

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)

MOTION TO INTERVENE UNDER PROVISIONS
OF RULE 24, MAINE RULES OF CIVIL
PROCEDURE

(Title to Real Estate is Involved)


Sharon Ann Eon-Harris and John Michie Harris, by and through their undersigned counsel, hereby move this Court to allow them to intervene in the above-captioned matter under the provisions of Rule 24 of the Maine Rules of Civil Procedure on the following grounds:

1. Sharon Ann Eon-Harris and John Michie Harris (hereinafter referred to as “Defendants”) are owners of a residence and rental property at Goose Rocks Beach, Town of Kennebunkport, County of York, and State of Maine.
2. Defendants are frequent users of Goose Rocks Beach as described in Plaintiffs’ Complaint and Defendant Town of Kennebunkport’s Answer in this matter.
3. Defendants’ renters are also frequent users of Goose Rocks Beach.
4. Plaintiffs’ Complaint names as Defendants “unascertained persons . . . who claim the right to use or title in Plaintiffs’ Property.”
5. Defendants claim the right to use property allegedly owned by Plaintiffs, and also claim an easement in said property.

6. Defendants have not been served with process in this matter.
7. Defendants have an interest in the property, which is the subject matter of this action.
8. Defendants are impeded and impaired from protecting their interests in this matter as a practical matter unless they are allowed to participate in this action as a party.
9. Defendants have claims and defenses in this matter, which may in some aspects (but not all) be common to the claims and defenses of Defendant, Town of Kennebunkport.
10. There are questions of law and fact in common between the parties and Defendants in this action.
11. The rights of Defendants in the property involved in this matter could be seriously prejudiced if Defendants are not allowed to intervene.
12. There are no parties to this action that are obligated to protect any of Defendants' property and easement rights relating to the property which is the subject matter of this action.

WHEREFORE, Defendants respectfully requests this Court to allow intervention under the provisions of Rule 24, M.R. Civ. P., either as a right under Rule 24(a) or by permission under Rule 24(b), M.R. Civ. P.

DATED this 15 day of December 2009.



Thomas R. McNaboe (MBN 1027)
Attorney for Defendants
Sharon Ann Eon-Harris and John Michie Harris

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IMPORTANT NOTICE

ANY MATTERS IN OPPOSITION TO THE WITHIN MOTION SUBMITTED PURSUANT TO RULE 7(c) OF THE MAINE RULES OF CIVIL PROCEDURE MUST BE FILED NO LATER THAN TWENTY-ONE (21) DAYS AFTER THE FILING OF THE WITHIN MOTION UNLESS ANOTHER TIME IS PROVIDED EITHER BY THE MAINE RULES OF CIVIL PROCEDURE OR SET BY THIS HONORABLE COURT. FAILURE TO FILE TIMELY OPPOSITION WILL BE DEEMED A WAIVER OF ALL OBJECTIONS TO THE WITHIN MOTION, WHICH MAY BE GRANTED WITHOUT FURTHER NOTICE OR HEARING.

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**MEMORANDUM IN SUPPORT OF MOTION TO
INTERVENE UNDER PROVISIONS OF RULE 24,
MAINE RULES OF CIVIL PROCEDURE**

(Title to Real Estate is Involved)

Sharon Ann Eon-Harris and John Michie Harris (hereinafter referred to as “Defendants”), by and through their undersigned counsel,, submit the following Memorandum of Law in support of their Motion to Intervene Under the Provisions of Rule 24 of the Maine Rules of Civil Procedure.

Plaintiffs’ Complaint is, *inter alia*, a Quiet Title Action. Proof of facts necessary in a quiet title action are subject to the provisions of 14 M.R.S.A. §§ 5951, *et seq.* Actual service of process is required upon all known or ascertainable parties (14 M.R.S.A. § 6653). Whether Plaintiffs have complied with the provisions of this statute is a question of fact and law. Defendants were not served with process or named individually in the Complaint. Nevertheless, Defendants claim legal rights to the property in issue. The Plaintiffs seek judgment and relief, EVEN FROM THOSE NOT NAMED IN THE COMPLAINT, OR GIVEN NOTICE BY ACTUAL SERVICE. Defendants have property interests in the property in question and must be allowed to participate in the proceedings to protect those interests. *See Eaton v. Town of Wells*, 760 A.2d 232 (Me. 2000). The Plaintiffs in this action are trying to obtain a judgment

from this Court with respect to their property rights against “unnamed unascertainable parties” (see Plaintiffs’ Complaint). This tactic is questionable, legally and factually, and this Court certainly should allow any “unnamed or unascertainable party” to intervene in this action, such as Defendants. *Eaton, id.*, and *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989).

Additionally, the Court should be aware that while the named Defendant, Town of Kennebunkport, may share common issues of law and fact with Defendants Sharon Eon-Harris and John Michie Harris, there are interests and rights which are not similar. Individual claims of prescription, trespass, overburdenment and public easement are not necessarily common. For example, what if the only named Defendant, Kennebunkport, entered into an agreement with Plaintiffs purporting to restrict the individual rights of Defendants? Clearly, under Rule 24, M.R. Civ. P., Defendants should be allowed to intervene in this matter to protect their individual property rights. Such intervention presumably would be welcome by all existing parties seeking to resolve this dispute without further litigation.

DATED this 15 day of December, 2009.



Thomas R. McNaboe (MBN 1027)
Attorney for Defendants
Sharon Eon-Harris and John Michie Harris

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Defendants)

ORDER

For good cause shown, the Motion to Intervene filed by Sharon Ann Eon-Harris and John Michie Harris is **GRANTED**. Sharon Ann Eon-Harris and John Michie Harris shall be allowed to appear as party Defendants in this action, and Plaintiffs shall answer the Counterclaim of Defendants Sharon Ann Eon-Harris and John Michie Harris pursuant to the Maine Rules of Civil Procedure.

Dated:

Justice, Superior Court