

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF SUFFOLK

THE SEAVIEW AT AMAGANSETT, LTD., DUNES  
AT NAPEAGUE PROPERTY OWNERS ASSOCIATION,  
INC., THE TIDES HOMEOWNERS ASSOCIATION, INC.,  
WHALERS LANE HOMEOWNERS ASSOCIATION, INC.,  
THE OCEAN ESTATES PROPERTY OWNERS  
ASSOCIATION, INC., ROBERT HIGGINS, MARC HELIE,  
ROBERT CRISTOFARO AND ROBERT COOPERMAN,  
Plaintiffs,  
-against-  
TOWN OF MONTAUK, Intervenor AND  
TRUSTEES OF THE FREEHOLDERS AND  
COMMONALTY OF THE TOWN OF EAST  
HAMPTON AND THE TOWN OF EAST HAMPTON,  
Defendants,  
-and-  
JAY H. BAKER, PATTY C. BAKER,  
DAVID STUART TYSON, STEPHANIE BITTERMAN,  
JUNE MERTON, NAPEAGUE ASSOCIATES,  
DAVID ROSS, GRACE ROSS, IRVING C. MARCUS  
AND HARRIET MARCUS,  
Additional Defendants.

**Answer**

**Index No. 09-34714**

**MELVIN TANENBAUM**

**FILED**

SEP 29 2011

Judith A. Pascale  
CLERK OF SUFFOLK COUNTY

Upon the attached Notice of Intervention as of right on behalf of the Township of Montauk ("Town of Montauk"), and the 2011 Napeague Affidavit of Robert A. Ficalora, the TOWN OF MONTAUK herewith ANSWERS the COMPLAINT entered August 27th, 2009 on behalf of PLAINTIFFS by attorney Stephen R. Angel, Esq., of the firm of Esseks, Hefter and Angel, LLP, that commenced this action.

Subject Property was purchased on March 15th, 1882 by deed recorded at Suffolk County liber 268 of deeds p. 478 by Arthur W. Benson, at that time the sole proprietor and Trustee of Montauk, from the Trustees of the Freeholders and Commonalty of the Town of Easthampton, at at that time the only government of said town of Easthampton, releasing all claim to Subject Property emteromg an unusual sworn statement in the text by affixing its corporate seal thereto at p. 481.

All properties at Napeague taking title through the subject deed share privity of estate through Arthur W. Benson, the properties that were settled by squatters or

outlaw speculators are without good title should be dealt with through the proper administration of law. The approximately 4000 feet of Atlantic Ocean beach is easterly of Amagansett and is claimed as part of the Township of Montauk to be governed by Town Meeting pursuant to the Articulated Rights and Constitution of the Township of Montauk adopted December 5th, 2000. (See Ficalora Affidavit).

Issues of title and tax exemption are not relevant to the issue of beach driving as all ownership of and jurisdiction over the beaches is reserved to the Township of Montauk, a commonwealth. Issues of ownership and regulation will be reviewed and settled at the Montauk Town Meeting in which Napeague proprietors are to be included (see Ficalora 2011 Affidavit).

It is emphasized that the E. H. Trustee corporation sold all right and interest to the Subject Property and had previously released all such claim over Montauk in 1852 pursuant to the 1851 Court Order of Nathan B. Morse of the Supreme Court of the State of New York in the Matter of Henry P. Hedges, et. al. v. The Trustees of the Freeholders and Commonalty of the Town of Easthampton.

The Township of Montauk continues to contest the legality and constitutional propriety of the 1909 Town Law government of the Town of East Hampton (sic).

The "Benson Deed" dated March 15, 1882, included two parcels totalling 1,100 acres of land at Napeague of which the Subject Property was 1,000 acres. (p35-6)

The Benson purchase cancelled any claim of public right which may have been offered by the E. H. Trustees and is assumed entirely by the Montauk Trustee Corporation to only be offered by resolution of the Montauk Town Meeting.

The East Hampton Town Code cannot and does not apply to Subject Property and is contested in its application within the Township of Montauk. That the Town of East Hampton asserts that "Driving a vehicle on the beach is a privilege granted by the East Hampton Town Board and the East Hampton Town Trustees" is without

right and a fraud (p47-48).

The beaches in Napeague and Montauk are the private property commonwealth of the freeholders (property owners) and inhabitants of the Township of Montauk (as enlarged by the 1882 purchase of Napeague by Arthur W. Benson) all adverse claims notwithstanding. restrictions and prohibitions instituted for whatever purpose or purposes by either the Town of East Hampton (Town Board) or the Town of Easthampton (Trustees) or by certain private individuals are illegal, unconstitutional and without right, all recent declarations, grants, covenants and restrictions also notwithstanding (p. 51-87).

**As and for the First Cause of Action brought by Plaintiffs  
at page 17**

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The First Cause of Action cause of action of subject Complaint brought at page 17 is supported by the Town of Montauk the extent that Subject Property is claimed as the exclusive private property commonwealth of the freeholders/proprietors of the Township of Montauk. All adverse claims and allegations over the properties purchased Arthur W. Benson at Montauk and Napeague by individuals or governing bodies is refuted (pp. 90-99), but that no beneficial estate can be created in Subject Property other than through the Township of Montauk.

All use of the "Access Point" at the Amagansett line for the public to access, drive upon or otherwise use Subject Property is trespassing upon the private commonwealth of the Township of Montauk and must be held by the court to be a prosecutable offense.

**As and for the Second Cause of Action brought by  
Plaintiffs at page 19**

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The 1882 Benson Deed language cited at liber 268 p. 480 did inure to the inhabitants of the town of East Hampton to land fish boats and nets as was customary at that time but has long ceased as a practice. In any event, this exception and reservation does not involve carting along the beach or the establishing of facilities such as tents or parked cars on the beach (p. 102). To the extent that the fishing practices.

The claims by the State of New York to State Parks in Montauk (and now Napeague) are challenged in The Articulated Rights and Constitution of the Township of Montauk, a document presented to the Court of Appeals of the Honorable Judith S. Kaye and before it when intervention upon notice pursuant to CPLR §1012 was granted to the Town of Montauk, Inc., in the matter of People v. Stuart Bennett Vorpahl (2 NY3d 781) (see Ficalora Affidavit).

Parklands controlled by East Hampton, Suffolk County, and State of New York are mostly unmanaged and make no contribution to the quality of life in Montauk or to its prosperity. To them it is expense, to Montauk and the East End, it is our future.

September 28th, 2011



Robert A. Ficalora

Actng Supervisor

Township of Montauk