

Bob Ficalora

From: Bob Ficalora [bobfic@montauk.com]
Sent: Thursday, July 14, 2005 1:33 AM
To: 'Stephen G. Court, Esq'
Cc: Bob Ficalora; Carla Grimm; Carolyn Carson; Connie Judson; Helen Ficalora; Jay Sayers; Nancy Woodward; Richard Monahan; Stuart Bennett Vorpahl; William Grimm
Subject: Ficalora answer to SG Court defenses

Dear Mr. Court,

Your reply (below) is disingenuous, so let me address your points seriatim.

- 1.) Whether you read my many emails to you or not, you should not have filed any "Notice of Appeal" with the trial court without my approval. If you had read ANY of my emails you would have known that I was preparing papers for you to review before filing with the Court of Appeals.
- 2.) I have taken many appeals to decisions both at the Appellate Division and the Court of Appeals. NO APPEAL TO THE APPELLATE DIVISION COMMENCES WITH A NOTICE FILED IN THE TRIAL COURT, and no "good" attorney would file what is, in essence, a frivolous document the only apparent purpose of which would be to preclude and appeal to the Court of Appeals under the law that I showed you (that you claim to have not read).
- 3.) I discussed the 30 day issue with a clerk at the Court of Appeals and the clock has not yet been started because there has been no service of a Notice of Entry.
- 4.) Article VI b(2) establishes a direct appeal to the Court of Appeals from the trial court as a matter of Constitutional right. Rarety? This will be the third matter that I've taken to them using that provision of the Constitution, and it was properly and respectfully considered and disposed.
- 5.) I'm sorry for your apparent ingratitude for the \$2,000. Our memories as to why I gave you the extra money are entirely different. It had nothing to do with any work by you.
- 6.) I have searched my records and have discovered no invoice from you. I would certainly remember any tally. I remind you that you were retained to a contingency fee contract and have been paid \$2,000 more than in full with the \$5,000 original retainer and \$1,000 for expenses. You can read online http://www.montauk.com/legal/PDFS/2004%20People/SGCourtRetainer_28Feb05.pdf . I note in particular paragraphs 2 and 5. Your position is nonsense given your contract.
- 7.) That you are incompetent to do appeals is clear, as was your foray into appellate work almost precluding our appeal to the Court of Appeals. You have been publicly instructed to retract your letter and/or filing concerning a purported appeal to the Appellate Division. If you don't deal with it I will anyway, so you might as well save face and retract it.
- 8.) Any invoice amount from you for greater than you have been paid is irrelevant. According to your contract you were due only \$5,000 plus expenses.
- 9.) There has been little paperwork generated by your office, and my lack of phone communication with you has been troubling. I already told you that you can keep the money and even the scanner – it's your karma, not mine.
- 10.) You are correct that our agreement is silent on your representing the corporation on appeals. At this point I think that it best that we part company. I am sad that it went this way, the same as it did with Gene Barr.
- 11.) I AM NOT UPSET AT THE "OUTCOME" OF THIS MATTER. I THINK THAT JUSTICE LOUGHLIN DID EXACTLY THE RIGHT THING, AND I LIKE THE LANGUAGE OF HIS DECISION. THIS MATTER SHOULD BE BROUGHT BACK TO THE COURT OF APPEALS FOR THEIR RE-CONSIDERATION BEFORE THE COURT PROCEEDS.

I have put up a new page with the most recent emails at <http://www.montauk.com/legal/PDFS/2004%20People/SGCourtEmails/SGCourtEmails05.htm> . The timing of your filing speaks volumes, as does the fact that a Notice of Appeal to the Appellate Division is not served on the trial court in a civil proceeding except in and appeal to the Court of Appeals (as I had written to you).

Please understand, Steve, that I never lose. Even if I do not prevail, what I do is for duty and to assist the court in upholding its duty. I do now and have always humbly submitted to them and pray that I can show them what I

believe to be true, just and lawfull. Even if we do not prevail, I will have done my job.

Sincerely Yours,

Robert A. Ficalora
Chief Executive Officer
Incorporated Township of Montauk

From: Stephen G. Court, Esq [mailto:courtlaw@optonline.net]
Sent: Wednesday, July 13, 2005 10:38 PM
To: bobfic@montauk.com
Subject: Re: Notice of Entry

Bob

As stated in my most recent email, I did not get a chance to view any of your recent emails nor did I disobey any of your instructions.

Any good attorney would file a Notice of Appeal as a matter of course for all denied relief so that your right to perfect an appeal is preserved and it should be submitted immediately because the 30 day deadline is a strict requirement. That is exactly what I did. My notice of appeal has no effect on your choice to file an appeal to the Court of Appeals. My notice made reference to the Appellate Division because, except for certain, special circumstances, that is where appeals from the Supreme Court are supposed to go. To get an appeal in to Court of Appeals, completely passing the Appellate Division, is a rarity. Please be advised that I have no experience with appeals and I was not retained to do appeals. Nevertheless, I still did put my time aside for you to provide written assistance to guide you along with the appeal process.

With respect to the additional \$2,000 added to the retainer, that agreement was made because of the problems we had in the Appellate Court. The extension was done freely by my mutual agreement. This was in light of the extra work which you did not anticipate in this matter because assured the Appellate Division was going to grant your original application. This agreement of additional money was fair and reasonable and accepted by you on behalf of Friends of Montauk.

My prior invoice showed my legal fees were beyond the \$5,000 retainer and I was generous with billing of same. Any other attorney would have billed you at least twice as much as my fees. As stated in my prior emails, as a courtesy, I waived at least 40 to 50% of my billable hours.

My final invoice will be completed for you and I anticipate it will be well over the amount I was already paid.

I have done everything necessary in furtherance of this matter and, pursuant to the retainer agreement, I fulfilled ALL of your instructions in a timely manner. I did not file the original Petition and I had no control over the manner in which this case was originally filed. I was retained AFTER this action was commenced.

Again, I fulfilled all my requirements under the retainer agreement. Please be advised I was never retained to do appeals work. In fact I am incompetent to do appeals as I have no direct experience with them. Nevertheless, I was willing to guide along with this process with no expectation of compensation in return for my assistance of same.

With respect to expenses, please be advised that the expense fees includes costs of paper, postage, travel, office supplies and any other equipment spent in furtherance of this matter. A complete expense account will be forwarded along with my final invoice.

I understand you are upset with the outcome of this matter. However, it gives you no right to send a mean letter to me, especially after everything I had done.

I would like you to forward this email and all the recent emails you forwarded to me to all of your associates. Upon their review, I would like their opinion of the above.

7/14/2005

- Steve

STEPHEN G. COURT, ESQ.
50 Danes Street
Patchogue, NY 11772
(631) 758-2352 (ph) , (631) 730-5480 (fax)
email: courtlaw@optonline.net

----- Original Message -----

From: Bob Ficalora

To: bobfic@montauk.com ; '[Stephen G. Court, Esq](#)'

Cc: '[Carla Grimm](#)' ; '[Carolyn Carson](#)' ; '[Connie Judson](#)' ; '[Helen Ficalora](#)' ; '[Jay Sayers](#)' ; '[Nancy Woodward](#)' ; '[Richard Monahan](#)' ; '[Stuart Bennett Vorpahl](#)' ; '[William Grimm](#)' ; '[Caitlin Halligan \(Business Fax\)"@mta1.srv.hcvlny.cv.net](#)' ; '[Christine Malafi \(Business Fax\)"@mta1.srv.hcvlny.cv.net](#)' ; '[Dennis J. McElligott \(Business Fax\)"@mta1.srv.hcvlny.cv.net](#)' ; '[John Courtney \(FAX\) \(Business Fax\)"@mta1.srv.hcvlny.cv.net](#)' ; '[Jonathan Kaledin \(Business Fax\)"@mta1.srv.hcvlny.cv.net](#)' ; '[Laura Molinari \(FAX\) \(Business Fax\)"@mta1.srv.hcvlny.cv.net](#)' ; '[Peter J. Mastaglio Esq. \(Business Fax\)"@mta1.srv.hcvlny.cv.net](#)' ; '[Richard Cahn Esq. \(Business Fax\)"@mta1.srv.hcvlny.cv.net](#)' ; '[Stephen G. Court Esq. \(Business Fax\)"@mta1.srv.hcvlny.cv.net](#)' ; '[Tim Hopkins \(Business Fax\)"@mta1.srv.hcvlny.cv.net](#)' ; '[Timothy Dewhurst \(Business Fax\)"@mta1.srv.hcvlny.cv.net](#)

Sent: Wednesday, July 13, 2005 8:57 AM

Subject: RE: Notice of Entry

Dear Mr. Court,

I realize that that there are draconian conditions in your contract for quitting which I must waive for you. My offer as set forth below will be honored. I do ask, however, that you consider paying us back the \$2,000 that I sent to you in response to your plea of financial hardship due to a new practice and a pregnant wife who was stopping work. You are now apparently gainfully employed and this will help us to retain another attorney.

Yours,

Robert A. Ficalora
CEO
Town of Montauk, Inc.

From: Bob Ficalora [<mailto:bobfic@montauk.com>]

Sent: Tuesday, July 12, 2005 11:02 PM

To: 'Stephen G. Court, Esq'

Subject: RE: Notice of Entry

Importance: High

No! Steve, we are not appealing to the Appellate Division, we are appealing to the Court of Appeals.

Although your letter is irrelevant because it is not used in bringing an appeal to the Appellate Division it creates a problem of intent and must be retracted. You were not authorized to send the letter to Judge Loughlin, especially as it contradicts my explicit instructions to you.

You will retract your letter and explain that we will be appealing to the Court of Appeals. If you wish to resign as our counsel you are, of course, free to do so. All that I ask is that you provide an invoice for your services and refund any balance in the \$1,000 expense account and return the scanner.

Please have the courtesy to call me on the phone as requested. You are hereby and herewith instructed to forward the above retraction and explanation. We will be appealing to the Court of Appeals.

Robert A. Ficalora

7/14/2005

Chief Executive Officer
Town of Montauk, Inc.

Cc: Efax to respondents.

From: Stephen G. Court, Esq [mailto:courtlaw@optonline.net]
Sent: Friday, August 12, 2005 10:35 PM
To: bobfic@montauk.com
Subject: Re: Notice of Entry

Hi Bob

I haven't been ignoring you. Just another busy week! I am working 4 days per week for a law firm plus my stuff on the side.

I should have an opportunity to review all your emails by the end of the week.

I served the notice of appeal. Copy attached hereto

- Steve

STEPHEN G. COURT, ESQ.
50 Danes Street
Patchogue, NY 11772
(631) 758-2352 (ph) , (631) 730-5480 (fax)
email: courtlaw@optonline.net

----- Original Message -----

From: [Bob Ficalora](#)
To: 'Stephen G. Court, Esq'
Cc: [Bob Ficalora](#)
Sent: Saturday, July 09, 2005 5:01 PM
Subject: RE: Notice of Entry

Hi Steve,

Many of the same forms apply to the Court of Appeals, but with different Part rules that can be reviewed at the bottom of <http://www.nycourts.gov/ctapps/>

Part 500 contains the appertaining rules of the court see: <http://www.nycourts.gov/ctapps/500rules.htm>

Hi Steve,

There have been some recent changes that can be reviewed at <http://www.courts.state.ny.us/ctapps/news/nottobar/Ruleschng04.pdf>

Part 520. rules pertain to the admission of attorneys such as yourself.
<http://www.courts.state.ny.us/ctapps/520rules.htm>

The guide for counsel is at <http://www.courts.state.ny.us/ctapps/counsguide.htm>

I brought the Vorpahl case to the Court of Appeals on Constitutional grounds from the court of original jurisdiction http://www.montauk.com/legal/PDFS/ct_appeals/Vorp_CofA_Appeal_03Dec03.pdf

All other filings in the above matter were according to normal motion practice.

I hope this helps!

Give me a call. 668-3119 or 668-2525

Thanks!

Bob

From: Stephen G. Court, Esq [mailto:courtlaw@optonline.net]
Sent: Tuesday, August 09, 2005 3:28 PM
To: bobfic@montauk.com
Subject: Re: Notice of Entry

Bob

I attached some examples of documents used for a criminal appeal. I am not sure how much different a civil appeal is compared to civil appeals but the form may be helpful for you/

STEPHEN G. COURT, ESQ.
50 Danes Street
Patchogue, NY 11772
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Sent: Saturday, July 09, 2005 12:01 PM
Subject: Notice of Entry

Hi Steve,

I didn't receive a copy of the notice of entry for the June 20th decision. Could you Efax it to me along with a note about when you received it? This will be important in our appeal to the Court of Appeals.

This will be at least my fifth time at the Court of Appeals. Filing with them is a simple matter of certifying the record and mailing copies of it out together with a brief and supplemental affidavit. I will be reviewing the record on file at Riverhead and preparing copies for service. I will also be preparing a draft of the pleading papers for filing. This will be the first time that we will appear at the court with an attorney, so they may schedule oral argument (although I won't hold my breath!).

Please RSVP.

Thanks,

Bob Ficalora
Town of Montauk, Inc.