



as the defendant's counterclaim regarding removal of sticks and leaves, were dismissed without prejudice on March 13, 2019.

A view was taken on June 24, 2019, and trial was held on June 24, 25, 26, 27, and July 25, 2019. On the first day of trial, parties stipulated that, with respect to Count I (Complaint, ¶¶ 51-58) allegations and requested relief that related to the companion cases 17 MISC 00204, 17 MISC 000272, 17 MISC 000366 and 18 MISC 000517 (zoning appeal) were struck, and with respect to the remaining claims, which were the subject of the preliminary injunction, they would not be considered at trial. Tr. I, 42:23 -46:19. On the third day of trial, plaintiff's motion for required finding on their adverse possession claim and defendant's motion for required finding on the adverse possession and dock rights claim were denied. Tr. III, 206: 2-18, 207: 5-8. On the fifth day of trial, defendant's motion for mandatory dismissal and plaintiff's motion for mandatory dismissal of counterclaims were both denied. Zoning Appeal Tr. III, 83: 13-20. Winchester Boat Club filed its Post-Trial Brief on October 24, 2019. The plaintiffs filed their Post-Trial brief on October 25, 2019. Winchester Boat club filed its reply brief on October 31, 2019, and the plaintiffs filed their reply brief on November 1, 2019. Closing arguments were held on November 13, 2019, after which the matter was taken under advisement. In a decision of even date, the court (Foster, J.) has made findings of fact and rulings of law.

In accordance with the dismissals of March 13, 2019, and the court's Decision issued today, it is

**ORDERED, ADJUDGED and DECLARED** that the Ho/O'Donnells have established title by adverse possession to that area of land underneath and enclosed by their stone wall that runs diagonally along the southwestern border of their property at 48 Everett Avenue, Winchester, Massachusetts conveyed by deed dated May 30, 2014, and recorded with the Middlesex South Registry of Deeds (registry) in Book 63682, Page 437 (the Property), as such area is shown as "Adverse Possession Area" on the plan attached hereto as Exhibit A. It is further

**ORDERED, ADJUDGED and DECLARED** that the Ho/O'Donnells have trespassed and continue to trespass on WBC's property by placing a stone step on the southern boundary of the Property that encroaches beyond the property line of the Property. It is further

**ORDERED and ADJUDGED** that the Ho/O'Donnells shall cease their trespass within 90 days of the date of this judgment by removing the encroaching stone step, and shall pay nominal damages of \$100.00 to WBC. It is further

**ORDERED, ADJUDGED and DECLARED** that the Ho/O'Donnells have not committed trespass as to the landscaping in the northeastern corner of the WBC's property, nor as to discarded concrete rubble. It is further

**ORDERED and ADJUDGED** that the Counterclaims for nuisance and the removal of sticks are **DISMISSED** without prejudice. It is further

**ORDERED and ADJUDGED** that the remaining Counterclaims are **DISMISSED** with prejudice. It is further

**ORDERED, ADJUDGED and DECLARED** that the easement rights held by the Ho/O'Donnells with respect to the right of way, as set forth in the easement dated February 25, 1998, and recorded in the registry on March 18, 1998 at Book 28324, Page 61 (dock easement) have not been altered by prescription. It is further

**ORDERED, ADJUDGED and DECLARED** that the existing dock attached to the southern shore of WBC's property is that referred to in the dock easement and is the property of the Ho/O'Donnells. It is further

**ORDERED, ADJUDGED and DECLARED** that the Ho/O'Donnells have acquired an easement by prescription to maintain a dock of the same width (5-6 ft) as the existing dock. It is further

**ORDERED, ADJUDGED and DECLARED** that the dock lies outside of the Ho/O'Donnells' right of way, in violation of the dock easement. It is further

**ORDERED and ADJUDGED** that the Ho/O'Donnells shall move the dock from its present location to a location within the southern boundary of the right of way as set forth in the dock easement within 90 days of the date of this judgment.

So Ordered.

By the Court. (Foster, J). /s/ Robert B. Foster

Attest:

/s/ Deborah J. Patterson  
Deborah J. Patterson  
Recorder

Dated: April 29, 2021.

