

State of New York - Court of Appeals
Supreme Court of the State of New York

**Robert A. Ficalora as assignee of Montauk Friends of
Olmsted Parks, inc., a not-for-profit corporation established
under the laws of the State of New York**

Plaintiff,

- against -

**The town board government of East Hampton
and
Sunbeach Montauk II, inc., as claimant fee title holder to the
Hither Plain Reservation and Bathing Reservation
properties in Montauk.**

Defendants.

**Notice of
Appeal (2)**

A. D. 2nd 99-02065
Suffolk 98-14806

PLEASE TAKE NOTICE that on this fifth day of February, 2001, Robert A. Ficalora, *pro se*, assignee and authorized representative of the Montauk Friends of Olmsted Parks corporation under the laws of the State of New York, does herewith and hereby notice an appeal to the Court of Appeals of the decision and order of the Second Judicial Department of the Appellate Division dated October 23rd, 2000, on the ground that the application of CPLR 321(a) as ground for dismissal is unconstitutional denial of equal protection of the law under the Constitution of the State of New York and the United States of America given the many assignments of the corporation's cause shown in the record (CPLR § 5601(b)(2), U. S. Constitution 14th Amendment, N.Y. Constitution Article 1 § 11, See: Kamp v. In Sportswear, 39 A.D. 2d 869, *revg for reasons stated in dissent at App.. Term 70 Misc. 2d 898*). The Appellate Division entered a decision and order denying a motion for reconsideration or leave to appeal in the above matter on December 21st, 2000, which was served by mail by defendant's counsel on January 8th, 2001.

Robert A. Ficalora, *pro se*

**State of New York - Court of Appeals
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**Robert A. Ficalora as assignee of Montauk Friends of
Olmsted Parks, inc., a not-for-profit corporation established
under the laws of the State of New York**

Plaintiff,

- against -

**The town board government of East Hampton
and
Sunbeach Montauk II, inc., as claimant fee title holder to the
Hither Plain Reservation and Bathing Reservation
properties in Montauk.**

Defendants.

**Affirmation of
Service**

A. D. Case No.
99-02065

I, Robert A. Ficalora, do affirm under the penalty of perjury that on February 5th, 2001, I did forward a copies of a Notice of Appeal (1) and Notice of Appeal (2) in the above captioned matter by depositing same in a sealed postage paid envelope in the care of the United States postal service to:

ESSEKS, HEFTER & ANGEL, ESQS.

Attorneys for Sunbeach Montauk Two, inc.

108 East Main Street - P.O. Box 279

Riverhead, New York 11901

CAHN, WISHOD & KNAUER

Attorneys for the town board government of East Hampton,

425 Broad Hollow Road - Suite 315

Melville, N.Y. 11747

(516) 752-1600

Robert A. Ficalora

CAHN WISHOD & KNAUER, LLP

ATTORNEYS AT LAW

425 BROADHOLLOW ROAD, SUITE 315

MELVILLE, NEW YORK 11747

(631) 752-1600

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RICHARD C. CAHN
EUGENE L. WISHOD
TODD A. KNAUER

BRIAN T. EGAN

January 8, 2001

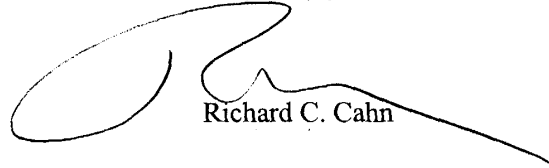
Mr. Robert A. Ficalora
P.O. Box 2612
Montauk, New York 11954

Re: Robert A. Ficalora v. The Town Board
Government of The Town of East Hampton
and Sunbeach Montauk II, Inc.
Docket No. 99-02065

Dear Mr. Ficalora:

We serve herewith Decision and Order on Motion of the Appellate Division, Second Department, with notice of entry in connection with the above-entitled appeal.

Very truly yours,



Richard C. Cahn

RCC/pdm
Enclosure

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT**

3681G
U/mm

LAWRENCE J. BRACKEN, J.P.
LEO F. MCGINITY
DANIEL F. LUCIANO
SANDRA J. FEUERSTEIN, JJ.

1999-02065

DECISION & ORDER ON MOTION

Robert A. Ficalora, etc., appellant, v
Town Board Government of East Hampton,
respondent, et al., defendant.

Motion by the appellant, in effect, for reargument of an appeal from an order of the Supreme Court, Suffolk County, dated February 1, 1999, which was determined by decision and order of this court dated October 23, 2000, or, in the alternative, for leave to appeal to the Court of Appeals from the decision and order of this court.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied.

BRACKEN, J.P., MCGINITY, LUCIANO and FEUERSTEIN, JJ., concur.

ENTER:

James Edward Pelzer
Clerk

December 21, 2000
FICALORA v TOWN BOARD GOVERNMENT OF EAST HAMPTON

October 23, 2000

FICALORA v TOWN BOARD GOVERNMENT OF EAST
HAMPTON

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

2843B

U/hu

AD2d Argued - September 5, 2000

LAWRENCE J. BRACKEN, J.P.

LEO F. McGINITY

DANIEL F. LUCIANO

SANDRA J. FEUERSTEIN, JJ.

1999-02065

DECISION & ORDER

Robert A. Ficalora, etc., appellant, v Town Board Government of
East Hampton,

respondent, et al., defendant.

Robert A. Ficalora, Montauk, N.Y., appellant pro se.

Cahn Wishod & Knauer, LLP, Melville, N.Y. (Richard C. Cahn of counsel), for respondent.

In an action, inter alia, for a judgment declaring that the title to certain property held by the defendant Sunbeach Montauk II, Inc., is invalid, the plaintiff appeals from an order of the Supreme Court, Suffolk County (Underwood, J.), dated February 1, 1999, which denied his motion for the court to recuse itself, and granted the cross motion of the defendant Town Board Government of East Hampton to dismiss the complaint .

ORDERED that the order is affirmed, with costs.

Absent a legal disqualification under Judiciary Law § 14, a Trial Judge is the sole arbiter on the issue of recusal (see, *People v Moreno*, 70 NY2d 403, 405; *Fisk v Slye*, 234 AD2d 983; see also, *Colburn v Blum* , 233 AD2d 890). The plaintiff failed to demonstrate that the Supreme Court erred in refusing to recuse itself from the case. The plaintiff's dissatisfaction with the Supreme Court's act of striking two provisions for temporary restraining orders contained in a previous order to show cause, standing alone, is insufficient to demonstrate a basis for recusal.

The Supreme Court also properly dismissed the complaint. CPLR 321(a) provides, with exceptions not applicable here, that a corporation or voluntary association shall appear by an attorney. A corporation can validly assign a claim, even if the assignment is undertaken to circumvent the statutory prohibition against a corporation appearing for itself (see , *Traktman v City of New York*, 182 AD2d 814, 815; *Medical Facilities v Pryke*, 172 AD2d 338). In this case, however, there was no valid assignment, as the complaint expressly stated that the plaintiff, who is not an attorney, was designated to represent the corporation before the court for the purposes for which the corporation was established (see, CPLR 321 [a]; see also, *Montauk Friends of Olmstead Parks v Brooklyn Historical Socy.*, 95 NY2d 821; *Matter of Ficalora v Planning Bd. of Town of E. Hampton*, 94 NY2d 891; *Hilton Apothecary v State of New York*, 89 NY2d 1024).

BRACKEN, J.P., McGINITY, LUCIANO and FEUERSTEIN, JJ.,
concur.

ENTER:

James Edward Pelzer

Clerk

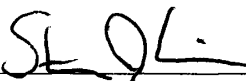
Montauk Friends of Olmsted Parks, Inc.
P.O. Box 2612
Montauk, NY 11954
(631) 668-3119
email: trustees@montauk.com



Resolution of Assignment 11/7/2000

On November 7th, 2000, we, the undersigned board of directors of the Montauk Friends of Olmsted Parks/Montauk Trustee corporation, having convened and considered the common law of the State of New York as established by in Kamp as assignee of AAA Stretch, inc., Appellant v. In Sportswear, inc., Respondent 39 A.D.2d 869, 332 N.Y.S.2d 983, *reversing on dissenting opinion of Mr. Justice Lupiano*, 70 Misc 2d 898, 899; 335 N.Y.S.2d 306, our past assignment of corporate causes before the Supreme Court of the State of New York to our acting president Robert A. Ficalora in attempted conformity with the law, and the decision and order of the Appellate Division of the Supreme Court of the State of New York entered on October 23rd, 2000, which dismissed our past assignments as invalid, do herewith attest our

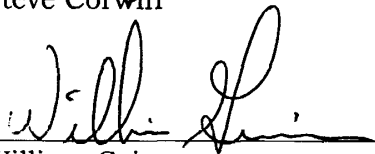
Resolve: that Mr. Ficalora is and for the present shall continue to be assigned the power and responsibility to represent this corporation in all of the corporation's matters before the court including and especially its pending cause in the matter of Robert A. Ficalora as Assignee of the Montauk Friends of Olmsted Parks corporation vs. the town board government of the Town of East Hampton, et. ano., filed with the Suffolk County Clerk as cause no. 98-14806, and that he shall do so in return for one dollar and other good and valuable consideration.



Steve Corwin



Helen Ficalora



William Grimm



Daniel Grimm



Richard Monahan

