

STATE OF MAINE
YORK, ss.

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

ROBERT F. and VIRGINIA S.)
ALMEDER, et al.,)
)
Plaintiffs)
)
v.)
)
TOWN OF KENNEBUNKPORT,)
TMF DEFENDANTS, STATE OF)
MAINE, et al.;)
)
Defendants)

MOTION FOR ENTRY OF FINAL
JUDGMENT PURSUANT TO
RULE 54(B)

Defendant Town of Kennebunkport (the “Town”) hereby moves, pursuant to Rule 54(b) of the Maine Rules of Civil Procedure, that this Court direct entry of a final judgment as to the claims of prescriptive easement and custom asserted by the Town in Counts IV and VI of its Counterclaim in the above-captioned matter and that the Court make an express determination that there is no just reason for delay. The reasons for this motion, as set forth more fully in the accompanying memorandum of law, are as follows.

1. The principal issue in dispute in this case between the Plaintiffs on the one hand and the Town and the TMF Defendants on the other, relates to whether the public has a right to use the entirety of Goose Rocks Beach, from river to river and on both wet and dry sand for recreational purposes. The Town has asserted a right by the public to use the beach under theories of prescriptive easement and custom, and it has also alleged that the Plaintiffs cannot quiet title to the beach and thereby prevent use of the beach by the public, because they do not have good title to the beach in front of their property.

2. Notwithstanding the issues of title raised in the Town's counterclaim, it has consistently maintained throughout the pendency of this matter, that its interest in Goose Rocks Beach is to establish a right by the public to use the beach, not that it owns the beach.

3. All parties agree that a threshold issue for the claims and counterclaims in this case is whether the Plaintiffs have title to the beach in front of their property.

4. Although title is a threshold issue to the Town's prescriptive easement and custom claims, pursuant to order of this Court, and at the urging of the Plaintiffs, the parties tried the prescriptive easement and custom issues before trying any title claims or counterclaims.

5. The Court has determined, pursuant to its Partial Judgment dated October 16, 2012, that the Town has proven the existence of a prescriptive easement on the entirety of the beach.

6. This is the extent of relief the Town wishes to recover in this case, and assuming that the judgment awarding the public the right to use the beach for recreational use becomes final, the Town has no desire to claim title to any portion of the beach.

7. Trying the issue of title as to each of the Plaintiffs will be a lengthy process requiring the utilization of substantial judicial resources.


8. The Town has filed herewith a Conditional Stipulation in which it has offered to stipulate to the title of each of the Plaintiffs if the Court's order establishing a prescriptive easement/custom is affirmed on appeal.

9. This Conditional Stipulation potentially eliminates the need for a costly and lengthy title trial and permits the real issues in dispute between the parties – the public's right to use Goose Rocks Beach – to be addressed on appeal without delay.

10. As testimony at the easement/custom trial repeatedly and very poignantly demonstrated, this case has been divisive to the Goose Rocks and Kennebunkport community, and so it is in the best interests of all that it be finally resolved without further delay.

11. There is no just reason for delay in a final determination of the Court's Partial Judgment addressing the public's right to use Goose Rocks Beach, and it is in the interest of justice and judicial economy that judgment be entered so that Plaintiffs may pursue an appeal at this time if they so choose.

Dated: November 8, 2012



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