

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

THE SEAVIEW AT AMAGANSETT, LTD., DUNES
AT NAPEAGUE PROPERTY OWNERS ASSOCIATION,
INC., THE TIDES HOMEOWNERS ASSOCIATION, INC.,
WHALERS LANE HOMEOWNERS ASSOCIATION, INC.,
THE OCEAN ESTATES PROPERTY OWNERS
ASSOCIATION, INC., ROBERT HIGGINS, MARC HELIE,
ROBERT CRISTOFARO AND ROBERT COOPERMAN,
Plaintiffs,
-against-
TOWN OF MONTAUK, Intervenor AND
TRUSTEES OF THE FREEHOLDERS AND
COMMONALTY OF THE TOWN OF EAST
HAMPTON AND THE TOWN OF EAST HAMPTON,
Defendants,
-and-
JAY H. BAKER, PATTY C. BAKER,
DAVID STUART TYSON, STEPHANIE BITTERMAN,
JUNE MERTON, NAPEAGUE ASSOCIATES,
DAVID ROSS, GRACE ROSS, IRVING C. MARCUS
AND HARRIET MARCUS,
Additional Defendants.

2011 NAPEAGUE AFFIDAVIT
OF ROBERT A. FICALORA
UPON INTERVENTION
(CPLR §1012(a)(3))

Index No. 09-34714

MELVIN TANENBAUM

FILED

SEP 29 2011

Judith A. Pascale
CLERK OF SUFFOLK COUNTY

Town of Montauk }

} ss:

State of New York }

Robert A. Ficalora duly sworn deposes and says: I am founder and acting Supervisor of the Montauk Friends of Olmsted Parks / Montauk Trustee Corporation and the Township of Montauk under the Articulated Rights and Constitution of the Township of Montauk (Montauk Constitution) adopted on December 5th, 2000 (p.2) and proclaimed shortly thereafter. This affidavit explains why and how Montauk is a township separate from the Town of Easthampton and how Arthur W. Benson's purchase of Napeague extended its boundaries to include the properties included in the deed recorded at Liber 268 p.478 (p.72).

The court will know that while I am able to file these papers on the Corporations' behalf that I am barred from moving the court because I am not an attorney (CPLR §321(a), (see People v. Stuart Bennett Vorpahl, defendant & Town of Montauk, Inc.,

Intervenor (2 NY3d 781, N.Y. Court of Appeals, May 6th, 2004) p.1.

We are currently petitioning the honorable Andrew M. Cuomo, Governor of the State of New York for the following language in the attached EXECUTIVE ORDER to be able to return to court with counsel to settle the many jurisdictional and real property issues that are raised in Montauk and Napeague (p. 8-12):

AND FURTHER, as significant ongoing injury requires mitigation and redress, and an orderly transition to a town claiming sovereign jurisdiction in the making, administering and enforcement of law requires judicial oversight and direction, a cause may be joined by the now established Township of Montauk against the People of the State of New York in the Supreme Court of the State of New York to settle claims made in the Articulated Rights and Constitution of the Township of Montauk,

Montauk's appearance and the court's support will enable us to retain competent counsel to enable the court to fashion a proper and equitable remedy in this matter.

This document accompanies and supports a NOTICE OF INTERVENTION and an ANSWER to Plaintiffs' August 29th, 2009 COMPLAINT that commenced the instant action.

The genesis of the Montauk Trustee Corporation and the Township of Montauk are presented in this affidavit together with their current status in law and in equity within the State of New York (p. 15). The assertions of Montauk's political and jurisdictional status is substantiated by the attached historical exhibits to explain, among other things, how the 1882 Purchase of 1,100 acres of land at Napeague by Arthur W. Benson enlarged the Township of Montauk within the boundaries of the lands contained in the 1686 Dongan Patent and therefore placing the Subject Properties herein under the Township of Montauk's jurisdiction to be governed pursuant to. the Montauk Constitution, p. 2.

The State of New York and the towns of Suffolk County were first established as

proprietary entities owned by individuals. King Charles II granted a proprietary patent to his brother the Duke of York in 1664. In 1648 the lands comprising the Town of East Hampton were purchased up to the eastern boundary of Napeague from the Montaukett tribe of Indians for individual settlers by the colonies of Connecticut and received a Patent on them from Governor Richard Niccols in 1666 (p. 18) that was referenced in the 1686 Dongan Patent and Charter (p. 19).

In 1691, after a Revolution in England and some turmoil in New York, the First Assembly of the now State of New York was convened that did enact at Chapter 2 of the laws of 1691, a law that held that the charters granted were

“Authentick in the law against their Majesties, their heirs and successors forever” (p. 32).

Charters to bodies Politic and Corporate such as the 1686 Dongan Patent were also protected from 1777 under the Constitution of the State of New York and are protected by the contracts clause of the Constitution of the United States.

In 1851 Judge Nathan Morse of the New York State Supreme Court entered a decision in the matter of Henry P. Hedges, et al (proprietors of Montauk) against defendant Easthampton Trustees wherein it was ordered that they release all claim to Montauk under their corporate seal (p. 19 & p. 38). With the Dongan Patent lands being divided leaving the unsettled lands at Montauk without government, the State Legislature at Albany responded by incorporating the Proprietors of Montauk and affirmed their right to govern (p. 53).

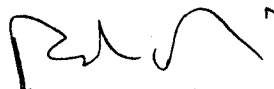
In 1879 an action in partition among the several proprietors of Montauk led to Montauk being sold by them at auction together with their Montauk trustee Corporation to Arthur W. Benson for One Hundred and Fifty-one thousand dollars. The deed, recorded at Liber 246 p. 256, lists the names of the individual proprietors (noting the trustees of Montauk) and the corporation of the Proprietors

of the undivided lands of Montauk and was entered by court order under Montauk Proprietors' corporate seal (p. 70).

Negotiations concerning Arthur W. Benson's 1882 purchase of of the lands at Napeague appear to have commenced almost immediately. Understanding that Judge Morses' 1851 decision ordered that the Defendant E.H. Trustees account for all rents issues and or profits received from Montauk since 1838 and pay the proprietors, and that Montauk was at that time sizeable livestock operation, myself and our current Montauk Trustee corporation had a feeling that there had been a settlement of some kind involving Napeague and adjusted our Associations map to include it (p. 83).

Montauk's proprietors and inhabitants have rights that should be recognized and upheld. The hour seems late, and there is much work to be done, but with proper application of law I am confident that past transgressions will be forgotten and Montauk will enjoy a bright and prosperous future.

Sworn to this 29 day of September, 2011



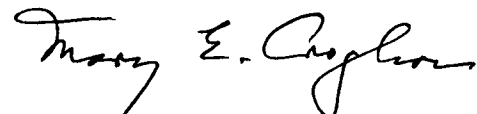
Robert A. Ficalora

Acting Supervisor

Town of Montauk

Suffolk County, New York

*Subscribed before me this
29th day of September 2011*



MARY E. CROGHAN
Notary Public, State Of New York
No. 01CR6095486
Qualified In Suffolk County
Commission Expires July 14, 2015