

STATE OF MAINE
YORK, ss.

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

ROBERT F. ALMEDER and VIRGINIA S.)
ALMEDER, et al.,)
Plaintiffs,)

vs.)

TOWN OF KENNEBUNKPORT and)
ALL PERSONS WHO ARE)
UNASCERTAINED,)
Defendants)

Title to Real Estate Involved

**DEFENDANTS' RESPONSE TO
PLAINTIFFS MOTION TO STRIKE**

NOW COME the named Defendants Kendall Burford and Linda W. Burford (herein the "Defendants"), and respond as follows to the Plaintiff's Motion (dated November 19, 2010) to Strike Defendants. The Burfords filed a new answer which stated many more facts showing that they had an individualized case and were not just speaking in terms where they had individual claims with special facts. The new Complaint was filed which alleged facts that would show an individual interest on the part of Linda Doe now Linda Burford and Kendall Burford, her husband.

1. The new Complaint states that Orestes Doe, grandfather of Linda Burford and Mabel P. Doe, grandmother of Linda Burford bought their property in the year 1903. This property included most of the land between New Biddeford Road, Kings Highway and Beaver Pond Creek. The property located at 304 Kings Highway now 1 New Biddeford Road has been in the possession of the Doe family for over 100 years.
2. During this period of 100 years, the house was inhabited by Orestes Doe, Mabel Doe, Kenneth Doe, Lila Doe and their child, Linda Doe now Linda Burford.
3. The house has continuously been inhabited or lived in by the Doe family since 1903.

4. The Does continually used the beach known as Goose Rocks Beach for their personal entertainment and enjoyment. This included the use of the intertidal and the upper dry sand beaches. The Defendants can provide pictures that show Linda Burford's father and his two brothers using the intertidal area when they were approximately 7 to 9 years old. Documents which would show Linda Burford, formerly Linda Doe, using the beach, intertidal and upper dry sand areas.

5. The Does have used and lived in the house at 1 New Biddeford Road also known as 304 Kings Highway since 1903. In some years it was used seasonally but in many years it was occupied most of the year.

6. Linda Doe has used the beach since 1942 and has come to the beach every year for at least one month and in most years more than that. When Judge Doe died, his wife Mabel Doe inherited the property. When Mabel Doe died her son Kenneth Doe inherited the property. When he died, Lila Doe inherited the property. When Lila Doe died, Linda Doe, now Linda Burford inherited the property located at 1 New Biddeford Road or 304 Kings Highway.

7. Lila and Kenneth Doe moved to the house upon Kenneth Doe's retirement and made that home their year round residence except for a period of time when they would go south for the winter.

8. Linda Doe and Kendall Burford and their children, Elizabeth Burford and Kendall Edgar Burford spent their summers in Maine at the house.

9. The use of the house included the use of the beach, access being a road called Jeffer's Way or the Right of Way. At the end of the paved portion of the Right of Way there is a sand portion with sea grass on either side which led to access and still leads to access to the entire beach.

10. Over the years the Does would go south for the winter and that the house was used primarily by them for 9 months of the year. During these times Linda, their daughter and Kendall would come up during the summer, spring and/or fall and stay with them for weekends and/or weeks at a time. When Kenneth Doe died he left the house to

his wife. Lila Doe continued to live at 1 New Biddeford Road (formerly 305 Kings Highway). Lila Doe's primary residence was 1 New Biddeford Road which she would leave only for visits to her daughter, Linda Burford's home or to visit friends in the south.

11. When Lila Doe died, Linda Doe inherited the property which she has been using since 1942, mostly in the summer time. Mr. Burford closed down his practice of law and moved with his wife, dogs, etc. to live in the house which is now 1 New Biddeford Road.

12. The Plaintiffs stated that there is no evidence that Kendall or Linda Burford had used the beach for a sufficient time to establish an easement by prescription. The Plaintiffs explained that the Burfords are merely alleging that they have established an easement by prescription over the dry sand by open and notorious use without permission for over 20 years. The Burfords are claiming that individually they have a prescriptive easement by using the property for over 20 years continuously without permission the use of the property in the intertidal area was to sunbathe, swim in the intertidal zone, walk up and down the entire length of the beach from river to river and especially in all other matters. Those activities took place in the dry sand area.

13. During this period of time there was also waterskiing at what was called Sand Point. People would bring their boats over and many people would waterski in the river or the bay depending on the tide.

14. The Burfords also used the area to take walks with their children, by themselves or with each other and use the intertidal areas in all ways.

15. During the entire time that the Does and the Burfords have used Goose Rocks Beach no one has ever complained or ever told them to get off and at all times the beach was used in open and obvious sight to the owners. No statement of permission or threat was ever given.

16. On the Plaintiffs Defenses and Counterclaims, the Plaintiff states even if the Burfords are claiming a private prescriptive easement they cannot prevail under applicable law. The Burfords are claiming that they have obtained an easement by

prescription of use of the dry sand and the entire upper beach area and intertidal area over a period of 40 years.

17. The Burfords agree there is case law that states that if there is a public easement and a private easement over a piece of property, the public easement takes precedent.

18. The Burfords are claiming they have their own right by their own use of the various intertidal spaces to over 20 year non-reproached, non-prohibited use of the dry sand and of the intertidal area. The Town's burden of proving a public prescription easement is far more difficult.

19. The Burford's claim should be upheld if the Town was not able to prove a public easement.

20. Linda Burford and Kendall Burford have used the various areas for over 20 years. If the Town was unable to prove that they have a public easement then it would be left to the individuals, such as the Burfords to prove that they have a private prescriptive easement.

21. The Burfords claim that they meet all the obligations of a private prescriptive easement but have insufficient knowledge to establish whether or not the Town has proven a prescriptive easement over the necessary parts of the beach.

22. The Burfords have alleged that they have used the beach in such ways as to establish an easement by prescription over the intertidal areas and over the dry sand areas.

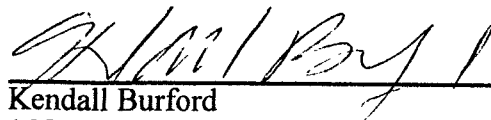
23. The Plaintiffs claim the Burfords have not differentiated their use in any manner than that of the general public. The general public did not stay in those places near the dunes.

Conclusion: The Burfords have an interest in getting their prescriptive easement for those areas of the intertidal use and for those areas of the dry sand in particularly the dry sand to the entranceway to the beach on Jeffer's Way. The Plaintiffs claim that the Burfords have already been adjudicated not to be separate from the general public. The Burfords feel that decision was on an earlier matter where the court ruled in error. The

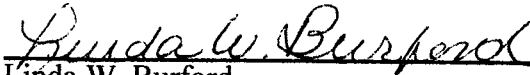
Burfords state that their town may have a public easement and that they also have a prescriptive easement by personal use of the beach.

WHEREFORE, the Plaintiffs, Linda W. Burford and Kendall Burford respectfully ask that the Court deny the Motion to Dismiss.

Dated this 6th day of December, 2010



Kendall Burford
1 New Biddeford Road
Kennebunkport, ME 04046



Linda W. Burford
1 New Biddeford Road
Kennebunkport, ME 04046