

DEREK ROBISHAW

v.

WELLS FARGO BANK, N.A., et al.

Submitted on Briefs April 27, 2011  
Decided April 28, 2011

Panel: ALEXANDER, LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

#### MEMORANDUM OF DECISION

Derek Robishaw appeals from the entry of a summary judgment in the Superior Court (Cumberland County, *Warren, J.*) in favor of Wells Fargo Bank, N.A., American Home Mortgage Servicing, and Bryce Hamilton on his complaint for illegal eviction, breach of warranty of habitability, breach of warranty of quiet enjoyment, trespass, conversion, punitive damages, and negligent infliction of emotional distress. Contrary to Robishaw's contentions, summary judgment was appropriate because Robishaw was not a tenant at will. *See Frost Vacationland Props., Inc. v. Palmer*, 1999 ME 15, ¶ 10, 723 A.2d 418, 421 (defining a tenant at will as "[o]ne who holds possession of premises *by permission of owner or landlord*, but without fixed term" (quotation marks omitted) (emphasis added)). The undisputed facts in the summary judgment record demonstrate that Robishaw did not have permission, either by express agreement or implication, to remain in possession of the premises. *See Goff v. Files*, 133 Me. 157, 160-61, 174 A. 901, 902-03 (1934).

Robishaw also appears to challenge the court's entry of a summary judgment in favor of Wells Fargo, American Home, and Hamilton with respect to his claim for conversion. The undisputed facts show that Robishaw never demanded the return of his personal belongings, so no such demand was ever denied. *See Withers v. Hackett*, 1998 ME 164, ¶ 7, 714 A.2d 798, 800. In fact, Robishaw

received two letters stating that he could retrieve his personal belongings. In addition, Robishaw argues that the court abused its discretion in excluding evidence of the special value of Robishaw's property as a measure of damages on his claim for negligent destruction of personal property. Because the jury found that American Home was not liable for the negligent destruction of Robishaw's property, it did not decide the issue of damages, and, as a result, we do not reach Robishaw's argument concerning special value as a measure of damages. *See DiCentes v. Michaud*, 1998 ME 227, ¶ 22, 719 A.2d 509, 516.

The entry is:

Judgment affirmed.

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**Attorney for Derek Robishaw:**

Robert C. Andrews, Esq.  
PO Box 17621  
Portland, Maine 04112

**Attorney for Wells Fargo Bank, N.A.  
and American Home Mortgage Servicing, Inc.:**

Mark E. Porada, Esq.  
Pierce Atwood LLP  
One Monument Square  
Portland, Maine 04101

**Attorney for Bryce Hamilton:**

Roy T. Pierce, Esq.  
Preti Flaherty, LLP  
One City Center  
PO Box 9546  
Portland, Maine 04112-9546