

STATE OF MAINE

YORK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-03-015

PAY FOR 1232 17

THOMAS F. McCARTHY,
Individually and as Trustee of the
Valeska Family Trust and Valeska
Realty Trust,

Plaintiff

v.

**ORDERS ON
PENDING MOTIONS**

THE INHABITANTS OF THE
TOWN OF KENNEBUNKPORT,

Defendant

DONALD L. DEWIGHT
LAW OFFICE

JAN 30 2004

Thomas McCarthy, individually and as trustee of the Valeska Family Trust and the Valeska Realty Trust, has brought a first amended complaint against the Town of Kennebunkport. Following an order on an earlier motion to dismiss, only Counts I, pursuant to Rule 80B, M.R.Civ.P. and III, a claim of trespass, remains. The town has filed a motion to dismiss, a motion for partial summary and a motion to strike the plaintiff's affidavit.

The motion to dismiss seeks to dismiss the claims of Mr. McCarthy as trustee as the trusts must be represented by a Maine licensed counsel, Mr. McCarthy is not licensed in Maine and as Mr. McCarthy cannot represent a separate entity in a *pro se* capacity. Trusts, like estates, see *State v. Simanonok*, 539 A.2d 211, 12-3 (Me. 1988), or corporations are entities separate from the people who administer them. The portion of the complaints brought by Mr. McCarthy, as trustee, must be dismissed. There are no statutory exceptions for non-Maine lawyer trustees to represent trusts. See 4 M.R.S.A. §807.

The second motion is a motion for partial summary judgment against Mr. McCarthy individually and as trustee of the Valeska Realty Trust. Since the claim of the Valeska Realty Trust has been dismissed, only the claim of Mr. McCarthy individually will be examined. The town's motion is granted as Mr. McCarthy has failed to comply with the requirements of Rule 56 in that an opposing statement of material facts was not submitted, his affidavit was late and the form of the affidavit was deficient.

The final motion need not be addressed.

The entry is:

Motion to dismiss the claims of Thomas McCarthy as trustee of the Valeska Family Trust and as Trustee of the Valeska Realty Trust is granted.

Motion for partial summary judgment is granted in part. Judgment for the defendant on the claims of Thomas McCarthy individually.

Dated: January 23, 2004

Thomas F. McCarthy - PL - prose
Sean T. McCarthy, Esq. - PL - pro hac vice
Melissa A. Hewey, Esq. - DEF



Paul A. Fritzsche
Justice, Superior Court