

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. RE-10-278
NM - CUM - 4/6/2011

BRADLEY HELLER and
ELEANOR HELLER,

Plaintiffs and Counterclaim
Defendants

v.

ORDER ON PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT

SUSAN COYNE,

Defendant and Counterclaim
Plaintiff

Before the court is the plaintiffs' motion for summary judgment. M.R. Civ. P. 56. In their complaint, the plaintiffs seek a judgment declaring that they have a prescriptive easement across a sandy beach area. The plaintiffs also allege that the defendant has interfered with the plaintiffs' use and enjoyment of their property. In the motion for summary judgment, the plaintiffs now claim that the defendant's property does not include the beach area in dispute.

As the plaintiffs admit, the allegation that the defendant does not own the sandy beach area at issue is raised for the first time in the motion for summary judgment. (Pls.' Mem. at 2 n.1.) Accordingly, that allegation is not appropriate for a motion for summary judgment. Polk v. Town of Lubec, 1999 Me. Super. LEXIS 204, *6 (Me. Super. Jul. 2, 1999), *aff'd*, 2000 ME 152, 756 A.2d 510. Pursuant to Rule 8, a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief, and . . . a demand for judgment for the relief which the pleader seeks." M.R. Civ. P. 8(a). The Law Court has recognized that the purpose of Rule 8(a) is to provide the opposing party "fair notice of the claim." Polk, 2000 ME 152, ¶ 18, 756 A.2d at 514

(quoting E.N. Nason, Inc. v. Land-Ho Dev. Corp., 403 A.2d 1173, 1177 (Me. 1979)). The defendant was not on notice that the plaintiffs intended to contest her ownership of the disputed beach area.¹

The entry is

The Plaintiffs' Motion for Partial Summary Judgment is
DENIED.

Date: April 6, 2011


Nancy Mills
Justice, Superior Court

¹ In fact, the plaintiffs' complaint specifically refers to "the Defendant's property." (See Compl. ¶¶ 4, 5, 14.)

BRADLEY HELLER ET ALS VS SUSAN COYNE

UTN:AOCSSr -2010-0048659

CASE #:PORSC-RE-2010-00278

01 0000000170 SNOW, TERRY
PO BOX 275 CUMBERLAND CTR ME 04021
F SUSAN COYNE DEF RTND 05/28/2010

02 0000004222 TEEL, ELLIOTT R
142 HIGH STREET SUITE 219 PORTLAND ME 04101
F BRADLEY HELLER PL RTND 05/14/2010