

STATE OF MAINE  
YORK, ss.

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

ROBERT F. ALMEDER and VIRGINIA	)	
S. ALMEDER, et al.,	)	
	)	
Plaintiffs	)	<b>OBJECTION OF DEFENDANTS HARRIS TO</b>
	)	<b>PLAINTIFFS' MOTION TO DISMISS,</b>
v.	)	<b>TO STRIKE AFFIRMATIVE DEFENSES</b>
	)	<b>AND FOR SANCTIONS</b>
TOWN OF KENNEBUNKPORT and	)	
ALL PERSONS WHO ARE	)	(Title to Real Estate is Involved)
UNASCERTAINED,	)	
	)	
Defendants	)	

Defendants Sharon Ann Eon-Harris and John Michie Harris object to Plaintiffs' Motion to Dismiss, to Strike Affirmative Defenses, and for Sanctions, on the following grounds:

1. Insofar as the Counterclaim and Affirmative Defenses of Defendants Sharon Ann Eon-Harris and John Michie Harris (hereinafter "Harris") are the same as those of Defendant Town of Kennebunkport (hereinafter "Town"), Harris adopts and reiterates arguments of Town as set forth in Objections of Town dated January 15, 2010.<sup>1</sup> This adoption applies to Counts III, V, VI, VII and VIII of Counterclaim.

2. With respect to Counts X, XI and XII of Counterclaim of Harris, the Motion to Dismiss for failure to state a claim of Plaintiffs is basically a factual argument and should therefore be treated as a Motion for Summary Judgment. See Rule 12(b), M. R. Civ. P. Such a motion would obviously be premature at this time. The Counterclaims of Harris are short and plain statements for relief alleging Harassment (Count X), Interference with Advantageous

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<sup>1</sup> See statement of Plaintiffs' counsel similarly adopting arguments made vs. Town on p. 2 of their filing against Harris on January 22, 2010.

Economic Relationship (Count XI), and Loss of Value to Real Estate due to Plaintiffs' claims of trespass (Count XII). Certainly the claims are clear to Plaintiffs and comply with the notice requirements of Rule 8(a), M. R. Civ. P. Whether Harris can prove facts sufficient to support these claims is another matter and will be addressed at a later time, whether at trial or by Summary Judgment. The form of pleading dealing with the elements of causes of action has long been replaced under Maine law with so-called "notice pleading" under Rule 8. "A dismissal for failure to state a cause of action is proper only when it appears beyond doubt that claimant is entitled to no relief under any set of facts that might be proven." *Larabee v. Penobscot Frozen Foods*, 486 A.2d 97, 99 (Me. 1984).

3. The arguments by Plaintiffs' counsel to strike certain Affirmative Defenses are simply rhetorical and should be left for later in the proceedings. For example, the defense of Lack of Standing is simply rebutted as "preposterous" (*See* Plaintiffs Motion, p. 3.) Yet, Plaintiffs in *Bell* were required to prove title in fee to the shore or tidal area as a prerequisite to their claim. *Bell v. Town of Wells*, 557 A.2d 168 (Me. 1989). Justice Crowley refused to consider the shorefront owner's claims under the Colonial Ordinance because the owner could not prove a fee interest in the shore. *See Flaherty, et al. v. Muther, et al.*, Cumberland County Superior Court Docket No. RE-08-098, July 30, 2009. Title of Plaintiffs herein is a central issue in this case.<sup>2</sup> Without title to the shore (intertidal), Plaintiffs lack standing.

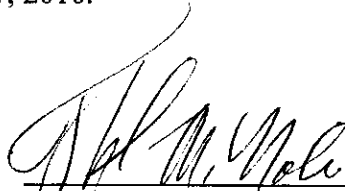
4. With respect to Sanctions, be assured that the Claims and Defenses of Harris are real. This case, for better or worse, has attained considerable notoriety, not only in the local

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<sup>2</sup> Plaintiffs' counsel was critical of my use of the term "Public Trust Doctrine" as distinguished from Colonial Ordinance. (*See* Plaintiffs' Motion, p. 13.) I am certainly not referring to The Public Trust in Intertidal Land Act, 12 M.R.S.A. § 571, which was held unconstitutional in *Bell, id.* I was simply referring to the so-called Colonial Ordinance as creating a public trust in intertidal lands of the State as many commentators do, and as the Court in *Bell* did. *Bell, id.*, at 178. Plaintiffs are arguing semantics. There will be plenty of time to argue substance as discovery establishes the facts of this controversy.

community but in the broader media as well. Certainly residents of Goose Rocks, such as Harris, and the public as well, are concerned, fearful and apprehensive, not only concerning the historic use of their beloved beach as a result of Plaintiffs' claim, but also its effect on tourism and property values as well. Adding to the concern of Harris is the fact that Harris and multiple others similarly situated were not even given notice of this lawsuit by Plaintiffs or served with process, notwithstanding the fact that the Plaintiffs are very well aware of their existence and opposition. The Defenses and Claims set forth by Harris, which are the subject of Plaintiffs' Motion, are not made to obfuscate or unduly delay the proceedings or made without grounds or in bad faith. The Claims and Defenses are serious, considered and intended to prevent the restriction or loss of any rights of Harris without due process.

DATED this 9<sup>th</sup> day of February, 2010.



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