

STATE OF MAINE
YORK, ss

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

ROBERT F. ALMEDER, et al.,

Plaintiffs

v.

TOWN OF KENNEBUNKPORT, et al.,

Defendants

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ANSWER AND AFFIRMATIVE
DEFENSES OF PARTY-IN-INTEREST
ANNE CHAPPELL, TRUSTEE OF THE
ANNE BENEDICT REVOCABLE TRUST 2002
f/k/a ANNE BENEDICT, TRUSTEE OF THE ANNE
BENEDICT REVOCABLE TRUST 2002, TO THE
TOWN OF KENNEBUNKPORT’S
COUNTERCLAIM

Anne Chappell, Trustee of the Anne Benedict Revocable Trust f/k/a Anne Benedict, Trustee of the Anne Benedict Revocable Trust 2002 (“Chappell”), is the owner of certain property located at or about 185 King’s Highway, Kennebunkport, Maine as set forth more fully in a deed recorded in Book 14446, Page 405 of the York County Registry of Deeds. Chappell hereby appears in this action as a Party-In-Interest and by and through her undersigned attorney, as her answer and affirmative defenses to the Town of Kennebunkport’s Counterclaim (the “Town”) states as follows:

COUNT I (FEE SIMPLE)

1. Chappell admits that Robert F. Almeder, et al, Plaintiffs in the above-captioned matter (“Plaintiffs”) have claimed fee simple title to a certain portion of the property commonly known as “Goose Rocks Beach,” all as set forth more fully in Plaintiffs’ Complaint. Chappell denies the Town’s allegations regarding Plaintiffs’ Complaint to the extent they are inconsistent therewith.

2-3. Chappell denies the allegations contained in Paragraphs 2 and 3 of the Town’s Counterclaim.

4. Chappell is without knowledge or information sufficient to form a belief as to the

truth of the allegations contained in Paragraphs 4 and 5 of the Town's Counterclaim, and therefore, denies same.

5. Chappell denies the allegations contained in Paragraph 5 of the Town's Counterclaim.

6-8. Chappell denies the allegations contained in Paragraphs 6-8 of the Town's Counterclaim.

WHEREFORE, Chappell prays that the Town's claims be dismissed and that she be awarded her attorney's fees and costs together with such other and further relief as the Court shall deem just and proper.

COUNT II (ADVERSE POSSESSION)

9. Chappell hereby restates her responses to the allegations contained in Paragraphs 1-8 of the Town's Counterclaim as if set forth in full herein.

10-12. Chappell denies the allegations contained in Paragraphs 10-12 of the Town's Counterclaim.

13. Chappell is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Town's Counterclaim, and therefore, denies same.

WHEREFORE, Chappell prays that the Town's claims be dismissed and that she be awarded her attorney's fees and costs together with such other and further relief as the Court shall deem just and proper.

COUNT III (ACQUIESCENCE)

14. Chappell hereby restates her responses to the allegations contained in Paragraphs 1-13 of the Town's Counterclaim as if set forth in full herein.

15. Chappell denies the allegations contained in Paragraph 15 of the Town's Counterclaim.

16. Chappell is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Town's Counterclaim, and therefore, denies same.

17-18. Chappell denies the allegations contained in Paragraphs 17 and 18 of the Town's Counterclaim.

WHEREFORE, Chappell prays that the Town's claims be dismissed and that she be awarded her attorney's fees and costs together with such other and further relief as the Court shall deem just and proper.

COUNT IV (PRESCRIPTION)

19. Chappell hereby restates her responses to the allegations contained in Paragraphs 1-18 of the Town's Counterclaim as if set forth in full herein.

20-22. Chappell denies the allegations contained in Paragraphs 20-22 of the Town's Counterclaim.

WHEREFORE, Chappell prays that the Town's claims be dismissed and that she be awarded her attorney's fees and costs together with such other and further relief as the Court shall deem just and proper.

COUNT V (DEDICATION AND ACCEPTANCE)

23. Chappell hereby restates her responses to the allegations contained in Paragraphs 1-

22 of the Town's Counterclaim as if set forth in full herein.

24-29. Chappel denies the allegations contained in Paragraphs 24 through 29 of the Town's Counterclaim.

WHEREFORE, Chappell prays that the Town's claims be dismissed and that she be awarded her attorney's fees and costs together with such other and further relief as the Court shall deem just and proper.

COUNT VI (CUSTOM)

30. Chappell hereby restates her responses to the allegations contained in Paragraphs 1-29 of the Town's Counterclaim as if set forth in full herein.

31. Chappell denies the allegations contained in Paragraph 31 of the Town's Counterclaim.

32. Chappell is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32 of the Town's Counterclaim, and therefore, denies same.

33. Chappell denies the allegations contained in Paragraph 31 of the Town's Counterclaim.

WHEREFORE, Chappell prays that the Town's claims be dismissed and that she be awarded her attorney's fees and costs together with such other and further relief as the Court shall deem just and proper.

COUNT VII (EASEMENT)

34. Chappell hereby restates her responses to the allegations contained in Paragraphs 1-33 of the Town's Counterclaim as if set forth in full herein.

35. The allegations contained in Paragraph 35 of the Town's Counterclaim are legal conclusions as to which no responsive pleading is necessary. To the extent Paragraph 35 alleges facts, Chappell denies each and every such allegation.

36-39. Chappell denies the allegations contained in Paragraphs 36 through 39 of the Town's Counterclaim.

WHEREFORE, Chappell prays that the Town's claims be dismissed and that she be awarded her attorney's fees and costs together with such other and further relief as the Court shall deem just and proper.

COUNT VIII (IMPLIED/QUASI EASEMENT)

40. Chappell hereby restates her responses to the allegations contained in Paragraphs 1-39 of the Town's Counterclaim as if set forth in full herein.

41-44. The allegations contained in Paragraphs 41 through 44 of the Town's Counterclaim are legal conclusions as to which no responsive pleading is necessary. To the extent Paragraphs 41 through 44 allege facts, Chappell denies each and every such allegation.

45. Chappell denies the allegations contained in Paragraph 45 of the Town's Counterclaim.

WHEREFORE, Chappell prays that the Town's claims be dismissed and that she be awarded her attorney's fees and costs together with such other and further relief as the Court shall deem just and proper.

COUNT IX (OFFSET TAXES)

46. Chappell hereby restates her responses to the allegations contained in Paragraphs 1-45 of the Town's Counterclaim as if set forth in full herein.

47. The allegations contained in Paragraph 47 of the Town's Counterclaim are legal conclusions as to which no responsive pleading is necessary. To the extent Paragraph 47 alleges facts, Chappell denies each and every such allegation.

48. Chappell denies the allegations contained in Paragraph 48 of the Town's Counterclaim.

WHEREFORE, Chappell prays that the Town's claims be dismissed and that she be awarded her attorney's fees and costs together with such other and further relief as the Court shall deem just and proper.

AFFIRMATIVE DEFENSES

1. As an affirmative defense, Chappell states that the Counterclaim, and each count thereof, fails to state a claim upon which relief can be granted.

2. As an affirmative defense, Chappell states that the Town's claims are barred because of the doctrine of laches.

3. As an affirmative defense, Chappell states that the Town's claims are barred because of the doctrines of waiver and/or estoppel.

4. As an affirmative defense, Chappell states that the Town's claims are barred by the applicable statute of limitations.

5. As an affirmative defense, Chappell states the Town has no right, title or interest in fee simple to any of Chappell's property affected by the tides between the mean high watermark and either 100 rods seaward from the high watermark or the mean low watermark, whichever is closer to the mean high watermark, and therefore, lacks standing.

6. As an affirmative defense, Chappell states that Custom is not a recognized claim in

Maine.

7. As an affirmative defense, Chappell states the Town's counterclaims are barred, in whole or in part, by the public trust doctrine.

8. As an affirmative defense, Chappell states the Town's counterclaims are barred by lack of permission and/or acquiescence for the public to traverse and use Chappell's property situated upland from the high water mark and to the seawall or landscaped portion of Chappell's property.

9. As an affirmative defense, Chappell states the Town does not possess Chappell's property under any claim of right.

10. As an affirmative defense, Chappell states that neither she, nor her predecessors, have dedicated her property, or any portion thereof, to the Town.

WHEREFORE, Chappell prays that the Town's claims be dismissed and that she be awarded her attorney's fees and costs together with such other and further relief as the Court shall deem just and proper.

Dated at Portland, Maine, this 2^d day of May, 2011.



William H. Leete, Jr., Esq., Bar No. 3482
Taylor D. Fawns, Esq., Bar No. 9169
Attorneys for Party-In-Interest, Anne
Chappell, Trustee of the Anne Benedict
Revocable Trust 2002

LEETE & LEMIEUX, P.A.
95 EXCHANGE STREET
P.O. BOX 7740
PORTLAND, ME 04112
(207) 879-9440