

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION – SECOND JUDICIAL DEPARTMENT

TOWN OF MONTAUK, INC.,

Petitioner,

ATTORNEY
AFFIRMATION

-against-

Hon. George E. Pataki, Esq., Governor of the State of New York and, The People of the State of New York Met in Assembly, and The Town Board government of the Town of East Hampton, and The Trustees of the Freeholders and Commonalty of the Town of Easthampton, and The Suffolk County Water Authority, Inc., and The County of Suffolk, and the Brooklyn Historical Society, Inc., and 511 Equities, Inc., and The Nature Conservancy, Inc.

Index No.: 04-27553

Hon. Daniel J. Loughlin

Respondents.

FILED

MAR 30 2005

EDWARD P. ROMAINE
CLERK OF SUFFOLK COUNTY

STATE OF NEW YORK:
COUNTY OF SUFFOLK:

I, STEPHEN G. COURT, an attorney at law, duly admitted to practice before the State of New York, hereby affirms under penalty of perjury, as follows:

1. In accordance with the retainer agreement executed on the 28th day of February, 2005, I am authorized to represent Montauk Friends of Olmstead Parks/Montauk Trustee Corporation (hereinafter "Trustee Corp."). This agreement was made with Mr. Robert A. Ficalora, CEO, pursuant to the resolution of the board of directors of Trustee Corp., dated the 11th day of October, 2004 (Resolution attached hereto).
2. My authorization is expressly stipulated in said agreement of February 28, 2005, to the co-preparation and filing of all documents with and for Mr. Robert A. Ficalora, CEO of Trustee Corp., at his direction.
3. I am the attorney for the Petitioner in the above referenced matter. I am fully

familiar with all of the facts, circumstances, pleadings and proceedings heretofore had herein. I submit this affirmation in support of the annexed Amended Petition, dated March 28, 2005 and filed in the Supreme Court of Riverhead on March 30, 2005.

4. That on March 11th, 2005, the Appellate Division, Second Department did finally deny, for the Court, Petitioner's application pursuant to CPLR Section 5704 thereby exhausting all efforts to obtain entry of the original Order to Show Cause (OSC) intended to commence this proceeding.
5. That the withdrawal of Petitioner's original attorney for this action had caused the delay in bringing forth the aforementioned CPLR 5794 application and is also the reason for the delay in filing this Amended Petition.
6. This Amended Petition has been filed within twenty (20) days of the denial of the CPLR 5704 application before the Appellate Division.
7. That original Petition was amended in only way: Paragraph "1" of the original Petition was deleted. The rest of this instant Amended Petition was re-numbered but is otherwise identical in content and form to the original Petition filed in this court on November 24th, 2004. No new causes of action or additional language was added to this Amended Petition.
8. The Amended Petition and supporting documents conform in all aspects with the papers previously filed and served. Jurisdiction was obtained via personal service on all Respondents when the original Petition was filed as set forth in the annexed Affidavits of Service. Service of this Amended Petition and Notice of Petition is being made on all parties with a new return date of April 29, 2005. This special

proceeding was commenced in accordance with CPLR Section 403. (See also Gershell v. Porr, 1996, 89 N.Y. 2d 327, 332, 653 N.Y.S. 2d 82, 85).

9. The annexed Amended Petition seeks pendente relief, which requests an Order to be made and entered granting the following relief:
 - a. Updating and re-entering the September 6th, 1851, Order of the Honorable Nathan B. Morse, J.S.C. to remove all claim of and by the Town of Easthampton to Montauk proprietor's (taxpayers') right to tax and govern Montauk under the 1686 Dongan Patent, and determine liability in Respondents for damages accruing from eighty years of usurpation and misrule; and
 - b. Allocating monies from Montauk's town revenues (taxes, etc.) to be used by Montauk Trustee Corp. to retain and compensate attorneys and to hire and to maintain a professional staff as set forth in its resolutions of October 11th, 2004, to more fully and properly bring this matter before this court; and
 - c. Ordering all claims into or over real property in Montauk by the Town of Easthampton, Suffolk County and the State of New York delivered to the MFOP/Montauk Trustee Corporation with the proprietors' second and third houses to be immediately delivered for use as offices and for community education and organizing; and
 - d. Recognizing the feudal tenure of a manor granted in the 1686 charter to be that of the Lord of the fee to which all properties escheat for lack of heirs; and
 - e. Identifying the properties encumbered by Indian/Proprietor rights as

determined by the July, 1878 judgment of Hon. J.O. Dykman, J.S.C. and the subsequent interlocutory judgment of Mr. Everett A. Carpenter, Esq., as referee in the matter of Robert M. Grinnel and wife against Edward D. Baker, et. Al. (Supreme Court, County of Suffolk, 1878) together with the determination that subsequent sales of lands by Arthur W. Benson in the 1880s encumbered the subject lands to be held "in stock" as appurtenances to at least the Montauk Association Corporation (1882), Robert W. De Forest (1883), John H. Prentice (1887) and Alfred M. Hoyt (1888) – proprietors of Montauk outside of the affected lands at Montauk or Napeague; and

- f. Ordering Respondent – The Nature Conservatory – to show all contracts entered into, deeds filed, and all claims, in or over lands at Montauk or Napeague; and
- g. Ordering Respondent – 511 Equities – to show all contracts entered into, deeds filed, and all claims into or over real property in Montauk since first established as the Montauk Beach Development corporation by Carl G. Fisher (date); and
- h. Compel, review and prohibit actions of bodies politic operating pursuant to statute using the court's prerogative powers consolidated under Article 78 of the CPLR and convert this proceeding into an action for declaratory judgment; and
- i. Enjoining and Restraining the Respondents and their attorneys, agents, servants an employees, or anyone on their joint or individual behalf during the pendency of this action, and until the further order of this Court, from

transferring, selling, assigning, conveying, mortgaging, pledging, negotiating or otherwise disposing of or encumbering any of the real property and assets herein described; and

j. Granting a jury trial upon compensation for damages sufficient to recover Montauk's revenues and lands unlawfully taken or injured, with damages; and

k. An Order, Pendente Lite, awarding the Petitioner such other and further relief as to the Court may seem just and proper.

10. As the facts and circumstances relating to this application are historic and complex and have been extensively detailed by the Petitioner, your Affirmant will refer to the Petitioner's Affidavit and refrains from repeating, at length, the same herein.

11. Upon information and belief, irreparable harm is threatened without entry of the restraining order contained in the Order to Show Cause as presented. We request the immediate re-entry of the Order of Hon. Nathan B. Morse, J.S.C., dated June 26th, 1851, stopping all further claim by the Town of East Hampton to approve plans or permits for land use in Montauk.

12. Upon information and belief, the pleadings herein assert the criminal usurpation of franchises and takings of real property.

WHEREFORE, the undersigned respectfully prays that the demands set forth in this Amended Petition be granted, and for such other and further relief as to the Court may seem just and proper.

DATED: March 29, 2005.

Respectfully,

A handwritten signature in black ink that reads "S.G. Court". The letters are cursive and somewhat stylized.

STEPHEN G. COURT, ESQ.
Attorney for Petitioner
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Patchogue, NY 11772
TEL.: (631) 758-2352