

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, SECOND DEPARTMENT

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TOWN OF MONTAUK, INC.,

Petitioner-Appellant,

-against-

App. Div. No.
2005-10912

HON. GEORGE E. PATAKI, ESQ., GOVERNOR OF THE
STATE OF NEW YORK, THE PEOPLE OF THE STATE
OF NEW YORK MET IN ASSEMBLY, THE TOWN
BOARD GOVERNMENT OF THE TOWN OF EAST
HAMPTON, THE TRUSTEES OF THE FREEHOLDERS
AND COMMONALTY OF THE TOWN OF EAST
HAMPTON, THE SUFFOLK COUNTY WATER
AUTHORITY, INC., THE COUNTY OF SUFFOLK, THE
BROOKLYN HISTORICAL SOCIETY, INC., 511
EQUITIES, INC., AND THE NATURE CONSERVANCY,
INC.

Respondents-Respondents.

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**MEMORANDUM OF LAW FOR RESPONDENT-RESPONDENT
COUNTY OF SUFFOLK**

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Suffolk County Clerk's Index No. 04-27553

PRELIMINARY STATEMENT

Respondent-Respondent County of Suffolk (hereinafter “the County”) respectfully submits this memorandum of law in support of its motion to dismiss the appeal of Petitioner-Appellant Town of Montauk, Inc. (hereinafter “Town of Montauk, Inc.”).

The County moves to dismiss the Town of Montauk’s appeal from an order of the Supreme Court, Suffolk County (Loughlin, J.), dated June 20, 2005, on the ground that the Town of Montauk, Inc.’s brief and appendix do not comply with the CPLR and the rules of this Court.

POINT I

THE APPEAL MUST BE DISMISSED BECAUSE THE BRIEF AND APPENDIX FAIL TO COMPLY WITH THE CPLR AND THE RULES OF THIS COURT.

Prosecuting an appeal by the appendix method requires that an appellant provide “only such parts of the record on appeal as are necessary to consider the questions involved, *including those parts the appellant reasonably assumes will be relied upon by the respondent....*” CPLR § 5528(a)(5) (McKinney 2006) (emphasis supplied). The failure to file a proper appendix may result in sanctions or dismissal of the appeal. See Ramirez v. Smith, 128 A.D.2d 511, 512 N.Y.S.2d 351 (2d Dept. 1987).

Here, it is the responsibility of the Town of Montauk, Inc. to file an appendix that “contains all relevant portions of the record in order to enable the court to render an informed determination of the merits of the appeal and to present the issues on appeal in a concise and clear manner.” Cross Westchester Dev. Corp. v. Sleepy Hollow Motor Court, Inc., 222 A.D.2d 644, 636 N.Y.S.2d 372 (2d Dept. 1995). However, the Town of

Montauk, Inc. failed to include the County of Suffolk's Cross-Motion to Dismiss in the appendix, which it is "reasonably assumed will be relied upon" by the County. See CPLR § 5528, supra; Gatto Affirmation, ¶ 6. Thus, the appendix lacks a crucial part of the record which will prohibit the Court from fully considering the issues on appeal. The 840-page appendix consists of hundreds of pages of historical information irrelevant to this appeal, and is not arranged in any logical or comprehensible manner. See Patel v. Patel, 270 A.D.2d 241, 704 N.Y.S.2d 606 (2d Dept. 2000).

The Town of Montauk, Inc.'s brief fails to contain any statement of the case and the citations to the appendix are inaccurate. Gatto Affirmation, ¶¶ 4 and 5. Thus, it is impossible to determine what facts the Town of Montauk, Inc. relies upon in this appeal, without poring over the voluminous appendix. However, it is well settled that "an appellate court should not be subjected to the task of untangling and mastering the facts from an inadequate and incoherent appendix." LoGerfo v. LoGerfo, 30 A.D.2d 156, 290 N.Y.S.2d 1005 (2d Dept. 1968).

Since the Town of Montauk, Inc. has failed to submit an appendix and brief that would enable this Court to render an informed decision on the merits, the appeal must be dismissed. Lowry v. Suffolk County Water Authority, 287 A.D.2d 551, 731 N.Y.S.2d 658 (2d Dept. 2001).

POINT II

THE COURT SHOULD AWARD COSTS AND IMPOSE SANCTIONS AGAINST THE TOWN OF MONTAUK, INC. AND/OR ITS COUNSEL FOR PROSECUTING THIS FRIVOLOUS APPEAL

22 NYCRR § 130-1.1 provides in relevant part that conduct is frivolous if “it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law” 22 N.Y.C.R.R. § 130-1.1 (2006). The Town of Montauk, Inc. has not supported its appeal with a citation to a single applicable case. See Gatto Affirmation, ¶ 10. Its contention that Montauk is not a part of the Town of East Hampton does not have any arguable merit and is frivolous.

Thus, the Court should award costs in favor of the County and impose sanctions upon the Town of Montauk, Inc. and/or its counsel. See Chu v. Green Point Savings Bank, 218 A.D.2d 781, 631 N.Y.S.2d 252 (2d Dept. 1995); Sommer v. Harrington, 201 A.D.2d 570, 607 N.Y.S.2d 706 (2d Dept. 1994); McMurray v. McMurray, 163 A.D.2d 280, 557 N.Y.S.2d 149 (2d Dept. 1990).

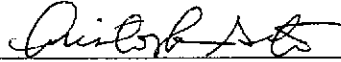
CONCLUSION

For the reasons stated above, the County of Suffolk’s motion should be granted in its entirety.

Dated: June 22, 2006
Hauppauge, New York

Respectfully submitted,

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