STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. RE-2021-0035

PETER MASUCCI, et al.,

Plaintiffs,

v.

JUDY'S MOODY, LLC, et al,

Defendants,

and

AARON FREY, in his capacity as Attorney General of the State of Maine,

Party-in-interest.

ORDER ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Before the Court is Plaintiffs'[1] motion for summary judgment on Count IV, the sole surviving claim. M.R. Civ. P. 56. For the following reasons, Plaintiffs' motion is denied.

BACKGROUND

On April 22, 2021, Plaintiffs filed a five-count complaint. Count I notice pleaded declaratory judgment, Plaintiffs' requested form of equitable relief. Counts II, III, and V generally aimed to establish the State's fee ownership of Defendants'[2] intertidal lands and asserted that any pre-statehood alienation or transfer of such land occurred in violation of various constitutional provisions. In Count IV, Plaintiffs sought to expand the scope of the public's permissible activities within Maine's intertidal zone beyond fishing, fowling, and navigation, the rights of use the Law

[1] Plaintiffs include Robert Morse, George Seaver, John Grotton, Hale Miller, Leroy Gilbert, Jake Wilson, Dan Harrington, Susan Domizi, Greg Tobey, Amanda Moeser, Chad Coffin, Lori Howell, Tom Howell, Peter Masucci, Kathy Masucci, William Connerney, William Griffiths, Sheila Jones, Orlando Delogu, Judith Delogu, and Brian Beal.

[2] Defendants include Judy's Moody, LLC, Ocean 503, LLC, OA 2012 Trust, and Jeffrey and Margaret Parent.

Court reserved for the public in *Bell v. Town of Wells (Bell II)*, 557 A.2d 168, 169 (Me. 1989).

On May 26, 2021, Defendant Ocean 503 individually, and Defendants Judy's Moody and OA 2012 Trust together, each filed M.R. Civ. P. 12(b)(6) motions to dismiss the complaint on largely similar grounds. On April 15, 2022, the Court granted these motions with respect to Counts I–III and V and denied them with respect to Count IV. The Court explained that Count IV survived because the Law Court, which customarily takes a flexible approach to defining intertidal usage rights, had not yet addressed whether any movement or research-based activity is permissible.

On April 28, 2022, Defendants Parent also filed a M.R. Civ. P. 12(b)(6) motion to dismiss all counts. On August 1, 2022, the Court granted the motion with respect to Counts I–III and V and denied it with respect to Count IV. Again the Court clarified that Count IV subsisted because, given the Law Court's historically generous approach to defining intertidal usage rights, there was "some legal theory" that would allow Plaintiffs to obtain a declaratory judgment permitting certain recreational or non-rockweed specific commercial activity in the intertidal zone.

On June 23, 2023, Plaintiffs filed a motion for summary judgment on Count IV requesting two declaratory judgments. First, that the Court should, in contravention of *Bell II*, declare the scope of permissible activity on intertidal lands consistent with public trust uses—which broadly extend to whatever the State sees fit to permit and regulate in the exercise of its sovereign police power, legislative and regulatory processes—rather than the limited Colonial Ordinance trifecta of fishing, fowling, and navigation. Second, that the Court should declare Plaintiffs' activities within the intertidal zone of Defendants' respective beach properties—recreating, conducting ocean-based research, and harvesting rockweed for commercial purposes—lawful public trust uses.

DISCUSSION

I. Legal Standard

"[S]trict adherence to [M.R. Civ. P. 56's] requirements is necessary to ensure that the [summary judgment] process is both predictable and just." *Deutsche Bank Nat'l Tr. Co. v. Raggiani*, 2009 ME 120, ¶ 7, 985 A.2d 1. The summary judgment record consists only of the parties' supported statements of material fact and the portions of the record referenced therein. *See Dorsey v. N. Light Health*, 2022 ME 62, ¶ 10, 288 A.3d 386. Summary judgment is appropriate if that record, construed in the nonmovant's favor, "demonstrates that there is no genuine issue of material fact in dispute and the moving party would be entitled to a judgment as a matter of law at trial." *Chartier v. Farm Fam. Life Ins. Co.*, 2015 ME 29, ¶ 6, 113 A.3d 234; *see* M.R. Civ. P. 56(c).

A material fact "has the potential to affect the outcome of the suit, and a genuine issue of material fact exists when a fact-finder must choose between competing versions of the truth, even if one party's version appears more credible or persuasive." *Dorsey*, 2022 ME 62, ¶ 10, 288 A.3d 386 (quoting *Yankee Pride Transp. & Logistics, Inc. v. UIG, Inc.*, 2021 ME 65, ¶ 10, 264 A.3d 1248). The evidence offered in support of a genuine issue of material fact "need not be persuasive at that stage, but . . . must be sufficient to allow a fact-finder to make a factual determination without speculating."[3] *Est. of Smith v. Cumberland Cnty.*, 2013 ME 13, ¶ 19, 60 A.3d 759.

II. Analysis

Maine law dictates that "[i]f a party submits an unnecessarily long, repetitive, or otherwise convoluted statement of material facts that fails to achieve the Rule's requirement of a 'separate,

[3] Each party's statements must include a reference to the record where "facts as would be admissible in evidence" may be found. M.R. Civ. P. 56(e). A party's opposing statement of material facts "must explicitly admit, deny or qualify facts by reference to each numbered paragraph, and a denial or qualification must be supported by a record citation." *Stanley v. Hancock Cnty. Comm'rs*, 2004 ME 157, ¶ 13, 864 A.2d 169 (citation omitted).

short, and concise' statement, the court has the discretion to disregard the statement and deny the motion for summary judgment solely on that basis." *Stanley v. Hancock Cnty. Comm'rs*, 2004 ME 157, ¶ 29, 864 A.2d 169 (acknowledging that the lower court could have disregarded a 191-paragraph statement of material facts); *see also First Tracks Invs., LLC v. Murray, Plumb & Murray*, 2015 ME 104, ¶¶ 2–3, 121 A.3d 1279 (stating that the lower court would have been "well within its discretion" to grant summary judgment to the moving party based on the opposition's noncompliant submission of a 130-paragraph additional statement of material facts); *Oceanic Inn, Inc. v. Sloan's Cove, LLC*, 2016 ME 34, ¶ 4 n.2, 133 A.3d 1021 (noting that the lower court could have declined to consider the opposition's 145-paragraph additional statement of material facts).

Here, Plaintiffs' 220-paragraph statement of material facts, which spans 30 pages, cannot be reasonably characterized as short and concise. *See* M.R. Civ. P. 56(h). The statement includes legal and factual conclusions, cites to portions of the record containing inadmissible hearsay, lacks logical organization, and frequently asserts facts that are irrelevant to the instant litigation or simply repetitive. Based on the manner in which Plaintiffs have availed themselves of the summary judgment process, the Court denies their motion for summary judgment.

CONCLUSION

In accordance with the above, Plaintiffs' motion for summary judgment is **DENIED**. The clerk is directed to incorporate this Order into the docket by reference. M.R. Civ. P. 79(a).

Dated: 1/26/24

John O'Neil, Jr.
Justice, Maine Superior Court

Entered on the Docket: 2/5/2024