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# New York State Supreme Court

Appellate Division - Second Judicial Department

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Robert A. Ficalora, both *pro se* and as acting president of  
Montauk Friends of Olmsted Parks, inc., a not-for-profit  
corporation established under the laws of the State of New  
York

Docket No.  
97-10457

*Petitioner-Appellants*

- against -

the Planning Board and Building Department  
of  
the town board government of the Town East Hampton,  
159 Pantigo Road, East Hampton, 11937

*Respondents-Respondants*

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## Appellant's Reply

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## Preliminary Statement

This Reply is submitted on behalf of appellant/petitioner Robert A. Ficalora both individually *pro se* and as acting president of the Montauk Friends of Olmsted Parks corporation. The Planning Board and Building Department of the town board government of East Hampton are the only named defendants/respondents in this matter. Extensive efforts to procure counsel had been successful in the person of Joel Kupferman, esq., who has since relocated and is unavailable.

Respondents continue tact of procedural arguments and *ad hominem* attacks while steadfastly refusing either to answer the order to show cause which commenced this proceeding or to address the merits of the arguments presented.

Appellant/Petitioner is unaware of any omissions from the record served other than those which were redundant in the record. Every attempt was made to note this. A stipulation signed by Appellant was served upon the Respondents together with the record with a copy to this court. Any inadvertent omissions could have been submitted together with Respondents' brief had Respondents felt them material.

## POINT I

**This special proceeding was properly joined, order and judgment was entered by the court below on the merits, and the court has jurisdiction.**

CPLR § 7804(c) expressly provides that:

“Unless the court grants an order to show cause to be served in lieu of a notice of petition at a time and in a manner specified therein, a notice of petition, together with a petition and affidavits specified in the notice, shall be served...”

An order to show cause was entered by Justice John J. Jones, Jr., J.S.C. in lieu of a notice of petition and petition. The cause of action is stated within the order to show cause and its supporting affidavit. The order was served and entered and this special proceeding properly joined.

Furthermore, the judgment and order was entered by the court below was on the merits, not for procedural deficiency or for failure to state a cause of action.

With the proceeding properly joined, the cause of action stated, the order and judgment entered by the court below, and this appeal having been perfected according to the rules of this court, the court has jurisdiction.

## POINT II

**Town Law Section 274-b(9), should it exist, cannot time-bar a proceeding in the nature of prohibition and would not apply to Building Department.**

Town Law § 274-b(9), first cited in the affidavit of Joseph Guarneri (281), is a mystery to appellant as it is not to be found in Westlaw. Guarneri counsel Christopher Kelley, esq., in his affidavit, cites the mystery statute as Town Law § 274-B(a). (305) In

any event, no statute can or does limit the commencing of a proceeding in the nature of prohibition against Planning Board to 30 days.

Furthermore, Section 274 of the Town Law applies to the powers and functioning of the Planning Board only and would not pertain to a proceeding against the Building Department.

Arguments at Point IX of appellants brief remain uncontradicted. (see also 128; 425ff.) This proceeding is not time-barred as a matter of law.

### POINT III

#### **Montauk Friends of Olmsted Parks Corporation, as trustee claimant of equitable title to adjoining Reservation property, has standing to sue.**

As claimant of equitable title to the adjoining property as trustee for the covenanted beneficiaries, the Montauk Friends of Olmsted Parks corporation has standing to sue even without pleading or proving special damage. (179, 125) Sunbright Car Wash, Inc. v. Board of Zoning and Appeals of North Hempstead 515 N.Y.S 2d 418, 69 N.Y.2d 406, 508 N.E.2d 130. See also: Colony Park v. Malone, 1960, 25 Misc. 2d 1072, 205 N.Y.S. 2d 166 and Matter of Knott v. Town of Oyster Bay, 57 Misc 2d 925.)

Appellant/petitioner has made every effort to procure counsel in this matter, for a time being successful with Joel Kupferman, esq., who is now unavailable. There are exceptions in both civil and criminal law which allow a corporation to be represented by a non-lawyer. (127) The court has discretion.

The court should note that there are significant and historic issues of law and of equity which this court may want settled in which appellant can be of great assistance. Appellant places himself at the service of the court and does swear to continue to comport himself in all matters as if an officer of this court.

Petitioner/ Appellant prays that the court will use its broad discretionary powers to allow appellant to represent the not-for-profit MFOP corporation or, in the alternate, to take an assignment by its board of directors.

#### **POINT IV**

##### **Appellant/Petitioner has standing to sue.**

Appellant does complain of significant harm to the use and enjoyment of his residence and the adjoining reservation property (125). The illegal Guarneri building does eerily hover over and look down into the interior of the Reservation and Breakers properties (498 bottom, 499ff.)

Appellant alleges material financial harm to the resort business from which his family derives its income due to interference with our common use of the Reservation properties (448-9, 452).

Appellant's spouse Helen is the manager of the Breakers Motel and an owner in equity in, and Secretary Treasurer of, the closely held Breakers Motel corporation. Appellant and spouse are married for fourteen years, have two children, and hold all property in common.

## Conclusion

**Permits issued by respondents are illegal and/or arbitrary under state and local law; no cause has been shown as ordered why the permits should not be annulled. Order of the court below should be reversed, the permits annulled, and a bond ordered to ensure removal of the structure erected.**

The court should recognize its opportunity to clearly establish the law pertaining to illegal permits issued by a municipality. Pressure by development interests upon our municipal bodies and officers to ignore zoning ordinances will increase as the limits to growth are reached under those ordinances. Appellant believes that the public interest in this matter is significant.

Appellant comes before the court to uphold the laws of the State of New York. The appellant/petitioner does pray that the court will render judgment upon the substance and merit of the arguments of law presented and provide such other and further relief as it may deem just and proper.

Robert A. Ficalora

Appellant-Petitioner, *pro se*