

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT**

District Court Department
Palmer Division
Civil Action No.: 1143CV293

BRIAN JOHNSON)
)
PLAINTIFF)
)
v.)
)
PETER FREI)
)
DEFENDANT)

DEFENDANT'S PRETRIAL MEMORANDUM

A. Reason for not filing a joint Pretrial Memorandum as required by the Rules:

Johnson's counsel has no interest in following the rules and cooperating with Frei in filing a joint memorandum. The reason is that this will make it more difficult for Frei.

B. Summary of Defendant and Plaintiff in Counterclaim:

Frei was running an interactive blog at the time, the Holland Blog at www.01521.com.

After being heavily criticized on Frei's blog, Johnson choose to ice-fish, of all the places Hamilton Reservoir offers, just a few feet from Frei's residence. After drinking heavily all day in puplic on said February 19, 2011, it came to an altercation after Frei, late in the afternoon, stepped onto the ice to tell Johnson and his friends, that he would not tolerate anybody trespassing onto his property. One of the group urinated on Frei's property just minutes earlier.

Johnson denied he committed any of the acts against Frei but was found guilty on Frei's counterclaims during trial for defamation (In his statement to the Police, Johnson accused Frei of having made death threats towards him, and that he, Johnson, would now fear for his life; Johnson accused another outspoken resident of Holland, James LaMountain, of the same crime before and that individual was not as fortunate as Frei, as he had no recording to prove Johnson to be lying to the

Police. LaMountain was convicted of the crime of threatening to commit a crime).

Johnson was also found guilty of attempted intentional and negligent infliction of emotional distress. All three claims were actionable through the Massachusetts Civil Rights Act, MCRA, .

Consequently the jury found Johnson's conduct a violation of Frei's civil rights, and found that his conduct was extreme and outrageous, and that it was beyond the bounds of decency and intolerable in a civilized society.

Frei's counter-claim for Abuse of Process was dismissed on Johnson's Motion for a Directed Verdict.

The Appeals Court found error by the District Court's decision to allow Johnson's Motion (at the time of the trial, it was not known that the members of the Board of Selectmen ("BOS"), secretly paid for Johnson's legal representation, and that Johnson's attorney, Tani Sapirstein, accepted the payments in violation of the State Ethics Law. This fact came to light after a lengthy investigation by the State Ethics Commission.

The State Ethics Commission's Public Education Letter ("PEL") also brought to light the true motive behind Johnson's civil suit against Frei. Johnson's civil suit against Frei was "aimed" to "deter" and "discourage" Frei from filing petitions with the government. Petitioning the government is one of the five constitutional rights explicitly named in the First Amendment.

C. Witnesses (and expected testimony):

Defendant and Plaintiff in Counterclaim:

Lynn Arnold, 9 Shore Drive, Holland, MA 01521, member of the Board of Selectmen at the time, witness, (events pre February 19, 2011, February 19, 2011, and post February 19, 2011);

Jeff Forcier, address unknown, former officer of the Holland Police Department ("HPD") (officer Forcier left the HPD after he testified in Court under oath, address unknown; witness, (events pre February 19, 2011, February 19, 2011, and post February 19, 2011);

Peter Frei, defendant and plaintiff in counterclaim, pro se (events pre February 19,

2011, February 19, 2011, and post February 19, 2011);

Brian J. Johnson, 61 Stafford Road, Holland, Ma 01521, defendant, (events pre February 19, 2011, February 19, 2011, and post February 19, 2011);

Michael Kennedy, 208 Mashapaugh Road, Holland MA 01521, witness, was a member of the BOS at the time (events pre February 19, 2011, February 19, 2011, and post February 19, 2011);

James LaMountain, address unknown at this time, witness (events pre February 19, 2011, February 19, 2011, and post February 19, 2011);

Dana Manning, 11 Birch Street, Sturbridge, MA 01566, witness (events pre February 19, 2011, February 19, 2011, and post February 19, 2011);

Christian Petersen, 3 Morse Road, Holland MA 01521, witness, was a member of the BOS at the time, (events pre February 19, 2011, February 19, 2011, and post February 19, 2011);

Albert West, father in law of Brian Johnson, address unknown, witness (events pre February 19, 2011, February 19, 2011, and post February 19, 2011);

James Wettlaufer, 101 Vinton Road, Holland, MA 01521, chairman of the Board of Selectmen at the time, witness (events pre February 19, 2011, February 19, 2011, and post February 19, 2011);

Representative of the State Ethics Commission, to testify on Johnson's testimony, written statements to the Commission, and their investigation in general.

D. FACTS ESTABLISHED BY PLEADINGS, STIPULATION, ADMISSIONS, TRIAL, JURY VERDICT, PUBLIC EDUCATION LETTER ISSUED BY THE STATE ETHICS COMMISSION, APPEAL TO THE APPELLATE DIVISION OF THE DISTRICT COURT, APPEAL TO THE APPEALS COURT OF THE COMMONWEALTH OF MASSACHUSETTS, AND REQUEST FOR FURTHER APPEAL BY THE SUPREME JUDICIAL COURT.

1. Frei criticized Johnson on his blog, the Holland Blog. (Trial)
2. Johnson came to Frei's house, surrounded the house under the pretense to ice-fish, on February 19, 2011. (Trial)
3. Johnson's real reason to ice-fish at this location, less than 50 feet from Frei's house, was to harass him and to intimidate him. (Trial, Jury verdict.)

4. Eventually one man of the group urinated on Frei's property. (Trial)
5. Frei went out on the ice to tell them he would not tolerate anybody trespassing his property. (Trial)
6. Frei was attacked by the group and the police was called.
7. While Frei was laying on the ice, Johnson attempted to kick Frei in his head.
8. Frei told the group that they are being video recorded to avoid a gang beating. (Trial testimony).
9. Johnson stated to the police that it was Frei who harassed the group and that Frei would have made a death threat towards Johnson and that he would be in fear of his life. (Police testimony at Trial).
10. Johnson denied having accused Frei towards the police (Trial).
11. Johnson's testimony contradicted the testimony of the police (Trial).
12. Frei had recorded the encounter.
13. Johnson stipulated to the completeness of Frei's recording minutes before trial.
14. The recording was void of any threats made by Frei towards Johnson as Johnson originally stated towards the police (Plaintiff's stipulation).
15. Johnson, in his private capacity, filed a civil suit against Frei.
16. The town of Holland secretly financed Johnson's civil suit, Public Education Letter issued by the State Ethics commission.
17. Johnson's civil suit was "aimed" to "deter" and "discourage" Frei from further petitioning the government. (Public Education Letter)
18. Frei's recording did not violate Johnson's privacy, (jury verdict).
19. Frei's recording did not violate Johnson's personal interest (jury verdict).
20. Frei's recording did not violate Johnson's property interest (jury verdict).
21. Johnson was lying to the police; with his recording on his i-phone, Frei exposed Johnson to be a liar. (Trial, jury verdict).
22. At the time Johnson filed his civil suit, he knew that Frei had a recording of the encounter. (Trial)
23. Johnson was found guilty of defamation, attempted intentional and negligent infliction of emotional distress, and violating Frei's civil rights (jury verdict).

24. The Jury found Johnson's conduct "extreme and outrageous, and that it was beyond the bounds of decency and intolerable in a civilized society."

25. **Johnson's suit secretly paid for with the unassuming taxpayer's money was filed to "deter" and "discourage" Frei from filing petitions with the government. (PEL issued by the State Ethics Commission.)**

E. **ITEMIZED LIST OF SPECIALIZED DAMAGES, IF ANY**

Defendant and plaintiff in Counter Claim: Frei is seeking actual damages, punitive damages and attorney's fees and costs.

F. **ESTIMATED LENGTH OF TRIAL**

Defendant and plaintiff in Counter Claim: Frei has no idea, probably at least three days.

G. **CERTIFICATION BY COUNSEL THAT THEIR CLIENT(S) HAVE BEEN APPRISED OF ESTIMATED LITIGATION COSTS**

Defendant in Counter Claim: Frei pro se, is representing himself.

Respectfully submitted, Holland, May 7, 2019,

Peter Frei

The Defendant and Plaintiff in counterclaim, pro se,

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101 Maybrook Road
HOLLAND, MA 01521
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CERTIFICATE OF SERVICE:

I hereby certify that a true copy of the above document was served upon the following in person:

Tani E. Sapirstein, Sapirstein & Sapirstein, P.C.,
1331 Main Street, 2nd Floor,
Springfield, MA 01103

May 7, 2019,

Peter Frei