

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
	)	RICHARD J. DRIVER AND
TOWN OF KENNEBUNKPORT and	)	MARGARETE K.M. DRIVER
ALL PERSONS WHO ARE	)	
UNASCERTAINED,	)	
	)	(Title to Real Estate Involved)
Defendants.	)	

Plaintiffs Robert F. Almeder, et al., each plaintiff being more fully identified in the complaint and all plaintiffs are herein referred to collectively as "plaintiffs," by and through counsel, state as their answer and affirmative defenses to the counterclaim of defendants Richard J. Driver and Margarete K.M. Driver (collectively "Driver"), as follows:

1. Plaintiffs are without information sufficient to form a belief as to the truth of the allegations contained in paragraph A of the Driver counterclaim, and therefore deny the same.
2. Plaintiffs are without information sufficient to form a belief as to the truth of the allegations contained in paragraph B of the Driver counterclaim, and therefore deny the same.
3. Plaintiffs are without information sufficient to form a belief as to the truth of the allegations contained in paragraph C of the Driver counterclaim, and therefore deny the same.

**COUNT I (Fee Simple)**<sup>1</sup>

**COUNT II (Prescription)**

4. Responding to paragraph 9 of the Driver counterclaim, plaintiffs repeat and reassert each response to paragraphs A through C as if more fully set forth herein; with regard to

---

<sup>1</sup> In response to Count I (Fee Simple) paragraphs 1 through 8 to the counterclaim, plaintiffs are concurrently serving herewith a motion to dismiss said Count I pursuant to Rule 12(b)(6) of the Maine Rules of Civil Procedure.

plaintiffs' response to paragraphs 1 through 8 to Count I of the Driver counterclaim, plaintiffs are concurrently serving herewith a motion to dismiss said Count I pursuant to Rule 12(b)(6) of the Maine Rules of Civil Procedure.

5. Plaintiffs deny paragraph 10 of Count II of the Driver counterclaim.
6. Plaintiffs deny paragraph 11 of Count II of the Driver counterclaim.
7. Plaintiffs deny paragraph 12 of Count II of the Driver counterclaim.
8. Plaintiffs deny paragraph 13 of Count II of the Driver counterclaim.

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

#### **AFFIRMATIVE DEFENSES**

1. The Driver defendants' counterclaim, in whole or in part, fail to state a claim upon which relief may be granted.

2. The Driver 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. The Driver defendants' counterclaim is barred, in whole or in part, by the public trust doctrine.

4. The Driver defendants' counterclaim is 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.

5. The Driver defendants do not possess plaintiffs' properties under any claim of right.

6. Neither plaintiffs, nor their predecessors, have dedicated their properties, or any portion thereof, to the Driver defendants or the Town of Kennebunkport for the public use.

10. The Driver defendants' counterclaim is barred, in whole or in part, by laches.

11. The Driver defendants' counterclaim is barred, in whole or in part, by waiver.


12. The Driver defendants' counterclaim is barred, in whole or in part, by estoppel.

13. The Driver defendants' counterclaim is barred, in whole or in part, by the applicable statutes of limitations.

14. Plaintiffs reserve the right to raise other defenses to the counterclaim of the Driver 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 Driver defendants' counterclaim and plaintiffs be awarded their costs and such further relief including equitable relief, as the court deems just and proper.

Dated: March 2, 2010

  
\_\_\_\_\_  
Sidney St. F. Thaxter, Bar No. 1301  
David P. Silk, Bar No. 3136  
Susan E. Schorr, Bar No. 9865  
CURTIS THAXTER STEVENS BRODER  
& MICOLEAU LLC  
One Canal Plaza / P.O. Box 7320  
Portland, Maine 04112-7320  
(207) 774-9000

Attorneys for Plaintiffs