

STATE OF MAINE
YORK, ss.

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

ROBERT F. ALMEDER et al.,)	
)	
)	
Plaintiffs,)	PLAINTIFFS' ANSWER AND
)	AFFIRMATIVE DEFENSES
v.)	TO COUNTERCLAIM OF
)	SHARON EON-HARRIS
SHARON ANN EON-HARRIS AND)	AND JOHN MICHIE HARRIS
JOHN MICHIE HARRIS, TOWN OF)	
KENNEBUNKPORT and ALL)	
PERSONS WHO ARE)	
UNASCERTAINED,)	(Title to Real Estate Involved)
)	
Defendants.)	

Plaintiffs Robert F. Almeder, et al., with each plaintiff more fully identified in the complaint and all plaintiffs referred to collectively as "plaintiffs" herein, by and through counsel, state as their answer and affirmative defenses to the counterclaim of defendants Sharon Eon-Harris and John Michie Harris (collectively "Harris"), as follows¹:

COUNT I (Fee Simple)

1. Plaintiffs admit paragraph 1 of Count I of the Harris counterclaim.
2. Plaintiffs deny paragraph 2 of Count I of the Harris counterclaim.
3. Plaintiffs deny paragraph 3 of Count I of the Harris counterclaim.

¹ In response to Count III (Acquiescence) paragraphs 14 through 18, Count V (Dedication and Acceptance) paragraphs 23 through 29, Count VI (Custom) paragraphs 30 through 33, Count VII (Easement) paragraphs 34-39, Count VIII (Implied/Quasi Easement) paragraphs 40-45, Count X (Harassment) paragraphs 49 through 51, Count XI (Interference with Economic Advantage) paragraphs 52 and 53, and Count XII (Loss of Property Value) paragraphs 54 and 55 to the Harris counterclaim, plaintiffs are concurrently serving herewith a motion to dismiss said counts pursuant to Rule 12(b)(6) of the Maine Rules of Civil Procedure.

4. Plaintiffs are without sufficient information or knowledge to form a belief as to the truth of the allegations set forth in paragraph 4 of Count I of the Harris counterclaim and therefore deny the same.
5. Plaintiffs deny paragraph 5 of Count I of the Harris counterclaim.
6. Plaintiffs deny paragraph 6 of Count I of the Harris counterclaim.
7. Plaintiffs deny paragraph 7 of Count I of the Harris counterclaim.
8. Plaintiffs deny paragraph 8 of Count I of the Harris counterclaim.

WHEREFORE, plaintiffs demand judgment in their favor against the Harris defendants on Count I of their counterclaim, together with costs, and such other relief, including equitable relief, as is appropriate.

COUNT II (Adverse Possession)

9. Plaintiffs repeat and reassert each answer to paragraphs 1 through 8 to Count I as if more fully set forth herein.
10. Plaintiffs deny paragraph 10 of Count II of the Harris counterclaim.
11. Plaintiffs deny paragraph 11 of Count II of the Harris counterclaim.
12. Plaintiffs deny paragraph 12 of Count II of the Harris counterclaim.
13. Plaintiffs deny paragraph 13 of Count II of the Harris counterclaim.

WHEREFORE, plaintiffs demand judgment in their favor against the Harris defendants on Count II of their counterclaim, together with costs, and such other relief, including equitable relief, as is appropriate.

COUNT IV (Prescription)

14. Responding to paragraph 19 of the Harris' counterclaim, plaintiffs repeat and reassert each answer to paragraphs 1 through 8 to Count I and paragraphs 9 through 13 to Count

II as if more fully set forth herein.

15. Plaintiffs deny paragraph 20 of Count IV of the Harris counterclaim.
16. Plaintiffs deny paragraph 21 of Count IV of the Harris counterclaim.
17. Plaintiffs deny paragraph 22 of Count IV of the Harris counterclaim.

WHEREFORE, plaintiffs demand judgment in their favor against the Harris defendants on Count IV of their counterclaim, together with costs, and such other relief, including equitable relief, as is appropriate.

COUNT IX (Nuisance)

18. Responding to paragraph 46 of the Harris counterclaim, plaintiffs repeat and reassert each answer to paragraphs 1 through 8 to Count I, paragraphs 9 through 13 to Count II, and paragraphs 19 through 22 to Count IV as if more fully set forth herein.

19. Plaintiffs deny paragraph 47 of Count IX of the Harris counterclaim.
20. Plaintiffs deny paragraph 48 of Count IX of the Harris counterclaim.

WHEREFORE, plaintiffs demand judgment in their favor against the Harris defendants on Count IX of their counterclaim, together with costs, and such other relief, including equitable relief, as is appropriate.

AFFIRMATIVE DEFENSES

1. The Harris defendants' counterclaims, in whole or in part, fail to state a claim upon which relief may be granted.
2. The Harris defendants have no right, title or interest in fee simple to any of the respective plaintiffs' properties 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, lack standing.

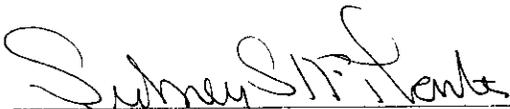
3. Custom is not a recognized claim in Maine.
4. The Harris defendants' counterclaims are barred, in whole or in part, by the public trust doctrine.
5. The Harris defendants' counterclaims are barred by lack of permission and/or acquiescence for the public to traverse and use plaintiffs' properties situated upland from the high water mark and to the seawall or landscaped portion of plaintiffs' properties.
6. The Harris defendants do not possess plaintiffs' properties under any claim of right.
7. Neither plaintiffs, nor their predecessors, have dedicated their properties, or any portion thereof, to the Harris defendants or the Town of Kennebunkport for the public use.
8. The Harris defendants have failed to comply with requirements of 14 M.R.S. §§ 6651 *et seq.*
10. The Harris defendants' counterclaims are barred, in whole or in part, by laches.
11. The Harris defendants' counterclaims are barred, in whole or in part, by waiver.
12. The Harris defendants' counterclaims are barred, in whole or in part, by estoppel.
13. The Harris defendants' counterclaims are barred, in whole or in part, by the applicable statutes of limitations.
14. The Harris defendants' counterclaims are barred, in whole or in part, by the provisions of 36 M.R.S.A. § 713.
15. Plaintiffs have not interfered with the Harris defendants' use and enjoyment, or the use and enjoyment of their guests and/or tenants under a grant by the Harris defendants, of their real property on Goose Rocks Beach.

16. Plaintiffs have not interfered with the use and enjoyment of the Harris defendants, or the use and enjoyment of their guests and/or tenants under a grant by the Harris defendants, to exercise their right, as established by the Colonial Ordinance of 1647, to fish, fowl and navigate on the “land 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” or intertidal land of each respective plaintiffs’ properties on Goose Rocks Beach.

17. Plaintiffs reserve the right to raise other defenses to the counterclaims of the Harris defendants as such defenses become known during discovery or as is otherwise appropriate.

WHEREFORE, plaintiffs request that the court grant judgment for plaintiffs on the Harris defendants’ counterclaims and plaintiffs be awarded their costs and such further relief including equitable relief, as the court deems just and proper.

Dated: January 22, 2010



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