

TIMOTHY W. KILROY et al.

v.

NORTHEAST SUNSPACES, INC. et al.

Submitted on Briefs July 29, 2009

Decided August 4, 2009

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

#### MEMORANDUM OF DECISION

Timothy W. Kilroy appeals from a judgment of the Superior Court (Penobscot County, *Hjelm, J.*) denying his costs and awarding costs to defendants Northeast Sunspaces, Inc., and Four Seasons Solar Products, LLC. We do not address the parties' procedural arguments. Kilroy contends that he was the prevailing party and is entitled to costs pursuant to 14 M.R.S. § 1501 (2008) and M.R. Civ. P. 54(d). The standard of review is clear error. *Runnells v. Quinn*, 2006 ME 7, ¶ 15, 890 A.2d 713, 717. We apply a functional analysis to determine which is the prevailing party, and have noted that the inquiry is essentially factual in nature, looking at the lawsuit as a whole. *Id.* We review a finding as to which party prevailed "with considerable deference." *Landis v. Hannaford Bros. Co.*, 2000 ME 111, ¶ 6 & n.3, 754 A.2d 958, 959-60. Contrary to Kilroy's contentions, the court did not err in finding that Kilroy was not the prevailing party, looking at the lawsuit as a whole. *See Runnells*, 2006 ME 7, ¶ 15, 890 A.2d at 717.

The entry is:

Judgment affirmed.

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