

**Supreme Court of the State of New York
Court of Appeals**

Town of Montauk, Inc.

Petitioner-Appellant

-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-Respondent

**Affidavit of Service
and Certification**

Robert A. Ficalora

A.D. no. 05-10912

Robert A. Ficalora, founder, CEO and assignee of Montauk Friends of
Olmsted Parks/Montauk Trustee Corporation does herewith affirm and swear
under the pains and penalties of perjury that on September __, 2008 I did forward
to the attached list of defendants two of the corrected copies of the Notice of
Motion of Reargue and the supporting Assignee Affidavit/Affirmation of Counsel
by placing them into postage paid envelopes in the care of the United States Postal
service for delivery to the court and the defendants/respondents herein.

I am not an attorney licensed to practice law and am not attempting to move
the court for the corporation in violation of the law (CPLR 321a). Instead, this
affidavit certifies Mr. Kolodny's signatures on the corrected copy were attached at
my direction and I know them to be true.

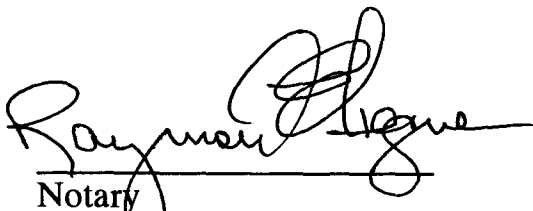
This motion was timely mailed by our attorney Jason B. Kolodny on May
23rd and received by the court on May 27th . On August 12th, six (6) copies of the

corrected copy of the instant motion to reargue were delivered to the court with a check written on the MFOP/Montauk Trustee Corporation's account for the filing fee of \$45. The check was not returned but instead was cashed on August 15th (please see attachments).

This sworn certification of our attorney of record's signatures upon the corrected copy of the instant papers presented will enable them to be submitted to the court with a return date.

The court should know that over the past four (4) years the corporation has retained four (4) attorneys that have declined to go forward with this case and that we are now again without counsel. We believe that the court can render judgment upon the instant motion in a way that we might return to Mr. Michael H. Sussman, Esq., our attorney of choice. Money issues or working relations with any attorney have never been the issue.

Sworn to September 25, 2008



Notary

RAYMOND HEGNER
Notary Public, State of New York
No. 01HE6831785
Qualified in Suffolk County
Term Expires June 30, 2010



Robert A. Ficalora
P.O. Box 2612
Montauk, NY 11954
(212) 219-3700 (ask for Andrea)
(631) 614-4319 (efax)

Hon. Anthony Cuomo
Attorney General of the State of New
York
*For Gov. Pataki & the People of the
State of New York met in Assembly ,
Respondents-Respondent*
c/o Solicitor General
Department of Law
NYS Capitol Building
Albany, NY 12207

Mr. Richard Cahn, Esq.
Cahn & Cahn, LLP
*Town board government of Easthampton
and 511 Equities Corp.,
Respondents-Respondent*
445 Broad Hollow Road - Suite 332
Melville, N.Y. 11747
(516) 752-1600

Mr. John Courtney, Esq
*Attorney for The Trustees of the
Freeholders and Commonalty of the
Town of Easthampton,
Respondent-Respondent*
P.O. Box 720
Amagansett, NY 11930
(631) 267-6161

Ms. Christine Malafi, Esq
Suffolk County Attorney
*For The County of Suffolk,
Respondent-Respondent*
H. Lee Dennison Building
100 Veterans Memorial Hwy
PO Box 6100
Hauppauge, New York 11788
(631)853-4049 FAX (631)853-5169

Mr. Peter J. Mastaglia, Esq
Cullen & Dykman, LLP
*The Brooklyn Historical Society, Inc.,
Respondent-Respondent*
Garden City Center
100 Quentin Roosevelt Boulevard
Garden City, New York 11530-4850

Mr. John T. McCarron, Esq.
*Attorney for the Suffolk County Water
Authority, Respondent-Respondent*
200 Broadhollow Road, Suite 207
Melville, New York 11747
(631) 694-6500

Mr. W. J. Fleming, Esq.
*Attorney for The Nature Conservancy,
Inc., Respondent-Respondent*
46 Newtown Lane, Suite 3
East Hampton, NY 11937-1405
(631) 324-8778

Jason B. Kolodny, Esq.
Petitioner's Attorney of Record
21 Hereford Road
Great Neck, NY 11021
(516) 661-9418

Michael H. Sussman, Esq.
Prior counsel for Petitioner
40 Park Place, P.O. Box 1005
Goshen, New York 10924
(845) 294-1623

THE BRIDGE GROUP



Bridgehampton National Bank

2200 Montauk Highway Box 3005
Bridgehampton, NY 11932-3005
(631) 537-1000

Address Service Requested

004 00007 00
ACCOUNT:

PAGE: 1
700000193 08/29/2008



002511 0.6354 AV 0.324 TR00011



MONTAUK FRIENDS OF	
ROBERT A FICALORA	
OLMSTED PARKS INC	30
PO BOX 2612	0
MONTAUK NY 11954-0939	2

Beginning June 30, 2008, a handling fee of \$15 will be charged for each deposit statement returned as undeliverable by the post office.

NON PERSONAL ACCOUNT 700000193

MINIMUM BALANCE	1,077.17	LAST STATEMENT 07/31/08	1,138.82
AVG AVAILABLE BALANCE	1,106.93	CREDITS	.00
		2 DEBITS	61.65
		THIS STATEMENT 08/29/08	1,077.17

CHECKS			
CHECK #	TRACE #	DATE	AMOUNT
1778*	9001002780	08/15	45.00
1785	9001003032	08/15	16.65

(*) INDICATES A GAP IN CHECK NUMBER SEQUENCE

DAILY BALANCE		
DATE	BALANCE	DATE
08/15	1,077.17	

BRNB-002-002511-001-001-080903 002511 503
11954093912



Bridgehampton National Bank
*The bank you can talk to.*SM



THE MONTAUK FRIENDS OF OLIMSTED PARKS, INC. 1778
 N.Y.S. COURT OF APPEALS - 7/2 2008
 FORTY-FIVE AND 00/100 DOLLARS \$45.00
 POB1778P 00214056676 07-00019-3P

1778 \$45.00 08/15/2008

THE MONTAUK FRIENDS OF OLIMSTED PARKS, INC. 1778
 N.Y.S. COURT OF APPEALS - 7/2 2008
 FORTY-FIVE AND 00/100 DOLLARS \$45.00
 POB1778P 00214056676 07-00019-3P

1778 \$45.00 08/15/2008

THE MONTAUK FRIENDS OF OLIMSTED PARKS, INC. 1785
 N.Y.S. COURT OF APPEALS - 8/11 2008
 SIXTEEN AND 65/100 DOLLARS \$16.65
 POB1785P 00214056676 07-00019-3P

1785 \$16.65 08/15/2008

THE MONTAUK FRIENDS OF OLIMSTED PARKS, INC. 1785
 N.Y.S. COURT OF APPEALS - 8/11 2008
 SIXTEEN AND 65/100 DOLLARS \$16.65
 POB1785P 00214056676 07-00019-3P

1785 \$16.65 08/15/2008

BRNB-002-002511-001-001-080903 002511 503

DATE	RECEIVED FROM	RECEIPT NO.	PURPOSE/TITLE OF ACTION	CASE NO.	PAY CODE	AMOUNT
8/14	J. Kalcobny	13888	Montauk v Patrick 08/		3	45.00

STATE OF NEW YORK
 COURT OF APPEALS
 Court of Appeals Hall
 20 Eagle Street
 Albany, New York 12207

OFFICIAL RECEIPT NO. 13888

TO: The Montauk Friends of Olmsted Parks
 P.O. Box 2612
 Montauk, NY 11954

RECEIVED BY: *A. J. [Signature]*

THANK YOU FOR THIS PAYMENT

CODES:
 1. CIVIL APPEAL FEES
 2. SLIP OPINION SUBSCRIPTION FEES
 3. MOTION/CROSS MOTION FEES
 4. OTHER

CASH
 CHECK OR M.O.
 MAIL
 COMBINATION



*State of New York
Court of Appeals*

*Stuart M. Cohen
Clerk of the Court*

*Clerk's Office
Albany, New York 12207*

September 5, 2008

Montauk Trustee Corporation
attn: Robert Ficalora
PO Box 2612
Montauk, NY 11954

Re: Matter of Montauk v Pataki

Dear Mr. Ficalora:

In response to your telephone request today, I enclose copies of this office's May 29, 2008 and August 12, 2008 letters addressed to your counsel, Mr. Kolodny.

Very truly yours,


Heather Davis
Chief Motion Clerk

HD:

Encs.

cc: Jason B. Kolodny, Esq.
Richard C. Cahn, Esq.
David Lawrence III, Esq.
John T. McCarron, Esq.
W.J. Fleming, Esq.
John Courtney, Esq.
511 Equities Corp.
Christine Malafi, Esq.
Peter J. Mastaglia, Esq.

Stuart M. Cohen
Clerk of the Court

Clerk's Office
Albany, New York 12207-1095

May 29, 2008

Jason B. Kolodny, Esq.
21 Hereford Road
Great Neck, NY 11021

Re: Matter of Montauk v Pataki

Dear Mr. Kolodny:

Your papers seeking reargument in the above matter were received on May 27, 2008. Your papers cannot be submitted to the Court until the following additional materials are filed:

- 1) Proof of service of two copies of the moving papers upon all adverse parties (Rule 500.24[a]).
- 2) An original motion (Rule 500.24[a]). This office received six copies of the moving papers.
- 3) The fee of forty-five dollars in the form of an attorney's personal check, certified check, cashier's check or money order payable to "State of New York, Court of Appeals" (Rule 500.3[b]).

Upon receipt of these materials, I will submit your papers to the Court on an appropriate return date.

Very truly yours,

Stuart M. Cohen

Stuart M. Cohen

HD:

cc: Richard C. Cahn, Esq.
David Lawrence III, Esq.
John T. McCarron, Esq.
W.J. Fleming, Esq.

John Courtney, Esq.
511 Equities Corp.
Christine Malafi, Esq.
Peter J. Mastaglia, Esq.



*State of New York
Court of Appeals*

*Stuart M. Cohen
Clerk of the Court*

*Clerk's Office
Albany, New York 12207*

August 12, 2008

Jason B. Kolodny, Esq.
21 Hereford Road
Great Neck, NY 11021

Re: Matter of Montauk v Pataki

Dear Mr. Kolodny:

On August 12, 2008, this office received six "corrected" copies of papers seeking reargument in the above matter and a check in the amount of \$45. You still must provide the additional materials requested in this office's May 29, 2008 letter. Because your check cannot be held, you must contact Lori Fix-Mossman at 518-455-7779 to expedite a refund.

You must file:

- 1) Proof of service of two copies of the moving papers upon all adverse parties (Rule 500.24[a]).
- 2) An original motion (Rule 500.24[a]). This office only received copies of the moving papers and corrected copies of the moving papers.
- 3) The fee of forty-five dollars in the form of an attorney's personal check, certified check, cashier's check or money order payable to "State of New York, Court of Appeals" (Rule 500.3[b]).

Upon receipt of these materials, I will submit your papers to the Court on an appropriate return date.

Very truly yours,

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

Stuart M. Cohen

HD:

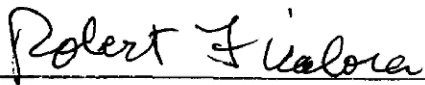
**Supreme Court of the State of New York
Court of Appeals**

<p>Town of Montauk, Inc.</p> <p style="text-align: right;">Petitioner-Appellant,</p> <p style="text-align: center;">-against-</p> <p>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.</p> <p style="text-align: right;">Respondents-Respondents.</p>
--

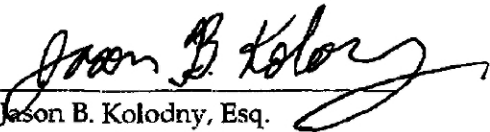
<p>Notice of Motion to Reargue</p> <p>22 NYCRR Part 500.24(a)</p> <p>Return Date: 6/9/08</p> <p>Jason B. Kolodny, Esq.</p>
--

PETITIONER'S MOTION TO REARGUE MOTION No. 101 TO VACATE COURT'S DECEMBER 18th, 2007 DISMISSAL ORDER.

All parties please take notice: that upon the affidavit as Assignee of Robert A. Ficalora and the affirmation of Jason B. Kolodny, Esq., the Exhibits thereto and all prior proceedings, on June 9th, 2008, at 10:00 a.m. at the Court of Appeals, 20 Eagle Street, Albany, New York, 12207, petitioner shall move for an order granting leave to Reargue the high court's April 24th, 2008 denial of Petitioner's motion to vacate it's December 18th, 2007 order dismissing this matter for want of prosecution.



 Robert A. Ficalora
 Supervisor and by assignment
 MFOP/Montauk Trustee Corporation
 Incorporated Township of Montauk
 P.O. Box 2612, Montauk, NY 11954
 (561) 840-0696
 May 21, 2008



 Jason B. Kolodny, Esq.
 Attorney for Petitioner
 21 Hereford Road
 Great Neck, NY 11021
 (516) 661-9418
 May __, 2008

Table of Contents

ASSIGNEE AFFIDAVIT AND AFFIRMATION OF COUNSEL	3
Appellant asks the court to exercise its discretion	4
The Court’s inquiries	5
Timeliness and CPLR 5513, 5514	5
Constitutional questions directly involved supporting an appeal taken as of right (CPLR 5601[b])	6
The central Constitutional questions involved in this matter are:	6
The Appellate Division order of May 4th, 2007 finally determined the matter within the meaning of the Constitution	8
1686 Dongan Patent ignored	9
NY Constitution Article IX imposed	10
Illegal and unlawful conquest supported.	11
Prior recognition by the court	13
Hearing denied	14
Conclusion	15
<u>People v. Vorpahl</u> (2 NY3d 781 [2004])	16
Appellate Division Decision, May 8th, 2007.	17
Notice of Appeal, October 5th, 2007	20
Court of Appeals dismissal order, December 18th, 2007	21
Court of Appeals order denying motion to vacate, April 24th, 2008	22
GENERAL ASSOCIATION	23

ASSIGNEE AFFIDAVIT AND AFFIRMATION OF COUNSEL

Affirmants Robert A. Ficalora, CEO and Assignee for petitioner, deposes and does swear, and Jason B. Kolodny, Esq., attorney for petitioner, does affirm, under the pains and penalties of perjury, in support of petitioner Incorporated Township of Montauk's motion for an order granting reargument of its motion to vacate the December 18th 2007 order of this court dismissing this proceeding for want of prosecution, that.

1.) Affirmants make this affirmation in support of petitioner's motion for an order granting reargument of its motion to vacate the December 18th 2007 order of this court dismissing this proceeding for want of prosecution; it is made in reliance on their familiarity with the record in this matter, all prior proceedings, and the ongoing efforts of the corporation.

2.) Subsequent to this courts order of May 6th, 2004 in the matter of People v. Stuart Bennett Vorpahl, 2 NY3d 781(attached), and by the deliberated resolutions of October 11th, 2004 of the board of directors of the corporate petitioner herein, Mr. Ficalora was authorized and directed "to retain, work with and have power to direct the attorney for the MFOP/Montauk Trustee Corporation" to bring the matters presented herein back to this court and was recently assigned to sign papers and appear before the court should we get a hearing.

3.) This court issued a decision and order dated April 24th, 2008, denying petitioner's motion to vacate and the May 4th, 2007 final determination of the Appellate Division was left without review and unchanged. Appellant asserts this circumstance will continue grievous injury to the Constitution and Laws of the State of New York and to Montauk's freeholders and residents and to all of the citizens of the State of New York.

Appellant asks the court to exercise its discretion

Neither the decision and order of 18 December 2007 dismissing this matter for failure to prosecute nor the 24 April 2008 order dismissing the motion to vacate that order were for constitutional or statutory violations. Appellant's motion to vacate did not argue that it was not in violation of section 500.16(a) (or 500.12(b)) of the court's rules, and there were no applicable statutes at issue. Instead, in filing its motion to vacate appellant pleaded that the personal activities and hardships of the corporation's executive charged with controlling and directing the litigation, Mr. Robert A. Ficalora, prevented the timely prosecution of the appeal to the satisfaction of this court. The motion to vacate, therefore, did then, as now, appeal to the court's discretion in applying its rules.

The Court's inquiries

The court's discretion appears reflected in recent correspondence initiated on its behalf by Deputy Clerk Mr. Richard A. Reed dated February 27th and March 10th of 2008: the court moved beyond the court's rules to the review of statutory and Constitutional questions.

The court's February 27th letter asked two questions: 1.) whether the court has subject matter jurisdiction with respect to the timeliness of the appeal (CPLR 5513, 5514), and 2.) whether a substantial constitutional question is directly involved to support an appeal taken as of right (CPLR 5601[b]).

The court's March 10th letter only asked whether the Appellate Division order finally determined the matter within the meaning of the Constitution.

Timeliness and CPLR 5513, 5514

With regard to the timeliness of the appeal, your appellant humbly submitted that this matter was irregularly and clumsily handled and that the irregularities are such that no Notice of Entry rendered the instant appeal untimely pursuant to CPLR 5513, 5514.

Constitutional questions directly involved supporting an appeal taken as of right (CPLR 5601[b])

The Notice of Appeal filed on October 5th, 2007 was as of right, on Constitutional grounds, in that “there is directly involved the construction of the Constitution” of the State of New York (CPLR §5601[b] [1]; N.Y. Const Art. VI §3[b][1]).

The central Constitutional questions involved in this matter are:

- 1.) Is Chapter 2 of the Laws of 1691 protected by New York Const. Article I §14?
- 2.) Does the legislature have the authority to extinguish charter-granted rights that survived the Constitution of the State of New York?
- 3.) What entity is constitutionally entitled to discharge governmental functions in the Town of Montauk?
- 4.) Did the 1686 Dongan Patent cede governing authority to the freeholders and residents of Montauk (through their trustees) to govern Montauk, and did this right survived under the Constitution of the State of New York?

- 5.) Did Chapter 64 of the laws of 1788 affirm the towns established by the Dongan Patents by requiring the freeholders and residents of the towns of New York to assemble in Town Meeting?
- 6.) Have alterations and modifications been made to the NY Constitution that could lawfully give the NY legislature authority to abrogate rights granted through the colonial Charters?
- 7.) Is Chapter 2 of the Laws of 1691 holding violations of the rights of freeholders under colonial charters such as the Dongan Patent enforceable against the New York State government as successor to the king protected under NY Const. Article I §14?
- 8.) Is the Town Law of 1909 by which the legislature claimed jurisdiction over the local governance of the freeholders (property owners) of New York adverse to the Charters, Chapter 2 of the laws of 1691 and NY Const. Art. I §15 Constitutional?
- 9.) Does the “Town Board” entity of the Town of Easthampton legally exist and was its imposition in Easthampton and Montauk under the 1909 Town Law constitutional?
- 10.) Were alterations to the NY Constitution including the purported 1962 repeals of Article 1 §§ 10, 13 & 15 and the validity of the immediately subsequent addition of Article IX pertaining to home rule powers constitutional?

- 11.) Did the purported repeal of Article I § 15 relieve the State of New York from the Constitutional enforcement of its contractual obligations?
- 12.) Is the NY Assembly's claim to possess, or to create unto themselves, authority to override the discharge of governing powers under the colonial Charters Constitutional under either the state or federal constitutions (NY Const. Art. I §15. US Const. contracts clause, Dartmouth College case)?
- 13.) Did the Appellate Division order of May 4th, 2007 finally determined the matter within the meaning of the Constitution?
- 14.) Are the rights of Montauk's freeholders (proprietors) and the juridical status of their trustee corporation legally and constitutionally protected?

Any and all of the above are substantial constitutional questions directly involved that support an appeal as of right pursuant to CPLR 5601(b) (1).

The Appellate Division order of May 4th, 2007 finally determined the matter within the meaning of the Constitution

This matter was transferred to the Appellate Division by order of this court dated October 27th 2005 on the ground that a direct appeal does not lie when

questions other than the constitutional validity of a statutory provision are involved (Chapter 2 of the laws of 1691; NY Const. Art. VI §§3[b] [2], 5[b]; CPLR 5601[b] [2]).

Appellant maintained that the Appellate Division was constrained by this court's transfer order to determine those other questions in order for this court to take jurisdiction in this case. It was with this understanding that its decision of May 4th, 2007 was entered.

Most of the central Constitutional questions listed above were finally determined as a matter of law. These include:

1686 Dongan Patent ignored

Ignoring the 1686 Dongan Patent, the Appellate Division held that:

“Petitioner has no standing to bring this proceeding (citation omitted). The petitioner, “Town of Montauk, Inc.,” is not an established corporation, since it has filed no incorporation papers with the Department of State (citations omitted).”

This Appellate holding finally determined that Montauk cannot assert its rights through constitutionally protected colonial charters when it suffers from an illegal, unconstitutional and despotic legislative imposition.

Appellant has fully and humbly submitted to the court's jurisdiction and does pray that the court will exercise its discretion, reverse its December 18th decision and order, take jurisdiction, hear this important matter and reverse the Appellate decision of May 4th, 2007.

NY Constitution Article IX imposed

NY Const. art. IX was enacted on an emergency basis by the legislature immediately subsequent to the purported 1962 repeal of NY Const. Art I § 15. The Appellate holding in support of legislature's conquest of Montauk's jurisdiction:

“Petitioner’s contention that the Town of East Hampton is not a legitimate governing entity is without merit. A municipal corporation is a political subdivision of the State having only the authority delegated to it by the State (see NY Const, art IX).”

When the State of New York was established by the Constitution of 1777, the town of Easthampton had already existed for more than 110 years. The 1777 Constitution clearly and expressly protected pre-existing colonial charters, and they remained protected until the purported repeals of 1962.

Clearly “there is directly involved the construction of the Constitution” of the State of New York (CPLR §5601[b] [1]; N.Y. Const Art. VI §3[b] [1]). The

Appellate Division's reliance on N.Y. Const. Art. IX to justify acts of legislative conquest should be reversed.

Illegal and unlawful conquest supported

The Town of Easthampton has two governments, the Trustees of the Freeholders and Commonalty of the Town of Easthampton created by the 1686 Dongan Patent and a town board entity operating under the 1909 Town Law that has never been legally established.

The Appellate decision attempts to make legal the legally fictitious town board entity in East Hampton which was established in violation of NY Const. Art. I sect. 15, violates Chapter 2 of the laws of 1691 and unlawfully imposed upon Montauk lands:

"Chapter 64 of the Laws of 1788 established the Town of East Hampton, specifically including Montauk. The Town of East Hampton is therefore a legitimate municipal corporation with the authority to govern Montauk (see Town Law §2).

Chapter 64 of the Laws of 1788 set boundaries for the Towns in New York, but incorporated no town and dissolved no juridical entity previously created by patent or charter. Indeed, it included contrary language:

"That none of the bounds or lines of the Act assigned for the limits of any or either of the said towns, shall be deemed to take away, abridge,

destroy or affect, the right of title of any person, or persons, body politic or corporate, in any manner or by any means whatsoever, nor be deemed, taken or construed as a confirmation of the bounds or the rights of a patent or patents whatsoever.

The freeholders and inhabitants of each and every of the said towns... who are or shall be qualified by law to vote at town meetings, shall forever hereafter have the Full power and authority and they are hereby directed and required to assemble together and hold town meetings..."

The occupying British forces had only withdrawn from the towns of Suffolk County in 1783, and they had begun to re-establish their town meeting governments and celebrate the centennial anniversaries of the Dongan patents that had incorporated each of their towns and were now protected under the new Constitution of the State of New York.

There was, however, significant contention due to the proposal a new Constitution for the United States of America and Governor Clinton and most of the legislature were opposed to its ratification. On January 26th, 1788 a letter was published in Albany in the *Independent Journal* by James Madison under the name Publius [Federalist #45]. On March 7th, 1688 chapter 64 of the laws of 1788 may have been signed into law by Governor Clinton in response to it.

Your appellant believes and does maintain that the freeholders and residents of the towns of Suffolk County assembled in Town Meeting under the Dongan

Patents have sovereign jurisdiction in the making, administering and enforcement of law under the jurisdiction of the Supreme Court of the State of New York.

The 1909 town law is challenged as an unconstitutional legislative imposition upon these rights, made in violation of N.Y. Const. Art. I § 15 and of Chapter 2 of the laws of 1691 (N.Y. Const. Art. I § 14).

At present, the Appellate Division's decision and order has finally determined this issue as a matter of law and must be reversed.

Prior recognition by the court

This matter was brought pursuant to an order of this court subsequent to the corporate appellant's intervention in a criminal matter pertaining to legislative claims of jurisdiction over Easthampton's fisheries (People v. Vorpahl (2 NY3d 781 [2004], attached).

Mr. Vorpahl made constitutional arguments using both the State and Federal constitutions showing the Dongan Patent and the U.S. Supreme Court decision in the matter of the Trustees of Dartmouth College v. Woodward. Mr. Vorpahl's lengthy Memorandum is in the record in this case.

The papers interposed before the court in *Vorpahl* were numerous and interesting, and the clear and unambiguous language of the order (attached) was the reason for bringing this case back to this court. The Appellate Division, however, strongly asserted a different reading of the court's order:

“The Court of Appeals did not recognize it as a corporation, or as the governing body of Montauk, in People v. Vorpahl (2 NY3d 781 [2004])”

The legal and constitutional rights of corporate appellant Incorporated Township of Montauk have been, therefore, finally determined by the Appellate order of May 4th, 2007 adverse to the clear and unambiguous language of this court's order (cited above) and must be reversed.

Hearing denied

The court should know that no hearing has been had in open court at any time or at any level in this matter, and that a petition signed by 56 Montauk freeholders has been filed with the court for a hearing before you. There has also been a press blackout in the media.


Under these circumstances, and understanding the seriousness of the suppression of the sovereign liberties presented, you appellant is considering a number of options to lawfully attain the rights presented before you, including the

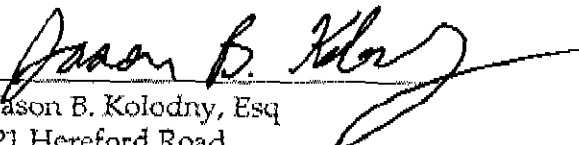
distribution of the attached revised 1775 General Association that was a unifying preamble to the American Revolution in the State of New York.

It is amazing that the complaints that we present to this court today, are very much the same as those presented in the original 1775 document. And so we, too, have resolved never to become slaves.

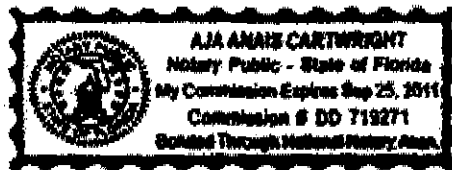
Conclusion

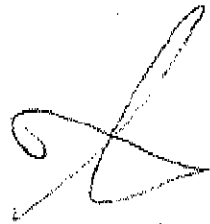
Appellant does, therefore, seek reargument and does pray that the court exercise it's discretion and vacate its December 18th 2007 order in order that the court can take jurisdiction in this case. We also do pray for a hearing in open court in order that all of Montauk's Freeholders and Residents may be in attendance, and for such other and further relief as the court deems equitable and just.


Robert A. Ficalora
Supervisor and by assignment
MFOP/Montauk Trustee Corporation
Incorporated Township of Montauk
P.O. Box 2612, Montauk, NY 11954
(561) 840-0696


Jason B. Kolodny, Esq
21 Hereford Road
Great Neck, NY 11021
(516) 661-9418
May 21, 2008

Sworn to before me
May 21, 2008




5-21-08

ASSIGNEE AFFIDAVIT AND AFFIRMATION OF COUNSEL

**State of New York,
Court of Appeals**

*At a session of the Court, held at Court of
Appeals Hall in the City of Albany
on the sixth day
of May 2004*

Present, HON. JUDITH S. KAYE, *Chief Judge, presiding.*

Mo. No. 277
The People &c., Respondent,
v.
Stuart Bennett Vorpahl,
Appellant,
Town of Montauk, Inc.,
Intervenor.

A motion for leave to intervene &c. in the above cause having been heretofore made upon the part of the intervenor herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion for leave to intervene be and the same hereby is dismissed upon the ground that Robert A. Ficalora is not an attorney authorized to represent Montauk Friends of Olmsted Parks/Montauk Trustee Corporation on behalf of the Incorporated Township of Montauk (CPLR 321[a]).

Stuart M. Cohen
Stuart M. Cohen
Clerk of the Court

Appellate Division Decision, May 8th, 2007

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D15029
O/hu

_____AD3d_____

Argued - January 22, 2007

DAVID S. RITTER, J.P.
FRED T. SANTUCCI
PETER B. SKELOS
THOMAS A. DICKERSON, JJ.

2005-10912

DECISION & ORDER

In the Matter of Town of Montauk, Inc., appellant,
v George E. Pataki, etc., et al., respondents.

(Index No. 27553/04)

Jason B. Kolodny, Great Neck, N.Y. (Michael H. Sussman of counsel), for appellant.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michael S. Belohlavek and David Lawrence III of counsel), for respondent George E. Pataki.

Cahn & Cahn, LLP, Melville, N.Y. (Richard C. Cahn of counsel), for respondents Town of East Hampton, s/h/a the Town Board Gov't of the Town of East Hampton and 511 Equities, Inc. (separate briefs filed).

John T. McCarron, Melville, N.Y., for respondent Suffolk County Water Authority.

William J. Fleming, PLLC, East Hampton, N.Y., for respondent the Nature Conservancy, Inc.

In a proceeding pursuant to CPLR article 78, inter alia, to enjoin the Town of East Hampton, s/h/a the Town Board Government of the Town of East Hampton, from all planning, permitting, use, taxation, and governance of lands located in Montauk, the petitioner appeals from a judgment of the Supreme Court, Suffolk County (Loughlin, J.), dated June 20, 2005, which denied the amended petition and dismissed the proceeding.

May 8, 2007

Page 1.

MATTER OF TOWN OF MONTAUK, INC. v PATAKI

ORDERED that the judgment is affirmed, with one bill of costs payable to the respondents appearing separately and filing separate briefs.

The amended petition in this CPLR article 78 proceeding was properly denied, since the petitioner has no standing to bring this proceeding (*see Rudder v Pataki*, 93 NY2d 273, 278). The petitioner, “Town of Montauk, Inc.,” is not an established corporation, since it has filed no incorporation papers with the Department of State (*see Business Corporation Law* § 403; *Not-For-Profit Corporation Law* §§ 403, 904[a]). Contrary to the petitioner’s contentions, the Court of Appeals did not recognize it as a corporation, or as the governing body of Montauk, in *People v Vorpahl* (2 NY3d 781).

Furthermore, the petitioner failed to show that it is the successor corporation to the original incorporated Proprietors of Montauk. Chapter 139 of the Laws of 1852 incorporated the Proprietors of Montauk, also making it the first Trustee with governing powers over Montauk. However, there is no showing of the succession to the Proprietors of Montauk ending with the petitioner. Indeed, in 1879, all of Montauk was sold to Arthur W. Benson, eliminating the need for a trustee corporation.

Moreover, the petitioner’s contention that the Town of East Hampton is not a legitimate governing entity is without merit. A municipal corporation is a political subdivision of the State having only the authority delegated to it by the State (*see NY Const art IX, § 2; Matter of Ames v Smoot*, 98 AD2d 216, 217). Chapter 64 of the Laws of 1788 established the Town of East Hampton, specifically including Montauk. The Town of East Hampton is therefore a legitimate municipal corporation with the authority to govern Montauk (*see Town Law* § 2; *Matter of Perry v Town of Cherry Val.*, 307 NY 427, 430).

Accordingly, the petitioner has no basis for its claims of injury and therefore cannot establish standing (*see Society of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 773-774).

The petitioner’s remaining contentions are without merit.

RITTER, J.P., SANTUCCI, SKELOS and DICKERSON, JJ., concur.

2005-10912

DECISION & ORDER ON MOTION

In the Matter of Town of Montauk, Inc., appellant,
v George E. Pataki, etc., et al., respondents.

(Index No. 27553/04)

May 8, 2007

MATTER OF TOWN OF MONTAUK, INC. v PATAKI

Page 2.

Motion by the respondent County of Suffolk to impose sanctions upon the appellant and/or its attorney for pursuing a frivolous appeal. Separate motion by the respondent Town of East Hampton, s/h/a Town Board Gov't of Town of East Hampton, to impose sanctions upon the appellant and/or its attorney, and Robert A. Ficalora, in the form of an award of costs and an attorney's fee for pursuing a frivolous appeal. Separate motion by the respondent Town of East Hampton, s/h/a Town Board Gov't of Town of East Hampton, inter alia, to enjoin Robert A. Ficalora from commencing any further actions or proceedings directly or indirectly challenging the governance of Montauk without prior leave of court. By decisions and orders on motions dated August 8, 2006, and September 27, 2006, respectively, the motions were held in abeyance and referred to the Justices hearing the appeal for determination upon the argument or submission of the appeal.

Upon the papers filed in support of the motions and the papers filed in opposition and relation thereto, and upon the argument of the appeal, it is

ORDERED that motion by the respondent County of Suffolk to impose sanctions upon the appellant and/or its attorney for pursuing a frivolous appeal is denied; and it is further,

ORDERED that the separate motion by the respondent Town of East Hampton, s/h/a Town Board Gov't of Town of East Hampton, to impose sanctions upon the appellant and/or its attorney, and Robert A. Ficalora, in the form of an award of costs and an attorney's fee for pursuing a frivolous appeal is denied; and it is further,

ORDERED that the separate motion by the respondent Town of East Hampton, s/h/a Town Board Gov't of Town of East Hampton, inter alia, to enjoin Robert A. Ficalora from commencing any further actions or proceedings directly or indirectly challenging the governance of Montauk without prior leave of court is denied for failure to serve Robert A. Ficalora, without prejudice to the respondent Town of East Hampton seeking relief in the Supreme Court, Suffolk County, upon proper notice to Robert A. Ficalora.

RITTER, J.P., SANTUCCI, SKELOS and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

**Supreme Court of the State of New York
Supreme Court of the State of New York**

Town of Montauk, Inc.	Petitioner
-against-	
<p>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.</p>	
	Respondents

Notice of Appeal

(CPLR §5601 b(1))

A.D. 2nd no. 05-10912
Suffolk Index no.
04-27553

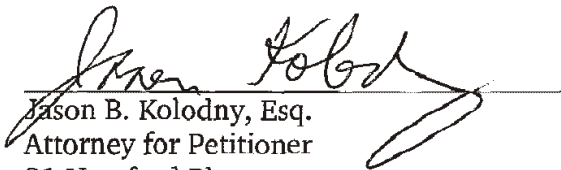
10 Minutes

ALL PARTIES PLEASE TAKE NOTICE, that the July 13, 2007 Appellate Division order denying leave to appeal the May 8, 2007 Decision and Order entered on August 30, 2007 is hereby and herewith appealed to the New York State Supreme Court, Court of Appeals, as of right, on Constitutional grounds, in that "there is directly involved the construction of the constitution" of the State of New York. (CPLR §5601[b][1]; N.Y. Const. Art. VI §3[b][1]). The gross violation of Chapter 2 of the laws of 1691 which protects colonial charters such as the 1686 Dongan Patent and the alteration, abrogation or pretended repeal of longstanding Constitutional provisions must be addressed. We do, therefore, humbly and fully submit to the court and do pray for the relief requested.

FILED

OCT 05 2007

JUDITH A. FASOLA
CLERK OF SUFFOLK COUNTY



Jason B. Kolodny, Esq.
Attorney for Petitioner
21 Hereford Place
Great Neck, NY 11021
(516) 661-9418
October 31st 2007

Court of Appeals dismissal order, December 18th, 2007

**State of New York,
Court of Appeals**

COPY

*At a session of the Court, held at Court of
Appeals Hall in the City of Albany
on the.....eighteenth.....day
of.....December..... 2007*

Present, HON. JUDITH S. KAYE, *Chief Judge, presiding.*

2 No.
In the Matter of Town of Montauk,
Appellant,
v.
George E. Pataki, etc., et al,
Respondents.

Pursuant to section 500.16(a) of this Court's Rules of Practice, sixty or more days now having passed from the filing of the notice of appeal and appellant's papers not having been filed, it is

ORDERED, that the appeal to this Court is dismissed for want of prosecution.

Stuart M. Cohen
Stuart M. Cohen
Clerk of the Court

Court of Appeals order denying motion to vacate, April 24th, 2008

**State of New York,
Court of Appeals**


*At a session of the Court, held at Court of
Appeals Hall in the City of Albany
on the.....twenty-fourth.....day
of.....April..... 2008*

Present, HON. JUDITH S. KAYE, *Chief Judge, presiding.*

Mo. No. 101
In the Matter of Town of Montauk,
Appellant,
v.
George E. Pataki, etc., et al.,
Respondents.

A motion having heretofore been made herein upon the part of the appellant to vacate this Court's December 18, 2007 dismissal order, papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.


Stuart M. Cohen
Clerk of the Court

GENERAL ASSOCIATION

Adopted by the Trustees of the Freeholders and inhabitants of the Incorporated Township of Montauk, on _____, the __th of _____, 2008, and transmitted for signing to all of the Cities and Towns, and Counties in the State of New York.

Persuaded that the Salvation of the Rights and liberties of America, depends, under God, on the firm union of its People, in a vigorous prosecution of the measures necessary for its safety and the rule of law under our constitutions as originally drawn and intended, and the use of the rights and liberties reserved to the People at Chapter 64 of the 1788 laws of the State of New York, and in the First and Second Amendments to the Constitution of the United States of America; and convinced of the necessity of preventing the Anarchy and confusion which attend the dissolution of the powers of lawful Government, we, the Freemen, Freeholders and Inhabitants of the Town of Montauk being greatly alarmed at the avowed design of the Legislature of the State of New York to take away our Charters, abolish our most valuable Laws and alter fundamentally the Forms of our Governments by imposing governments through conquest under the pretext of unlawful statutes and alterations, amendments or pretended repeals to the Constitution of the State of New York; we do pray for relief in the matter of the Town of Montauk, Inc. v. Pataki, et al., affecting the sovereign rights of freeholders and residents of the Towns of Suffolk County established by colonial charters, currently before the high Court of Appeals of the State of New York, and do, in the most Solemn manner, Resolve never to become Slaves, and do associate under all the ties of Religion, honor and Love to our Country, to adopt and endeavor to carry into execution, for the time being, whatever measures may be recommended without let or hindrance by the Trustees of the Incorporated Township of Montauk, or resolved upon by a suitable state Convention, for the purpose of preserving our Constitutions, and opposing the execution of the several arbitrary and oppressive acts of the legislature of the State of New York, until a reconciliation, between the State of New York and its freeholders and residents, on Constitutional Principles, (which we most ardently desire) can be obtained; and that we will in all things, follow the advice of our provisional board of Trustees, respecting the purposes aforesaid, the preservation of Peace and Good Order, and the safety of individuals and private property.

These may certify that all persons in the Town of Montauk are to be approached to sign the above Association, that are capable of bearing arms.

[The forgoing was adapted from the General Association of the Freemen, Freeholders, and inhabitants of the city and county of New-York, on Saturday, the 29th of April, 1775, and was transmitted for signing, to all the counties in the Province of New York (see: <http://longislandgenealogy.com/append3.html#general>). It was certified locally as follows: "These may certify that every male in the Town of East-Hampton have signed the above Association, that are capable of bearing arms. By Order of the Committee, JOHN CHATFIELD, Chairman.]