

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, ss.

Superior Court Department
Civil Action No. **09 935**

TOWN OF HOLLAND, FIRE)
DEPARTMENT)
)
Plaintiff)
)
v.)
)
JAMES P. LAMOUNTAIN and)
NORTHEAST CONCEPTS, INC.)
)
Defendants)

VERIFIED COMPLAINT AND
REQUEST FOR INJUNCTIVE RELIEF

The Plaintiff, Town of Holland, Fire Department, ("Town") files this verified complaint and seeks injunctive relief against the Defendants, James P. Lamountain, ("Lamountain") and Northeast Concepts, Inc., ("Northeast"), (collectively "Defendants") prohibiting the Defendants from open burning in violation of the Sanitary Code, 310 CMR 7.07 and Mass. General Laws, c. 48, §13 and G.L. c. 111, §142L.

1. Town of Holland, Fire Department, is a department within a municipality with a place of business at 7 Sturbridge Road., Holland, Hampden County, Massachusetts ("Town").

2. James P. Lamountain is an individual with a residence at 16 Lakeridge Drive, Holland, Hampden County, Massachusetts ("Lamountain").

3. Northeast Concepts, Inc. is a corporation organized under the laws of the Commonwealth of Massachusetts with a principal place of business at 16 Lakeridge Drive, Holland, Hampden County, Massachusetts ("Northeast").

4. On several dates since June, 2009, Lamountain and Northeast have engaged in open burning at Mashapaug Road, Holland, Massachusetts. Specifically, the Defendants engaged in open burning on June 8, 2009, June 22, 2009, August 31, 2009 and September 9, 2009.

5. Paul Foster, the Fire Chief, ("Foster") had previously denied an open burning permit to Lamountain due to the lack of supervision when burning, the disregard to the public safety of adjacent homes and property, and not having proper fire equipment to handle the fires.

6. Defendants' blatant disregard of the laws restricting open burning places other property owners at risk and unnecessarily utilizes the resources of the Town.

7. On August 31, 2009, Lamountain was arrested by the Massachusetts Environmental Police and Massachusetts State Police for, *inter alia*, violation of G.L. c. 131. At the time of the arrest, there were two open fires burning and the Town was called to extinguish the fires.

8. The total cost for extinguishing the brush fire at Mashapaug Road on August 31, 2009 was \$1,057.50.

9. Neither Lamountain nor Northeast have a permit which would allow
~~open burning.~~

10. Neither Lamountain nor Northeast qualifies for an open burning permit under any relevant law or regulation.

COUNT I

VIOLATION OF SANITARY CODE

310 CMR 7.07

(Lamountain and Northeast)

11. The allegations contained in Paragraphs 1 through 10 are repeated, reiterated and realleged as if fully set forth herein.
12. The conduct of Defendants violates 310 CMR 7.07.
13. The Town and the public will suffer substantial, immediate and irreparable harm and damages unless Defendants are enjoined from open burning.

COUNT II

VIOLATION OF

G.L. c. 48, §13

(Lamountain and Northeast)

14. The allegations contained in Paragraphs 1 through 13 are repeated, reiterated and realleged as if fully set forth herein.
15. The conduct of Defendants violates G.L. c. 48, §13.
- ~~16. The Town and the public will suffer substantial, immediate and~~
irreparable harm and damages unless Defendants are enjoined from open burning.

WHEREFORE, Plaintiff, Town of Holland, Fire Department requests that this honorable Court:

1. issue its Summons and Order of Notice that Defendants answer this verified complaint and appear for a hearing on the Motion for Preliminary Injunction at 2:00 p.m. on October 6, 2009;
2. after hearing, issue a preliminary injunction enjoining and restraining Defendants from open burning in the Town of Holland unless expressly and specifically authorized by the Fire Chief;
3. after trial, enter a permanent injunction in the form set forth in paragraph 2;
4. award the Plaintiff its damages, attorney fees, costs and interest; and
5. award such other relief as the Court may deem appropriate.

The Plaintiff,
Town of Holland, Fire Department
By its attorney,



Tani E. Sapirstein, Esq.

~~BBO No. 236850~~
Sapirstein & Sapirstein, P.C.
1350 Main Street, 12th Floor
Springfield, MA 01103
Tel. (413) 827-7500
Fax (413) 827-7797

Dated: September 25, 2009

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, ss.

Housing Court Department
No. 06H79CV000392

TOWN OF HOLLAND FIRE)
DEPARTMENT FOR THE)
)
Plaintiff)
)
v.)
)
JAMES LAMOUNTAIN)
)
Defendant)

VERIFICATION

I, Paul Foster, hereby depose and state as follows:

1. I am the Fire Chief for the Town of Holland, the Plaintiff in this matter.

2. I have read the Verified Complaint and have found that the allegations of fact set forth therein are based on my own personal knowledge and are true, except as to those allegations based on information and belief which I believe to be true.

Signed under the penalties of perjury on this 24TH day of September, 2009.

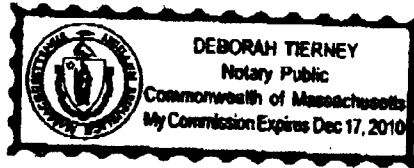
Paul Foster
Paul Foster

COMMONWEALTH OF MASSACHUSETTS

, ss.

On this the 24th day of September, 2009, before me, the undersigned notary public, personally appeared Paul Foster, and proved to me through satisfactory evidence of identification which was personal knowledge to be the person whose name is signed on the preceding document and acknowledged to me that he signed it voluntarily and for its stated purpose.

Deborah Tierney
Notary Public
My commission expires: 12/17/10



PLAINTIFF(S) Town of Holland Fire Department	DEFENDANT(S) James P. Lamountain and Northeast Concepts, I
ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE Tani E. Sapirstein, (413) 827-7500 apirstein & Sapirstein, PC 1350 Main St. Springfield, MA 01103 Board of Bar Overseers number: 236850	ATTORNEY (if known)

Place an x in one box only:

<input checked="" type="checkbox"/> 1. P01 Original Complaint	<input type="checkbox"/> 4. P04 District Court Appeal c.231, s. 97 & 104 (After trial) (X)
<input type="checkbox"/> 2. P02 Removal to Sup. Ct. C.231, s.104 (Before trial)	<input type="checkbox"/> 5. P05 Reactivated after rescript; relief from judgment Order (Mass.R.Civ.P. 60) (X)
<input type="checkbox"/> 3. P03 Re-transfer to Sup. Ct. C.231, s.102C (X)	<input type="checkbox"/> 6. E10 Summary Process Appeal (X)

Origin code and track designation

CODE NO.	TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)	IS THIS A JURY CASE?
D99	Injunctive Relief (F)	() Yes (X) No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS
(Attach additional sheets as necessary)

A. Documented medical expenses to date:

1. Total hospital expenses	\$.....
2. Total Doctor expenses	\$.....
3. Total chiropractic expenses	\$.....
4. Total physical therapy expenses	\$.....
5. Total other expenses (describe)	\$.....
Subtotal	\$.....

B. Documented lost wages and compensation to date \$.....

C. Documented property damages to date \$.....

D. Reasonably anticipated future medical and hospital expenses \$.....

E. Reasonably anticipated lost wages \$.....

F. Other documented items of damages (describe) \$.....

G. Brief description of plaintiff's injury, including nature and extent of injury (describe) \$.....

TOTAL: \$.....

CONTRACT CLAIMS
(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

TOTAL \$.....

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record Tani E. Sapirstein DATE: 9/25/09

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT
DEPARTMENT OF THE TRIAL COURT
CIVIL ACTION
NO. 09-935

~~XS~~
L. M. DEN, ss.

Town of Holland
Fire Department
_____, PLAINTIFF(S)

V.
James P. Lamountain and
Northeast Concepts, Inc.
_____, DEFENDANT(S)

SUMMONS

James P. Lamountain
To the above named defendant: 16 Lakeridge Drive
Holland, MA

You are hereby summoned and required to serve upon
Tani E. Sapirstein, Esq. _____, plaintiff's attorney, whose address is
1350 Main St. Springfield, MA 01103 _____, an answer to the complaint which is herewith served upon
you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do
so, judgment by default will be taken against you for the relief demanded in the complaint. You are also
required to file your answer to the complaint in the office of the Clerk of this court at Springfield either before
service upon the plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by rule 13(a), your answer must state as a counterclaim any claim which
you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter
of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Barbara J. Rouse, Esq., at Springfield the _____ 25th _____ day of
September _____ in the year of our Lord two thousand nine.

Barbara J. Rouse
Clerk / Magistrate

NOTES:

- 1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
- 2. When more than one defendant is involved, the names of all such defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

FORM No. 1

9/30/09

A TRUE COPY ATTEST
Donald P. Castaldi
DEPUTY SHERIFF HND. CTY.

NOTICE TO DEFENDANT -- You need not appear personally in court to answer the complaint, but if you claim to have a defense, either you or your attorney must serve a copy of your written answer within 20 days as specified herein and also file the original in the Clerk's office.