

STATE OF MAINE
YORK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-09-111

**ROBERT F. ALMEDER and
VIRGINIA S. ALMEDER, et al.,**

Plaintiffs

v.

**TOWN OF KENNEBUNKPORT and
ALL PERSONS WHO ARE
UNASCERTAINED,**

Defendants

)
)
)
)
)
) DEFENDANTS'
) ALEXANDER M. LACHIATTO and
) JUDITH A. LACHIATTO'S OBJECTION TO
) PLAINTIFF'S MOTION TO DISMISS and
) MOTION TO STRIKE
)
)
)
)

INTRODUCTION

We filed a Pro Se answer and counterclaim in this matter on January 11, 2010. In response, Plaintiffs have filed an answer with affirmative defenses together with a combined Motion to Dismiss and Motion to Strike certain portions of our answer and counterclaim. Our intention in filing our answer and counterclaim was to protect our rights which we hold dear to use Goose Rocks Beach as we have for over 40 years and for decades by our predecessors. Over the years we have never been asked to vacate any portion of the beach.

Our filing was based, in part, upon the arguments asserted by the Town of Kennebunkport because we support the town's efforts to fight the plaintiffs efforts to restrict public and private rights to the beach. We have now been served with a lengthy, intensely lawyered Motion to Dismiss, condescending in tone, attempting to have portions of our pleading thrown out by the court.

DISCUSSION

While Plaintiffs' arguments seem more like form over substance, we have further examined our responsive pleadings and respond as follows:

COUNTERCLAIM:

Counts III, V, VI

Count III (Acquiescence), Count V (Dedication and Acceptance) and Count VI (Custom) have each been asserted as a counterclaim by the Town in this matter. Accordingly, we agree to amend our pleadings to withdraw these counts.

COUNTERCLAIM:

Counts VII and VIII

Count VII (Easement) and Count VIII (Implied/Quasi Easement) have been pled with sufficient clarity to withstand Plaintiffs' Motion to Dismiss.

As recited in the Town's response, the standard for a party seeking dismissal is quite high. "A dismissal for failure to state a cause of action is proper only when it appears beyond doubt that a [counterclaim] plaintiff is entitled to no relief under any set of facts that might be proven in support of the claim." Plimpton v. Gerard, 668 A.2d 882, 885 (Me. 1995).

AFFIRMATIVE DEFENSES

Consistent with the Town's answer, we have asserted as affirmative defenses that Plaintiffs' claim is barred due to the public trust doctrine and the doctrine of "custom".

It is perfectly appropriate to assert the public trust doctrine as a defense in this case. It is obvious that the public trust doctrine (analyzed significantly in the Bell v. Town of Wells and Eaton v. Town of Wells cases) will be relevant to the disposition of this case—as evidenced by

the efforts of the Attorney General's office to intervene. Because of its relevance, this defense should not be stricken.

Similarly, the doctrine of custom is also properly pled as a defense. As the Town points out in its responsive memorandum, the Bell v. Town of Wells case does not dispose of the question of whether the doctrine remains viable under Maine law. To preserve the issue, we asserted custom as a defense.

As to the failure of consideration, standing and failure to pay property taxes defenses, they are withdrawn.


PRAYER FOR RELIEF

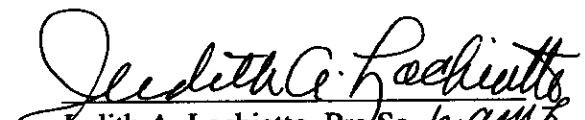
We acknowledge that we are not asserting a quiet title claim under 14 M.R.S. §6651 but reserve the right to seek attorneys fees, to the extent allowed by the so-called American Rule, if the facts going forward warrant such an award.

CONCLUSION

We request that Plaintiffs' Motion to Dismiss and Motion to Amend be denied. We will file an amended answer and counterclaim as required by the Court.

Dated: February 19, 2010


Alexander M. Lachiatto, Pro Se


Judith A. Lachiatto, Pro Se *by AMK*

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February 19, 2010

Dianne Hill, Clerk
York County Superior Court
P.O. Box 160
Alfred, ME 04002-0160

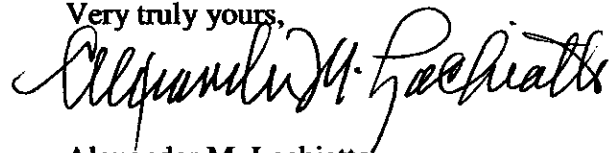
Re: Almeder, et. al v. Town of Kennebunkport
Docket No. RE-09-111

Dear Dianne:

Enclosed for filing please find Defendants Alexander M. Lachiatto and Judith A. Lachiatto's Objection to Plaintiffs' Motion to Dismiss and Motion to Strike in connection with the above-captioned matter.

Thank you for your attention to this matter.

Very truly yours,



Alexander M. Lachiatto

AML/ks

Enclosure

cc: Sidney St.F Thaxter, Esq.

Thomas McNaboe, Esq.

Amy Tchao, Esq./Brian Willing, Esq./Melissa Hewey, Esq.

Neal Weinstein, Esq.

Richard & Margaret Driver

Paul Stern, Esq.