

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,
ALL PERSONS WHO ARE
UNASCERTAINED, not in being,
unknown or out of the State, heirs or
legal representatives of such
unascertained persons, or such persons
as shall become heirs, devisees or
appointees of such unascertained
persons who claim the right to use or
title in Plaintiffs' Property other than
persons claiming ownership or
easement by, through, or under an
instrument recorded in the York
County Registry of Deeds, et al.

Defendants

**ORDER FOR SERVICE
OF PROCESS AND SERVICE
BY PUBLICATION**

(Title to Real Estate Involved)

The plaintiffs own beachfront properties on Goose Rocks Beach in the Town of Kennebunkport. They have brought this action to obtain a declaration that they own fee titles in the beach to the low-water mark and may exclude the public from their land, and to obtain judgment quieting their titles. The Town of Kennebunkport, on behalf of the general public, opposes the plaintiffs and is asserting counterclaims to establish the general public's right to use Goose Rocks Beach for recreational purposes. The State of Maine has joined the Town of Kennebunkport on behalf of the

public, and the following parties have intervened to claim private rights to the beach: Sharon & John Michie Harris; Alexander & Judith Lachiatto; and Richard & Margarete K.M. Driver. Many other individuals, corporations, and trusts are also seeking to intervene in the proceeding.

On July 21, 2010, the court heard argument on the defendant Town of Kennebunkport's objection to the method and adequacy of the plaintiffs' service of process. "Service of process serves the dual purposes of giving adequate notice of the pendency of an action, and providing the court with personal jurisdiction over the party properly served. . . . 'Any judgment by a court lacking personal jurisdiction over a party is void.'"

Gaeth v. Deacon, 2009 ME 9, ¶ 20, 964 A.2d 621, 626 (quoting *Brown v. Thaler*, 2005 ME 75, P 10, 880 A.2d 1113, 1116). After due consideration the court orders:

1. Service by Publication

The court finds that service in person or by mail cannot practicably be made upon all persons who are unascertained, not in being, unknown or out of the State, heirs or legal representatives of such unascertained persons, or such persons as shall become heirs, devisees or appointees of such unascertained persons who claim the right to use or title in Plaintiffs' Property other than persons claiming ownership or easement by, through, or under an instrument recorded in the York County Registry of Deeds. To serve, notify, and bind these persons, including persons owning non-beachfront property in the so-called "Goose Rocks Zone" of the Town of Kennebunkport, the court orders service to be made by publication as prescribed by Maine Rule of Civil Procedure 4(g). The plaintiffs shall publish in the Portland Press Herald the legal notice attached to

and incorporated into this order as Exhibit A. This notice shall be published once a week for three consecutive weeks, with the first publication occurring within twenty days after the date of this order. Service by publication shall be complete on the twenty-first day after the first publication. The plaintiffs shall file with the court an affidavit that publication has been made. This publication shall be the responsibility of and at the expense of the plaintiffs.

2. Personal Service


The law requires that any person subject to service of process be joined as a party to an action if that person claims an interest relating to the subject matter of the action and if their absence may leave any existing parties subject to a substantial risk of incurring inconsistent obligations. Property rights pertaining to Goose Rocks Beach's intertidal zone are in dispute. Approximately sixty-five owners of beachfront properties on Goose Rocks Beach are not parties to this litigation and will not necessarily be bound by its outcome. If the plaintiffs succeed in quieting their titles in the beach, the non-party owners' titles will remain open to challenge. Conversely, if the Town of Kennebunkport succeeds in establishing the public's right to use the intertidal zone of the plaintiffs' property for recreational purposes, the non-party owners' could attempt to exclude the public from their own land in the future. Either result creates a checkerboard of uncertainty regarding the public and the Town of Kennebunkport's rights to use Goose Rocks Beach.

To ensure that complete relief may be accorded to all the named parties in this case and to avoid the risk of duplicative future litigation, the court orders the plaintiffs and the Town of Kennebunkport to jointly serve process on each owner of beachfront property on Goose Rocks Beach not already named as a party in

conformity with Maine Rule of Civil Procedure 4(c)(1). Per the rule and within twenty days after the date of this order, the plaintiffs and the Town of Kennebunkport shall jointly mail a copy of the summons, the complaint, and the Town of Kennebunkport's counterclaim (by first-class mail, postage prepaid) to each person to be served, together with two copies of a notice and acknowledgment form and a return envelope, postage prepaid, addressed to the sender. If no acknowledgement of service is received within twenty days after the date of mailing, personal service shall be made in accordance with the Rule. Any owner of beachfront property on Goose Rocks Beach who does not wish to join as a plaintiff shall be joined as a defendant. The plaintiffs and the Town of Kennebunkport shall each bear one-half the cost of service.

Nothing in this order should be read to prohibit any party from taking additional, independent measures to notify potential litigants of these proceedings.

DATE: 8/30/10



G. Arthur Brennan
Justice, Superior Court

EXHIBIT A

NOTICE TO PERSONS WHO ARE UNASCERTAINED AND TO THE GENERAL PUBLIC 14 M.R.S. § 6653

PURSUANT to 14 M.R.S. §§ 6653–6654, and by order of the York County Superior Court, PLEASE TAKE NOTE that on October 26, 2009, a complaint was filed in the Office of the Clerk of the York County Superior Court, Alfred, Maine, Docket No. ALFSC-RE-2009-00111, titled: *Robert F. Almeder et al. v. Town of Kennebunkport*.

The plaintiffs in this lawsuit are as follows: Robert F. Almeder and Virginia S. Almeder, Trustees of the Almeder Living Trust, 113 Kings Highway, York County Registry of deeds (“YCROD”) Book 15659, Page 864; Christopher Asplundh, 17 Sandpoint Road, YCROD Book 1979, Page 551; John T. Coughlin and Priscilla M. Coughlin, Trustees of P.M.C. Realty Trust, 115 Kings Highway, YCROD Book 3085, Page 5; Louise S. De Mallie, as Trustee of the Louise S. De Mallie Revocable Trust u/a dated November 12, 2002, 287 Kings Highway, YCROD book 12173, Page 221 and Book 14675, Page 862; Willard Parker Dwelley, Jr. and W. Parker Dwelley, III and John H. Dwelley, Co-Trustees of the Joan H. Dwelley Testamentary Trust, 23 Sandpoint Road, YCROD Book 12248, Page 9 and Book 15577, Page 679; Janice M. Fleming, 227 Kings Highway, YCROD Book 13696, Page 59; John O. Gallant and Sharon A. Gallant, 219 Kings Highway, YCROD Book 8413, Page 198; Jule C. Gerrish, 173 Kings Highway, YCROD Book 1819, Page 32; Eugene R. Gray, Trustee of the Qualified Personal Residence Trust, 183 Kings Highway, YCROD Book 14656, Page 916; Edwina D. Hastings, Trustee of the Edwina D. Hastings Revocable Trust, 221 Kings Highway, YCROD Book 14999, Page 766; Leslie A Josselyn-Rose, Trustee of the LAJR Trust, 251 Kings Highway, YCROD Book 15587, Page 491; Deborah J. Kinney, 223 Kings Highway, YCROD Book 9721, Page 278; Terrence G. O’Connor and Joan M. Leahey, 195 Kings Highway, YCROD Book 13253, Page 87; Kristen B. Raines, 249 Kings Highway, YCROD Book 14147, Page 614; Linda M. Rice, 193 Kings Highway, YCROD Book 7955, Page 127; Michael J. Sandifer and Alice B. Sandifer, Co-Trustees of the Alice B. Sandifer Trust, 253 Kings Highway, YCROD Book 14627, Page 144; Eleanor A. Scribner and Robert H. Scribner, Trustees of the Eleanor A. Scribner Qualified Personal Residence Trust, 291 Kings Highway, YCROD Book 14225, Page 139; Carolyn K. Sherman, 109 Kings Highway, YCROD Book 9721, Page 281; Steven H. Wilson and Shawn B. McCarthy, Trustees of the Twombly Family Trust u/d/t dated January 24, 2002, as amended, 165 Kings Highway, YCROD Book 15516, Page 1121; Richard M. Vandervoorn, Lawrence W. Vandervoorn and Robert O. Clemens, Trustees of The Cornelius J. Vandervoorn Qualified Personal Residence Trust, 177 Kings Highway, YCROD Book 15718, Page 584; and Beth G. Zagoren, 215 Kings Highway, YCROD Book 5931, Pages 340.

The present defendants in this lawsuit are: the Town of Kennebunkport; the State of Maine; Alexander M. Lachiatto and Judith A. Lachiatto; John Michie Harris and Sharon Eon-Harris; Richard J. Driver and Margarete K.M. Driver; and

all persons who are unascertained, not in being, unknown or out of the State, heirs or legal representatives of such unascertained persons, or such persons as shall become heirs, devisees or appointees of such unascertained persons who claim the right to use or title in the plaintiffs' property other than persons claiming ownership or easement by, through, or under an instrument recorded in the York County Registry of Deeds.

The Town of Kennebunkport, the Lachiattos, the Drivers, and the HARRISES have asserted counterclaims claiming ownership of Goose Rocks Beach, the general public's right to the use of Goose Rocks Beach for any general recreation purpose, and individual private rights to the use of Goose Rocks Beach.

The plaintiffs complaint seeks a declaratory judgment under 14 M.R.S. §§ 5951-5963 and to quiet title pursuant to 14 M.R.S. §§ 6651-6653 in order to remove any cloud of apprehension over plaintiffs' title to their respective properties, including intertidal and upland property situated at Goose Rocks Beach, Town of Kennebunkport, York County, State of Maine.

IMPORTANT WARNING

IF YOU WISH TO OPPOSE the claims of the plaintiffs, you or your attorney MUST PREPARE AND DELIVER A WRITTEN ANSWER to the complaint or counterclaim WITHIN 41 DAYS from the date of first publication. An answer must be delivered in person or by mail to Diane Hill, Clerk of Courts, York County Superior Court, 45 Kennebunk Road, P.O. Box 160, Alfred, Maine 04002-0160. On or before the day the answer is delivered to the Clerk of Courts, a copy of your answer must be mailed to the plaintiffs' attorney, Sidney St. F. Thaxter, Esq., Curtis Thaxter, LLC, One Canal Plaza, Suite 1000, P.O. Box 7320, Portland, Maine, 04112-7320. IF YOU INTEND TO OPPOSE THIS LAWSUIT, YOU MUST ANSWER WITHIN THE REQUIRED TIME. FAILURE TO DO SO WILL RESULT IN THE FORFEITURE OF YOUR CLAIMS. Failure to answer will not affect the public's rights.