

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION - SECOND JUDICIAL DEPARTMENT
TOWN OF MONTAUK, INC.**

Petitioner,

-against-

Notice of Motion

Index No.: 04-27553

Return Date: 01/07/2005

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.

Respondents.

Please take Notice that the petitioner herein and herewith seek entry of an attached Order to Show Cause twice marked "NOT SIGNED" by separate Justices of the Supreme Court, Riverhead, County of Suffolk, New York. The request for the Temporary Restraining Order is supported by attached exhibits.

Due to the corporate and commercial nature of the relief sought herein we move for assignment of this matter to the commercial part (see attached affirmation.) No prior action by the petitioner herein has been properly brought before this Court for the relief sought herein.

The East Hampton Town Board government is concurrently being personally served with this motion and Notice of Petition pursuant to statute, together with all parties herein below listed.

Petitioner asserts that this Court has original jurisdiction to consider both versions of the Order to Show Cause (as hereafter attached) either according to C.P.L.R. § 5704, or at common law (see: Association of the Bar of the City of New York, 1928, 222 App. Div. 580, 227 N.Y.S. 1; Barkley v. New York Cent. & H.R.R. Co., 1899, 42 App. Div. 597, 59 N.Y.S. 742, appeal dismissed 161 N.Y. 647, 57 N.E. 1103) and the petitioner's application for assignment to the commerce division.

List of noticed parties attached below:

Greg Allen, Esq.
Counsel for Governor Pataki
NYS Capitol Building, Albany, NY 12207
(518) 474-8437

Elliot Spitzer, Esq.
Attorney General of the State of New York
NYS Capitol Building
Albany, NY 12207

CAHN, WISHOD & KNAUER
Attorneys for the Town Board Government
of East Hampton,
425 Broad Hollow Road - suite 315
Melville, N.Y. 11747
(516) 752-1600

John Courtney, Esq.
Attorney for The East Hampton Town
Trustee Corporation
P.O. Box 720, Amagansett, N.Y. 11930
(631) 267-6161

Suffolk County Water Authority, Inc.
4060 Sunrise Highway, Oakdale, N.Y.
11769
(631) 589-5200

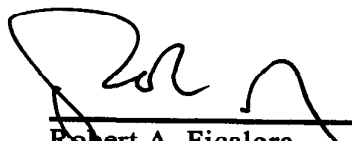
The County of Suffolk
County Attorney's Office
H. Lee Dennison Building
100 Veterans Memorial Hwy, P.O. Box 6100
Hauppauge, N.Y. 11788
Phone: (631) 853-4049
Fax: (631) 853-5169

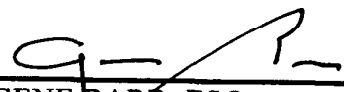
The Brooklyn Historical Society
128 Pierrepont Street,
Brooklyn, NY 11201
Phone: (718) 222-4111
Fax: (718) 222-3794

511 Equities, Corporation
A.K.A. Montauk Improvement Corp.
511 5th Avenue, N.Y., N.Y. 10018
(212) 578-1699

The Nature Conservancy, Inc.
4245 North Fairfax Drive, Suite 100
Arlington, VA 22203-1606
(703) 841-4850

Solicitor General for the NYS Assembly
Department of Law
NYS Capitol Building
Albany, NY 12207


Robert A. Ficalora,
C.E.O. M.F.O.P. Montauk Trustee Corp.
P.O. Box 2612, Montauk, N.Y. 11954


GENE BARR, ESQ.
Attorney for the Petitioner
80 Medford Avenue,
Patchogue, New York, 11772
Phone: (631) 732-3775
Fax: (631) 207-0023

Suffolk County

Town of Montauk, Inc.

Petitioner

-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 gov't 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.

Respondents

Order to Show Cause

(CPLR § 7803(2))

Index no. 04 - 17553

Present: Hon.

NOV 2004
Received
East Hampton
Town Office

10:14
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Upon the annexed affidavit of Robert A. Ficalora duly sworn on the 17th day of November, 2004, and the affirmation of Gene Barr, an attorney duly admitted to practice law before the Courts of the State of New York, dated the 23rd day of November, 2004, together with the attachments and annexed exhibits, and in support of Petition and causes of this action, it is hereby

ORDERED that defendants show cause before this court at IAS Part ___ to be held at the Courthouse at 235 Griffing Avenue, Riverhead, New York at 9:30 a.m. on _____, 2004 why orders should not be made and entered in this proceeding:

- * I... recognizing the Incorporated Township of Montauk upon the same record as the May 6th, 2004 Decision of the New York Court of Appeals (attached);
- * II... compelling delivery into court of all current revenues raised in Montauk by respondent town board of East Hampton, including all taxes, pursuant to CPLR 2701;
- * III... holding all jurisdiction claimed in Montauk pursuant to Acts of distant legislatures to be in violation of the 1686 Dongan Patent and, therefore, of Chapter 2 of the laws of 1691 and Article 1 Section 14 of the Constitution of the State of New York (attached);

ORDERED that the attached Order of Hon. Nathan B. Morse, J.S.C., dated June 27th, 1851, is updated, modified and re-entered enjoining and restraining the Town of Easthampton from all planning, permitting or use of lands at Montauk while maintaining essential services (police, etc.)

LET SERVICE of a copy of this order, together with the Petition and supporting affidavits and attachments thereto, by personal delivery to all defendants on or before _____, 2004 be deemed sufficient service thereof.

This order has been signed by me this ___ day of November, 2004, and shall upon presentation be entered into the office of the clerk.

Enter:

Justice Supreme Court
Suffolk County

RTB

INDEX NO.: 04 - 27553

SUPREME COURT - STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
Town of Montauk, Inc.

Petitioner/Plaintiff,

AFFIRMATION

-against-

Hon. George E. Pataki, Governor State of New York, et. al.

Respondents/ Defendants.
-----X

Mr. Gene D. Barr, Esq., an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms the following statements to be true under the penalties of perjury.

1. I am the authorized attorney for the Montauk Friends of Olmsted Parks / Montauk Trustee Corporation and submit this affirmation in support of the assignment of this action to the Commercial Division.


2. This is an action to: 1.) end the fraudulent usurpation of franchises in Montauk by the town of Easthampton, including that to tax and to govern; 2.) end the wrongful mis-appropriation of assets; and 3.) obtain compensation for past misappropriation of assets, with damages.

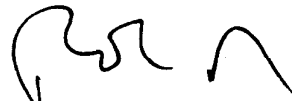
3. The amount sought in compensatory damages is in excess of \$100,000,000.

4. I am fully familiar with the facts and pleadings in this action and have reviewed the Rules of the Commercial Division, Suffolk County including the guidelines for the assignment of cases to the Commercial Part.

5. I believe that this case complies with the guidelines for the assignment of cases to the Commercial Part and should be assigned to the Commercial Division.

Dated 11/29/04


Gene D. Barr, Esq.
80 Medford Ave
Patchogue, New York, 11772
Phone:(631) 654-5050
Fax:(631) 207-0023


Robert A. Ficalora
signed per paragraph no. 2 in:
Nov. 22nd 2004
Attorney's Affirmation
of Gene Barr, Esq.