

FRIENDS OF MERRYMEETING BAY et al.

v.

CENTRAL MAINE POWER COMPANY

Argued October 6, 2021
Decided January 11, 2022

Panel: STANFILL, C.J., and MEAD, GORMAN, JABAR, HUMPHREY, and HORTON, JJ.

MEMORANDUM OF DECISION

Friends of Merrymeeting Bay, Kathleen McGee, Ed Friedman, and Colleen Moore (collectively, FOMB) appeal from a judgment entered by the Business and Consumer Docket (*Murphy, J.*) dismissing their nuisance claims against Central Maine Power Company (CMP) based on its conclusion that the claims were preempted by federal law. FOMB asserts that lighting installed on CMP's utility towers in Bath and Woolwich in compliance with Federal Aviation Administration (FAA) standards constitutes an actionable nuisance under Maine's common law and 17 M.R.S. § 2701 (2021). Contrary to FOMB's contentions, the court did not err in concluding that FOMB's state law claims are preempted because they are based on CMP's compliance with FAA standards that occupy the field of aviation safety.¹ *See, e.g., Bieneman v. City of Chicago*, 864 F.2d 463, 471-73 (7th Cir. 1988) (concluding that state law tort remedies are available for claims asserting a violation of FAA standards

¹ We are not persuaded by FOMB's argument that its allegations concerning the rate at which the lights flash are sufficient to assert a separately-actionable nuisance claim based on noncompliance with FAA standards. *Cf. Leppla v. Sprintcom, Inc.*, 806 N.E.2d 1019, 1023-25, 1023 n.1 (Ohio Ct. App. 2004).

occupying the field of aviation safety but are not available for claims based on compliance with such standards); *Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472, 488-89 (2013).

The entry is:

Judgment affirmed.

Bruce M. Merrill, Esq., Law Offices of Bruce M. Merrill, Portland; and William Most, Esq. (orally), and David Lanser, Esq., Law Office of William Most, New Orleans, Louisiana, for appellants Friends of Merrymeeting Bay et al.

Gavin G. McCarthy, Esq. (orally), and Matthew Altieri, Esq., Pierce Atwood LLP, Portland, for appellee Central Maine Power Company

Business and Consumer Court docket number CV-2020-36
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