

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)

**TMF DEFENDANTS' MOTIONS IN
LIMINE CONCERNING
PRESERVATION OF STANDING
ARGUMENT**

BACKGROUND

This Court issued a Procedural Order indicating that only the prescriptive easement claims would be heard at the trial scheduled for August 20, 2012 and that all remaining claims, including title claims, would be heard at a later date. A crucial element of whether or not the Plaintiffs or any Party-in-Interest can object to the TMF Defendants' use of Goose Rocks Beach is whether or not they have ownership of the property being used. If the Plaintiffs are not the servient estate, they cannot object to the prescriptive use (i.e. recreational activities on Goose Rocks Beach). See e.g. Flaherty v. Muther, CUM-RE-08-098 (Me. Sup. Ct., Cum. Cty., July 30, 2009). Because the determination as to the ownership of Goose Rocks Beach will not be made until a later trial, TMF Defendants are requesting that their standing argument relative to their prescriptive easement claims be preserved until ownership is determined.

ARGUMENT

“Standing is a threshold issue bearing on the court’s power to adjudicate disputes.”

Franklin Prop. Trust v. Foresite, Inc., 438 A.2d 218, 220 (Me. 1981) (citations omitted). In order

to have standing, one must assert that they have some right, title, or interest in the disputed way. Id. at 220-221. If the Plaintiffs or any Party-in-Interest cannot prevail in demonstrating that they have an ownership interest in Goose Rocks Beach, they do not have standing to adjudicate their interest. As this Court noted in its January 18, 2012 Decision and Order on Plaintiffs' Motion for Reconsideration, "[a] deed that only conveys the grantor's 'right, title and interest' in the land is not a grant of land or of a particular estate and is not *prima facie* evidence of title." at 4. (citing Sargent v. Coolidge, 399 A.2d 1333, 1343 (Me. 1979)). The Plaintiffs even admit that Plaintiffs Sherman, Coughlin and Celi have not produced *prima facie* evidence of title. See Plaintiffs' Motion for Reconsideration at 5, n.4.

CONCLUSION

TMF Defendants expect to put on evidence, including expert witness testimony, demonstrating that the Plaintiffs and Parties-in-Interest do not own portions of Goose Rocks Beach.¹ To the extent that they do not own these portions of Goose Rocks Beach, they do not have standing to object to its use. As such, this Court should preserve any argument with respect to the Plaintiffs' and Parties-in-Interest's standing to object to the recreational use of Goose Rocks Beach until the extent of their ownership can be determined.

DATED: August 8, 2012



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¹ The Town of Kennebunkport will likely put on similar evidence regarding ownership.

NOTICE OF DEFAULT

ALL MATTER IN OPPOSITION TO THIS MOTION MUST BE FILED NOT LATER THAN AUGUST 16, 2012, AFTER THE SERVICE OF THIS MOTION UPON YOU UNLESS ANOTHER TIME IS PROVIDED BY MAINE RULES OF CIVIL PROCEDURE OR SET BY THE COURT. FAILURE TO FILE TIMELY OPPOSITION WILL BE DEEMED A WAIVER OF ALL OBJECTIONS TO THIS MOTION WHICH MAY BE GRANTED WITHOUT FURTHER NOTICE OR HEARING.