STATE OF MAINE PENOBSCOT, SS.	SUPERIOR COURT Docket No. RE-03-31	
GORDON PELLETIER, et al.,) Plaintiff,)		FLED & ERTERED SUPCENOR DOURT
v.)	ORDER	812 0 7 2005
LOWELL SMITH,) Defendant.)		PENOBSCOT COUNTY

The case of Larrabee v. Town of Knox, 2000ME 15; 744 A.2d 544 (Me. 2000), provides (in no uncertain terms) that a court cannot dismiss a claim of a party because that a current party failed to join a necessary party.¹ It does not matter that the current party failed to request an opportunity to join the party. Rather, the court <u>must</u> order <u>sourd</u> joinder – upon its own initiative – where the necessary party is susceptible to service of process. As that is the case here,² the court is without discretion to order anything except joinder.

Accordingly, that portion of the Court's' Judgment which deals with the Plaintiffs' Complaint is vacated. The Plaintiffs are ordered to file an amended Complaint adding Gloria Smith as a defendant. After service, the parties are directed to advise the court within thirty days whether further evidentiary hearings will be requested. In the absence of such, the court will render judgment upon the existing record.

The Clerk may incorporate this Order upon the docket by reference.

Dated: September 7, 2005

Andrew M. Mead JUSTICE, MAINE SUPERIOR COURT

¹ This court's Judgment of May 2, 2005, effectively operated as a dismissal of the Plaintiffs' equitable claims for relief.

² Gloria Smith is available for service.

GORDON L PELLETIER - PLAINTIFF 608 FULLER RD HERMON ME 04401 Attorney for: GORDON L PELLETIER TERENCE HARRIGAN - RETAINED 11/21/2003 VAFIADES BROUNTAS & KOMINSKY 23 WATER STREET PO BOX 919 BANGOR ME 04402-0919

SALLY PELLETIER - PLAINTIFF 608 FULLER ROAD HERMON ME 04401 Attorney for: SALLY PELLETIER TERENCE HARRIGAN - RETAINED 11/21/2003 VAFIADES BROUNTAS & KOMINSKY 23 WATER STREET PO BOX 919 BANGOR ME 04402-0919

vs LOWELL W SMITH - DEFENDANT 338 WOODBRIDGE CORNER RD SHERMAN ME 04775 Attorney for: LOWELL W SMITH PATRICK HUNT - RETAINED 12/02/2003 LAW OFFICE PATRICK E. HUNT 7 SHERMAN ST PO BOX 130 ISLAND FALLS ME 04747

Filing Document: COMPLAINT Filing Date: 11/21/2003

Docket Events: 11/21/2003 FILING DOCUMENT - COMPLAINT FILED ON 11/21/2003 (TITLE TO REAL ESTATE IS INVOLVED) (EXHIBIT A ATTACHED)

- 11/24/2003 Party(s): GORDON L PELLETIER ATTORNEY - RETAINED ENTERED ON 11/21/2003 Plaintiff's Attorney: TERENCE HARRIGAN
- 11/24/2003 CERTIFY/NOTIFICATION CASE FILE NOTICE SENT ON 11/24/2003 TO PLAINTIFF'S ATTORNEY.
- 11/24/2003 Party(s): SALLY PELLETIER ATTORNEY - RETAINED ENTERED ON 11/21/2003 Plaintiff's Attorney: TERENCE HARRIGAN
- 11/26/2003 Party(s): LOWELL W SMITH SUMMONS/SERVICE - CIVIL SUMMONS FILED ON 11/26/2003 BY PLAINTIFF.

11/26/2003 Party(s): LOWELL W SMITH

Page 1 of 7

SUPERIOR COURT PENOBSCOT, ss. Docket No BANSC-RE-2003-00031

DOCKET RECORD

. . .

Minor Case Type: EQUITABLE REMEDIES

Printed on: 09/13/2005