

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION FOR THE SECOND DEPARTMENT

TOWN OF MONTAUK, INC.,

APP. DIV. NO.
2005-10912

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'R OF THE TOWN OF EAST
HAMPTON, and THE TRUSTEES OF THE
FREEHOLDERS AND COMMONALITY OF
THE TOWN OF EAST HAMPTON, 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-RESPONDENTS.

PETITIONER'S MOTION for LEAVE TO APPEAL
TO THE COURT OF APPEALS

Michael H. Sussman, Esq.
SUSSMAN & WATKINS
PO Box 1005
Goshen, New York 10924
(845) 294-3991
Counsel for Petitioner-Appellant

Suffolk County Index No. 04-27553

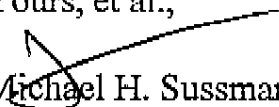
NOTICE OF MOTION

To: All counsel of Record:

PLEASE TAKE NOTICE that upon the annexed Affirmation of Michael H. Sussman, Esq. , the Exhibits thereto and all prior proceedings, on June 25, 2007, at 10:00 a.m. at the Appellate Division for the Second Department, 45 Monroe Place, Brooklyn, New York 11201, petitioner shall move this Honorable Court for an order granting petitioner leave to appeal its decision and order of May 4, 2007 to the New York State Court of Appeals.

Dated: June 8, 2007
Goshen, New York

Yours, et al.,


Michael H. Sussman
Sussman & Watkins
PO Box 1005
Goshen, New York 10924
(845)-294-3991

Counsel for Petitioner

AFFIRMATION OF COUNSEL

Michael H. Sussman, counsel for petitioner, hereby states and affirms under pains and penalties of perjury in support of petitioners' motion for an order granting petitioner leave to appeal the May 4, 2007 decision and order to the New York State Court of Appeals.

1. I am counsel for petitioner in this matter and make this Affirmation in support of petitioner's motion for an order granting it leave to appeal this Court's May 4, 2007 decision and order to the New York State Court of Appeals. I make this Affirmation in reliance on my familiarity with the record in this matter.

2. This Court issued a decision and order on May 4, 2007 in satisfaction of a Court of Appeals order of transfer dated October 27, 2005. [A-12]. I received notice of entry on May 21, 2007. Exhibit 1. This decision and order affirmed the decision rendered by Supreme Court, County of Suffolk. Exhibit 2.

This Court should grant the instant motion and permit review of its decision and order by the New York State Court of Appeals because this matter raises an important legal issue, namely the impact of later passed legislation or constitutional provisions upon pre-existing rights established and recognized by a colonial charter and patents. See, NY Const. Art. VI secs. 3[b][2], 5[b], N.Y.

Const. Art. 1, sec. 14; Chapter 2, Laws of 1691.

3. In material regards, there is a significant basis to believe that the Court of Appeals might disagree with the conclusions reached by this Court.

I. **Petitioner has Standing to Maintain this Action**

Petitioner contends that, contrary to the decision of this Court, it has standing to sue as a 1994 not-for-profit corporation established to protect the rights and interests of Montauk proprietors/freeholders/trustees. Since its incorporation, petitioner has noticed claims to assume the rights, duties and privileges arising from a legislative enactment, colonial patents and a 1686 charter. There is no other entity which has similarly asserted successor rights.

Petitioner intervened, as a matter of right pursuant to CPLR sec. 1012, in People v. Vorpahl, 2 N.Y.3d 781, before the Court denied its non-attorney's motion. Previously, in December 2000, the corporation served its charter on the Court of Appeals. Nothing in the Court of Appeals' order evidences that it denied intervention or otherwise failed to recognize the corporation as the governing body of Montauk.

This Court has now recognized that the Proprietors of Montauk was incorporated by Chapter 139 of the Laws of 1852, making it the first trustee corporation with governing powers over Montauk. But, this Court rejected the

petitioner's standing as a successor entity to assert the rights and interests of the recognized trustees.

A majority of the current Board of Directors of the Montauk Friends of Olmstead Parks/Montauk Trustee Corporation own real property in Montauk. The 1852 corporation has never been legally extinguished and no other entity has sought to revive its juridical status. Therefore, petitioner content, it has a legitimate claim as successor to the 1852 corporation of the Trustees of Montauk.

In Grinnell and wife v. Baker, et al., a partition matter which led to the sale at auction to Arthur W. Benson, Justice Dykman held that Chapter 139 of the Laws of 1852 insured that, "The interest of the several proprietors would pass by their individual deeds of conveyance, after this law, the same as before..."

Patents and colonial charters attach to, and run with, the land. The 1852 law was passed less than one month after the lands, waters and appurtenances covered by the 1686 Dongan Patent establishing the Town of Easthampton were divided by Order of this court in Henry P. Hedges, et al. v. The Trustees of the Frecholders and Commonalty of the Town of Easthampton.

As successor under the 1686 Patent, Montauk is an incorporated township and, at the very least, petitioner, as the successor trustee, has a right to control land use matters in Montauk.

2 11 4

II. The Town of Easthampton cannot legally usurp the Petitioner's Rightful Authority

Today, the Town of Easthampton, Long Island, has two concurrently functioning governments: a Town Board which operates according to the 1909 Town Law of the State of New York and a longstanding Trustee corporation established by the Dongan Patent of 1686. The former government has been unable to show that its incorporation extinguished the latter's juridical status which derives from the 1686 charter which itself affirmed the original 1666 Nichols Patent, first establishing the Town of East Hampton under the laws of England.

This Court's holding that "a municipal corporation is a political subdivision of the State having only the authority delegated to it by the State" cuts to the fundamental issue which the Court of Appeals should resolve.

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.

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 this 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 Full power and authority and they are hereby directed and required to assemble together and hold town meetings...”

This enactment neither contravened nor contradicted Chapter 2 of the Laws of 1691. Instead, it plainly supported the Dongan Patent which incorporated the freeholders and inhabitants of the towns of Suffolk County and reaffirmed that they would and could assemble and govern through town meetings.

The imposition of a state-supported, but legally fictitious, body posturing as a government over the lands and waters of Montauk represents the usurpation of the Montauk property owners’ longstanding, constitutionally protected right to govern and to tax under the 1686 Dongan Patent and, therefore, petitioner submits, violates Chapter 2 of the Laws of 1691.

CONCLUSION

As this Court has determined the question [other than the constitutional

validity of Chapter 2 of the Laws of 1691] raised by the Court of Appeals'
transfer order of October 27, 2005, the matter is ripe for review by the Court of
Appeals. We respectfully request this Honorable Court grant this motion and
authorize petitioner to appeal.



MICHAEL H. SUSSMAN

SUSSMAN & WATKINS
PO BOX 1005
GOSHEN, NEW YORK 10924
(845)-294-3991

COUNSEL FOR PETITIONER

Dated: June 8, 2007