

Motion for Joinder of Gov. Pataki, March 25th, 2004
Supreme Court of the State of New York
Court of Appeals

CLERK: STUART COURT
LOREN, ESQ

The People of the State of New York
Respondent,
v.
Stuart Bennett Vorpahl
&
Town of Montauk, Inc. (Intervener)
Defendant/Appellants

Mo. No. ___ SSD 1

Motion for Joinder
(Southampton Justice Court
Docket #01-091384)

RETURN: APRIL 5th


Honorable magistrates of the court, showeth:

Whereas, on March 8th, 2004, Mr. Chris O'Brien, Esq., counsel to the Governor, did refuse to accept service of the four bound volumes of papers herein served upon the "Notice of Intervention" in the pending "Motion for Reconsideration and Conversion", upon the grounds that the Governor is not a named party to this action (see attached), and

Whereas, the above referenced papers, also delivered and served to this court and all parties herein, includes a "Notice of Intervention" that does notice in its opening: "*To Stuart Bennett Vorpahl, Governor George E. Pataki...*" as necessary parties upon whom said Notice should be served, and yet it remains unserved upon the honorable governor,

Therefore, your intervenor Township of Montauk does pray forgiveness for this motion to join the Honorable Governor George E. Pataki, Esq., as a respondent herein for all purposes whatsoever including service of the above refused papers together with personal service of this motion.

RECEIVED
MAR 2 2004
NEW YORK STATE
COURT OF APPEALS


Robert A. Ficalora
Assignee, Township of Montauk
6753 Bellevista Place NW
Olympia, WA 98502
(360) 866-2278

Motion for Joinder

1

cc:

Hon. Elliot Spitzer, Esq.
Attorney General for the State of New York
The Capitol
Albany, NY 12224-0341

Hon. Thomas J. Spota, III, Esq.
Suffolk County District Attorney
Criminal Courts Building
200 Center Drive
Riverhead, NY 11901

Solicitor General
Dept. of Law
The Capitol
Albany, NY 12207

Mr. Chris O'Brien, Esq.,
Counsel to Governor Pataki
NYS Capitol Building
Albany, NY 12207

Motion for Joinder

2

Motion for Joinder of Gov. Pataki, March 25th, 2004

2

Court of Appeals motion rejected, Stuart M. Cohen, Esq., Clerk, March 31st, 2004



*State of New York
Court of Appeals*

*Stuart M. Cohen
Clerk of the Court*

*Clerk's Office
Albany, New York 12207-1095*

March 31, 2004

Robert A. Ficalora
Assignee, Township of Montauk
6753 Bellevista Place NW
Olympia, WA 98502

Re: People v Vorpahl

Dear Mr. Ficalora:

Your "Motion for Joinder" does not comply with section 500.11 of the Court's Rules of Practice and is returned enclosed with your \$45 check.

Very truly yours,

Stuart M. Cohen

Stuart M. Cohen

SA:jg
Encs.

cc: Hon. Eliot Spitzer
Hon. Thomas J. Spota, III
Solicitor General
Chris O'Brien, Esq.

Affidavit of Attempted Service upon Gov. Pataki, March 8th, 2004

Affidavit of Refused Service

AFFIDAVIT OF ATTEMPTED SERVICE

STATE OF NEW YORK
COUNTY OF ^{COURT OF APPEALS} SUPREME COURT FILED ON: FILE NO.: 040702
INDEX NO.: 01-091384

THE PEOPLE OF THE STATE OF NEW YORK Plaintiff(s)-Petitioner(s)

-vs-

STUART BENNETT VORPAHL & TOWN OF MONTAUK, INC. (INTERVENER) Defendant(s)-Respondent(s)

DECLARATION OF REASONABLE DILIGENCE

STATE OF NEW YORK } Mark E. McClosky
COUNTY OF SCHENECTADY ss. } P.O. Box 180
Burnt Hills, N.Y. 12027

I, Mark E. McClosky being duly sworn, deposes and says that deponent is over the age of eighteen years and is not a party in this proceeding.

I received a true copy of } REPLY TO OPPOSITION, NOTICE OF INTERVENTION, MEMORANDUM OF STUART BENNETT VORPAHL, NOVEMBER 2001 AFFIDAVIT OF
for service upon } ROBERT A. FICALORA
HON. GOVERNOR GEORGE E. PATAKI, ESQ.
at address: NYS CAPITOL BUILDING
City & State: ALBANY, NY 12207

and that after due search, careful inquiry and diligent attempts at the aforementioned address I have been unable to make delivery of said process on the within named person(s)


I further state that I attempted to serve the within process on the following dates and times:
MARCH 8, 2004 @ 2:35 P.M.

Your deponent believes that he will be unable to effect personal service upon the above named person(s) herein, although you deponent made due and diligent effort to effect same.
Your deponent believes that he will be unable to effect personal service upon the above named person(s) due to the following reason(s):

CHRIS O'BRIEN, COUNSEL TO THE GOVERNOR REFUSED TO ACCEPT SERVICE OF THESE PAPERS ON THE GROUNDS THAT THE GOVERNOR IS NOT NAMED AS A PARTY TO THE ACTION.

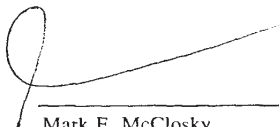

Subscribed and sworn before me on } MARCH 9, 2004

Kathryn A. Rock McClosky
Commissioner of Deeds
Qualified in Schenectady County
Commission Expires 08/27/2004


Karen E. Rock
Notary Public, State of New York
Qualified in Schenectady County
Commission Expires 10/09/2005

Attorney:
Bob Ficalora
MFOP
P.O. Box 2612
Montauk, NY 11954
631-668-2525

affidavit number: 200422734


Mark E. McClosky
Deponent
NATIONWIDE LEGAL SERVICES, LLC
POST OFFICE BOX 180
BURNT HILLS, NEW YORK 12027 
(518) 399-3059

Motion for Joinder
Affidavit of Refused Service

Affidavit of Service upon Gov. Pataki, March 25th, 2004
AFFIDAVIT OF SERVICE

STATE OF NEW YORK
COUNTY OF COURT OF APPEALS SUPREME

COURT FILED ON:

FILE NO.: 040702
INDEX NO.: 01-091384

THE PEOPLE OF THE STATE OF NEW YORK

Plaintiff(s)-Petitioner(s)

-vs-

STUART BENNETT VORPAHL & TOWN OF MONTAUK, INC. (INTERVENER)

Defendant(s)-Respondent(s)

STATE OF NEW YORK }
COUNTY OF SCHENECTADY ss. }

Mark E. McClosky
P.O. Box 180
Burnt Hills, N.Y. 12027

I, Mark E. McClosky being duly sworn, deposes and says that deponent is over the age of eighteen years and is not a party in this proceeding.

On MARCH 25, 2004 at 11:55 A.M.
Deponent served a true copy of MOTION FOR JOINDER, REPLY TO OPPOSITION, NOTICE OF INTERVENTION, MEMORANDUM OF STUART BENNETT VORPAHL, NOVEMBER 2001 AFFIDAVIT OF ROBERT A. FICOLARA & MOTION FOR JOINDER bearing index number: 01-091384 and date of filing: upon HON. GOVERNOR GEORGE E. PATAKI, ESQ. at address: NYS CAPITOL BUILDING City & State: ALBANY, NY 12207

MANNER OF SERVICE

PERSONAL

By delivering to and leaving with personally } known to the deponent to be the same person mentioned and described in the above proceeding as the person to be served.

SUITABLE AGE PERSON

By delivering and leaving with personally } at the premises which is recipient's actual place of business/usual place of abode. Such person knowing the person to be served and associated with him/her, and after conversing with him/her, deponent believes him/her to be a suitable age and discretion.

AUTHORIZED AGENT

By delivering and leaving with } CHRIS O'BRIEN, ESQ. the agent for service on the person in this proceeding designated under Rule 311 CPLR. Service having been made to such person at the place, date and time above.

AFFIXING TO DOOR, ETC.

By affixing a true copy of each to the door of the actual place of business, dwelling place or usual place of abode stated above. Deponent was unable with due diligence to find the proper or authorized person to be served, or a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode stated above after having called there on the following dates and times:

MAILING

Deponent completed service by depositing a true copy of each in a postpaid, properly addressed envelope in an official depository under the exclusive care and custody of the United States Postal Service. The package was labeled "Personal & Confidential" and mailed to the person stated above at address on . The envelope did not indicate on the outside that the communication was from an attorney or concerned an action against the recipient. The envelope was mailed by __first class mail__certified mail__registered mail__return receipt requested.

Deponent further states upon information and belief that said person so served is not in the Military service of the State of New York or the United States as the term is defined in either State or Federal statutes.


DESCRIPTION } deponent describes the person actually served as:

Sex: MALE Race/Skin Color: WHITE
Approximate Age: 34 years Approximate Height: 5'9"
Other:

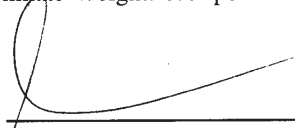

Hair Color: BROWN
Approximate Weight: 170 pounds

Subscribed and sworn before me on } MARCH 26, 2004

Kathryn A. Rock McClosky
Commissioner of Deeds
Qualified in Schenectady County
Commission Expires 08/27/2004


Karen E. Rock
Notary Public, State of New York
Qualified in Schenectady County
Commission Expires 10/09/2005

Attorney :
Bob Ficalora
MFOP
P.O. Box 2612
Montauk, NY 11954
631-668-2525


Mark E. McClosky
Deponent
NATIONWIDE LEGAL SERVICES, LLC
POST OFFICE BOX 180
BURNT HILLS, NEW YORK 12027
(518) 399-3059 

affidavit number: 200423151

FIRM FILE #