

STATE OF MAINE
YORK, ss.

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

RECEIVED STATE OF MAINE

2012 DEC 19 P 2:51

ROBERT F. ALMEDER et al.,

CLINTON COUNTY } YORK CLERKS OFFICE

Plaintiffs,

v.

NOTICE OF APPEAL

TOWN OF KENNEBUNKPORT and
ALL PERSONS WHO ARE
UNASCERTAINED,

Defendants.

Notice is given that Plaintiffs¹ and Parties-in-Interest² (collectively “Plaintiffs”), hereby appeal to the Law Court from this Court’s orders as follows:

1. August 17, 2010 Order;
2. December 22, 2011 Decision and Order on Motions for Summary Judgment;
3. October 16, 2012 Partial Judgment;
4. November 29, 2012 Order (entering final judgment on its October 16, 2012 entry

of “partial judgment” in favor of defendant Town of Kennebunkport (the “Town”));

¹ Robert F. Almeder and Virginia S. Almeder, Trustees; Christopher B. Asplundh ; Mark E. Celi and William E. Brennan, Jr., Co-Trustees; John T. Coughlin and Priscilla M. Coughlin, Trustees; Willard Parker Dwelley, Jr. and W. Parker Dwelley, III, and John H. Dwelley, Co-Trustees; Janice M. Fleming; Susan Flynn; William D. Forrest and Nancie M. Julian; John O. Gallant and Sharon A. Gallant; Jule C. Gerrish; Eugene R. Gray, Trustee; Edwina D. Hastings, Trustee; Leslie A. Josselyn-Rose, Trustee; Deborah J. Kinney; Donna K. Lencki, Trustee; Terrence G. O’Connor and Joan M. Leahey; Kristen B. Raines; Linda M. Rice; Michael J. Sandifer and Alice B. Sandifer, Co-Trustees; Eleanor A. Scribner and Robert H. Scribner, Trustees; Goose Rocks Beach Holdings LLC; J. Liener Temerlin and Karla Sue Temerlin, Trustees; Richard M. Vandervoorn, Lawrence W. Vandervoorn, and Robert O. Clemens, Trustees; Steven H. Wilson and Shawn B. McCarthy, Co-Trustees; and Beth G. Zagoren.

² David and Jennifer Eaton; Susan Lewis, Trustee; Heather Vicenzi, Trustee; Mary L. Emmons, Trustee; Anne E. Clough; John A. Parker and Jeannette M. Partker; and Marie B. Henriksen (Sea Rose Family-Limited Partnership).

5. November 29, 2012 Order (entering final judgment on its October 16, 2012 entry of “partial judgment” in favor of Alexander M. Lachiatto and Judith A. Lachiatto (“Lachiatto”), Richard J. Driver and Margarete K.M. Driver (“Driver”), and TMF Defendants³); and

6. November 29, 2012 Order (entering final judgment on its October 16, 2012 entry of “partial judgment” in favor of the State of Maine (the “State”).

STATEMENT OF ISSUES ON APPEAL

Pursuant to Rule 2(a)(2) of the Maine Rules of Appellate Procedure, Plaintiffs identify the following issues on appeal:

1. Whether the court properly granted the Town, TMF Defendants, and State’s motions for final judgment under Rule 54(b)(1) of the Maine Rules of Civil Procedure. Orders (November 29, 2012).

2. Whether the court erred in granting the Town, on behalf of the public, judgment on its prescriptive easement claims. Partial Judgment (October 16, 2012).

3. Whether the court erred in granting Lachiatto, Driver, and the TMF Defendants, as a “class” of individuals, judgment on their prescriptive easement claims. Partial Judgment (October 16, 2012).

4. Whether the court erred in granting the State of Maine’s claims.

5. Whether the court erred in denying Plaintiffs’ motion to dismiss with respect to the Town’s claim of custom. Order (August 17, 2010).

6. Whether the court erred in finding custom in favor of the Town. Partial Judgment (October 16, 2012).

³ Group of owners of back lots situated in the Goose Rocks Zone and represented by the law firm Taylor, McCormack & Frame.

7. Whether the court properly granted the State intervener status. Order (August 17, 2010).

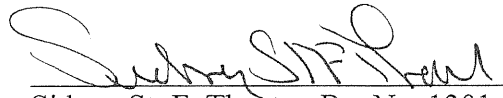
8. Whether the court erred in denying Plaintiffs' motion to strike the TMF Defendants' Answer and Counterclaim and allowing the TMF Defendants as a defendant class.

9. Whether the court erred in concluding that Lachiatto, Driver and the TMF Defendants can pursue a prescriptive claim as a "class". Decision and Order on Motions for Summary Judgment (December 22, 2011).

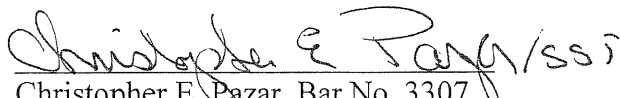
10. Whether the court erred in allowing Edwin A. Churchill to testify at trial.

11. Whether the court made errors of law with respect to certain evidentiary rulings at trial.

Dated: December 19, 2012


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Attorneys for Plaintiffs/Appellants

Dated: December 19, 2012


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Attorneys for Plaintiffs/counterclaim
Defendants Terrance O'Connor, Joan Leahy,
and Janice M. Fleming

A TRUE COPY ATTEST


CLERK

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RECEIVED STATE OF MAINE TEL: 207.774.9000 • FAX 207.775.0612 • www.curtisthaxter.com

2012 DEC 19 P 2:51

COUNTY OF YORK CLERKS OFFICE
October 17, 2012

Dianne Hill, Clerk
York County Courthouse
45 Kennebunk Road
P. O. Box 160
Alfred, Maine 04002-0160

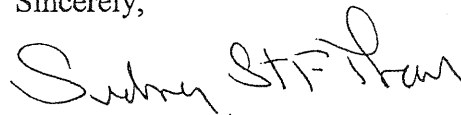
RE: Robert F. Almeder, et al. v. Town of Kennebunkport, et al.
Docket No. RE-09-111

Dear Ms. Hill:

Enclosed please find a complete Transcript Order form requesting the transcripts of the three week trial held in the above entitled matter including closing arguments held September 25, 2012.

Thank you for your assistance.

Sincerely,



Sidney St. F. Thaxter

SST/jvw

Enclosure

Copy to (w/encl.):

Amy K. Tchao, Esq./Brian Willing, Esq.
Gregg R. Frame, Esq. / André G. Duchette, Esq.
Paul Stern, Deputy Attorney General
Alexander M. and Judith A. Lachiatto, *pro se*
Richard J. and Margarete K.M. Driver, *pro se*
Christopher E. Pazar, Esq.

TRANSCRIPT ORDER - TO BE PAID WITH PRIVATE FUNDS

COPY

SUPERIOR COURT

DISTRICT COURT

York, ss.

Location

Docket No. RE-09-111

Docket No.

Robert Almeder, et al. v. Town of Kennebunkport, et al.

Plaintiff/State Attorney Sidney St. F. Thaxter Defendant Attorney Brian Willing

& Address One Canal Plaza, Ste 1000 & Address 84 Marginal Way
Portland, ME 04101 Portland, ME 04101

REASON FOR TRANSCRIPT: (If needed for an appeal, this form must be filed at the same time as the Notice of Appeal.)

Appeal: Superior Court Law Court Sentence Review Panel

Reference: (Please specify) Part of Record; Phase Two of trial to be set

(Please check the box that best describes the type of action and check the appropriate box if the defendant is incarcerated and cannot make bail.)

CIVIL:

- General Civil, Land Use Enforcement, Family Matters, Divorce, Paternity, Special Actions, Money Judgments, Forcible Entry & Det., Real Estate, Small Claims, Civil Violation, Child Protective, Mental Health Actions, Involuntary Commitment, Protection Abuse/Harass

CRIMINAL:

- Murder, Felony Charge (A, B, or C), Misdemeanor Charge (D or E)

JUVENILE:

- Murder, Felony Charge (A, B, or C), Misdemeanor Charge (D or E)

PAYMENT INFORMATION: Will be paid for with private funds. (See reverse side for instructions)

Indicate below each proceeding you request transcribed in the above case. Requestor MUST PROVIDE SPECIFIC INFORMATION FOR EACH HEARING TO BE TRANSCRIBED. Except as otherwise designated, trial transcripts shall include testimony, bench conferences and the charge to the jury.

Table with 3 columns: HEARING DATE, PROCEEDING (Trial/Sentencing/Motion, Etc.), Court Reporter/OTP Tape & Index No. Includes entries for dates 8/20-8/24, 8/27, 8/28-8/31, 9/4-9/6, 9/25 and names like Tim Thompson, Janet Cook, Kim McCulloh, Penny Philbrook.

Print Name of Person Ordering Transcript Benjamin M. Leoni, Esq. Bar No. 4870
Address One Canal Plaza, Ste 1000
City/Town Portland State ME Zip 04101
Telephone No.
Signature of Person Ordering Transcript Date 10/17/12

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INCOMPLETE FORMS WILL NOT BE ACTED UPON.