

STATE OF MAINE
YORK, ss.

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

| | | |
|--------------------------------|---|-----------------------------|
| ROBERT F. ALMEDER and |) | |
| VIRGINIA S. ALMEDER, et al., |) | MOTION TO QUASH SUBPOENA |
| |) | AND MOTION <i>IN LIMINE</i> |
| v. |) | REGARDING TESTIMONY OF |
| |) | TOWN ATTORNEY WITH |
| TOWN OF KENNEBUNKPORT, et al., |) | INCORPORATED MEMORANDUM |
| |) | |
| Defendants |) | |

Pursuant to Rules 7(b) and 45(c) of the Maine Rules of Civil Procedure and the Court's Pretrial Orders, Defendant Town of Kennebunkport (the "Town") hereby moves to quash, and moves *in limine*, a subpoena served on Attorney Charles A. Lane, the former Town counsel, for the following reasons:

1. Plaintiffs caused a subpoena dated July 23, 2012 made out to Charles A. Lane, Esq. to be served on him and the Town. A true copy of the subpoena is attached hereto as Exhibit A.
2. Charles A. Lane, Esq. was employed by the Town as Town attorney in the 1970s and advised the Town concerning its legal issues, including one or more issues involving property rights at Goose Rocks Beach.
3. The Town has produced certain public records to Plaintiffs in this case, including but not limited to documents listed as Exhibit 64 on Plaintiffs' July 12, 2012 List of Trial Exhibits and related documents and correspondence. Exhibit 64 and the related documents and correspondence produced by the town concern a purported violation of the Town's leash law by Mrs. Eugene Gray in the 1970s. The purported violation resulted in correspondence between the

Town's attorney, Charles A. Lane, and the attorneys for Mrs. Gray regarding the Grays' alleged title to Goose Rocks Beach.

4. The Town's undersigned counsel has agreed with Plaintiffs' counsel to stipulate to the authenticity and admissibility (to the extent relevant) of all public records at the trial in this case, including the aforementioned correspondence between Charles A. Lane, Esq. and the attorneys for Mrs. Gray. Attached hereto as Exhibit B is e-mail correspondence dated July 20, 2012 between the Town's undersigned counsel and Plaintiffs' counsel on the subject.

5. Plaintiffs' counsel contacted Charles A. Lane, Esq. directly (without first notifying the Town's current attorneys) concerning his knowledge and memory of the incident in the 1970's involving Mrs. Gray and Town, and Charles A. Lane's role in it. In a brief discussion, Attorney Lane informed Plaintiffs' counsel that he has no memory of the incident or any other issue involving Goose Rocks Beach during his tenure as the Town's counsel.

6. Following his conversation with Plaintiffs' counsel, Charles A. Lane, Esq. contacted the Town's undersigned attorneys to inform them of the conversation with Plaintiffs' counsel, and he reaffirmed that he has no memory of the incident in the 1970's involving Mrs. Gray and Town, and no memory of any other issues involving Goose Rocks Beach during his tenure as the Town's counsel.

7. Even if Attorney Lane could recall the incident in the 1970's involving Mrs. Gray and Town or any other issues on which he advised the Town relating to Goose Rocks Beach, his advice and communications with the Town would be privileged, and the Town has agreed to stipulate to the authenticity of any public records relating to such issues.

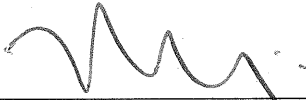
8. The Town's undersigned counsel discussed with Plaintiffs' counsel and requested that Plaintiffs' counsel explain the basis for calling Attorney Lane in light of these

circumstances. Plaintiffs' counsel responded as follows: "I do want to keep him on tap to be witness but can't give you any definite answer until well into trial." Exh. B.

8. Because Charles A. Lane has no memory of the incident in the 1970's involving Mrs. Gray and Town or any other issues on which he advised the Town relating to Goose Rocks Beach, because his advice and communications with the Town would be privileged even if he could remember, and because the Town has agreed to stipulate to the authenticity of any public records concerning these issues, the subpoena served on Charles A. Lane is unduly burdensome in violation of Rule 45(c) and must be quashed.

WHEREFORE, for the reasons set forth above, Defendant Town of Kennebunkport respectfully requests that the subpoenas served on Charles A. Lane, the Town's former counsel, be quashed and that he be excused from testifying in the above-captioned matter for all of the reasons discussed herein.

Dated: August 9, 2012



Melissa A. Hewey, Bar No. 3587
Amy K. Tchao, Bar No. 7768
Brian D. Willing, Bar No. 9112
Attorneys for the Defendant, Town of
Kennebunkport

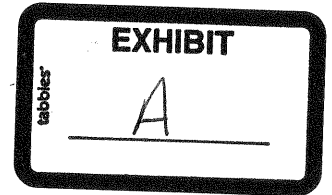
Drummond Woodsum & MacMahon
84 Marginal Way, Suite 600
Portland, Maine 04101
(207) 772-1941

CURTIS THAXTER
ATTORNEYS AT LAW

Sidney St. F. Thaxter, Esq.
sthaxter@curtisthaxter.com

ONE CANAL PLAZA, SUITE 1000, P.O. BOX 7320, PORTLAND, ME 04112-7320
TEL: 207.774.9000 • FAX 207.775.0612 • www.curtisthaxter.com

July 23, 2012



Hand Delivered

Charles A. Lane
c/o Brian D. Willing, Esq.
Drummond Woodsum
84 Marginal Way, Suite 600
Portland, ME 04101-2480

RE: Almeder, et al. v. Town of Kennebunkport, et al.

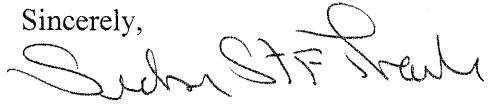
Dear Charlie:

Attached to this letter are a Trial Subpoena and a check for witness fees pursuant to 16 MRSA §251. As you will notice, the trial period runs August 6 through August 31, however we will only need you to be available for a morning or afternoon during that time period. We hope to give you plenty of notice before you will need to come to court and testify. We currently have your home telephone number, but if you prefer that we contact you by other means please let me know.

Also, please let me know if you have any conflicts in August and we will do our best to accommodate your schedule.

If you have any concerns you may contact our office at 774-9000 and ask for my assistant, Rebecca Robinson, or Lynne Crandall or Julie Washburn, the paralegals working on this matter.

Thank you for your cooperation in this matter.

Sincerely,

Sidney St. F. Thaxter

SST/lc
Enclosures

Service Copy

STATE OF MAINE

SUPERIOR COURT

York ss.
Docket No. RE-09-11

DISTRICT COURT

Location _____
Docket No. _____

WITNESS SUBPOENA FOR:

- TRIAL
- HEARING
- DEPOSITION
- INSPECTION

To: Charles A. Lane, of Portland, Maine

In the matter of Robert F. Almeder, et al v. Town of Kennebunkport, et al.

- YOU ARE COMMANDED in the name of the State of Maine, to appear for the purpose of testifying at the ~~(District)~~ (Superior) Court located at 142 Federal Street at Portland, Maine at 9:00 (am)(~~pm~~) on August 6 - 31, 2012 and to remain until discharged for the purpose of testifying)
- YOU ARE COMMANDED in the name of the State of Maine to appear before _____, a _____, at the offices of _____ at _____, Maine at _____ (am)(pm) on _____ to testify and give evidence by deposition pursuant to the Maine Rules of Civil Procedure, an application having been filed for this deposition in this court.
- YOU ARE COMMANDED to produce and permit inspection and copying of the following designated things or premises on _____ at _____ (am)(pm) at _____
- YOU ARE COMMANDED to permit inspection and copying of the following designated things or premises:

Time and place of inspection: _____

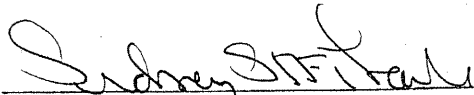
This subpoena is issued on behalf of Robert F. Almeder, et al whose attorney is Sidney St. F. Thaxter, Esq., One Canal Plaza, Ste. 1000, Portland, ME 04101
If you object to the subpoena, you must file a timely motion in court to quash or modify it. If you object to the inspection or copying of any of the materials or premises designated above, you must serve notice of that objection in writing upon the party or attorney, Sidney St. F. Thaxter, Esq. before August 6, 2012.

WARNING AND NOTICE

FAILURE TO COMPLY WITH THIS SUBPOENA MAY SUBJECT YOU TO ARREST AND BEING HELD IN CONTEMPT OF COURT.
SEE THE REVERSE SIDE OF THIS SUBPOENA FOR A STATEMENT OF YOUR RIGHTS AND DUTIES PURSUANT TO THIS SUBPOENA AS SET OUT IN RULES 45(c) AND (d) OF THE MAINE RULES OF CIVIL PROCEDURE.

Date: July 23, 2012

Cumberland, ss


~~(Clerk)~~ (Attorney at Law)
Sidney St. F. Thaxter, Esq. (Bar #1301)

On 7/23/2012, I subpoenaed the above-named Charles A. Lane by delivering a copy of this Subpoena to Brian D. Willing, Esq., at 84 Marginal Way, Portland, Maine. (At the same time I tendered and paid to Charles A. Lane the sum of \$ 15.00 as fees for travel and one days attendance.)

Fees: Travel, \$ 15.00
Service,
Copy,
Witness fee,

_____, Paralegal
Signature
Curtis Thaxter, LLC, One Canal Plaza, Portland, ME
Agency

THIS CHECK IS PROTECTED BY A VOID PANTOGRAPH, MICROPRINT SIGNATURE LINE AND A HEAT SENSITIVE PADLOCK ICON. ADDITIONAL SECURITY FEATURES ARE LISTED ON BACK.

CURTIS THAXTER LLC

ONE CANAL PLAZA
PORTLAND, MAINE 04101

KEY BANK NATIONAL ASSOCIATION
PORTLAND, MAINE

52-60/112

066751

PAY

Fifteen and NO/100

TO THE
ORDER
OF

CHARLES A. LANE

CHECK NO.

66751

CHECK DATE

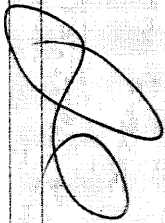
07/23/2012

VENDOR NO.

TEMP

CHECK AMOUNT

15.00



⑆066751⑆ ⑆011200608⑆ 0020079315⑆

Brian D. Willing

From: Pete Thaxter [PThaxter@curtisthaxter.com]
Sent: Friday, July 20, 2012 10:42 AM
To: Brian D. Willing
Cc: Ben Leoni; David Silk; Amy K. Tchao; Melissa A. Hewey; Rebecca Robinson
Subject: RE: Charlie Lane [DWM-Client.FID295980]

Brian: I do want to keep him on tap to be a witness but can't give you any definitive answer until well into the trial. I will get you the subpoena. I would note that I don't agree with your claim of privilege but we will have to wait to see if it becomes an issue. Pete

Sidney St. F. Thaxter, Esq.
sthaxter@curtisthaxter.com

CURTIS THAXTER

ATTORNEYS AT LAW

One Canal Plaza, Suite 1000, Portland, ME 04101
P.O. Box 7320, Portland, ME 04112-7320
TEL: 207-774-9000, Ext. 222
FAX: 207-775-0612
www.curtisthaxter.com

From: Brian D. Willing [<mailto:BWilling@dwmlaw.com>]
Sent: Friday, July 20, 2012 10:07 AM
To: Pete Thaxter
Cc: Ben Leoni; David Silk; Amy K. Tchao; Melissa A. Hewey
Subject: RE: Charlie Lane [DWM-Client.FID295980]

Pete:

I spoke with Charlie Lane and understand from him that he does not recall the Gray matter, or any other matter relating to Goose Rocks Beach from his time as Town counsel. He further reports to me that he has told you the same. Even if Charlie did recall anything, his conversations and communications with the Town are privileged, and so I'm somewhat mystified that you have twice contacted him without first speaking with me or Amy.

Regarding the letters and deeds that Charlie Lane prepared and sent relating to Mr. Gray and others, they are clearly public records. I have previously stated to you that the Town will stipulate to the authenticity of any public records in this case, and so there is no need to call Attorney Lane as a witness for that purpose.

If you nevertheless intend to call Charlie Lane as a witness, I would appreciate if you would let me know the basis of his anticipated testimony. If you wish to serve a subpoena on him, I will accept service of it on behalf of the Town, but I anticipate that the Town will seek to quash the subpoena unless you can provide me with a legitimate basis for calling Attorney Lane as a witness. I am not aware of one.

Brian

DrummondWoodsum

Brian D. Willing | Attorney
84 Marginal Way, Suite 600, Portland, Maine 04101-2480

voice (207) 772-1941 ext. 516 • fax (207) 772-3627
direct (207) 253-0516 • (800) 727-1941

BWilling@dwmlaw.com | www.dwmlaw.com

The information transmitted herein is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Unintended transmission shall not constitute waiver of any privilege, including, without limitation, the attorney-client privilege if applicable. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the e-mail and any attachments from any computer.

For purposes of compliance with Internal Revenue Service requirements, we inform you that any Federal tax advice contained in this communication (including any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (including any attachment).

From: Pete Thaxter [<mailto:PThaxter@curtisthaxter.com>]

Sent: Wednesday, July 18, 2012 4:28 PM

To: Brian D. Willing

Cc: Ben Leoni; Julie Washburn; Rebecca Robinson; Lynne Crandall; David Silk; Rebecca Robinson

Subject: Charlie Lane

Brian: I called Charlie Lane to ask him if I needed to subpoena him for trial and he said he could not talk to me on Amy's orders. Will you agree to produce him or should I subpoena him. I am at least entitle to arrange a time for service. Pete

Sidney St. F. Thaxter, Esq.
sthaxter@curtisthaxter.com

CURTIS THAXTER

ATTORNEYS AT LAW

One Canal Plaza, Suite 1000, Portland, ME 04101
P.O. Box 7320, Portland, ME 04112-7320
TEL: 207-774-9000, Ext. 222
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www.curtisthaxter.com

STATE OF MAINE
YORK, ss.

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

ROBERT F. ALMEDER and)
VIRGINIA S. ALMEDER, et al.,)
)
v.)
)
TOWN OF KENNEBUNKPORT, et al.,)
)
Defendants)

ORDER

And now, upon review of the Motion to Quash and Motion *in Limine* of Defendant Town of Kennebunkport, such Motion is GRANTED, and Charles A. Lane, Esq. is hereby excused from testifying in the above-captioned matter.

Dated:

Justice, Superior Court