

STATE OF MAINE
YORK, ss.

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

ROBERT F. ALMEDER and VIRGINIA S. ALMEDER)
et al.,)
Plaintiff,)
vs.)
TOWN OF KENNEBUNKPORT and ALL PERSONS WHO)
ARE UNASCERTAINED,)
Defendant

Answer, Defenses and Counterclaims of
Defendants Roger C. Allen and
Nancy H. Allen

NOW COME Defendants, Roger C. Allen and Nancy H. Allen (hereinafter referred to as "Defendants") hereby answers the Plaintiff's Complaint as follows:

1. Defendants admit the allegations contained in Paragraph 1 of Plaintiffs' Complaint.
2. Defendants neither admit nor deny the allegations contained in Paragraph 2 of Plaintiffs' Complaint and calls upon the Plaintiff to prove same.
3. Defendants deny the allegations contained in Paragraph 3 and calls upon the Plaintiff to prove same.
4. Defendants deny the allegations contained in Paragraph 4 and calls upon the Plaintiff to prove same.
5. Defendants neither admit nor deny the allegations contained in Paragraph 5 of Plaintiffs' Complaint and calls upon the Plaintiff to prove same.
6. Through 27. Defendants neither admit nor deny the allegations contained in Paragraphs 6 through 27 of Plaintiffs' Complaint which allege they are owners of certain properties and calls upon the Plaintiff to prove the same.
7. Defendants admit the allegations of Paragraph 28 of Plaintiffs' Complaint.
8. Defendants are without knowledge of all unknown people who might have a claim to the use of the beach and calls upon the Plaintiff to produce whether or not there are any other people that know an answer to this suit.

9. Defendants deny the allegations of Paragraph 30 of Plaintiffs' Complaint.
10. Defendants deny the allegations of Paragraph 31 of Plaintiffs' Complaint but do acknowledge there are high and low tides at Goose Rocks Beach.
11. Defendants neither admit nor deny the allegations in Paragraph 32 of Plaintiffs' Complaint and calls upon the Plaintiff to prove same.
12. Defendants neither admit nor deny the allegations in Paragraph 33 of Plaintiffs' Complaint and calls upon the Plaintiff to prove same.
13. Defendants deny the allegations of Paragraph 34 of Plaintiffs' Complaint.
14. Defendants deny the allegations of Paragraph 35 of Plaintiffs' Complaint.
15. Defendants neither admit nor deny the allegations of Paragraph 36 of Plaintiffs' Complaint and call upon the Plaintiff to prove same.
16. Defendants neither admit nor deny the allegations of Paragraph 37 of Plaintiffs' Complaint and call upon the Plaintiff to prove same.
17. Defendants agree that the Kennebunkport Conservation Trust owns lots; Defendants further claim that the entire beach and areas are open for public use.
18. Defendants deny the allegations of Paragraph 39 of Plaintiffs' Complaint and calls upon the Plaintiff to prove same.
19. Defendants deny the allegations of Paragraph 40 of Plaintiffs' Complaint and calls upon the Plaintiff to prove same.
20. Defendants deny the allegations of Paragraph 41 of Plaintiffs' Complaint and calls upon the Plaintiff to prove same.
 - (a.) Defendants deny the allegations of Paragraph 41 (a) of Plaintiffs' Complaint and calls upon the Plaintiff to prove same.
 - (b.) Defendants deny the allegations of Paragraph 41 (b) of Plaintiffs' Complaint and calls upon the Plaintiff to prove same.
 - (c.) Defendants deny the allegations of Paragraph 41 (c) of Plaintiffs' Complaint and calls upon the Plaintiff to prove same.
 - (d.) Defendants deny the allegations of Paragraph 41 (d) of Plaintiffs' Complaint and calls upon the Plaintiff to prove same.
 - (e.) In reference to Exhibit 24 the Defendants deny any inference that the Town has refused to act properly in support of the beach in accordance with the law.

28. Defendants deny the allegations of Paragraph 42 of Plaintiffs' Complaint and calls upon the Plaintiff to prove same.

29. Defendants deny the allegations of Paragraph 43 of Plaintiffs' Complaint and further say the public has a right to use all portions of the Upper Beach and the Intertidal Zone.

30. Defendants deny the allegations of Paragraph 44 of Plaintiffs' Complaint and further state that the public has established a right to use the Intertidal and Dry Sand area of the beach.

COUNT I

DECLARATORY JUDGMENT

31. Defendants re-affirm all answers in Paragraphs 1 through 44.

32. Defendants deny the allegations in Paragraph 46 and ask that the Plaintiff's Complaint be dismissed and the Court awards the Defendants' cost in defending this action.

33. Defendants re-affirm all answers in Paragraphs 1 through 46 and incorporate them by reference herein.

34. Defendants are without knowledge of what the Selectmen have said. Defendants further state that the public has established an Easement By Prescription over the Intertidal and Upper (dry sand) area.

35. Defendants say that the Defendants have achieved an Easement by Prescription by using the Intertidal Area and Dry Sand area for over 20 years.

36. Defendants deny the allegations of Paragraph 50 of Plaintiffs' Complaint and call upon the Plaintiff to prove same.

37. Defendants deny the allegations of Paragraph 51 of Plaintiffs' Complaint and further state that the use of Goose Rocks Beach has been public since the late 1800's or at least 100 years.

38. Defendants admit the allegations of Paragraph 52 of Plaintiffs' Complaint with the exception of the word "allegedly".

39. Defendants deny the allegations of Paragraph 53 of Plaintiffs' Complaint and further state that the Public has an easement over Dry Sand and use of the Intertidal Area has been established by over 20 years of open and notorious use.

WHEREFORE, Defendants demand judgments against the Plaintiffs as follows:

- a) Plaintiffs' Complaint be dismissed.
- b) The Court finds an Easement By Prescription has been established for the Public Use Beach by the Town of Kennebunkport and by the residents.
- c) Plaintiffs' be restrained from bothering, harassing, and in otherwise interfering with the public's use of the beach.

Dated:

May 3, 2010

Roger C. Allen

Roger C. Allen
Property Owner of
25 New Biddeford Road
Kennebunkport, Maine

Nancy H. Allen

Nancy H. Allen
Property Owner of
25 New Biddeford Road
Kennebunkport, Maine