penalties or fines imposed by any governmental entity, Owner of the Dominant Estate may suffer as a result of the use of the Woods Road by Owner of the Servient Estate or any of their employees, agents, customers or invitees.

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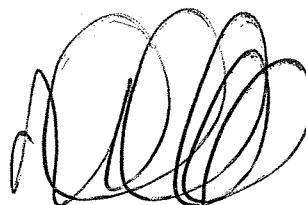
## SECTION SEVEN. LITIGATION - COSTS AND EXPENSES

In the event of litigation in connection with or concerning the subject matter of this Declaration of Easement the prevailing party shall be entitled to recover all costs and expenses incurred by such party in connection therewith, including reasonable attorneys' fees.

**SO ORDERED.**

Dated: \_\_\_\_\_

*June 8, 2011*



\_\_\_\_\_  
Robert W. Clifford  
Justice, Superior Court

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### **SECTION FOUR. RIGHT TO INSTALL UTILITIES**

Owner of the Dominant Estate shall have the right to install adjacent to or beneath the Woods Road underground utilities at the expense of the Dominant Estate.

### **SECTION FIVE. NOT A PUBLIC DEDICATION**

Nothing contained in this Easement shall be deemed to be a gift or dedication of any portion of the Woods Road to the general public or for the benefit of the general public or for any public purpose.

Provided further that if in conjunction with the Owner of the Servient Estate's development or subdivision of the Servient Estate all or a portion of the Woods Road shall be designated, dedicated or accepted as a public way this shall not alter any rights of the Owner of the Dominant Estate.

~~FIVE~~  
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~~SIX~~  
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Dated: \_\_\_\_\_

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Robert W. Clifford  
Justice, Superior Court

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**WHEREFORE, THE COURT ORDERS AND FINDS AS FOLLOWS:**

#### **RECITALS**

A. The Servient Estate consists of certain real property partly in the Town of Hanover and partly in the Town of Newry, Maine both in the County of Oxford and State of Maine and more particularly described in the Deed from Richard J. Keenan to owners of the Servient Estate dated February 12, 1993 and recorded in the Oxford County Registry of Deeds at Book 1989, Page 310, being the same premises comprised by and conveyed by Deed from Theodora Russell to Erik Nelson dated December 14, 1981 and recorded in the Oxford County Registry of Deeds at Book 1145, Page 087 and by Deed from P.H. Chadbourne & Co. to Erik R. Nelson and Pamela J. Nelson dated November 9, 1988 and recorded in the Oxford County Registry of Deeds at Book 1615, Page 153 which real property in its entirety is hereafter referred to as the "Servient Estate" upon which is situated a gravel woods road (hereafter "Woods Road") which starts at a northern point along Chamberlain Way contiguous with the Servient Estate and continuously progressing from there first in a north-northwesterly direction and then in a northeasterly direction to the northeast corner of the Servient Estate' Property following the course shown by a dotted red line on the plan attached as **Exhibit A**.

B. Owner of the Dominant Estate is the owner of certain real property in said Newry (hereafter "Owner of the Dominant Estate's Property") located northerly of the Servient Estate and more particularly described in the Deed of Distribution from Linda J. Harrington, Personal Representative of the Estate of Gerald H. Harrington, to Ralph B. Harrington dated December 2, 1994 and recorded in the Oxford County Registry of Deeds at Book 2181, Page 285, being the same premises conveyed by Deed from Ralph Richardson to Gerald Harrington dated June 4, 1962 and recorded in the Oxford County Registry of Deeds at Book 614, Page 469 (hereafter "Richardson Deed") which deed included an easement to cross a portion of what is now the Servient Estate.

C. These findings are intended to resolve a dispute that has arisen regarding the scope of Owner of the Dominant Estate's easement attributable in part to a Quitclaim Deed from Gerald Harrington and Linda J. Harrington to Erik R. Nelson and Pamela Nelson dated April 6, 1990 and recorded in the Oxford County Registry of Deeds at Book 1723, Page 290 which owners of

the Servient Estate have asserted constituted a release and extinguishment of any easement held by the owner of the Dominant Estate and which the Owner of the Dominant Estate and which Court finds was intended solely to clarify a shared boundary.

#### SECTION ONE. INCORPORATION OF RECITALS

The foregoing recitals are incorporated in this Declaration of Easement as if fully rewritten here.

#### SECTION TWO. GRANT OF ACCESS, INGRESS AND EGRESS EASEMENT

The Servient Estate is subject to the right of the owner of the Dominant Estate, his successors, and assigns forever, the perpetual nonexclusive right to move pedestrian and vehicular traffic over, on and across the Woods Road, including tractor trailer wood haulers and any less *intrusive* vehicle use.

*Owners of the Servient Estate are prohibited from interfering in any way with owner of the Dominant Estate's of this easement, and from erecting any chains, gates, bars, blocks, boulders, or other obstructions which would in any way impede use of this easement, except that two gates may be erected by owners of the Servient Estate, when appropriate and necessary, to keep cows in a portion of the Servient Estate if it is used for the pasturing of cows. In such event, owner of the Dominant Estate is to be provided with the means to open the gate to use the easement at any time.*

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#### SECTION THREE. MAINTENANCE AND USE OF EASEMENT

Except if dedicated as a public way or used by owners of the Servient Estate as part of the development of the Servient Estate, owner of the Dominant Estate shall be responsible for maintaining the Woods Road, including, at his sole discretion, clearing it of snow by plowing or other means in order to keep it passable for use by the Dominant Estate.

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#### SECTION FOUR. RIGHT TO INSTALL UTILITIES

Owner of the Dominant Estate shall have the right to install adjacent to or beneath the Woods Road underground utilities at the expense of the Dominant Estate.

#### SECTION FIVE. NOT A PUBLIC DEDICATION

Nothing contained in this Easement shall be deemed to be a gift or dedication of any portion of the Woods Road to the general public or for the benefit of the general public or for any public purpose.

Provided further that if in conjunction with the Owner of the Servient Estate's development or subdivision of the Servient Estate all or a portion of the Woods Road shall be designated, dedicated or accepted as a public way this shall not alter any rights of the Owner of the Dominant Estate.

## **SECTION SIX. BINDING EFFECT**

The terms of this Declaration of Easement are intended to and shall run with the land and shall benefit the Dominant Estate and burden the Servient Estate.

## **SECTION SEVEN. MUTUAL INDEMNIFICATION**

Owner of the Servient Estate shall indemnify, defend and hold harmless Owner of the Dominant Estate from any and all claims, expenses, losses, causes of action or liabilities, including penalties or fines imposed by any governmental entity, Owner of the Dominant Estate may suffer as a result of the use of the Woods Road by Owner of the Servient Estate or any of their employees, agents, customers or invitees.

Owner of the Dominant Estate shall indemnify, defend and hold harmless Owner of the Servient Estate from any and all claims, expenses, losses, causes of action or liabilities, including penalties or fines imposed by any governmental entity, Owner of the Servient Estate may suffer as a result of the use of the Woods Road by Owner of the Dominant Estate or any of his employees, agents, customers or invitees.

## **SECTION EIGHT. LITIGATION - COSTS AND EXPENSES**

In the event of litigation in connection with or concerning the subject matter of this Declaration of Easement the prevailing party shall be entitled to recover all costs and expenses incurred by such party in connection therewith, including reasonable attorneys' fees.

**SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Robert W. Clifford  
Justice, Superior Court