

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' SECOND RESPONSE TO
PLAINTIFFS MOTION TO STRIKE AND
OPPOSITION TO SUMMARY
JUDGMENT**

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 Plaintiff claims that the Burfords do not have an easement by prescription because it is united with a public easement to the public in general. The Burfords claim that they have an individual right and are not part of the just the general public.

1. Linda Burford, formerly Linda Doe, has been using this property since she was born in excess of 20 years. Her family has been using the beach and the public way to get to the beach by using Jeffrey's Way since the time they purchased their property in 1903.

2. Once the Does or Linda Doe in particular and her husband Kendall Burford reached the sand they would use the beach in their own way and had nothing to do with the general public except that the general public also used that same entrance way to get to the beach.

3. That entrance way should no longer be in question based upon the length of time it has been used by the Does, in excess of 100 years.

4. The Burfords used the beach as if it were their own. They decided where they would sit on the sand, which was mostly on the dry sand, and the intertidal zone in which they walked their dogs and enjoyed friends, picnics, games and sports.

5. The Plaintiffs seem to claim that the Burfords are part of a public easement. The Burfords are not aware of any claim they have made to be part of a public easement. They have a prescriptive easement over certain areas which have been described as the dry sand and intertidal area. They walk their dog on the beach at all times of the year from the Little River to the Batson's River. Walks are usually either in the upper part of the intertidal area and/or in the dry sand.

6. It has been near 109 years that the Does have been using the beach. There are pictures that show Linda Doe's father and two brothers using the intertidal area when they were approximately 3 to 4 years old.

7. There are documents which would show Linda Burford, formerly Linda Doe, using the beach and intertidal and upper dry sand areas. The Does have used and lived in the house at 1 New Biddeford Road, also known as 304 Kings Highway since 1903. The first house was burned in the fire of 1947 and the second house was torn down when a new one was built approximately in 2008.

8. Linda Doe has used the beach since 1942 and has come to the beach every year for at least one month, in most years more than that. When Judge Doe died his wife Mabel inherited the property.

9. When Mabel Doe gave her son Kenneth Doe the property and then when he died, his wife Lila Doe inherited the property.

10. When Lila Doe died, her daughter Linda Doe inherited the property located 1 New Biddeford Road, also known as 304 Kings Highway. At the time Linda Doe inherited the property, Jeffrey's Way was an absolute right of way being used by other people, not in coordination with each other but by being an access road to get to the beach. Once the people got to the beach they all went on their own way.

11. Linda Doe and her husband Kendall Burford used primarily the upper dry sand from Jeffrey's Way all the way to the river. While at the river they would swim, waterski or walk back to the other end of the beach on many occasions.

12. Linda Doe and her husband would use the upper dry sand area to put down blankets and to talk with their friends. The beach was a prime reason for the Doe's to come to Kennebunkport. They sunbathed and played in the upper sand, had picnics in the upper sand, and conversed with friends.

13. Picnics and sunbathing were primarily done in the dry sand area. There were times there would be baseball games played and friends would stop by and go down to the beach and play in the intertidal area and also to take the dogs and walk from one end of the beach to the other. During the summer it would be done very early in the morning. During the winter they would come and walk both ways back and forth.

14. The Plaintiff's filed a motion to dismiss on November 19, 2010.

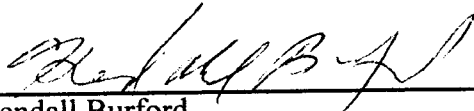
15. The Defendants filed an answer to that Motion to dismiss. The court and the parties turned towards either discovery and/or gathering of information taking depositions and nothing apparently went on during this period of time except what would be shown by the discovery.

16. The Plaintiffs have filed a Motion for Summary Judgment and the Town of Kennebunkport has filed their Motions for Summary Judgment.

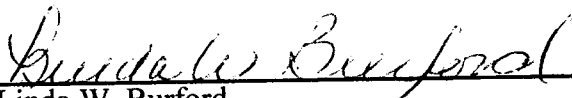
Conclusion: The Burfords never requested a public easement since the places that they went and stayed open and obvious to the owners of the property was under a claim of rights that they have to go use those particular areas. They were never given permission, they were never denied permission nor did they ever ask for permission to use some of the upper sand areas which are now in question. The Burfords would sometimes entertain relatives of theirs at the beach but by open and notorious use without permission for over 20 years. The Burfords are claiming they have a prescriptive easement by using the property for over 20 years without permission.

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

Dated this 29th day of June, 2011



Kendall Burford
1 New Biddeford Road
Kennebunkport, ME 04046



Linda W. Burford
1 New Biddeford Road
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CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2011, I caused to be served by placing a copy of the foregoing document in the U.S. Mail, postage-prepaid, and addressed to the following:

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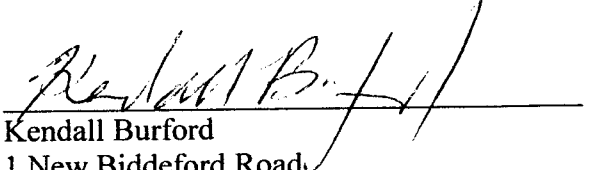
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