

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, SS.

DISTRICT COURT DEPARTMENT
PALMER DIVISION
Docket NO. 201143 RO 000079

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

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO
DISMISS.**

Defendant's rule 41(b)(2) motion is, for a lack of a better word, grotesque!

The evidence and testimony by the plaintiff and witnesses testifying before this honorable court showed that Brian Johnson's criminal harassment towards the plaintiff escalated over the past; on

May 30, 2008, Brian Johnson only used words to intimidate; on **September 30, 2009**, he tried to break into plaintiff's car to harm plaintiff, and then held plaintiff against his will for approximately 20 minutes; on

December 7, 2009, Brian Johnson tried to run plaintiff off the road, the road conditions were treacherous at the time due to previous snowfall; on

January 18, 2011, Brian Johnson put his cell phone 3-1/2" from plaintiff's face taking pictures or pretending to take pictures, calling

plaintiff “fucking loser” and, as he left the police station, vandalized plaintiff’s car by kicking-in the driver door of plaintiff’s car; on **January 29, 2011**, Brian Johnson made two harassing phone calls to plaintiff; on **January 30, 2011**, Brian Johnson made two more harassing phone calls (three harassing phone calls are a crime pursuant to G.L. c.269, s. 14A); on **February 19, 2011**, Brian Johnson asked plaintiff just seconds before he attacked plaintiff the chilling question, “**wasn’t there somebody else in the house?**” Exhibit 10, at 6:06 minutes, audio CD. Brian Johnson then, “**get out of here! Get the fuck out of here!**” At 6:10 minutes, Ibid, and, “**YOU BETTER GET THE FUCK OUT OF HERE! RIGHT NOW!!**” At 6:14 minutes, Ibid. Brian Johnson then took a swing with his right foot towards plaintiff to kick plaintiff with his heavy shoe in his head while plaintiff laid on the snow covered ice.

The Supreme Judicial Court (SJC) recognized the escalating nature of harassment, going from words to property destruction and finally to end in lethal violence:

Our statutory interpretation today effectuates this intent by protecting victims from harassment that may begin with words, but tragically end with violence. See Kirkman, Every Breath You Take: Massachusetts Steps up its Efforts to Stop Stalkers, 85 Mass. L.Rev. 174, 181, 183 (2001) (“stalkers who become lethal move from non-threatening behavior to direct threats and property destruction” and “criminal harassment law establishes a continuum along which law enforcement may confront stalking behaviors”).

Comm. v. Valerie WELCH. 444 Mass. 80, 92 (2005).

(speech that places victim in reasonable apprehension of imminent serious physical harm is conduct equivalent to crime of assault and is unprotected by First Amendment);

Ibid, at 86.

But it is not just the overt intimidation and harassment perpetrated against plaintiff which escalated over the past; Brian Johnson's attempts to criminalize plaintiff escalated too:

March 5, 2008, Brian Johnson, according to the official police report (Exhibit 16), accused plaintiff of having watched his house from, "Stafford Rd [is] a public way in the town of Holland," of, being aware about the fact that plaintiff, "is friends with LaMountain, (James), who threatened to do bodily harm to his children," and, that, "FREI has been posting blogs on the Worcester Telegram & Gazette website accusing him of illegally obtaining land while constructing his residence."

All these accusations didn't include anything which would not be within plaintiff's rights. On **September 30, 2009**, defendant knew that he had to allege a crime in order to criminalize plaintiff. Brian Johnson ganged up with his neighbor Alexander Haney and falsely claimed plaintiff was trespassing. The pictures plaintiff took proved Johnson to be a liar. The fact that Brian Johnson did not file a voluntary statement and that the police neither wrote a report, nor issued a written "NO TRESPASS ORDER," as initially announced by Trooper John Puccia is telling; on

February 19, 2011, according to the official police report, Brian Johnson falsely claimed that, "Frei had come out onto the ice and was yelling at the group of them stating they were trespassing on his [plaintiff's] property. Johnson said he felt threatened by Frei because Frei said 'Stay off my property or I'll fucking kill you.' Johnson said he felt concerned for his safety because of this threat." Exhibit 2. par.3. official police report, ref. 11-31-OF.

Brian Johnson is intimately familiar with c.275, s.2 (threat to commit a crime) as he pressed such charges against James LaMountain, (docket # 0743CR00143.) Plaintiff's audio recording proves all these allegations to be falsehoods. Scary is the fact that his associates who were accompanying Johnson on the ice backed up his lies; Officer Jeffrey Forcier, according to his report and testimony stated: "I asked these individuals if anyone had just been in an altercation with Frei and they all said no."

Brian Johnson's habitual lies were exposed through testimony, police reports, and plaintiff's audio recording. On the other side, plaintiff's testimony was confirmed. For instance, all along, plaintiff claimed that he took no pictures on March 5, 2008 (first incident at Johnson's residence), that there was nobody in Brian Johnson's lawn or around the house while plaintiff pulled over on 61 Stafford Road. On June 16, 2011, attorney Sapirstein asked plaintiff the following question during cross examination:

"Do you know whether Mr. Johnson was concerned that Mr. LaMountain had threatened his children?" (At 3:33:46 PM)

Plaintiff objected based on relevancy. This court then asked defendant's attorney, "You can make an offer of proof of what kind of evidence will be forthcoming from a witness.." (at 3:34:50 PM). Sapirstein then stated that a police officer will give testimony to the fact that, "the concern is and the reason that Mr. Johnson wanted Mr. Frei to move uhh, there was a concern for the safety of the [Johnson] children and it went back to at least 2008." (At 3:35:54 PM).

Children's threatened welfare creates strong emotions, a fact Brian Johnson and his attorney wanted to exploit by fabricating a "concern for the safety of the children." Plaintiff by coincident learned about the official police report about the incident which clearly shows what Brian Johnson's real concerns were: "FREI has been posting blogs on the Worcester Telegram & Gazette website accusing him of illegally obtaining land while constructing his residence." Exhibit 16, par. 3, police report about incident of March 3, 2008.

Jim Boder, manager of online operations at the Worcester Telegram and Gazette, confided to plaintiff that Holland town officials threatened with

lawsuits in order to have plaintiff's comments censored and removed. All comments posted by the plaintiff were signed with plaintiff's real name (Peter Frei) and it would have been easy to sue plaintiff for libel if the comments would have been false. To this day, every single allegation is now posted on plaintiff's own blog under "Johnson Landgate," which plaintiff established in response to the Worcester Telegram and Gazette's censoring their blog.

The evidence on record clearly shows that Brian Johnson's intimidation and harassment is an attempt to shut plaintiff up and to deter plaintiff from political activism and from exercising his First Amendment Rights, nothing else. The SJC opined in *Planned Parenthood League, Inc.:*

The word "intimidation" has been construed in the Massachusetts Civil Rights Act (G.L. c. 12, § 11H) to mean "putting in fear for the purpose of compelling or deterring conduct."

Planned Parenthood League, Inc. v. Blake, 417 Mass. 467, 474, cert. denied, 513 U.S. 868 (1994).

The evidence further clearly shows that Brian Johnson is a liar; plaintiff's audio recording is prima facie evidence to this fact and would meet the "beyond a reasonable doubt" standard applied in a criminal proceeding any day in court. While violations of orders issued pursuant G.L. c.258E are criminal in nature, hearings whether to issue orders are civil in nature and the standard of prove is only "preponderance of the evidence." See c.258E, s.4. To expect this court to grant defendant's rule 41(b)(2) motion under the given circumstances and Brian Johnson's utter lack of credibility would be contrary to the legislature's intent expressed in G.L. chapter 258E.

WHEREFORE, plaintiff respectfully requests this court to deny defendant's motion for involuntary dismissal of plaintiff's request to issue a "criminal harassment prevention order" against Brian Johnson.

Respectfully submitted by fax,

Peter Frei
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August 7th, 2011

Peter Frei

CERTIFICATE OF SERVICE:

I hereby certify that a true copy of the above document was served upon the following by fax to (413) 827 7797 and will also be served by hand delivery on August 9th, 2011:

Sapirstein & Sapirstein, P.C.
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August 7th, 2011

Peter Frei