

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.)

PLAINTIFFS' OPPOSITION TO
TOWN OF KENNEBUNKPORT'S
MOTION TO CONTINUE TRIAL

(Title to Real Estate Involved)

Plaintiffs/counterclaim defendants and the Parties In Interest represented by Sidney St. F. Thaxter and Curtis Thaxter LLC and the plaintiffs/counterclaim defendants Terrence O'Connor, Joan Leahey and Janice Fleming represented by Christopher Pazar (collectively "Plaintiffs") oppose the Town's Motion to Continue Trial.

1. Settlement Status.

There is no settlement between all the parties. The prescriptive easement case will have to be tried. Plaintiffs engaged in an extended arduous judicially assisted settlement process and that process ended with no settlement. Indeed the parties were not even close. While the Town has continued to negotiate with the non-plaintiff beachfront owners they are nowhere near reaching a settlement. Other than the Town, the two major parties are the Plaintiffs and the TMF Group. The TMF Group has not agreed to the latest proposal from the Town, so the Town's motion seeks only to facilitate a settlement with those property owners who for three years have done nothing.

The settlement with the some property owners the Town now proposes is complicated and includes many steps. If they wanted to pursue that type of settlement they should have done

so starting in January when the trial date was set, not in July. In any case, until this Court actually renders an opinion the Town can continue to negotiate with the non-participating beachfront owners. Indeed if the Town really wants to settle this case they can still work on it until this Court renders an opinion or even until the Court renders an opinion on the title claims.

The non-binding settlement offers mean nothing, especially since the email traffic confirms that many non-participating beachfront owners are only now beginning to understand the pitfalls in the Town's settlement proposal and there is no guarantee more than a handful will actually settle. When the non-Plaintiff beachfront owners realize that the proposed agreement does not affect the majority of users of the beach namely the TMF Group, they will certainly opt out. Plaintiffs dispute the Town's number of property owners who have signed the non-binding agreement and the Court should be aware that the 9 public lots are apparently part of their computation.

2. Not a Brief Continuance.

This is not a brief continuance for it will require that all of Plaintiffs' witnesses who have made plans to be here in August wait until September when many will have left town and be unavailable. This is largely a summer community and by September many witnesses will have returned to their winter homes and put their children in school. Any continuance of this trial will derail all the witnesses' preparation and availability which we all have agreed is critical because witnesses are here and available in August and not September.

3. Prejudice.

Plaintiffs have been waiting over three years for their day in court. Plaintiffs have over 30 witnesses and 163 exhibits marked and ready to go. We are reviewing over 476 exhibits from the Town and more from TMF. An enormous and expensive effort has been made and much

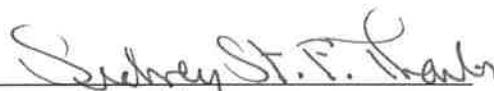
money expended to get ready for trial. Plaintiffs have altered vacation plans and scheduled themselves to be available in August. Plaintiffs have already lost one witness who is now deceased and several others who, due to age and illness, cannot testify. Since this case will not be settled even if the Town does reach a settlement with some beachfront owners, there is no good reason to prejudice the Plaintiffs because of the procrastination of some other beachfront owners.

The Plaintiffs should not be prejudiced because of the Town's failure to actively pursue settlement back in January when this trial date was set and their eleventh-hour attempt to avoid a trial should be denied.

4. Conclusion.

This case needs to be tried in August when people are here to testify and the best tonic for a settlement is a firm trial date. We ask this Court to deny the Town's Motion for Continuance.

Dated: July 24, 2012


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