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Montauk Friends of Olmsted Parks, Inc.
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3/6/2001
Mr. Stewart M. Cohen, Esq.
Clerk of the Court
New York State Court of Appeals
Eagle Street
Albany, New York 12207

In Re: Your inquiry of 21 Feb 2001 on possible *sua sponte* review (A.D. 99-02065)

Dear Mr. Cohen,

We are in receipt of the above referenced inquiry and ask that the court not undertake a *sua sponte* review of its jurisdiction for the apparent purpose of summary dismissal. Our appeal is made as a matter of right. The sections of the law relied upon for the appeal (CPLR § 5601(b)1 and CPLR § 5601(b)2) support such an appeal of the constitutional pleadings made in the original complaint, the briefs entered upon appeal, and the constitutional violations suffered by the actions of the court itself.

Attached please find bound copies of the Notices of Appeal and Jurisdiction Statements submitted to this court together with a copy of the Record on Appeal and appellate briefs as requested. The constitutional issue was raised in the complaint at page 5 (record, p18) and in the opening brief at Points VII and VIII. No discovery or trial was had in the court of original jurisdiction.

The Town of Easthampton's (and Montauk's) jurisdictions and franchises were established by the Town Patent of December 9th, 1686. The Town Patent is a colonial charter issued by royal authority that established both legislative and judicial powers that were protected from state interference by the constitution of the State of New York from 1777 until wrongfully repealed in 1961-2 at a time when Montauk's rights were under intensive review. The protection of the jurisdictions established by colonial charters was a central cause of the struggle for

Independence, was secured upon independence within the constitutional structure and process of governance of the state of New York, and their protection remains fundamental to the sovereignty of the people of the state of New York and of the United States of America today.

We challenge the constitutionality of the 1961-2 repeals of Sections §§ 10, 13 and 15 of Article I (Bill of Rights) of the Constitution of the state of New York as, among other reasons, an *ex post facto* act by the assembly in support of their apparent creature “town board government” in the Town of Easthampton. We hold said creature to have been unconstitutionally imposed upon the Town of Easthampton and Montauk around 1925 under the guise of the Town Law of 1909. (Trustees of Dartmouth College v. Woodward, U.S. Supreme Court, 1819, 4 Wheaton 518). The “town board government” of Easthampton is not a legal entity, has no constitutional basis for its claim of civil jurisdiction, and cannot be made to be legal by the state assembly. It is, in effect, a “stealth Woodward”.

We do also believe that the MFOP/Montauk Trustee corporation was denied equal protection of the laws of the state of New York with the intent of denying due process of law by the court of original jurisdiction and do seek a direct appeal from its actions with the purpose of a remand for further process of law and a trial.

This matter clearly affects the construction of the constitution of the State of New York and we have presented to the court a substantial constitutional and statutory basis for an appeal as a matter of right. If there are questions about our assertion of the court’s jurisdiction, they may be more appropriately raised by the defendants in the forthcoming briefs or by the court during oral argument. We do, therefore, pray the for termination of this inquiry and the quick establishing of a new schedule for the perfecting of the appeals.

In closing, it is important to understand our assertion that this matter was dismissed by the lower court by the extraordinary intervention of a biased judge who denied equal protection of the law for the purpose of obstructing due process of law and that the good justices of the

appellate court were clearly prejudiced by two decisions of this higher court that utilized the same unconstitutional mis-application of statute.

The constitutional effect of such a denial of fundamental constitutional rights is best summed up in the written message which the great republican parliamentarian Algernon Sydney passed to his executioner. It read:

"That God had left Nations unto the Liberty of setting up such Governments as best pleased themselves.

That Magistrates were set up for the good of Nations, not Nations set up for the honor or glory of Magistrates.

That the Right and Power of Magistrates in every Country, was that which the laws of that Country made it to be.

That those Laws were to be observed, and the Oaths taken by them, having the force of a Contract between Magistrate and People, could not be violated without danger of dissolving the whole Fabrick."

Algernon Sidney was executed on 7 December 1683 by a predecessor to the courts of the state of New York upon the testimony of one witness when the law required two. The court determined to ignore his right to equal protection of law and executed him for his avowedly republican beliefs. Algernon Sydney had significant involvement in the framing of the constitutions of North Carolina and Pennsylvania and was executed only thirty eight days after the enactment of the original constitution of New York on ³⁰~~27~~ October 1683 by framers who articulated therein the same principles of republican constitutional government.

The very "fabrick" of the still young experiment in constitutional republican government in the state of New York is threatened by the improper handling of this case. Any further protection of the usurpation of the contractually established sovereign jurisdictions of the Towns of East Hampton and Montauk is constitutionally unwise and unjust. Neither this state nor our nation has been conquered by a foreign power and we neither know nor accept any authority above the constitutions, laws and statutes of this state or our nation.

We do pray that we be accorded argument upon the appeal of the Montauk Friends of Olmsted Parks corporation as a matter of right and seek a judgment of this court which will remand this matter to the court of the Honorable Robert Webster Oliver, J.S.C., for further process of law ~~and~~ and a full and fair trial.



Robert A. Ficalora, *pro se*
acting supervisor and assignee
MFOP/Montauk Trustee Corp

Cc: Cahn, Wishod & Knauer, Esqs.(Town)
Esseks, Hefter and Angel, Esqs.(Sunbeach)
Attorney General c/o Solicitor General, Dept. of Law, The Capitol, Albany

Enclosures (court only):

- Jurisdiction Statement (1) upon CPLR § 5601(b)(2) w/notice of appeal and attachments
- Jurisdiction Statement (2) upon CPLR § 5601(b)(1) w/notice of appeal and attachments
- Record on Appeal, Robert A. Ficalora as assignee of Montauk Friends of Olmsted Parks, inc. &c. v. the town board government of East Hampton and Sunbeach Montauk II, inc. Suffolk index number 98-14806.
- Appellant's brief, 8/30/1999
- Defendant Town's reply, 11/2/1999
- Appellant's answer
- Your inquiry of 21 Feb 2001

These and other documents are also available at www.montauk.com.



*State of New York
Court of Appeals*

*Stuart M. Cohen
Clerk of the Court*

*Clerk's Office
Albany, New York 12207-1095*

February 21, 2001

Robert A. Ficalora
P.O. Box 2612
Montauk, New York 11954

Re: Ficalora v. The Town Bd. of the Town of
East Hampton and Sunbeach Montauk II, Inc.

Dear Mr. Ficalora:

The Court has received your 500.2 jurisdictional statements and may examine its subject matter jurisdiction sua sponte with respect to whether a substantial constitutional question is directly involved to support an appeal as of right, whether there is a jurisdictional predicate for an appeal as of right pursuant to CPLR 5601(b)(1), whether there is a jurisdictional predicate for a direct appeal pursuant to CPLR 5601(b)(2) and whether plaintiff is the authorized legal representative of Montauk Friends of Olmstead Parks, Inc. .

This communication is without prejudice to any motion any party may wish to make. If you conclude that the order is not appealable as of right, please arrange for the execution of a stipulation consenting to a dismissal of the appeals and transmit that paper to my office. If a stipulation is to be forthcoming, please inform me immediately.

On the other hand, if you wish to persevere in the appeals, you are invited to present to the Court in writing within ten days of this letter's date your comments justifying the retention of subject matter jurisdiction, including references to the record demonstrating that a constitutional question was raised in the court or other forum of original instance. Also please enclose a copy of each brief filed in the Appellate Division, as well as a copy of the Record on Appeal or Appendix filed in that court. Your adversary is likewise afforded the opportunity to comment in writing on the subject matter jurisdiction.

If this sua sponte inquiry is terminated by the Court, the Clerk will notify counsel in writing and set a new schedule for normal perfecting of the appeals.

Very truly yours,

A handwritten signature in cursive script that reads 'Stuart M. Cohen'.

Stuart M. Cohen

SMC:mec

cc: Esseks, Hefter & Angel
Cahn, Wishod & Knauer