

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

BRUNSWICK INTERSTATE OASIS, INC
d/b/a ECONOLODGE, et al.,

Plaintiffs

v.

Civil No. 97-131-P-C

DONALD E. NASON
and
DONNELLY FARMS, LTD.,

Defendants

GENE CARTER, District Judge

**MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS'
MOTION *IN LIMINE* REGARDING THE MEASURE OF DAMAGES**

Before the Court for action at this time is Defendants' Motion *in Limine* Regarding the Measure of Damages (Docket No. 27). After full consideration of the written submissions on the said motion and consideration of the record made for decision on said motion, the Court concludes that the applicable rule for the determination of the amount of damage occasioned to buildings and real estate and personal property involved in Plaintiffs' claim in this case is the general rule of Maine law: that is, that the measure of damages for injury to property is the difference in value of the property before and after the injury. *See, e.g., Borman v. Milliken*, 123 Me. 488, 495, 124 A. 200 (1924). This Court has so recognized previously in *Lerman v. City of Portland*, 675 F. Supp. 11, 17 (D. Me. 1987). *See also Sullivan v. Young Brothers and Co., Inc.*, 893 F. Supp. 1148, 1161 (D. Me. 1995).

The Court concludes from the record made on this motion that the evidence at trial will establish that Plaintiffs' determined that the building damaged by the alleged conduct of Defendants herein was totally destroyed and could not be restored to its original condition and that Plaintiffs replaced the building with one of different appearance or characteristics. For that reason, the damage to the original structure was not repaired or the building restored to its **original** condition. Rather, the damage was addressed by the construction of a new and different structure. Under such circumstances, Maine law, on the facts of this case as displayed by this record on this motion, do not permit recovery of costs of restoration where they are widely at variance with the diminution in value of the original property occasioned by the tortious conduct.

Accordingly, Plaintiffs will be entitled to present evidence at trial pertinent to the diminution in value of the structure allegedly damaged by Defendants' tortious conduct. Costs of construction of the new structure raised by Plaintiffs to replace the original structure as "restoration costs" are **excluded** from evidence.

The Court reserves the right to revisit and reconsider this ruling at trial if the evidence at trial indicates that the factual predicates for the ruling are substantially different from what the Court has indicated them to be in the record made on this motion.

So ORDERED.

GENE CARTER
District Judge

Dated at Portland, Maine this 18th day of June, 1998.