

PEBBLEDENE TRUST et al.

v.

TOWN OF YORK et al.

Argued September 22, 2004

Decided November 9, 2004

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

MEMORANDUM OF DECISION

The Town of York, and Leon Moulton, Marvin Swain, James Moody, Brent Goodwin, and Randolph Earle, all employees of the Town, appeal the denial of their motions for summary judgment entered in the Superior Court (York County, *Fritzsche, J.*), in this action brought against them by Pebbledene Trust and Eileen Ceccanti. Contrary to the contentions of the employee defendants, genuine issues of material fact remain in dispute on the present state of the pleadings. On both civil rights claims, Count I, pursuant to the Maine Civil Rights Act, 5 M.R.S.A. § 4682 (2002), and Count II, pursuant to the Federal Civil Rights Act, 42 U.S.C.A. § 1983 (2003), the employee defendants have not sufficiently established their

entitlement to qualified immunity as a matter of law. M.R. Civ. P. 56(c); *see Lyons v. City of Lewiston*, 666 A.2d 95, 99 (Me. 1995).

Likewise, contrary to the contentions of all of the defendants, on the present state of the pleadings, there remain disputed issues of material fact on the State tort law claims of the complaint, precluding the entry of summary judgment in their favor on the basis of the immunity provisions of the Maine Tort Claims Act, 14 M.R.S.A. §§ 8103, 8104-A, and 8111(1)(c) (2003).

The entry is:

Order denying summary judgment is affirmed.
Remanded to the Superior Court for further
proceedings consistent with this opinion.

Attorneys for plaintiffs:

John C. Bannon, Esq.
John B. Shumadine, Esq. (orally)
Murray, Plumb & Murray
P O Box 9785
Portland, ME 04104-5085

Attorneys for defendants:

Mark V. Franco, Esq. (orally)
Edward R. Benjamin Jr., Esq.
Thompson & Bowie, LLP
P O Box 4630
Portland, ME 04112