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ATTORNEYS AT LAW

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January 24, 2014

Brian St. Onge, Clerk-Magistrate
Palmer District Court
235 Sykes St., Ste. 3
Palmer, MA 01069

HAND DELIVERY

**Re: Brian Johnson v. Peter Frei
Civil Action No.: 1143CV293**

Dear Mr. St. Onge:

Enclosed herewith for filing in connection with the above-referenced matter please find a Notice of Appeal.

Please date stamp the enclosed copy of the above-referenced Notice of Appeal and return same to the undersigned.

Feel free to contact the undersigned should you have any questions or comments in this regard.

Very truly yours,



Tani E. Sapirstein

TES:ps
Enclosures

cc: Henry L. Rigali, Esq. (w/encl.)
Mr. Brian Johnson (w/encl.)

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT OF THE COMMONWEALTH

HAMPDEN, ss.

District Court Department
Palmer Division
Civil Action No. 1143CV000293

BRIAN JOHNSON

Plaintiff/Defendant-in-Counterclaim

v.

PETER FREI

Defendant/Plaintiff- in-Counterclaim

NOTICE OF APPEAL

1. Brian Johnson, Plaintiff/Defendant-in-Counterclaim ("Johnson") is the designated party which is filing this appeal.

2. The legal issues presented in this appeal are the insufficiency of evidence, as a matter of law, to support the jury verdict on the claim for violation of the Civil Rights Act. Specifically, there was insufficient evidence to support the essential element that any interference or attempted interference of Defendant/Plaintiff-in-Counterclaim, Peter Frei's ("Frei") constitutional rights was by threats, intimidation or coercion. The jury verdict is contrary to the Supreme Judicial Court decision in *Kennie v. Natural Resource Dept. of Dennis*, 451 Mass. 754, 765 (2008) which noted that "[A] certain amount of verbal 'posturing' and 'huffing and puffing' is 'not uncommon during neighborhood disputes, especially those wending their way through town hall en route to litigation.'" The evidence supported the conclusion that any dispute between Johnson and Frei was just this type of neighborhood dispute between a citizen of the Town of Holland (Frei) and an elected official (Johnson).

3. Johnson appeals the entry of judgment in favor of Frei on the claim for violation of Mass. General Laws c.12, §11I (the "Civil Rights Act") and the denial of Johnson's Motion for Judgment Notwithstanding the Verdict by the Court (Poehler, J.).

4. A copy of the decision on Johnson's Motion for Judgment Notwithstanding the Verdict is attached hereto.

5. The required form for ordering a cassette copy of the electronic recording of the jury trial and the requisite fee are attached hereto.

Respectfully submitted,

The Plaintiff/Defendant-in-Counterclaim,
Brian Johnson,
By His Attorney,



Tani E. Sapirstein, Esq.
BBO #236850
SAPIRSTEIN & SAPIRSTEIN, P.C.
1350 Main Street - 12th Floor
Springfield, MA 01103
Tel: (413) 827-7500
Fax: (413) 827-7797

Dated: January 24, 2014

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing document to be served upon the following by first class mail, postage prepaid, to:

Henry L. Rigali, Esq.
78 Maple Street
Springfield, MA 01105-1813

Dated: January 24, 2014

Tani E. Sapirstein
Tani E. Sapirstein

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January 24, 2014

Brian St. Onge, Clerk-Magistrate
District Court Department
Palmer Division
235 Sykes St., Ste. 3
Palmer, MA 01069

Via Hand Delivery

Re: **Brian Johnson v. Peter Frei**
Civil Action No.: 1143CV293

Dear Mr. St. Onge:

Enclosed herewith please find a Cassette Copy Order Form as well as our firm's check made payable to the order of Palmer District Court in the amount of \$50.50 in connection with the above-referenced matter.

Please date stamp the enclosed copy of the above-referenced order form and return same to the undersigned.

Feel free to contact the undersigned should you have any questions or comments in this regard.

Very truly yours,



Tani E. Sapirstein

TES:ps
Enclosure

cc: Henry L. Rigali, Esq. (w/encl.)
Mr. Brian Johnson (w/encl.)

CASSETTE COPY ORDER FORM

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Springfield Palmer
District

ORDER NUMBER

221354

Trial Court of Massachusetts
District Court Department

PART I — TO BE COMPLETED BY PERSON PLACING ORDER

NAME, ADDRESS AND ZIP CODE OF PERSON PLACING ORDER

Tani E. Sapirstein, Esq.

Sapirstein & Sapirstein, P.C.

1350 Main St.

Springfield, MA 01103

NAME OF CASE

Brian Johnson v. Peter Frei

DOCKET NUMBER OF CASE

1143 cv 293

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Trial/ Poehler, J.

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NATURE OF PROCEEDING

☐ CRIMINAL BENCH TRIAL☐ CRIMINAL JURY TRIAL☐ PROBABLE CAUSE HEARING☐ CRIMINAL SHOW CAUSE HEARING☐ CIVIL HEARING☐ ABUSE PREVENTION ORDER☐ DELINQUENCY☒ CIVIL TRIAL☐ OTHER (specify):Is this proceeding presently pending on appeal? ☐ YES ☐ NO

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☐ counsel for _____, a party,☐ a party appearing pro se,

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X Tani E. Sapirstein

SIGNATURE OF PERSON PLACING ORDER

1/24/13

DATE ORDER PLACED

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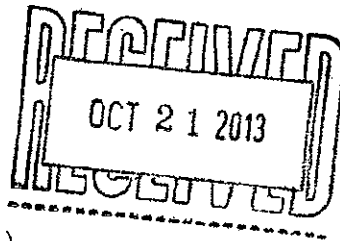
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COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS



DISTRICT COURT DEPT.
OF THE TRIAL COURT
PALMER DIVISION
DOCKET NO. 1143 CV 293

BRIAN JOHNSON,
Plaintiff,

vs.

PETER FREI,
Defendant.

ORDER ON PLAINTIFF'S MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT

Following a jury trial, a judgment issued against the plaintiff (Johnson) on the defendant's (Frei's) counterclaim (Count VII) for violation of the Massachusetts Civil Rights Law, G.L. c. 12, § 11 I. In answers to special questions the jury found that Johnson interfered with or attempted to interfere with Frei's constitutional rights by threats, intimidation or coercion. The plaintiff has now filed a motion pursuant to Mass. R. Civ. Pro. 50(b) for judgment notwithstanding the verdict on that claim.

APPLICABLE STANDARD OF REVIEW

In considering a motion for judgment notwithstanding the verdict the following language from *Cahaly v. Benistar Prop. Exch.*, 451 Mass. 343, 350 (2008) is instructive:

Because the jury are a pillar of our justice system, nullifying a jury verdict is a matter for the utmost judicial circumspection. The touchstone is reasonableness. We ask whether, construing the evidence most favorably to the plaintiff, and "without weighing the credibility of the witnesses or otherwise considering the weight of the evidence, the jury reasonably could have returned a verdict for the plaintiff. . . . To be reasonable, the inference [or conclusion] 'must be based on probabilities rather than possibilities and cannot be the result of mere speculation and conjecture.'" (citations omitted). "[We] consider whether 'anywhere in the evidence, from whatever source derived, any combination of circumstances could be found from which a reasonable inference could be drawn' in favor of the

nonmoving party.” (citations omitted).

MASSACHUSETTS CIVIL RIGHTS ACT

“To establish a claim under the Massachusetts Civil Rights Act (Act), G.L. c. 12, § 11I, [an individual] must prove that (1) his exercise or enjoyment of rights secured by the Constitution or laws of either the United States or of the Commonwealth, (2) has been interfered with, or attempted to be interfered with, and (3) that the interference or attempted interference was by “threats, intimidation or coercion.” *Bally v. Northeastern University*, 403 Mass. 713, 717 (1989). “In the context of the act, a “threat” consists of “the intentional exertion of pressure to make another fearful or apprehensive of injury or harm.” (citation omitted). “Intimidation” involves “putting in fear for the purpose of compelling or deterring conduct.” (citation omitted). “Coercion” is “the application to another of such force, either physical or moral, as to constrain him to do against his will something he would not otherwise have done.” (citations omitted).” *Haufler v. Zotos*, 446 Mass. 489, 505 (2006). In determining whether the conduct complained of constitutes threats, intimidation or coercion, a reasonable person standard is applied. See *Planned Parenthood League of Mass., Inc. v. Blake*, 417 Mass. 467, 474-475 (1994).

Taken in the light most favorable to the plaintiff, the evidence regarding the civil rights claim was as follows: Frei operates an interactive blog in the town of Holland. At times, Frei has been highly critical of Johnson, an elected highway surveyor and of Johnson’s father, an elected member of the town board of selectmen. Frei would elicit, or receive unsolicited from citizens, information on certain of Johnson’s activities. Frei would then investigate the information and under certain circumstances would post the results of his investigation on his blog. Oftentimes in his blog Frei would report that Johnson was doing something illegal or shady, e.g., using a town grader to plow his father’s driveway. The jury heard evidence that as the blog reports continued, Johnson, who was obviously upset about Frei’s investigations and postings, called him names, insulted him and called his house on a couple of occasions making insulting remarks. The hostility between the two parties culminated in an incident on February 19, 2011 in front of Frei’s lakeshore home. On that date, Johnson and some friends were ice fishing in a fishing derby run by the town. They set up their camp in front of Frei’s home. They had a large sign

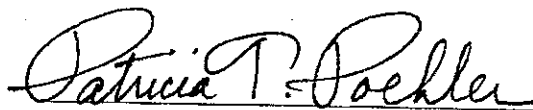
reading "Eat me" facing Frei's home and were drinking beer. When Frei came down to the lake to tell them not to trespass on his property, words were exchanged between the two and Frei testified that Johnson took a swing towards Frei's head with his foot. Johnson did not hit him but ultimately either someone in Johnson's group pushed Frei or he slipped on the ice. The police were called. No one was arrested.

Without reaching the issue of whether the jury could have found threats or coercion, they could have found intimidation. In criticizing Johnson's activities as an elected official, Frei was exercising his First Amendment right to free speech. There was evidence from which the jury could have found that Johnson intimidated or attempted to intimidate Frei by putting Frei in fear for the purpose of deterring him from reporting on Johnson's activities, and further that a reasonable person would have been so intimidated.

ORDER

It is hereby ORDERED that the plaintiff's motion for judgment notwithstanding the verdict is DENIED.

So ordered.



Patricia T. Poehler

Associate Justice of the District Court

Dated: October 16, 2013