

Law Offices of Jason B. Kolodny
21 Hereford Place
Great Neck, NY 11021
(516) 661-9148

Mr. Richard A Reed
Deputy Clerk
Court of Appeals, State of New York
Albany, New York 12207-1905

In re: Town of Montauk, Inc. v. Hon. Pataki, et al., Motion No. 08/101

Dear Mr. Reed:

Your undersigned does reply, on behalf of the corporate movant herein, to your letters of February 27 and March 10 concerning the high Court's consideration of our motion to vacate its December 18th, 2007 Order dismissing the instant special proceeding. The issues presented are the timeliness of the appeal (CPLR 5513, 5514) and whether a constitutional question is directly involved to support an appeal as of right (CPLR 5601[b]).

In regard to the timeliness of the appeal, your appellant does humbly submit that this matter was irregularly and clumsily handled and that the irregularities are such that no Notice of Entry has been filed and served by the defendants which could render the instant appeal untimely pursuant to CPLR 5513, 5514.

In his March 5th letter to you, attorney Richard Cahn did submit that on July 17, 2007 he did file and serve a notice of entry of the July 13, 2007 Order of the Appellate Division by mail on your appellant. Mr. Cahn held that the 35 day period in which an appeal could be timely taken expired on August 21st, 2007 based on this service.

Mr. Cahn does further assert that "Page 3 of the Appellant's Preliminary Appeal Statement inconsistently states that Appellant was served on July 13th, 2007 and August 30th, 2007". He goes on to note that the subsequent Attorney General's notice dated August 30th, 2007 was untimely and then further asserts that the Notice of Appeal filed October 5th, 2007 was untimely (by one day) if the latter service was controlling.

Two defendants have, therefore, entered and served Notices of Entry of the July 13th decision while most of the defendants have not. The absence of defendant "The People of the State of New York met in Assembly", which appellant holds to be the primary constitutional miscreant in the proceeding, is especially important. It was personally served on December 8, 2004 with the affidavit of personal service filed in the record on February 4th, 2005 (see attached). The grounds for failure to accept this service by the Attorney General's office on behalf of the State Assembly has been refuted by the Petitioner/Appellant herein.

The court must now consider which or what Notice of Entry could or did start the statutory clock at issue. Your Movant/Appellant does humbly submit that the

irregularities presented are such that no notice of entry has been submitted by the defendants which could render the instant appeal untimely pursuant to CPLR 5513, 5514.

In regard to whether a substantial constitutional question is directly involved in support of the appeal as of right (CPLR 5601[c]) the central questions presented are:

- 1.) Is Chapter 2 of the Laws of 1691 protected by New York Const. Art I §14?
- 2.) Does the legislature have the authority to extinguish charter-granted rights that survived the Constitution of the State of New York?

While Mr. Kahn says that there is a plethora of other than constitutional issues raised in Montauk's appeal, none is identified in their response to the court. The central argument of this proceeding concerns what entity is constitutionally entitled to discharge governmental functions in the Town of Montauk.

Appellant asserts that the 1686 Dongan Patent by the Crown of England ceded governing authority in the freeholders and residents of Montauk (through their trustees) to govern Montauk, and that this right survived under the Constitution of the State of New York.

Alterations and modifications have been made to the Constitution since at least the enactment of the Town Law in 1909, but it otherwise never contemplated giving the NY legislature the authority to abrogate the colonial Charters.

Chapter 2 of the Laws of 1691 holds that violations or suppression of the rights of freeholders under charters such as the Dongan Patent are enforceable against the New York State government as successor to the king.

The Town Law of 1909 by which the legislature claimed jurisdiction over the freeholders (property owners) of New York adverse to the Charters and NY Const. Art. I Sect 15 is challenged. The un-Constitutional nature of the legally fictitious "Town Board" entity that was imposed it in Easthampton and Montauk is raised.

Subsequent alterations to the NY Constitution including the purported 1962 repeals of Article 1 §§ 10, 13 & 15 are raised and the validity of the immediately subsequent addition of Article IX pertaining to home rule powers is challenged. The NY Assembly's claim to possess, or to create unto themselves, authority to override the discharge of governing powers under the colonial Charters is raised.

Accordingly, the rights of Montauk's freeholders (proprietors) and the juridical status of their trustee corporation must be recognized. This argument raises only Constitutional issues and no other

Respectfully,

Jason B. Kolodny, Esq.
March 10, 2008

cc: all counsel

Town of Montauk, Inc.

COPY

Plaintiff(s)/Petitioner(s)

vs

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

Defendant(s)/Respondent(s)

AFFIDAVIT OF SERVICE

STATE OF NEW YORK, COUNTY OF ALBANY, SS.:

Stephen L. Collen, being duly sworn deposes and says: Deponent is not a party herein, is over 18 years of age and resides in New York State. On December 8, 2004 at 9:15 am, at New York State Capitol Building, Albany, NY 12207, deponent served the within Notice of Motion w/ Attachments A,B,C, Order to Show Cause w/ Exhibits A-G, Notice of Petition/Petition & 2004 Affidavit of Robert A. Ficalora w/ Attachments A-E on: Solicitor General for the NYS Assembly, Dept. of Law, Recipient therein named.

- By delivering a true copy of each to said recipient personally, deponent knew the person served to be the person described as said person therein.
[X] By delivering thereat a true copy of each to Rosemarie Perez-Jaquith - Atuh Agent personally, deponent knew said business/agency so served to be the business/agency described in same as said defendant and knew said individual to be the managing/authorized agent of the business/agency, and said person stated that he/she was authorized to accept service on behalf of the business/agency.
By delivering a true copy of each to a person of suitable age and discretion. Said premises is defendant's: [] actual place of business [] dwelling house (usual place of abode) within the state.
By affixing a true copy of each to the door of said premises, which is defendant's: [] actual place of business [] dwelling house (place of abode) within the state.

Deponent was unable, with due diligence to find defendant or a person of suitable age and discretion, having called thereat

on the day of at
on the day of at
on the day of at
on the day of at

Address confirmed by

On, deponent completed service by depositing a true copy of each to the above address in a 1st Class postpaid properly addressed envelope marked "Personal and Confidential" in an official depository under the exclusive care and custody of the United States Post Office in the State of New York.

A description of the Defendant, or other person served, or spoken to on behalf of the Defendant is as follows:

Sex: Female Color of skin: White Color of hair: Blonde Age: 30 - 39 Yrs. Height: 5' 4" - 5' 8"
Weight: 100 - 130 Lbs. Other Features:

the authorize witness fee and / or traveling expenses were paid (tendered) to the witness.

Deponent asked whether the defendant is presently in military service of the United States Government or of the State of New York and was informed that defendant is not.

EDWARD P. ROMAINE
CLERK OF SUFFOLK COUNTY

Sworn to before me on December 10, 2004

Marcy A. O'Hare

MARCY A. O'HARE
NOTARY PUBLIC, State of New York
No. 4885530, Qualified in Albany County
Term Expires July 14, 2006

Stephen L. Collen

Invoice-Work Order # 0413949