

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 )

**REPLY OF DEFENDANT TOWN OF  
KENNEBUNKPORT IN SUPPORT  
OF TMF INTERVENORS'  
MOTION TO INTERVENE**

Defendant Town of Kennebunkport hereby joins the Reply Memorandum filed by Defendant TMF Intervenors, as well as the original Motion to Intervene, and Defendant Town of Kennebunkport incorporates the Reply Memorandum and Motion to Intervene by reference, and further states as follows:

In their Opposition to TMF Intervenors' Motion to Intervene, Plaintiffs mistakenly point to the September 14, 1987 decision of Justice Brodrick in *Bell v. Town of Wells*, Docket No. CV-84-125, in arguing that TMF Intervenors should somehow be treated like second-class parties in this case. Plaintiffs go so far as to suggest that the TMF Intervenors, all of whom have claimed a particularized interest in Goose Rocks Beach on par with the interest claimed by Plaintiffs themselves, only be allowed to participate as non-party, *amicus curiae*.

Plaintiffs' argument constitutes a misapplication of the *Bell* decision. Regardless, the decision of the Law Court in *Eaton v. Town of Wells*, 2000 ME 176, ¶ 47, 760 A.2d 232, 248, demonstrates why Plaintiffs' position must fail.

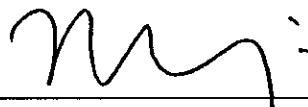
In *Eaton*, the Law Court determined that ascertainable parties with an interest in the beach should have been properly notified of, and included in, the action. When the Plaintiffs, in *Eaton*, attempted to notify and bind interested and ascertainable parties as defendants by publication, the Law Court held that the notice by publication was inadequate; therefore, the Court determined that such parties had not been properly included in the action, were not bound by the Court's decision, and could not have their property rights adjudicated by the Court. *See id.* Similarly, in this case, interested and ascertainable parties must be properly notified by Plaintiffs and allowed to participate fully in order for their property rights to be adjudicated.

Plaintiffs' effort to prevent interested and ascertainable parties from joining the lawsuit is eerily similar to their efforts to exclude people from the reasonable recreational use of Goose Rocks Beach, and it is especially disconcerting given that it is Plaintiffs that chose to name interested parties who "claim the right to use or title in" portions of Goose Rocks Beach in their Complaint. By bringing the lawsuit against "all persons are unascertained...who claim the right to use or title in" portions of Goose Rocks Beach, Plaintiffs cast a very wide net. In essence, Plaintiffs invited any and all parties who claim an interest in Goose Rocks Beach to join the lawsuit or run the risk of having their property rights be determined without their participation. Now that interested parties want to participate in the lawsuit, however, Plaintiffs seek to exclude them.

Plaintiffs cannot have it both ways. Their position with respect to the notice of publication on the one hand, and their opposition to the intervention of interested parties on the other, is completely untenable.

WHEREFORE, Defendant Town of Kennebunkport respectfully requests that the Motion to Intervene of TMF Intervenors be granted and that the Court enter such other and further relief as justice may require.

Dated: July 2, 2010



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