

TOWN OF STARKS

v.

DONALD CHRISTEN et al.

Submitted on Briefs November 25, 2003
Decided December 11, 2003

Panel: SAUFLEY, C.J., and CLIFFORD, RUDMAN, DANA, CALKINS, and
LEVY, JJ.

MEMORANDUM OF DECISION

Donald Christen and Maine Vocals, Inc., appeal from a judgment entered in Superior Court (Somerset County, *Jabar, J.*) in favor of the Town of Starks granting the Town's motion for a summary judgment and awarding attorney fees and injunctive relief for violations of the Town's mass gathering ordinance.

Contrary to the appellants' contention, the court did not err by granting summary judgment when the appellants failed to controvert the Town's motion for a summary judgment. *See* M.R. Civ. P. 56(h)(4); *Kezer v. Mark Stimson Assocs.*, 1999 ME 184, ¶ 11, 742 A.2d 898, 902 (stating that summary judgment is awarded if there is no genuine issue of material fact and the party is entitled to judgment as

a matter of law). In addition, the court acted within the bounds of its discretion in awarding attorney fees, *see Lee v. Scotia Prince Cruises, Ltd.*, 2003 ME 78, ¶ 18, 828 A.2d 210, 215, and in granting injunctive relief, *see Eaton v. Cormier*, 2000 ME 65, ¶ 4, 748 A.2d 1006, 1008, both of which are authorized by the mass gathering ordinance. Additional issues appellants raise on appeal do not merit discussion because they were either not raised before the Superior Court or were waived by the voluntary dismissal of appellants' counterclaim. *See Cyr v. Cyr*, 432 A.2d 793, 797 (Me. 1981) (A party cannot raise issues on appeal for the first time that were not raised below, even if it is one of constitutional law.).

The entry is:

Judgment affirmed.

Attorney for plaintiff:

Lisa Fitzgibbon Bendetson, Esq.
Thompson & Bowie, LLP
P O Box 4630
Portland, ME 04112

For defendant:

Donald Christen
65 Shusta Road
Madison, ME 04950