

STATE OF MAINE
YORK, ss.

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

ROBERT F. ALMEDER et al.,)	
)	
Plaintiffs,)	
)	
v.)	PLAINTIFFS' REPLY TO
)	DEFENDANT TOWN OF
TOWN OF KENNEBUNKPORT et)	KENNEBUNKPORT'S OPPOSITION
al.,)	TO PLAINTIFFS' MOTION TO
)	STRIKE OBJECTION OF TOWN OF
Defendants.)	KENNEBUNKPORT TO NOTICE OF
)	PUBLICATION
)	
)	
)	
)	(Title to Real Estate Involved)

In its opposition to plaintiffs Robert F. Almeder et al.'s motion to strike the objection of the Town of Kennebunkport ("Town") to the plaintiffs' notice of service by publication, the Town repeats almost verbatim its original objection, adding little new to its arguments. For that reason, this reply will not rehash the facts and legal argument set forth in plaintiffs' motion to strike. Plaintiffs reiterate that they have followed the requisites of the quiet title statute, 14 M.R.S. § 6653 and Maine Rule of Civil Procedure 4(g) with regard to service of their complaint and therefore urge this court to grant their motion to strike.

The Town does raise one new argument in its opposition that plaintiffs will address, namely the applicability of the Law Court's *dicta* in Eaton v. Town of Wells, 2000 ME 176, ¶ 47, 760 A.2d 232, 248 concerning the service of the quiet title complaint in that action on all "supposed known claimants residing either in the State or outside the

State.” Id. Though the Eaton court opined that the 44 beachfront lot owners in that action were ascertainable and should have been named in the complaint and “service other than by publication should have been attempted,” the Law Court also affirmed the judgment of the Superior Court, which adjudicated the case despite the apparent flaw in service by the Eaton plaintiffs. Specifically, the Law Court in Eaton upheld the trial court’s findings regarding the Eaton plaintiffs’ holding of the record title to their property abutting Wells Beach. Id. at ¶ 17, 760 A.2d at 240. Thus despite its commenting on the Eatons’ service by publication, the Law Court did not find that the property claims at issue in the Eaton case, claims that bear some resemblance to those at issue in this case (claims for adverse possession, prescriptive easement, dedication and acceptance, for example), could not be adjudicated without all property owners along Wells Beach participating in the suit.

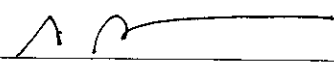
Similarly, this Court should find that this suit can proceed without the mandatory service of the suit on all property owners along Goose Rocks Beach. In addition to adequately effecting service pursuant to 14 M.R.S. § 6653, and as recited in its underlying motion, plaintiffs exercised due diligence in canvassing their neighbors in advance of filing suit in order to apprise them of it and seek their participation. The Town on its own initiative, though also suggested by plaintiffs, prominently published the complaint on its website, where it resides today as part of an advocacy campaign by the Town. See http://www.town.kennebunkport.me.us/Public_Documents/index (last visited January 27, 2010). Thus, between the plaintiffs’ own initiatives prior to filing suit, the publication of the notice of the suit three times in the local paper, and the Town’s own

publicizing of the suit on its website, any potential defendants to this suit have been adequately noticed.

Plaintiffs would also point out that as of now, in addition to the Town's answer and counterclaim, motions to intervene and/or answers and counterclaims have been filed by the State of Maine, Sharon-Eon Harris and John Michie Harris, Alexander Lachiatto and Judith Lachiatto, and the Surfrider Foundation. The latter organization also has a website devoted to this suit. See <http://www.surfrider.org/nne/index.php?page=124> (last visited January 27, 2010). This breadth of participation in the suit lends credence to the plaintiffs' contention that its service by publication, conducted in accordance with 14 M.R.S. § 6653 and Maine Rule of Civil Procedure 4(g) was effective.¹

For all of the reasons recited above and in their original motion to strike, plaintiffs Robert F. Almeder et al. respectfully request this court grant their motion to strike defendant Town of Kennebunkport's objection to service of notice by publication.

Dated: January 29, 2010



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¹ See also Brian MacQuarrie, *A Line in the Sand*, BOSTON GLOBE, January 10, 2010, http://www.boston.com/news/local/maine/articles/2010/01/10/homeowners_draw_line_in_the_sand_over_beach_access/ (last visited January 28, 2010) for coverage of the suit in a major metropolitan newspaper's Sunday edition, front page.