

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)

ANSWER, DEFENSES AND COUNTERCLAIMS
OF DEFENDANTS SHARON EON-HARRIS AND
JOHN MICHIE HARRIS

(Title to Real Estate is Involved)

NOW COME Defendants, Sharon Ann Eon-Harris and John Michie Harris (hereinafter referred to as "Defendants"), by and through their undersigned counsel, and hereby answer Plaintiffs' Complaint, as follows:

1. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1 of Plaintiffs' Complaint and, therefore, deny the same.

2. Defendants deny the allegations contained in Paragraph 2 of Plaintiffs' Complaint and are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 2(a) of Plaintiffs' Complaint and, therefore, deny the same.

3. Defendants deny the allegations contained in Paragraph 3 of Plaintiffs' Complaint.

4. Defendants deny the allegations contained in Paragraph 4 of Plaintiffs' Complaint.

5. through 27. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraphs 5 through 27 of Plaintiffs' Complaint and, therefore, deny the same.

28. Defendants admit the allegations contained in Paragraph 28 of Plaintiffs' Complaint.

29. Paragraph 29 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 29 of Plaintiffs' Complaint includes factual allegations, they are denied.

FACTUAL ALLEGATIONS

30. Defendants admit that Goose Rocks Beach in Kennebunkport, Maine, is approximately two miles long, but deny any remaining allegations contained in Paragraph 30 of Plaintiffs' Complaint.

31. Defendants admit that portions of Goose Rocks Beach in Kennebunkport, Maine, are subject to the ebb and flow of tides of the Atlantic Ocean, but deny any remaining allegations contained in Paragraph 31 of Plaintiffs' Complaint.

32. Defendants deny the allegations contained in Paragraph 32 of Plaintiffs' Complaint.

33. Defendants deny the allegations contained in Paragraph 33 of Plaintiffs' Complaint.

34. Defendants deny the allegations contained in Paragraph 34 of Plaintiffs' Complaint.

35. Defendants deny the allegations contained in Paragraph 35 of Plaintiffs' Complaint.

36. Paragraph 36 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 36 of Plaintiffs' Complaint includes factual allegations, they are denied.

37. The 2009 Comprehensive Plan described in Paragraph 37 of Plaintiffs' Complaint speaks for itself. Defendants deny any remaining allegations contained in Paragraph 37 of Plaintiffs' Complaint.

38. Defendants admit that the Town of Kennebunkport, or the Kennebunkport Conservation Trust, owns certain lots adjacent to Goose Rocks Beach in Kennebunkport, Maine, but deny any remaining allegations contained in Paragraph 38 of Plaintiffs' Complaint.

39. Defendants deny the allegations contained in Paragraph 39 of Plaintiffs' Complaint.

40. Paragraph 40 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 40 of Plaintiffs' Complaint includes factual allegations, they are denied.

41. Paragraphs 41, 41(a), 41(b), 41(c) and 41(d) of Plaintiffs' Complaint contain legal conclusions not requiring a responsive pleading. To the extent that Paragraphs 41, 41(a), 41(b), 41(c) and 41(d) of Plaintiffs' Complaint include factual allegations, they are denied. The letter dated October 31, 2008, and referenced as Exhibit 24 in Paragraph 41(e) of Plaintiffs' Complaint speaks for itself. Defendants deny any remaining allegations contained in Paragraph 41(e) of Plaintiffs' Complaint.

42. Paragraph 42 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 42 of Plaintiffs' Complaint includes factual allegations, they are denied.

43. Paragraph 43 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 43 of Plaintiffs' Complaint includes factual allegations, they are denied.

44. Paragraph 44 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 44 of Plaintiffs' Complaint includes factual allegations, they are denied.

COUNT I
DECLARATORY JUDGMENT

45. Defendants repeat and reallege their responses to Paragraphs 1 through 44 above as if set forth in full herein.

46. Paragraph 46 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 46 of Plaintiffs' Complaint includes factual allegations, they are denied.

WHEREFORE, Defendants demand judgment in their favor against Plaintiffs on Count I of Plaintiffs' Complaint, together with interest, costs and attorney's fees, and judgment for such other relief as is appropriate.

COUNT II
QUIET TITLE

47. Defendants repeat and realleges their responses to Paragraphs 1 through 46 above as if set forth in full herein.

48. Paragraph 48 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 48 of Plaintiffs' Complaint includes factual allegations, they are denied.

49. Paragraph 49 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 49 of Plaintiffs' Complaint includes factual allegations, they are denied.

50. Defendants deny the allegations contained in Paragraph 50 of Plaintiffs' Complaint.

51. Paragraph 51 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 51 of Plaintiffs' Complaint includes factual allegations, they are denied.

52. Defendants admit that they claim a right of the public to use Goose Rocks Beach for recreational purposes by custom, prescription or otherwise, but deny any remaining allegations contained in Paragraph 52 of Plaintiffs' Complaint.

53. Paragraph 53 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 53 of Plaintiffs' Complaint includes factual allegations, they are denied.

54. Defendants deny the allegations contained in Paragraph 54 of Plaintiffs' Complaint.

55. Paragraph 55 of Plaintiffs' Complaint contains legal conclusions not requiring a responsive pleading. To the extent that Paragraph 55 of Plaintiffs' Complaint includes factual allegations, they are denied.

WHEREFORE, Defendants demand judgment in their favor against Plaintiffs on Count II of Plaintiffs' Complaint, together with interest, costs and attorney's fees, and judgment for such other relief as is appropriate.

DEFENSES

1. Plaintiffs' Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

2. Some, or all, of Plaintiffs have no right, title or interest in the property in dispute, specifically the intertidal zone and the high dry sand between the intertidal zone and certain properties abutting Goose Rocks Beach in Kennebunkport, Maine, including, but not limited to, Plaintiffs' properties ("Goose Rocks Beach") and, therefore, lack standing.

3. Plaintiffs' Complaint, in whole or in part, is barred by the applicable statutes of limitations, including, without limitation, 14 M.R.S.A. §§ 801, *et seq.*

4. Plaintiffs' Complaint, in whole or in part, is barred by the doctrine of waiver.

5. Plaintiffs' Complaint, in whole or in part, is barred by the doctrine of estoppel.

6. Plaintiffs' Complaint, in whole or in part, is barred by the doctrine of laches.

7. Plaintiffs' claims are barred to the extent that the public trust doctrine includes the right of the public to use Goose Rocks Beach for recreational and amusement purposes including, but not limited to, swimming, sunbathing, walking, running, playing, kite flying, sandcastle building, sailing, windsurfing, kayaking, canoeing and other recreational activities, otherwise generally using the beach in an unfettered manner for recreational and amusement purposes.

8. Plaintiffs' claims are barred because Defendants, the Town of Kennebunkport or the public, have acquired title to Goose Rocks Beach by adverse possession, dedication and acceptance, or otherwise.

9. Plaintiffs' claims are barred because Defendants, the Town of Kennebunkport or the public, have acquired an easement in Goose Rocks Beach by prescription, custom and/or use, or otherwise.

10. Plaintiffs' claims are barred because Defendants, the Town of Kennebunkport, or the public, have an implied or quasi easement relating to Goose Rocks Beach.

11. Plaintiffs' claims are barred because Plaintiffs and/or their predecessors in title have acquiesced in the use of Goose Rocks Beach by Defendants, the Town of Kennebunkport and the public.

12. Plaintiffs, or their predecessors in title, abandoned any and all right, title and interest in Goose Rocks Beach by virtue of their actions and inactions.

13. Plaintiffs are estopped from claiming title to Goose Rocks Beach by virtue of their actions and inaction, and/or the actions and inaction of their predecessors in title.

14. Plaintiffs' claims are barred by the doctrines of res judicata and collateral estoppel.

15. Plaintiffs' claims are barred by lack of consideration or the failure of consideration.

16. Plaintiffs, and/or their predecessors in title, have failed to pay property taxes on all or any portion of Goose Rocks Beach.

COUNTERCLAIM

COUNT I **(FEE SIMPLE)**

1. On information and belief, Plaintiffs claim to hold fee simple title in a certain portion of Goose Rocks Beach, as more particularly described in Plaintiffs' Complaint, including both the intertidal zone and the high dry sand between the intertidal zone and certain properties

abutting the beach including, but not limited to, Plaintiffs' property ("Goose Rocks Beach"), subject only to the right of the public to fish, fowl and navigate thereon as established by the Colonial Ordinance of 1647.

2. Fee simple title to Goose Rocks Beach has resided in Defendant Town of Kennebunkport, and/or the public, continuously for over 100 years.

3. Fee simple title to Goose Rocks Beach rests in the Town of Kennebunkport, and/or the public, by virtue of royal grants of certain English monarchs confirmed in 1663 by the decree of King Charles II and later re-confirmed by William III and Mary II as joint sovereigns by virtue of the issuance of a new charter in favor of the Town of Kennebunkport, or other such royal grants or land grants in favor of the Town of Kennebunkport.

4. No evidence exists suggesting that the Town of Kennebunkport, and/or the public, at any time conveyed any portion of its interests to Goose Rocks Beach to Plaintiffs or to any other party.

5. Plaintiffs' source of title originates after the aforementioned land grants and colonial grants and, therefore, has no legal basis over the original land grants and/or royal grants to the Town of Kennebunkport, and/or the public.

6. Plaintiffs' source of title is invalid relative to the source of title of the Town of Kennebunkport, and/or the public.

7. Plaintiffs have no current interest in Goose Rocks Beach.

8. Defendants, the Town of Kennebunkport, and/or the public, have acquired fee simple title to Goose Rocks Beach either by deed, by adverse possession, by prescription, or by acquiescence.

WHEREFORE, Defendants respectfully request that this Court find and declare, pursuant to 14 M.R.S.A. §§ 5951, *et seq.*, and 14 M.R.S.A. §§ 6651, *et seq.*, that fee simple title in Goose Rocks Beach rests in the Defendants, the Town of Kennebunkport, and/or the public, and further order the following:

- a. That Plaintiffs refrain from taking any action which would prohibit the unfettered use and possession of Goose Rocks Beach by the Defendants, the Town of Kennebunkport, and/or the public, for any and all purposes consistent with fee simple title by deed, by adverse possession, or by acquiescence;
- b. That Defendant Town of Kennebunkport record an attested copy of the Order declaring title in the Town of Kennebunkport and the public in the York County Registry of Deeds;
- c. That costs and attorney's fees be awarded to Defendants; and
- d. Such other further relief as this Court deems reasonable and just.

COUNT II
(ADVERSE POSSESSION)

9. Defendants repeat and reallege the assertions set forth in Paragraphs 1 through 8 above as if restated herein in their entirety.

10. Defendants, the Town of Kennebunkport, and/or the public, have acquired title to Goose Rocks Beach by adverse possession and prescription.

11. Defendants, the Town of Kennebunkport, and/or the public, have possessed Goose Rocks Beach openly, notoriously, adversely and exclusively under claim of right for over 100 years and a period in excess of 20 years.

12. Neither Plaintiffs, nor their predecessors in title, have stated any claim of title against Goose Rocks Beach despite the open and notorious possession of Goose Rocks Beach by the Defendants, the Town of Kennebunkport, and/or the public, for over 100 years.

13. Plaintiffs have failed to pay real property taxes on Goose Rocks Beach at any time.

WHEREFORE, Defendants respectfully request this Court to find, pursuant to 14 M.R.S.A. §§ 801, *et seq.*, 14 M.R.S.A. §§ 5951, *et seq.*, and 14 M.R.S.A. §§ 6651, *et seq.*, as well as Maine common law, that the Defendants, the Town of Kennebunkport, and/or the public, have acquired title to Goose Rocks Beach by adverse possession and order the following:

- a. That Plaintiffs refrain from taking any action which would prohibit the unfettered use and possession of Goose Rocks Beach by the Defendants, the Town of Kennebunkport, and/or the public, for any and all purposes consistent with fee simple title by adverse possession;
- b. That Defendant Town of Kennebunkport record an attested copy of the Order declaring title in the Town of Kennebunkport and the public in the York County Registry of Deeds; **ONE**
- c. That costs and attorney's fees be awarded to Defendants; and
- d. Such other further relief as this Court deems reasonable and just.

COUNT III
(ACQUIESCENCE)

14. Defendants repeat and reallege the assertions set forth in Paragraphs 1 through 13 above as if restated herein in their entirety.

15. Defendants, the Town of Kennebunkport, and/or the public, have established possession to Goose Rocks Beach to a clearly marked visible line.

16. Defendants, the Town of Kennebunkport, and/or the public, gave actual or constructive notice of the same to Plaintiffs.

17. Plaintiffs' actions and inactions imply their recognition and acquiescence in the possession of Goose Rocks Beach by Defendants, the Town of Kennebunkport, and/or the public.

18. Plaintiffs' acquiescence has existed for a sufficiently long period of time to permit establishment of title in the Defendants, the Town of Kennebunkport, and/or the public, by acquiescence.

WHEREFORE, Defendants respectfully request this Court to find that, pursuant to 14 M.R.S.A. §§ 5951, *et seq.*, and 14 M.R.S.A. §§ 6651, *et seq.*, the Defendants, the Town of Kennebunkport, and/or the public, has acquired title to Goose Rocks Beach by acquiescence and order the following:

- a. That Plaintiffs refrain from taking any action which would prohibit the unfettered use and possession of Goose Rocks Beach by the Defendants, the Town of Kennebunkport, and/or the public, in accordance with their rights acquired by acquiescence;
- b. That Defendant Town of Kennebunkport record an attested copy of the Order declaring title in the Town of Kennebunkport and the public in the York County Registry of Deeds;
- c. That costs and attorney's fees be awarded to Defendants; and
- d. Such other further relief as this Court deems reasonable and just.

COUNT IV
(PRESCRIPTION)

19. Defendants repeat and reallege the assertions set forth in Paragraphs 1 through 18 as if restated herein in their entirety.

20. Defendants, the Town of Kennebunkport, and/or the public, have acquired prescriptive rights in Goose Rocks Beach by virtue of 20 years of continuous, open and notorious use of Goose Rocks Beach with Plaintiffs' knowledge and acquiescence, for fishing, fowling, navigation, and for unfettered general recreational and amusement purposes subject only to the equivalent rights of others in the same premises.

21. Neither Plaintiffs, nor Plaintiffs' predecessors in title, have ever stated any claim to Goose Rocks Beach which would stop the running of the Defendants, the Town's and the public's continuous adverse use of the premises.

22. The scope of the prescriptive easement obtained by the public and by Defendants includes the right of the general public to use the beach for any general recreational purposes including, but not limited to, swimming, sunbathing, walking, running, playing, kite flying, sandcastle building, sailing, windsurfing, kayaking, canoeing and other recreational activities, or otherwise generally using the beach in an unfettered manner for recreational and amusement purposes, subject only to the equivalent rights of other members of the public in the same premises.

WHEREFORE, Defendants respectfully request that this Court find that Defendants, the Town of Kennebunkport, and/or the public, have continuously for 20 years openly and notoriously used Goose Rocks Beach for fishing, fowling, navigation and general recreational and amusement purposes as aforesaid and, pursuant to 14 M.R.S.A. §§ 801, *et seq.*, 14 M.R.S.A. §§ 5951, *et seq.*, and 14 M.R.S.A. §§ 6651, *et seq.*, as well as Maine common law, further find

and declare that Defendants, the Town of Kennebunkport, and/or the public, hold an easement by prescription on and over Goose Rocks Beach for said purposes. Defendants further request this Court to order the following:

- a. That Plaintiffs refrain from taking any action which would prohibit the unfettered use and possession of Goose Rocks Beach by the Defendants, the Town of Kennebunkport, and/or the public, in accordance with their rights acquired by prescription;
- b. That Defendant Town of Kennebunkport record an attested copy of the Order declaring title in the Town of Kennebunkport and the public in the York County Registry of Deeds;
- c. That costs and attorney's fees be awarded to Defendants; and
- d. Such other further relief as this Court deems reasonable and just.

COUNT V
(DEDICATION AND ACCEPTANCE)

23. Defendants repeat and reallege the assertions set forth in Paragraphs 1 through 22 as if restated herein in their entirety.

24. Plaintiffs, and their predecessors in title, have dedicated Goose Rocks Beach to exclusive public use through the recording of certain plans for the sale of lots by Goose Rocks Beach, and by the actions and inactions of Plaintiffs and their predecessors in title for over 100 years.

25. Defendants, the Town of Kennebunkport, and/or the public, accepted the dedication of Goose Rocks Beach by virtue of their actions since then, including the maintenance of the beach, the construction and reconstruction of the sea wall and access ways, the harvesting of seaweed and kelp, the use of the beach for fishing, fowling, navigation, and unfettered array of

recreational and amusement purposes including, but not limited to, swimming, sunbathing, walking, running, playing, kite flying, sandcastle building, sailing, windsurfing, kayaking, canoeing and other recreational activities, or otherwise generally using the beach in an unfettered manner for recreational and amusement purposes.

26. Neither Plaintiffs, nor their predecessors in title, took any action inconsistent with the dedication to public use.

27. The creation of certain subdivision plans and the sale of lots referenced in such plans created certain public and private rights which continue to exist today.

28. The public and private rights so created gives the public and owners of lots in the vicinity of Goose Rocks Beach, which were sold with reference to such plans, the unfettered right to use Goose Rocks Beach for any and all purposes consistent with the rights of others to use Goose Rocks Beach.

29. The public rights include the right to fish, fowl, navigate, and to use Goose Rocks Beach in an unfettered manner for recreational and amusement purposes including, but not limited to, swimming, sunbathing, walking, running, playing, kite flying, sandcastle building, sailing, windsurfing, kayaking, canoeing and other recreational activities, or otherwise generally using the beach in an unfettered manner for recreational and amusement purposes, in a manner consistent with the private rights of others.

WHEREFORE, Defendants respectfully request that this Court find that, pursuant to 14 M.R.S.A. §§ 5951, *et seq.*, and 14 M.R.S.A. §§ 6651, *et seq.*, Goose Rocks Beach has been dedicated to public use and has been accepted for such use by the Town of Kennebunkport, and/or the public, and pursuant to Maine law, further order the following:

- a. That Plaintiffs refrain from taking any action which would prohibit the unfettered use and possession of Goose Rocks Beach by the Defendants, the Town of Kennebunkport, and/or the public, in accordance with their rights acquired by dedication and acceptance;
- b. That Defendant Town of Kennebunkport record an attested copy of the Order declaring title in the Town of Kennebunkport and the public in the York County Registry of Deeds;
- c. That costs and attorney's fees be awarded to Defendants; and
- d. Such other further relief as this Court deems reasonable and just.

COUNT VI
(CUSTOM)

30. Defendants repeat and reallege the assertions set forth in Paragraphs 1 through 29 as if restated herein in their entirety.

31. Defendants, the Town of Kennebunkport, and/or the public, have acquired rights in Goose Rocks Beach by custom by virtue of the use of the beach by the Defendants, the Town of Kennebunkport, and/or the public, for so long as the memory of man runneth not to the contrary.

32. The use of the beach by the Defendants, the Town of Kennebunkport, and/or the public, has been peaceable and free from dispute.

33. The public rights include the right to fish, fowl, navigate, and to use Goose Rocks Beach in an unfettered manner for recreational and amusement purposes including, but not limited to, swimming, sunbathing, walking, running, playing, kite flying, sandcastle building, sailing, windsurfing, kayaking, canoeing and other recreational activities, or otherwise generally

using the beach in an unfettered manner for recreational and amusement purposes, in a manner consistent with the private rights of others.

WHEREFORE, Defendants respectfully request that this Court find that, pursuant to 14 M.R.S.A. §§ 5951, *et seq.*, and 14 M.R.S.A. §§ 6651, *et seq.*, Defendants, the Town of Kennebunkport, and/or the public, have acquired rights in Goose Rocks Beach by custom for fishing, fowling, navigation and general recreational and amusement purposes as aforesaid and further declare that Defendants, the Town of Kennebunkport, and/or the public, hold an easement by custom on and over Goose Rocks Beach for said purposes. Defendants further request this Court to order the following:

- a. That Plaintiffs refrain from taking any action which would prohibit the unfettered use and possession of Goose Rocks Beach by the Defendants, the Town of Kennebunkport, and/or the public, in accordance with their rights acquired by custom;
- b. That Defendant Town of Kennebunkport record an attested copy of the Order declaring title in the Town of Kennebunkport and the public in the York County Registry of Deeds;
- c. That costs and attorney's fees be awarded to Defendants; and
- d. Such other further relief as this Court deems reasonable and just.

COUNT VII
(EASEMENT)

34. Defendants repeat and reallege the assertions set forth in Paragraphs 1 through 33 as if restated herein in their entirety.

35. Defendants, for themselves, the Town of Kennebunkport and the public, assert the existence of an easement over Goose Rocks Beach for purposes of unfettered public recreation

and amusement including, but not limited to, swimming, sunbathing, walking, running, playing, kite flying, sandcastle building, sailing, windsurfing, kayaking, canoeing and other recreational activities, or other generally using the beach in an unfettered manner for recreational and amusement purposes, as well as for fishing, fowling, and navigation, subject only to the equivalent rights of others on the same premises.

36. Defendants, the Town of Kennebunkport, and/or the public, have acquired such an easement on and over Goose Rocks Beach for purposes of unfettered public recreation and amusement, as well as for fishing, fowling, and navigation, by virtue of more than 20 years of open, notorious, adverse and exclusive use of Goose Rocks Beach under a claim of right.

37. Defendants, the Town of Kennebunkport, and/or the public, have acquired such an easement on and over Goose Rocks Beach for purposes of unfettered public recreation and amusement, as well as for fishing, fowling, and navigation, by virtue of the express and implied dedication of the Beach go public use, by and through the recording of certain plans for the sale of lots by Goose Rocks Beach, and by the actions and inactions of Plaintiffs and their predecessors in title.

38. Defendants, the Town of Kennebunkport, and/or the public, have acquired such an easement on and over Goose Rocks Beach for purposes of unfettered public recreation and amusement, as well as for fishing, fowling, and navigation, by virtue of an implied easement or quasi easement created by recording of certain plans for the sale of lots by Goose Rocks Beach and by the sale of lots with reference to such plans.

39. Defendants, the Town of Kennebunkport, and/or the public, have acquired such an easement on and over Goose Rocks Beach for purposes of unfettered public recreation and amusement, as well as for fishing, fowling, and navigation, by virtue of the public trust doctrine.

WHEREFORE, Defendants respectfully request that this Court find and declare that, pursuant to 14 M.R.S.A. §§ 5951, *et seq.*, and 14 M.R.S.A. §§ 6651, *et seq.*, Defendants, the Town of Kennebunkport, and/or the public, have an easement on and over Goose Rocks Beach for unfettered public recreation and amusement as aforesaid and for fishing, fowling, and navigation subject only to the equivalent rights of others on the same premises. Defendants further request that this Court order the following:

- a. That Plaintiffs refrain from taking any action which would prohibit the unfettered use and possession of Goose Rocks Beach by the Defendants, the Town of Kennebunkport, and/or the public, in accordance with their easement rights;
- b. That Defendant Town of Kennebunkport record an attested copy of the Order declaring title in the Town of Kennebunkport and the public in the York County Registry of Deeds;
- c. That costs and attorney's fees be awarded to Defendants; and
- d. Such other further relief as this Court deems reasonable and just.

COUNT VIII
(IMPLIED/QUASI EASEMENT)

40. Defendants repeat and reallege the assertions set forth in Paragraphs 1 through 39 as if stated herein in their entirety.

41. Plaintiffs' predecessors in title are the common grantors of lots in the vicinity of Goose Rocks Beach and Goose Rocks Beach itself.

42. The circumstances at the time of the conveyance of the lots located adjacent to, and in the vicinity of, Goose Rocks Beach imply the intent of Plaintiffs' predecessors in title to subject the remaining land, including Goose Rocks Beach, to an easement in favor of the Defendants, the Town of Kennebunkport, and/or the public.

43. The use of Goose Rocks Beach prior to the conveyance of lots also establishes an implied easement, or quasi-easement, in favor of Defendants, the Town of Kennebunkport, and/or the public.

44. By virtue of their actions taken in connection with marketing of the lots located adjacent to, and in the vicinity of, Goose Rocks Beach, Plaintiffs and their predecessors in title manifested an intent to continue the implied easement or quasi-easement.

45. The scope of the implied easement or quasi-easement includes the unfettered use of the Beach for all purposes including fishing, fowling, navigation, and all recreational and amusement purposes including, but not limited to, swimming, sunbathing, walking, running, playing, kite flying, sandcastle building, sailing, windsurfing, kayaking, canoeing and other recreational activities, or otherwise generally using the beach in an unfettered manner for recreational and amusement purposes, subject only to the equivalent rights of others on the same premises.

WHEREFORE, Defendants respectfully request that this Court find that, pursuant to 14 M.R.S.A. §§ 5951, *et seq.*, and 14 M.R.S.A. §§ 6651, *et seq.*, Goose Rocks Beach is subject to an implied easement or quasi-easement permitting the unfettered use of the Beach by the owners of the lots in the vicinity of Goose Rocks Beach and by the public, and pursuant to Maine law, order the following:

- a. That Plaintiffs refrain from taking any action which would prohibit the Defendants, the Town of Kennebunkport, or the public, from the unfettered use of Goose Rocks Beach in accordance with their implied easement rights;
- b. That Defendant Town of Kennebunkport record an attested copy of this Order in the York County Registry of Deeds;

- c. That costs and attorney's fees be awarded to Defendants; and
- d. Such other further relief as this Court deems reasonable and just.

COUNT IX
(NUISANCE)

46. Defendants repeat and reallege the assertions set forth in Paragraphs 1 through 45 as if stated herein in their entirety.

47. Plaintiffs have interfered with Defendants' use and enjoyment of Goose Rocks Beach by asking Defendants to stay off of the shore claimed by Plaintiffs, reporting Defendants' activities on said shore to police, and telling Defendants that their activities on said shore constituted trespass.

48. Said interference with Defendants' use of the Beach constitutes nuisance and has caused Defendants to suffer damages as a result thereof.

WHEREFORE, Defendants request that this Court enter Judgment in their favor against Plaintiffs as a result of nuisance, together with damages and costs, and that this Court enter injunctive relief prohibiting Plaintiffs from interfering with Defendants' reasonable use of Goose Rocks Beach, both above and below the shore.

COUNT X
(HARASSMENT)

49. Defendants repeat and reallege the assertions set forth in Paragraphs 1 through 48 as if stated herein in their entirety.

50. Plaintiffs have harassed Defendants peacefully enjoying the benefits of the Beach by reporting them as trespassers to police and telling them that they had no right to be in areas of the Beach above and below the shore claimed by Plaintiffs.

51. Defendants have suffered damage as a result of said harassment.

WHEREFORE, Defendants request that this Court enter Judgment in their favor against Plaintiffs as a result of harassment, together with damages and costs, and that this Court enter injunctive relief prohibiting Plaintiffs from interfering with Defendants' reasonable use of Goose Rocks Beach, both above and below the shore.

COUNT XI
(INTERFERENCE WITH ECONOMIC ADVANTAGE)

52. Defendants repeat and reallege the assertions set forth in Paragraphs 1 through 51 as if stated herein in their entirety.

53. Defendants own rental property on Goose Rocks Beach. The wrongful interference and harassment of Defendants and their tenants has caused and will cause Defendants to incur damages resulting from loss of value of rental property.

WHEREFORE, Defendants request that this Court enter Judgment in their favor against Plaintiffs as a result of interference with economic advantage, together with damages and costs.

COUNT XII
(LOSS OF PROPERTY VALUE)

54. Defendants repeat and reallege the assertions set forth in Paragraphs 1 through 53 as if stated herein in their entirety.

55. Because of the wrongful interference by Plaintiffs with the property rights of Defendants as alleged above, the value of Defendants' property has been diminished and Defendants have suffered damages as a result therefrom.

WHEREFORE, Defendants request that this Court enter Judgment in their favor for loss of value caused by wrongful activity of Plaintiffs, together with costs.

DATED this 15 day of December 2009.



Thomas R. McNaboe (MBN 1027)
Attorney for Defendants
Sharon Eon-Harris and John Michie Harris

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