

STATE OF MAINE  
PENOBSCOT, SS.

SUPERIOR COURT  
Docket No. RE-03-31

*Am. Pet. - Dis. 9/7/05*

GORDON PELLETIER, et al., )  
Plaintiff, )  
 )  
 )  
v. )  
 )  
 )  
LOWELL SMITH, )  
Defendant. )

ORDER

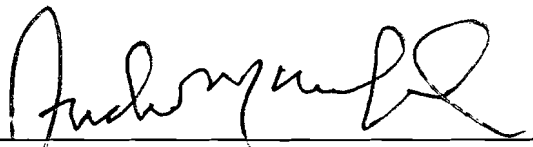
FILED & ENTERED  
SUPERIOR COURT  
SEP 07 2005  
PENOBSCOT COUNTY

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.<sup>1</sup> It does not matter that the current party failed to request an opportunity to join the party. Rather, the court must order joinder – upon its own initiative – where the necessary party is susceptible to service of process. As that is the case here,<sup>2</sup> 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

<sup>1</sup> This court’s Judgment of May 2, 2005, effectively operated as a dismissal of the Plaintiffs’ equitable claims for relief.  
<sup>2</sup> 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

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

**DOCKET RECORD**

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  
Minor Case Type: EQUITABLE REMEDIES

**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