

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, SS.

DISTRICT COURT DEPARTMENT
PALMER DIVISION
CIVIL ACTION NO. 1143CV293

Brian Johnson,)
Plaintiff)
)
v.)
)
Peter Frei,)
Defendant)

**DEFENDANT’S EMERGENCY ANSWER TO
PLAINTIFF’S OPPOSITION TO DEFENDANT’S
MOTION TO DISMISS**

It is outrageous how plaintiff’s attorney is trying to dupe this court again; during a hearing on my request to this court to issue a “Criminal Harassment Prevention Order” against Brian Johnson, the plaintiff in this civil action, attorney Tani Sapirstein tried to dupe this court during the hearing of May 19, 2011.

Instead of believing attorney Sapirstein’s claim — after all Sapirstein is a Superlawyer and defendant is just a layman — Honorable Justice Patricia Poehler asked her clerk to get her a copy of the statute in question to see for herself. The statute was the same as the statute in this matter, c.272, s.99.

Justice Poehler subsequently denied Sapirstein’s motion to suppress the audio recording, Sapirstein’s argument was a blatant misrepresentation of Section 99, and I was allowed to play the audio recording.

Defendant doesn't mind being patronized by plaintiff's attorney. However, defendant minds having his rights denied by her deceptive arguments and misrepresentations of the law to this court.

Attorney Sapirstein realizes and agrees that the plaintiff has no expectancy of privacy out on the frozen lake, that's why she falsely claims that expectancy of privacy is not a required element to the civil remedy available pursuant to section 99 Q.

It is imperative to read section 99 Q with the definition of "aggrieved person" in mind.

The key to the question whether plaintiff has a civil remedy available or not lays in the definition of "aggrieved person," the definition to be found in section 99 B 6:

The term "aggrieved person" means any individual who was a party to an intercepted wire or oral communication or who was named in the warrant authorizing the interception, or who would otherwise have standing to complain that his personal or property interest or privacy was invaded in the course of an interception.

The sequence, "or who would otherwise have standing to complain..." clearly defines that the two preceding outlined scenarios,

- (1) A party to an intercepted wire or oral communication,
or,
- (2) a party who was named in the warrant authorizing the interception,

confer individuals standing as an "aggrieved person [...] to complain that his personal or property interest or privacy was invaded in the course of an interception."

Plaintiff's attorney would like this court to believe that, according to the definition of section 99 B 6 supra, an "aggrieved person" is either:

- (1) A party to an intercepted wire or oral communication,
- or,
- (2) a party who was named in the warrant authorizing the interception,
- or,
- (3) a party who would otherwise have standing to complain that his personal or property interest or privacy was invaded in the course of an interception.

.....
Now, (2) has no bearing in this particular case.

However, note that the last part of (3) states:

. . . was invaded in the course of an interception.

This means that for (3) to apply, (1) must also apply.
(i.e. an interception must have taken place).

It is clear that (3) is the crux of section 99 B 6.

To be an "aggrieved person" it is clear that some expectation of privacy must exist.

The claim to privacy invasion confers the required "standing" to be an "aggrieved person."

Without the claim to the invasion of privacy the plaintiff has no civil remedy available!

To simplify it more, section 99 B 6 can be read as:

The term "aggrieved person" means any individual who was a party to an intercepted wire or oral communication [...], or who would otherwise have standing to complain that his personal or property interest or privacy was invaded in the course of an interception.

The sequence,
“or who would otherwise have standing to complain,”
would read,
“and has standing to complain,”
if the language of the statute would not include the all inclusive term,
“or who would otherwise,” to include other, “aggrieved persons.”

Section 99 B 6 would then read as follows:

The term “aggrieved person” means any individual who was a party to an [...] oral communication [...] and who’s] privacy was invaded in the course of an interception.

This court may also ask itself why the legislature introduced the term “aggrieved person” in the first place.

If the plaintiff’s claim would be correct and any violation of section 99 would give rise to a civil action, the language could be simple and the term “aggrieved person” and its definition would be superfluous.

The term “aggrieved person” only appears in s.99 B 6 (definition), in s.99 Q (civil remedy), and s.99 L (Warrants: service thereof).

The somewhat convoluted language of the “aggrieved person,” definition is necessary for its application in s.99 L.

Attorney Sapirstein also misrepresents *Commonwealth v. Michael J. Hide* 434 Mass. 594, 600 (2001).

Hide was accused of secretly record four police officers, a **CRIMINAL** violation according to section 99 C 1. Hide was not sued in civil court for damages.

The defendant included *Hide* because the SJC pointed out that consideration of “privacy” issues would only be warranted in “civil” suits for damages:

[Note6] ... whether the police officers possessed privacy interests in their words spoken in the course of performing their public duties, or whether the encounter constituted a routine traffic stop or a custodial interrogation, as argued by the defendant, are issues that we need not address. Consideration of such issues would only be warranted in a civil suit for damages under G.L. c. 272, § 99 Q,

Commonwealth v. Michael J. Hide 434 Mass. 594, 600 (2001).

Respectfully submitted,

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July 13th, 2011

Peter Frei

CERTIFICATE OF SERVICE:

I hereby certify that a true copy of the above document was served upon the following by first class mail, postage prepaid:

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July 13th, 2011

Peter Frei