

STATE OF MAINE
YORK, ss.

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

Robert F. Almeder, et al.)	
Plaintiffs,)	FIRST AMENDMENT TO PLAINTIFFS'
)	COMPLAINT FOR DECLARATORY
)	JUDGMENT AND QUIET TITLE
v.)	
)	
TOWN OF KENNEBUNKPORT, et al.)	
Defendants.)	(Title to Real Estate Involved)
)	

Pursuant to the Court's March 8, 2010 Order granting their Motion to Amend, Plaintiffs hereby amend their original Complaint by adding only two new paragraphs, 27-1 and 27-2, stated in full below. The two additional paragraphs are the only changes made to the Complaint adding two additional property owners as ordered who make all the same allegations and claims as in the original Complaint and all the answers, prayers for relief, and defenses filed to date shall remain in full force and effect.

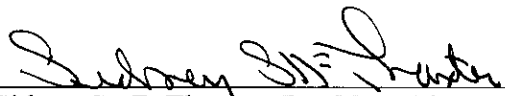
PARTIES

27-1. Louise S. De Mallie, as Trustee of the Louise S. De Mallie Revocable Trust u/a dated November 12, 2002, was the owner of record of real property situated at 287 Kings Highway, Kennebunkport, County of York, State of Maine, by virtue of a deed recorded in the York Registry of Deeds, Book 12173, Page 221 and Book 14675, Page 862. Louise S. De Mallie died November 16, 2009 and plaintiffs Anne E. Robinson, Thomas D. Robinson, II, and Christian Barner, as successor trustees of the Louise S. De Mallie Revocable Trust u/a dated November 12, 2002 are the record owners of the property at 287 Kings Highway. True copies of the referenced deeds are attached as Exhibit 25 and Exhibit 25-1 to this Complaint as amended.

27-2. Plaintiffs Steven H. Wilson and Shawn B. McCarthy, Trustees of the Twombly Family Trust u/d/t dated January 24, 2002, as amended, are owners of real property situated at 165 Kings Highway, Kennbunkport, County of York, State of Maine, by virtue of a deed recorded in the York Registry of Deeds, Book 15516, Page 112. A true copy of the deed is attached as Exhibit 26 to this Complaint as amended.

The two new parties hereby adopt all the allegations and claims made in the original Complaint.

Dated: April 8, 2010


Sidney St. F. Thaxter, Bar No. 1301
David P. Silk, Bar No. 3136
Susan E. Schorr, Bar No. 9865
CURTIS THAXTER STEVENS BRODER
& MICOLEAU LLC
One Canal Plaza / P.O. Box 7320
Portland, Maine 04112-7320
(207) 774-9000

Attorney for plaintiffs

WARRANTY DEED

LOUISE S. DE MALLIE, *tr/w/a* LOUISE S. ROBINSON, of Kennebunkport, Maine, for consideration paid, hereby grants to LOUISE S. DE MALLIE, Trustee of THE LOUISE S. DE MALLIE REVOCABLE TRUST, *w/a* dated November 12, 2002 with a mailing address of 287 Kings Highway, Kennebunkport, ME 04046, with WARRANTY COVENANTS, the following real estate in the Town of Kennebunkport, County of York, and State of Maine:

See Exhibit A attached hereto and made a part hereof.

Witness my hand and seal this 12 day of November, 2002.

In presence of:

Barbara I. Belik
Barbara I. Belik

LOUISE S. DE MALLIE
LOUISE S. DE MALLIE *tr/w/a*
LOUISE S. ROBINSON

NO RE TRANSFER TAX PAID

STATE OF MAINE
COUNTY OF YORK, ss.

November 12, 2002

Personally appeared the above-named LOUISE S. DE MALLIE *tr/w/a* LOUISE S. ROBINSON and acknowledged the foregoing instrument to be her free act and deed.

Before me.

Judith A. Desrosiers
Notary Public
Print Name
My Commission Expires: _____

200210 000 76

JUDITH A. DESROSIERS
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES OCTOBER 7, 2007

BK 12173PG221

EXHIBIT A

**Louise S. De Mallie f/k/a Louise S. Robinson
To
Louise S. De Mallie, Trustee**

PARCEL 1

A certain lot or parcel of land, together with the buildings thereon, situated in that part of the Town of Kennebunkport, known as Goose Rocks Beach, bounded and described as follows:

Beginning at an iron pipe driven into the ground on the southeasterly side of the Kings Highway at the northerly corner of a 20 foot reserved way lying between the land herein described and land formerly of one Fessenden, now of one Harry Hall III; thence North 58° 30' East by said Highway 45.50 feet to an iron pipe driven into the ground; thence North 65° 55' East by said Highway 151.96 feet to an iron pipe driven into the ground and land of one Kelsey; thence South 0° 52' East partly by said land of Kelsey and partly by land of one Clark 207.9 feet to an iron pipe driven into the ground near the southeasterly face of the sea wall; thence South 80° 51' West along the southeasterly side of said sea wall 94.47 feet to a drill hole in the concrete top of said wall and said reserved way, said drill hole being 54.0 feet southeasterly of the underpinning at the westerly corner of the house standing on land hereby conveyed and being 61.14 feet southwesterly of the underpinning at the easterly corner of said house; thence North 32° 30' West by said reserved way 162.64 feet to the point of beginning.

Together with all right, title and interest, in and to land situated at said Goose Rocks Beach in said Town of Kennebunkport which lies between the South 80° 51' West course along said sea wall mentioned above and the Ocean and between said reserved way mentioned above and said land of Clark.

The above bearings refer to the 1960 Magnetic Meridian.

Being the same premises conveyed by H. Glen Caffrey, Executor of the Estate of Mildred MacDonald to Louise S. Robinson by deed dated February 12, 1969 and recorded in the York County Registry of Deeds in Book 1836, Page 654.

PARCEL 2

A certain lot or strip of land at Goose Rocks Beach in the Town of Kennebunkport, County of York, and State of Maine, being twenty feet in width running Southwesterly from King's Highway to the sea wall, being more particularly bounded and described as follows:

Beginning at a drill hole in the concrete top of said sea wall at the Southwesterly corner of land of Louise S. De Mallie f/k/a Louise S. Robinson, said drill hole being 54.0 feet southeasterly of the underpinning at the westerly corner of the house standing on said Robinson's land and being 61.14 feet southwesterly of the underpinning at the easterly corner of said house; thence North 32°

BK 12173PG222

EXHIBIT A

**Louise S. De Mallie *f/k/a* Louise S. Robinson
To
Louise S. De Mallie, Trustee**

30' West by said Robinson's land 162.64 feet to an iron pipe driven into the ground at the Northwestern corner of said Robinson's land and in the Southeastery side line of King's Highway; thence Southwesterly twenty feet or more by said King's Highway to an iron pipe driven into the ground at the Northeastery corner of land recently owned by Harry A. Hall III; thence South 32° 30' East by land formerly of said Hall One Hundred thirty-four and forty-three hundredths (134.43) feet to an iron pipe driven into the ground on the Southeastery side of a stone wall at the sea wall, so-called; thence Northeastery by said sea wall twenty feet (20') or more to the point of beginning.

Also all my right, title and interest in and to an adjoining parcel of land bounded as follows: Northwesternly by said above described 20-foot wide strip; Southeastery by the Atlantic Ocean; Northeastery by the extension in a southeasterly direction of the Northeastery side line of the above described strip; and Southwesterly by the extension in a southeasterly direction of the Southwesterly side line of the above described strip.

Being the same premises conveyed by William E. Prescott to Louise S. Robinson by deed dated May 6, 1972 and recorded at the York County Registry of Deeds in Book 1949, Page 101.

This conveyance is made subject to the rights given by Elbridge G. Proctor to Nathaniel M. Lowe in deed dated May 26, 1882 as recorded in said Registry in Book 416, Page 283; said Lowe property having been subsequently conveyed by Oscar G. Hanson et ux to Warren F. Libby and Mabel H. Libby as joint tenants by deed recorded in Book 1072, Page 495

Louise S. Robinson, LLC
12 Parkland Road
Kennebunk, ME 04041

3/19 →

REC. CLK YORK S.S.
2002 NOV 13 AM 11:46

COPY

Doc# 2005069982
BK 14675 Pg 0862 - 0865
Received York SS
11/18/2005 12:21PM
Debra L. Anderson
Register of Deeds

WARRANTY DEED

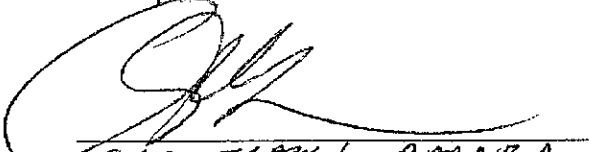
LOUISE S. De MALLIE, f/k/a/ LOUISE S. ROBINSON, of Kennebunkport, Maine, for consideration paid, hereby grants to LOUISE S. De MALLIE, Trustee of THE LOUISE S. De MALLIE REVOCABLE TRUST, u/a dated November 12, 2002, with a mailing address of 287 Kings Highway, Kennebunkport, Maine 04046, with WARRANTY COVENANTS, the following real estate in the Town of Kennebunkport, County of York and State of Maine:

See Exhibit A attached hereto and made a part hereof.

LOUISE S. De MALLIE declares that this property was acquired from her predeceased husband, William W. De Mallie, who died intestate without issue on November 25, 1980 in the State of Florida. A copy of his death certificate is attached hereto as Exhibit B and incorporated herein by reference. Under Maine law, all of William W. De Mallie's interest in the parcel herein conveyed devolved to the Grantor herein as his surviving spouse.

Witness my hand and seal this 3rd day of November, 2005.

In the presence of:


CHRISTIAN L. BARNARD


LOUISE S. De MALLIE
f/k/a LOUISE S. ROBINSON

STATE OF MAINE
COUNTY OF YORK, ss

November 3, 2005

Personally appeared the above-named LOUISE S. De MALLIE, f/k/a LOUISE S. ROBINSON, and acknowledged the foregoing instrument to be her free act and deed.

Before me,


Notary Public

Michelle D. Cote
A Notary Public of Maine
My Commission Expires Sept. 23, 2008

EXHIBIT 25-1

NO R.E. TRANSFER TAX PAID

Poor Copy At Time Of Recording

SEAL

4-99 → BEGEN & PARKINSON AND RD KENN ME 04043

EXHIBIT A

A certain lot or parcel of land situated in that part of the Town of Kennebunkport known as Goose Rocks Beach and bounded and described as follows:

Beginning on the Southerly side of the King's Highway, so called, at the Northwesterly corner of land of Louise E. De Mallie said point bears South $65^{\circ} 55'$ West twenty seven and $20/100$ (27.2) feet from an iron pipe driven into the ground on the Southerly side of said Highway at the Northwesterly corner of land now or formerly of one Kelsey; thence running South $0^{\circ} 52'$ East by said land of Louise E. De Mallie and by a line which is parallel with and twenty five and $00/100$ (25) feet Westerly of the Westerly side of said land of said Kelsey, seventy (70) feet to an iron pipe driven into the ground; thence running South $24^{\circ} 19'$ West by land of said Louise E. De Mallie, forty seven (47) feet to an iron pipe driven into the ground; thence running South $69^{\circ} 51'$ West by land of said Louise E. De Mallie, thirty eight and $52/100$ (38.52) feet to an iron pipe driven into the ground; and to other land of the grantee; thence running North $23^{\circ} 21'$ West by said other land of the grantee, ninety two and $90/100$ feet to an iron pipe driven into the ground and said Highway; thence running North $65^{\circ} 55'$ East by said Highway, one hundred (100) feet to an iron pipe driven into the ground and point of beginning.

Containing 7262 square feet. The above bearings refer to 1960 magnetic meridian.

Being the same premises conveyed by the said Campbell De Mallie to William W. De Mallie, a/k/a William D. De Mallie, by deed dated May 25, 1976 and recorded in the York County Registry of Deeds, Book 2132, Page 750. Said William W. De Mallie died intestate in the State of Florida on November 25, 1980 without children and under Maine law, the Grantor herein inherited all of his interest in the parcel herein conveyed as his surviving spouse.

CLB
Bergen & Parkinson, LLC
62 Portland Road
Kennebunk, ME 04043

OFFICE of VITAL STATISTICS

CERTIFIED COPY

EXHIBIT

16302

CERTIFICATE OF DEATH
FLORIDA

OCCIDENT NAME FIRST: William W. DeMallie MIDDLE: W. LAST: DeMallie		SEX: Male	DATE OF DEATH: Nov 25, 1980
RACE: White	AGE: 64	DATE OF BIRTH: Nov 18, 1916	COUNTY OF DEATH: Dade
CITY/TOWN OF LOCATION OF DEATH: Miami	HOSPITAL OR OTHER INSTITUTION: Jackson Memorial Hospital		PLACE OF DEATH: Emergency
STATE OF BIRTH: Massachusetts	CITIZEN OF WHAT COUNTRY: USA	MARRIED, NEVER MARRIED, WIDOWED, DIVORCED: Married	SURVIVING SPOUSE: Mimi Griot
SOCIAL SECURITY NUMBER: 20-20-3751	USUAL OCCUPATION: Sales Manager	KIND OF BUSINESS OF DECEASED: Bakery	
RESIDENCE STATE: Florida	COUNTY: Dade	CITY/TOWN/PLACE OF DEATH: Miami	STREET AND NUMBER: 2121 No. Bayshore Dr #502
OTHER NAME: (Unobtainable)		MOTHER: (Unobtainable)	FATHER: (Unobtainable)
INFORMANT NAME: Mimi DeMallie		MAILING ADDRESS: 2121 North Bayshore Drive #502 Miami Fla.	
BURIAL CREMATION REMOVAL OTHER: Cremation		CEMETERY OR CREMATORY NAME: Van Orsdel Crematory	
FUNERAL DIRECTOR: Donald Van Orsdel		ADDRESS: 3333 N.E. 2 Avenue Miami Fla. 33137	
DATE SIGNED: Nov 26, 1980	HOUR OF DEATH: 5:14	DATE SIGNED: Nov 26, 1980	HOUR OF DEATH: 5:14
NAME AND ADDRESS OF CERTIFIER: Roger E. Mittleman, M.D.		MEDICAL EXAMINER: (Signature)	
REGISTRAR: Roger B. Roberts	Sub-reg	DATE RECEIVED BY REGISTRAR: Nov 28, 1980	

VOID IF ALTERED OR ERASED

VOID IF ALTERED OR ERASED

Roger B. Roberts
State Registrar

Date Issued: SEP 14 2005

THE ABOVE SIGNATURE CERTIFIES THAT THIS IS A TRUE AND CORRECT COPY OF THE OFFICIAL RECORD ON FILE IN THIS OFFICE.
WARNING: THIS DOCUMENT IS PRINTED OR PHOTOCOPIED ON SECURITY PAPER WITH A WATERMARK OF THE GREAT SEAL OF THE STATE OF FLORIDA ON THE FRONT, AND THE BACK CONTAINS SPECIAL LINES WITH TEXT AND SEALS IN THERMOCHROMIC INK.



B1994463

CERTIFICATION OF VITAL RECORD



* 1 9 9 4 4 6 3 *

OH FORM 1946 (09-04)

OFFICE OF VITAL STATISTICS

CERTIFIED COPY

EXHIBIT

16302

CERTIFICATE OF DEATH

FLORIDA

DECEASED - NAME: WILLIAM W. DeMallie, JR. SEX: Male, DATE OF BIRTH: Nov. 25, 1980

RACE: White, AGE: 64, SEX: Male, MARRIAGE STATUS: Single, DATE OF MARRIAGE: Nov. 18, 1916, PLACE OF BIRTH: Miami, Dade

CITY/TOWN OF LOCATION OF DEATH: Miami, HOSPITAL OR OTHER INSTITUTION: Jackson Memorial Hospital, PLACE OF DEATH: Emergency Rm

STATE OF BIRTH: Massachusetts, CITIZEN OF WHAT COUNTRY: USA, MARRIED: NEVER MARRIED, SURVIVING SPOUSE: Mimi Guio

SOCIAL SECURITY NUMBER: 0012-01-8751, USUAL OCCUPATION: Sales Manager, EMPLOYERS OF INDUSTRY: Bakery

RESIDENCE STATE: Florida, COUNTY: Dade, CITY/TOWN OF RESIDENCE: Miami, STREET AND NUMBER: 2121 North Bayshore Dr, #502, RESIDENCE CITY: Miami, YES

FATHER: (Unobtainable), MOTHER: (Unobtainable)

DECEASED'S MAILING ADDRESS: Mimi DeMallie, 2121 North Bayshore Drive, #502, Miami, Fla.

FINAL CREMATION, REMOVAL, OTHER: Cremation, CEMETERY OR CREMATORY NAME: Van Orsdel Crematory, ADDRESS: Miami, Florida

REGISTRAR: Ronald Van Orsdel, FUNERAL HOME: Van Orsdel Northside, ADDRESS: Kenera Chapel, 3333 N.E. 2 Avenue, Miami, Fla., 33137

SIGNATURE AND TITLE: [Signature], DATE SIGNED: Nov. 26, 1980, HOUR OF DEATH: 11:14

NAME OF ATTENDING PHYSICIAN: Roger E. Mittleman, M.D., MEDICAL EXAMINER: [Signature]

REGISTRAR: Joyce B. Roberts, Sub-Reg., DATE RECEIVED BY REGISTRAR: Nov. 28, 1980

REGISTRAR: [Signature], State Registrar, Date Issued: SEP 14-2005

THE ABOVE SIGNATURE CERTIFIES THAT THIS IS A TRUE AND CORRECT COPY OF THE OFFICIAL RECORD ON FILE IN THIS OFFICE. THIS DOCUMENT IS PRINTED OR PHOTOCOPIED ON SECURITY PAPER WITH A WATERMARK OF THE GREAT SEAL OF THE STATE OF FLORIDA ON THE FRONT, AND THE BACK CONTAINS SPECIAL LINES WITH TEXT AND SEALS IN THERMOCHROMIC INK.

B1994463

CERTIFICATION OF VITAL RECORD

END OF DOCUMENT



* 1 9 9 4 4 6 3 *

DL FORM 1946 (08-04)

VOID IF ALTERED OR ERASED

RESERVE NO COPY FOR VITAL



TRUSTEE'S DEED

STEVEN H. WILSON and SHAWN B. McCARTHY, Co-Trustees of REVOCABLE LIVING TRUST AGREEMENT OF CAROLYN W. TWOMBLY, dated August 18, 1983, as amended, with a mailing address of 175 Federal Street, 14th Floor, Boston, MA 02110, by the power conferred by law, and every other power, for consideration paid, grant to STEVEN H. WILSON and SHAWN B. McCARTHY, Co-Trustees of THE TWOMBLY FAMILY TRUST, of 175 Federal Street, 14th Floor, Boston, MA 02110, a certain lot or parcel of land with the buildings thereon situated at Goose Rocks Beach in the Town of Kennebunkport, County of York and State of Maine, bounded and described as follows:

Lot numbered one (1) as delineated on Plan number one (1) of cottage lots, Estate of George F. Piper, Beachwood, Kennebunkport, Maine, drawn by Libby and Johnson, Engineers, November, 1924, and recorded in Plan Book 10, Page 6 at the York County Registry of Deeds, said lot is bounded and described as follows:

COMMENCING at a point on the southeasterly side of the Town Road, so-called, said point being at land now or formerly of Emmons' heirs and the westerly corner of the lot herein conveyed;

Thence northeasterly by said Town Road one hundred (100) feet to lot numbered two (2) on said Plan;

Thence southeasterly by said lot numbered two (2) on said plan one hundred thirteen and 45/100 (113.45) feet to a stake and the beach;

Thence southwesterly by the beach one hundred one and 4/10 (101.4) feet to land of said Emmons' heirs;

Thence at a right angle or nearly a right angle by land of said Emmons' heirs one hundred and thirteen (113) feet to the aforesaid Town Road and the point of beginning.

Together with all rights of Carolyn W. Twombly in and to the beach in front of said lot as was conveyed by deed recorded at Book 7182, Page 26 at the York County Registry of Deeds.

For reference see deed from George W. Wilson, 2nd, Personal Representative of the Estate of Carolyn W. Twombly to John T. Collins and George W. Wilson, 2nd, Trustees w/a of Carolyn W. Twombly dated August 18, 1983, as amended, dated September 1, 1994 and recorded in Book 7182, Page 26 at the York County Registry of Deeds.

Shawn B. McCarthy is a successor co-trustee as referenced at Book 14128, Page 601 at the York County Registry of Deeds. Steven H. Wilson is also a duly appointed successor trustee to said trust; for reference see acceptance of co-trustee recorded prior thereto.

No R.E. Transfer Tax Paid

EXHIBIT 26

Witness our hands this 7th day of October, 2008.

REVOCABLE LIVING TRUST AGREEMENT OF
CAROLYN W. TWOMBLY, dated August 18,
1983

[Signature]
Witness

[Signature]
Stephen H. Wilson, co-Trustee

[Signature]
Witness

[Signature]
Shawn B. McCarthy, co-Trustee

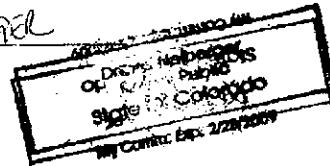
State of Colorado
County of SAN JUAN

October 15, 2008

Then personally appeared before me the above-named Stephen H. Wilson in his capacity and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said trust.

[Signature]
Notary Public

[Signature]
Printed Name



Commonwealth of Massachusetts
County of Suffolk

October 7, 2008

Then personally appeared before me the above-named Shawn B. McCarthy in his capacity and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said trust.

[Signature]
Notary Public

[Signature]
Printed Name



CAMILLE R. PELOSI
Notary Public
Commonwealth of Massachusetts
My Commission Expires
July 30, 2015

③
20
→ Hylie A. West Esq.
PO Box 1419
Damariscotta, ME
04543

SEAL

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