STATE OF VERMONT

SUPERIOR COURT CIVIL DIVISION

GRAND ISLE UNIT DOCKET NO. \_\_\_\_\_\_\_\_\_\_

Town of Alburgh, a Vermont )

Municipality )

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Plaintiff, )

 )

 v. )

 )

Edward Murphy and Maureen )

Murphy, and John Morrissette )

and Maureen Morrisette, the Estate )

of Mary V. Mooney, Maura )

Kelley-Pizzigno, Eilis Mooney and )

Caleb Couture )

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 )

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 Defendants. )

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**COMPLAINT FOR DECLARATORY JUDGMENT TO QUIET TITLE**

**AND INJUNCTIVE RELIEF**

 NOW COMES Plaintiff, Town of Alburgh, by and through its attorneys, MSK Attorneys, and hereby complains as follows:

**Parties, Jurisdiction, and Venue**

1. Plaintiff, Town of Alburgh is a Vermont municipality located in Grand Isle County, Vermont. The Town has an address of 1 North Main Street, Alburgh, VT 05440.
2. On information and belief, Defendants Edward Murphy and Maureen Murphy reside at 1 Center Bay North, Alburgh, VT 05440 (Parcel ID: CO001).
3. On information and belief, Defendants John Morrissette and Leann Morrissette reside at 95 Center Bay North, Alburgh, VT 05440 (Parcel ID: CO003).
4. On information and belief, Defendant Maura Kelley-Pizzigno resides at 1936 North Road, Hinesburg, VT 05461.
5. On information and belief, Defendant Eilis Mooney resides at 97 Manseau Street, Apt. B, Winooski, VT 05404.
6. On information and belief, Defendant Caleb Couture resides at 1044 Sweet Hollow Road, Sheldon, VT 05483.
7. On information and belief, the heirs at law of the Estate of Mary V. Mooney are Defendant Kelley-Pizzigno, Defendant Mooney, and Defendant Couture.
8. Jurisdiction is proper pursuant to 4 V.S.A. § 31.
9. Venue is proper pursuant to 12 V.S.A. § 402(a) because this is a matter concerning real estate and the real estate in question is located in Grand Isle County.

**Background**

1. At issue in this action is the property known as “Center Bay Beach” identified by the Town of Alburgh as Parcel ID: CB038 and SPAN 009-003-10311 (the “Property”).
2. Defendants Murphy reside at 1 Center Bay North, Alburgh (Parcel ID: CO001) and Defendants Morrissette reside at 95 Center Bay North, Alburgh (Parcel ID: CO003). These parcels abut the Property to the West (Defendants Murphy and Defendants Morrisette are hereafter referred to together as the “Defendant Neighbors”).
3. On information and belief, Defendants Kelley-Pizzigno, Mooney, and Couture are the heirs at law of the Estate of Mary V. Mooney (Defendant Kelley-Pizzigno, Defendant Mooney, and Defendant Couture are hereafter referred to together as the “Defendant Heirs”).
4. Prior to 1871, Center Bay Road (also known as Town Highway #31) extended through the Property across Mud Creek. *Exhibit 1 1857 H.F. Walling Survey and Exhibit 2 Affidavit of Milfred Shedrick.*
5. On information and belief, the bridge crossing Mud Creek was removed in or around 1871. *Exhibit 3 1871 Beers Atlas.*
6. On information and belief, the portion of Center Bay Beach Road at issue was never formally discontinued.
7. On information and belief, prior to the removal of the bridge across Mud Creek on Center Bay Beach Road in or around 1871, and continually since, the Plaintiff has occupied and used the Property as a public beach for the benefit of the residents of the Town of Alburgh.
8. In addition to using the beach for recreational activities like swimming and fishing, residents have used the Property to provide water for livestock, to raise frogs, and to provide access to boats stored on Mud Creek. *Exhibit 4 To Whom it May Concern Letter*.
9. In or around 1999, in response to the actions of residents of Center Bay Beach, Plaintiff requested the Town’s attorney at the time, Brian Hehir, Esq., investigate the ownership and use of the Property.
10. On November 10, 1999, the Selectmen of the Town of Alburgh mailed a letter drafted by Attorney Hehir to the residents of Center Bay Beach. The letter outlined the Plaintiff’s claim of ownership of the Property as well as the appurtenant right to public access to the beach. *Exhibit 5 Letter from B. Hehir dated November 1, 1999 and cover letter to residents.*
11. Defendants Murphy’s predecessor in title, Ernest and Janet Oakes were mailed a copy of this letter. See *Exhibit 5*.
12. Defendants Morrissette’s predecessor in title, Leroy Drinkwine was mailed a copy of this letter. See *Exhibit 5.*
13. On December 14, 1999, a survey depicting the right of way limits of Town Highway #31 extending along the beach entitled “Survey Part of T.H. # 31 – Selectman Town of Alburgh” was recorded in Map Slide 137 in the Town of Alburgh Land Records (the “Survey”). *Exhibit 6 Survey Part of T.H. # 31.*
14. Defendant Neighbors, Defendant Heirs, and their respective predecessors in title, did not contest the Survey upon recording nor did any party file a suit to challenge the Plaintiff’s claim of ownership of the Property.
15. From as early as 1871, continuing through 1999, until present, the Plaintiff has openly, notoriously, hostilely, and exclusively claimed ownership of the Property.
16. The Plaintiff has held the Property open to the public, including the following activities: utilizing the beach for swimming, walking the shore to watch wildlife, conducting water quality sampling, access for fishing (including ice fishing in the winter), walking dogs along the beach, and launching boats prior to and continually since the recording of the survey in 1999.
17. In or around 2021, conflict around use of the Property arose.
18. In 2021, Plaintiff sent the residents of Center Bay Beach, including Defendant Neighbors, a request to document their concerns regarding the Property.
19. On September 9, 2021, residents of Center Bay Beach, including Defendant Neighbors, sent a response to the Plaintiff outlining their concerns regarding the Property, which fall into two categories: 1. Access, control and maintenance of the beach; 2. Ownership of the beach. *Exhibit 7 Letter from Center Bay Residents to Town Board dated September 7, 2021.*
20. On November 10, 2021, Plaintiff replied to the residents of Center Bay Beach, including Defendant Neighbors, providing them notice that the Town intends to mark the boundary, delineate the beach/parking areas, in addition to other actions necessary to further demonstrate the Plaintiff’s ownership and the public’s usage of the beach. *Exhibit 8 Letter from Town of Alburgh to Center Bay Residents dated November 10, 2021.*
21. Since conflict arose in 2021, the Plaintiff has utilized and continues to utilize the Property in various ways, including the Fire Department filing water trucks, residents swimming in summer and ice fishing in winter, and the Town plowing the Property.
22. In or around this time, the Plaintiff installed concrete blocks to demarcate the boundary of the Property with the property of Defendant Neighbors.
23. On December 3, 2021, Defendant Neighbors, through their counsel, mailed the Plaintiff and Dave Rugh Esq., then acting as the Plaintiff’s attorney, a letter objecting to the use of the Property as a Town Beach and claiming ownership of the Property. *Exhibit 9 Letter from Defendant Neighbors Counsel to the Plaintiff* *dated December 3, 2021.*
24. In or around February of 2023, the Defendant Neighbors received an Assignment of Rights to Protect Property from Defendant Heirs purporting to assign rights held by the heirs of Mary V. Mooney to the Property, which was recorded in the Alburgh Land Records in at Book 196 at Page 192. *Exhibit 10* *Assignment of Rights to Protect Property.*
25. On May 18, 2023, Defendant Neighbors, through their counsel, sent a “No Trespass Notice” to the Plaintiff instructing them to refrain from accessing the Property and threatening action pursuant to 13 V.S.A. § 1301 if the Plaintiff does enter onto the Property. *Exhibit 11* *Letter from Defendant Neighbors Counsel to the Plaintiff dated May 18, 2023.*
26. In or around February 2024, Defendant Neighbors recorded a Final Decree of Distribution issued by the Vermont Superior Court, Probate Division, Grand Isle Unit, in the matter captioned In re Estate of Mary V. Mooney Docket No. 23-PR-04173, purporting to decree any interest held the Estate of Mary V. Mooney to the Defendant Heirs. *Exhibit 12* *Final Decree of Distribution In re Estate of Mary V. Mooney.*
27. On May 3, 2024, Defendant Murphy wrote to Plaintiff claiming ownership of the Property and requesting the Town remove the concrete blocks it installed on the boundary. *Exhibit 13* *Email from E. Murphy dated May 3, 2024*.
28. On May 7, 2024, Plaintiff’s Counsel wrote to Counsel for the Defendant Neighbors reiterating the Plaintiff’s position that the Property is owned by the Plaintiff. *Exhibit 14* *Letter from Plaintiff’s Counsel dated May 7, 2024.*
29. On May 8, 2024, Defendant Neighbors Counsel wrote to Counsel for the Plaintiffs and stated that Defendants will seek to have anyone who enters the Property charged with criminal trespass and will pursue a criminal action against the Plaintiff in addition to bringing a suit under 42 U.S. Code § 1983. *Exhibit 15* *Email from* *Defendant Neighbors Counsel to the Plaintiff’s Counsel dated May 8, 2024.*
30. Plaintiff and the public have generally ignored any notices posted by Defendant Neighbors.
31. Plaintiff subsequently initiated this suit to resolve the dispute as to the ownership of the Property.

**COUNT I**

**LEGAL TITLE**

1. Plaintiff repeats and re-alleges the forgoing paragraphs as if fully stated herein.
2. Plaintiff has claimed legal title to the Property since at least 1871.
3. Plaintiff has never relinquished or conveyed legal title to the Property.
4. Plaintiff recorded a survey depicting the boundaries of the Town’s property in 1999.
5. Plaintiff seeks an order quieting title to the Property in favor of Plaintiff and a judgement that Defendant Neighbors and Defendant Heirs have no right or title to the Property to access or use Plaintiff’s Property beyond access and use generally afforded to the residents of the Town of Alburgh by the Plaintiff.

**COUNT II**

**ADVERSE POSSESSION**

1. Plaintiff repeats and reasserts each of the foregoing allegations as though fully set forth herein.
2. Plaintiff and the public have used the Property openly, notoriously, hostilely and under a claim of right since at least 1871. The Town residents have used the property as a public beach including but not limited to activities parking, swimming, fishing, ice fishing, boat launching, watering livestock, raising frogs, etc.
3. Plaintiff recorded a survey depicting the boundaries of the Town’s property in 1999, which recording is evidence of its claim of title.
4. The use of the Property and claim of right of title to the Property by the Plaintiffs has been continuous for more than 15 years and such use has been open, notorious, hostile and adverse to the interests of Defendant Neighbors and Defendant Heirs and their respective predecessors, including the Defendant Heirs.
5. Plaintiff seeks an order that it has acquired equitable title by Adverse Possession and a judgement that Defendant Neighbors and Defendant Heirs have no right or title to the Plaintiff’s Property.

**COUNT III**

**PRESCRIPTIVE EASEMENT**

1. Plaintiff repeats and reasserts each of the foregoing allegations as though fully set forth herein.
2. Plaintiff and the public have accessed and used the Property openly, notoriously, hostilely since at least 1871. The Town residents have accessed and used the property as a public beach including but not limited to activities such as parking, swimming, fishing, ice fishing, boat launching, watering livestock, raising frogs, etc.
3. Plaintiff recorded a survey depicting the boundaries of the Town’s property in 1999, which recording is evidence of its claim of use of the property as a public beach including but not limited to activities such as parking, swimming, fishing, ice fishing, boat launching, watering livestock, raising frogs, etc.
4. The use of the Property by the Plaintiff and the residents of Alburgh has been continuous for more than 15 years and such use has been hostile and adverse to the interest of Defendant Neighbors and Defendant Heirs and their respective predecessors.
5. Plaintiff seeks an order Plaintiff has acquired a Prescriptive Easement to use the Property for a public beach parking, swimming, fishing, ice fishing, boat launching, watering livestock, raising frogs, etc.

**WHEREFORE**, Plaintiff requests that the Court grant:

1. An order quieting title in favor of Plaintiff confirming legal title to the Property;
2. In the alternative, an order quieting title confirming equitable title to the Property by means of adverse possession;
3. In the alternative, an order quieting title confirming a prescriptive easement on the Property for use as a public beach, including but not limited to activities such as parking, swimming, fishing, ice fishing, boat launching, watering livestock, raising frogs, etc.
4. A Preliminary Injunction prohibiting the Defendants from restricting, excluding, or otherwise interfering with the Plaintiff and residents of the Town of Alburgh’s continued access, occupancy, and use of the Property.
5. A judgement of attorneys’ fees and costs from Defendants.
6. Such other and further legal and equitable relief as this Court deems just and proper.

DATED at Burlington, Vermont this 17th day of May 2024.

 MSK ATTORNEYS

 /s/ *Liam L. Murphy*

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