

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 OF DEFENDANT TOWN OF
KENNEBUNKPORT TO STRIKE
APPEARANCES AND ANSWERS OF THE
ANNE E. CLOUGH AND
JOHN A. PARKER AND JEANNETTE M.
PARKER

For the same reasons that Defendant Town of Kennebunkport (the “Town”) is seeking to strike the July 31, 2012 Appearance and Answer of Mary L. Emmons, and the August 10, 2012 Appearances and Answers filed by Gregory Living Trust and Marie B. Henriksen, the Town hereby moves to strike the August 8, 2012 Appearance and Answer of Anne E. Clough and the August 13, 2012 Appearance and Answer of John A. Parker and Jeannette M. Parker.

Anne E. Clough was served with the pleadings in accordance with the Court’s August 30, 2010 Order for Service of Process and Service By Publication. (Anne E. Clough was subsequently served on September 27, 2010).

John A. Parker and Jeannette M. Parker are successors in title to former Plaintiff Louise S. De Mallie Revocable Trust (“DeMallie Trust”), who has been dismissed from this case by Order of this Court dated January 20, 2012, and may not now, seventh months later, enter an appearance on the eve of trial. The DeMallie Trust’s interest in the property at issue in this case was transferred to David B. Robinson, Anne E. Robinson and Thomas D. Robinson, II by deed dated December 15, 2010 recorded in the York County Registry of Deeds on December 22, 2010

at Book 16014, Page 880. The DeMallie Trust property was subsequently transferred to John A. Parker and Jeannette M. Parker by deed dated June 27, 2011 from Anne E. Robinson and Thomas D. Robinson, II and recorded in the York County Registry of Deeds Book 16119 Page 153.

Plaintiffs' counsel failed to file a motion for substitution within 90 days of either the transfer of property to John A. Parker and Jeannette M. Parker, or within 90 days of the transfer to Anne E. Robinson and Thomas D. Robinson, II, and took no action to notify the Town or the Court of these transfers of ownership even after the Town and TMF Defendants subsequently sought to take the deposition of the DeMallie Trust in this case, and despite an on-going discovery dispute in which the Town specifically raised the DeMallie Trust's failure to produce documents and provide discovery as an issue. Plaintiffs also filed a Partial Motion for Summary Judgment and Opposition to the Town's Motion for Summary Judgment on behalf of the DeMallie Trust on April 29, 2011, well over 90 days after the DeMallie Trust no longer had any interest in the Goose Rocks Beach property. The Town subsequently became aware of the transfer of ownership and on January 19, 2012—at the time that John A. Parker and Jeannette M. Parker already owned the property—moved to dismiss the Louise S. De Mallie Revocable Trust. That motion was granted by Order of this Court dated January 20, 2012. Now, the same counsel that represented the DeMallie Trust property at the time it was dismissed from this case on January 20, 2012 is attempting to enter an appearance on the eve of trial on behalf of the very people who owned the property at the time of such dismissal, and without even indicating to the Court or the other parties in this case, that the property owned by John A. Parker and Jeannette M. Parker is the same as the DeMallie Trust property, which had previously been dismissed.

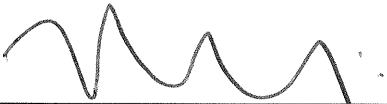
Such an action is prejudicial to the Town, and the Appearance and Answer of John A. Parker and Jeannette M. Parker should be stricken.

Neither the Anne E. Clough, nor John A. Parker or Jeannette M. Parker, actively participated in the discovery process in this case,¹ or any other substantive part of this case, and so they should not be permitted to appear now, at the eleventh hour, and contest the Town's counterclaims.²

The Town reiterates, as was previously stated in the Town's August 9, 2012 Reply to TMF Defendants' Request for Default and the Town's August 16, 2012 Motion to Strike the Appearance and Answer of the Gregory Living Trust, Marie B. Henriksen, that it is not seeking default against any other party-in-interest in this case. The Town reserves the right, however, to seek entry of default and default judgment against plaintiffs in this action.

WHEREFORE, for the reasons set forth above, Defendant Town of Kennebunkport respectfully requests that the August 8, 2012 Appearance and Answer of Anne E. Clough and the August 13, 2012 Appearance and Answer of John A. Parker and Jeannette M. Parker in the above-captioned matter be stricken.

Dated: August 17, 2012



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Attorneys for the Defendant, Town of
Kennebunkport

¹ Indeed, the Town had an ongoing discovery dispute with the Parker's predecessor in title, the DeMallie Trust, prior to its dismissal from this case.

² The Town notes here, as it has repeatedly throughout the case, that its counterclaims in the above-captioned action have been asserted against Plaintiffs – not parties-in-interest – in response to Plaintiffs' Complaint, so an answer by parties in interest is neither necessary nor appropriate (which is why it should be stricken). The Town does not understand why counsel for parties in interest are accusing the Town of making a distinction without a difference in one set of motions, while arguing in another set of motions that that the Town has no claims against them. Thus, it remains unclear why non-Plaintiffs continue to file answers to the Town's counterclaims as parties-in-interest on the eve of trial, while at the same time taking the position that there are no claims against them to answer.

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Defendants)

ORDER

And now, upon review of the Motion to Strike of Defendant Town of Kennebunkport,
such Motion is GRANTED.

Dated:

Justice, Superior Court