

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
)	ALEXANDER M. LACHIATTO
TOWN OF KENNEBUNKPORT and)	AND JUDITH A. LACHIATTO
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 Alexander M. Lachiatto and Judith A. Lachiatto (collectively “Lachiatto”), as follows¹:

A. To the extent a response is required by plaintiffs to paragraph A of Lachiatto’s counterclaim, plaintiffs state each referenced document speaks for itself; plaintiffs deny any attempt to characterize or paraphrase the contents or meaning of said documents which is inconsistent therewith and is hereby denied.

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 through 39, and Count VIII (Implied/Quasi Easement) paragraphs 40 through 45 to the Lachiatto 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.

B. Plaintiffs are without information sufficient to form a belief as to the truth of the allegations contained in paragraph B of Lachiatto's counterclaim, and therefore deny same.

C. Plaintiffs are without information sufficient to form a belief as to the truth of the allegations contained in paragraph C of Lachiatto's counterclaim, and therefore deny same.

COUNT I (Fee Simple)

1. Plaintiffs admit paragraph 1 of Count I of the Lachiatto counterclaim.

2. Plaintiffs deny paragraph 2 of Count I of the Lachiatto counterclaim.

3. Plaintiffs deny paragraph 3 of Count I of the Lachiatto counterclaim.

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 Lachiatto counterclaim and therefore deny the same.

5. Plaintiffs deny paragraph 5 of Count I of the Lachiatto counterclaim.

6. Plaintiffs deny paragraph 6 of Count I of the Lachiatto counterclaim.

7. Plaintiffs deny paragraph 7 of Count I of the Lachiatto counterclaim.

8. Plaintiffs deny paragraph 8 of Count I of the Lachiatto counterclaim.

WHEREFORE, plaintiffs demand judgment in their favor against the Lachiatto 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 Lachiatto counterclaim.

11. Plaintiffs deny paragraph 11 of Count II of the Lachiatto counterclaim.

12. Plaintiffs deny paragraph 12 of Count II of the Lachiatto counterclaim.

13. Plaintiffs deny paragraph 13 of Count II of the Lachiatto counterclaim.

WHEREFORE, plaintiffs demand judgment in their favor against the Lachiatto 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 Lachiatto' 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 Lachiatto counterclaim.

16. Plaintiffs deny paragraph 21 of Count IV of the Lachiatto counterclaim.

17. Plaintiffs deny paragraph 22 of Count IV of the Lachiatto counterclaim.

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

AFFIRMATIVE DEFENSES

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

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

5. The Lachiatto defendants' counterclaim is barred by lack of permission and/or acquiescence for the public to traverse and use plaintiffs' properties.

6. The Lachiatto 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 Lachiatto defendants or the Town of Kennebunkport for the public use.

8. The Lachiatto defendants have failed to comply with requirements of 14 M.R.S.A. §§ 6651 *et seq.*

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

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

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

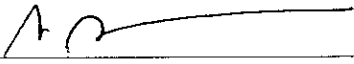
13. The Lachiatto defendants' counterclaim is barred, in whole or in part, by the applicable statutes of limitations.

14. The Lachiatto defendants' counterclaim is barred, in whole or in part, by the provisions of 36 M.R.S.A. § 713.

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

Dated: February 2, 2010



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