

Index Number: 613512/2020

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 12 - SUFFOLK COUNTY

**P R E S E N T:**

Hon. John H. Rouse  
Acting Supreme Court Justice

MOTION DATE: 11/04/2020  
ADJ. DATE: 08/25/2021  
Mot. Seq. 005-MG

MOTION DATE: 11/04/2020  
ADJ. DATE: 08/25/2021  
Mot. Seq. 001-*adjourned to December 15, 2021 to permit  
in camera inspection of documents claimed to be exempt  
from disclosure*

MOTION DATE: 11/04/2020  
ADJ. DATE: 08/25/2021  
Mot. Seq. 006-MD

MOTION DATE: 11/04/2020  
ADJ. DATE: 08/25/2021  
Mot. Seq. 002-MG

MOTION DATE: 11/04/2020  
ADJ. DATE: 08/25/2021  
Mot. Seq. 007-MG

MOTION DATE: 11/04/2020  
ADJ. DATE: 08/25/2021  
Mot. Seq. 004-MG

MOTION DATE: 11/04/2020  
ADJ. DATE: 08/25/2021  
Mot. Seq. 009-MG  
*e-filed full participation*

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Michael G. Gaynor,  
Petitioner/Plaintiff  
-against-

**COUNTY CLERK  
DIRECTIVE TO AMEND  
THE CAPTION**

Town of Shelter Island, Mike Bebon, Amber Brach-  
Williams, Albert A. Brayson, Michael Coles, James  
Colligan, Joseph Denny, Robert J. Destefano Jr., Albert  
Dickson, Kathleen Gerard, Gordon Gooding, Charles  
Kraus, Karin Lissakers, Dorothy Ogar, J. Edward  
Shillingburg, Gerry Siller, Debbie Strongin, Peter Vielbig,  
Art Williams,  
Respondent/Defendants

with  
**SEALING ORDER**  
together with  
**DECISION & ORDER**

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**TO:**  
KRIEGSMAN PC  
279 MAIN STREET  
SAG HARBOR, NY 11963  
631-899-4826

SOKOLOFF STERN LLP  
179 WESTBURY AVE  
CARLE PLACE, NY 11514  
516-334-4500

Upon the reading and filing of the following papers in this matter: (1) Petition (Sequence 001) made by Order to Show Cause granted on September 24, 2020 by the Hon. Joseph Pastorella for an Order: annulling the Town's denials of the appeals of the denials of the Petitioner's requests pursuant to the New York Freedom of Information Law submitted on August 19, 2020, August 20, 2020, August 21, 2020, and August 24, 2020 (the "FOIL Requests"); annulling the Town's denials of the FOIL Requests; directing the Town to produce all non-privileged and responsive documents requested by the FOIL Requests, including e-mail communications in private e-mail accounts of members of the Town Board and the Town's Community Preservation Fund Advisory Board pertaining to official agency business; enjoining the Town from taking future actions against Petitioner/Respondent that are contrary to the Town Code, New York state law, and the United States Constitution; awarding Petitioner/Respondent compensatory and punitive damages, costs, disbursements, and attorney's fees as allowed under Public Officers Law § 89(4)(c) and 42 U.S.C. §1988(b); and granting Petitioner/Respondent such other and further relief as this Court deems just and proper; and

(2) Notice of Motion (Sequence 002) by Non-Parties Sylvester Manor Educational Farm, Donnamarie Barnes, Ingrid Bateman, Blair Borthwick, Julia Brennan, Thomas F. Carter, Kathleen DeRose, Benjamin Dyett, Steven Eisenstadt, Donna M. Emma, Cynthia Flynt, Sara Gordon, William Johnston III, Bennett Konesni, Tracy McCarthy, Thomas Misson, Stephen Mrozowski, Eben Ostby, Marc Robert, Karlann Rubin, Stephen Searl, Courtney Wingate, Gunnar Wissermann, by and through their counsel for an Order Pursuant to CPLR §§ 2304 and/or 3103 quashing Petitioner/Respondent Michael G. Gaynoy's subpoena duces tecum dated October 1, 2020 directed against the non-parties listed above and for such other relief as this Court may deem just and proper; and

(3) WITHDRAWN: - Notice of Motion (Sequence 003) by Petitioner/Plaintiff for an order pursuant to CPLR § 2308 granting Petitioner/Plaintiff's motion to compel compliance with a subpoena duces tecum/ad testificandum, dated September 23, 2020, issued to nonparty Beyoncé Knowles-Carter; and

(4) Notice of Motion (Sequence 004) by Respondents/Defendants for a protective order and to quash the subpoenas duces tecum/ad testificandum issued by Petitioner/Respondent Michael Gaynor on September 23 through October 8, 2020 under CPLR §§ 2304 and 3103, together with such other and further relief as this Court deems just, proper, and equitable; and

(5) Notice of Motion (Sequence 005) by Marvin S. Putnam, Esq. for an Order, pursuant to Section 520.11 of the Rules of the New York State Court of Appeals and 22 N.Y.C.R.R. § 602.2, admitting Laura R. Washington, Esq., *pro hac vice* to the Supreme Court of the State of New York, County of Suffolk, in order to argue and try the above-captioned case, and for such other and further relief as the Court may deem just and proper; and

(6) Notice of Motion (Sequence 006) by Respondents/Defendants for an Order pursuant to CPLR §§3211(a) (2), (7), and (8) dismissing Petitioner/Plaintiff's complaint with prejudice in its entirety; and

(7) Notice of Motion (Sequence 007) by Attorney's for Respondents/Defendants for an Order: a) pursuant to CPLR § 2304 to quash the subpoenas duces tecum issued on Sokoloff Stern LLP by Plaintiff on December 4, 2020; b) pursuant to 22 NYCRR 130-1.1 (a) and (b) for an award of costs and/or sanctions, including attorney's fees, in Defendants' favor based on Plaintiff's service of a frivolous subpoena to Sokoloff Stern LLP; c) prohibiting Plaintiff from issuing any further subpoenas without prior approval from the Court; and

(8) WITHDRAWN: Notice of Motion (Sequence 008) for an order pursuant to CPLR § 3215(f) granting Petitioner's motion for a default judgment against Respondents; AND

(9) Notice of Motion (Sequence 009) by Respondent/ Defendants for an Order, pursuant to CPLR §§ 3211 (a)(2), (7), and (8), dismissing Plaintiff's complaint, with prejudice, and for such other and further relief as this Court may deem just, equitable, and proper.

(10) e-filed documents 1-212, it is:

**ORDERED** that the motion (Sequence 001) is **adjourned to December 15, 2021**, and Respondent will e-file a privilege log with respect to all documents demanded by Petitioner that Respondent contends are exempt together with the specification of the authority for the exemption from disclosure under the Public Officers Law, said log to be e-filed within 45 days of service of this decision and order with notice of entry; and it is further

**ORDERED** that Respondent, within 45 days of service of this decision and order with notice of entry, will file under seal to the court, with no access permitted to any other person or party, the documents it contends are exempt from disclosure under the Public Officers Law; and it is further

**ORDERED** that Respondent will contact:

David Grier, Esq.  
Deputy County Clerk  
[David.Grier@suffolkcountyny.gov](mailto:David.Grier@suffolkcountyny.gov)

to arrange for the sealing of the documents prior to uploading those documents in the NYSCEF system; and it is further

**ORDERED** that the motion (Sequence 002) by Non-Parties Sylvester Manor Educational Farm, Donnamarie Barnes, Ingrid Bateman, Blair Borthwick, Julia Brennan, Thomas F. Carter, Kathleen DeRose, Benjamin Dyett, Steven Eisenstadt, Donna M. Emma, Cynthia Flynt, Sara Gordon, William Johnston III, Bennett Konesni, Tracy McCarthy, Thomas Misson, Stephen Mrozowski, Eben Ostby, Marc Robert, Karlann Rubin, Stephen Searl, Courtney Wingate, Gunnar Wissermann, by and through their counsel for an Order Pursuant to CPLR §§ 2304 and/or 3103 quashing Petitioner/Respondent Michael G. Gaynor's subpoena duces tecum dated October 1, 2020 is **granted**; and it is further

**ORDERED** that the motion Motion (Sequence 004) by Respondents/Defendants for a protective order and to quash the subpoenas duces tecum/ad testificandum issued by Petitioner/Respondent Michael Gaynor on September 23 through October 8, 2020 under CPLR §§ 2304 and 3103 is **granted** and the subpoenas are quashed; and it is further

**ORDERED** that Motion (Sequence 005) by Marvin S. Putnam, Esq. for an Order, pursuant to Section 520.11 of the Rules of the New York State Court of Appeals and 22 N.Y.C.R.R. § 602.2, admitting Laura R. Washington, Esq., *pro hac vice* to the Supreme Court of the State of New York, County of Suffolk, in order to argue and try the above-captioned case is **granted nunc pro tunc** and is effective as of December 2, 2020; and it is further

**ORDERED** that Motion (Sequence 006) by Respondents/Defendants for an Order pursuant to CPLR §§3211(a) (2), (7), and (8) dismissing Petitioner/Plaintiff's complaint with prejudice in its entirety is **denied** as it is moot upon the filing by the Petitioner/Complainant of an Amended Complaint; and it is further

**ORDERED** that Motion (Sequence 007) by Attorney's for Respondents/Defendants for an Order: a) pursuant to CPLR § 2304 to quash the subpoenas duces tecum issued on Sokoloff Stern LLP by Plaintiff on December 4, 2020; b) pursuant to 22 NYCRR § 130-1.1 (a) and (b) for an award of costs and/or sanctions, including attorney's fees, in Defendants' favor based on Plaintiff's service of a frivolous subpoena to Sokoloff Stern LLP; c) prohibiting Plaintiff from issuing any further subpoenas without prior approval from the Court is **granted** to the extent that the subpoenas are quashed and Petitioner/Plaintiff is prohibited from issuing any subpoena without prior approval of this court; and it is further

**ORDERED** that Motion (Sequence 009) by Defendants for an Order, pursuant to CPLR §§ 3211 (a)(2), (7), and (8), dismissing Plaintiff's complaint, with prejudice is **granted** to the extent that the Plaintiff's second cause of action based upon alleged constitutional violation of his right to equal protection of law as may be enforced through 42 USC § 1983 is dismissed with prejudice; and it is further

**ORDERED** that the County Clerk is directed to amend the caption to be as follows:

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Michael G. Gaynor,

Petitioner

-against-

Town of Shelter Island,

Respondent

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**ORDERED** that Respondent is directed to serve notice of this decision and order upon the Suffolk County Clerk in accordance with CPLR § 8019(c)

See: <https://iappscontent.courts.state.ny.us/NYSCEF/live/forms/notice.to.county.clerk.pdf>

## DECISION

On September 22, 2020, Petitioner/Plaintiff commenced this hybrid proceeding/action. Petitioner/Plaintiff later filed an amended complaint on December 23, 2020.

Petitioner/Plaintiff is a resident of the Town of Shelter Island. The Respondents/Defendants are the Town Supervisor; Members of the Town Board; Past and Present Members of the Community Preservation Fund Advisory Board; The Town Attorney; and the Town Clerk. The first cause of action is to secure the release of documents Petitioner/Plaintiff contends the Respondents/Defendants withheld from him in violation of the Freedom of Information Law. This claim is governed by Article 4 and Article 78 of the Civil Practice Laws and Rules. The Plaintiff's second cause of action alleges that the Defendants have denied him equal protection of the law and brings this claim pursuant to 42 U.S.C. § 1983. The second cause of action is governed by the Civil Practice Laws and Rules as pertain to plenary actions. See CPLR § 103.

Petitioner/Plaintiff alleges that the Respondents/Defendants unlawfully "targeted" Petitioner/Plaintiff in a "harassment campaign... singling him out again and again for retribution" when it: issued a notice of violation accusing Petitioner/Plaintiff of attempting to rent his home in violation of Town Code §§ 105-20 and 105-40; reassessed his property; and removed him from the waiting list for a mooring permit. [See Amended Petition/Complaint at pages 8-9.](#)

Petitioner/Plaintiff alleges the Respondents/Defendants antipathy to Petitioner/Plaintiff arises from his removal of trees from his property which then became the subject of letters to the local paper and a cartoon in that paper that lampooned him. [See Amended Petition/Complaint at par. 43-44.](#) Petitioner/Plaintiff alleges his neighbor, Sylvester Manor Educational Farm, a not-for-profit corporation, allowed a movie to be filmed on its property and the Respondents/Defendants did not require it to secure a permit as required by town law. Petitioner/Plaintiff contends this violated his right to equal protection under the law.

On December 3, 2020, the Respondents/Defendants filed a motion (Sequence 006) to dismiss pursuant to CPLR §§3211(a) (2), (7), and (8) together with their answer to the petition but did not answer those portions of the Petition/Complaint as pertained to Plaintiff's constitutional claim that was the subject of their motion to dismiss. The Petitioner/Complainant did not oppose this motion. On December 23, 2020 Petitioner/Plaintiff filed an amended petition/complaint. Respondents'/Defendants' motion (Sequence 006) is denied as it is moot.

On January 19, 2021, Respondents/ Defendants moved this Court for an Order, pursuant to CPLR §§ 3211 (a)(2), (7), and (8), dismissing Plaintiff's amended complaint, with prejudice. By Order of the Hon. Joseph Pastorella entered on July 13, 2021, that court was recused from this proceeding and the case was reassigned to this court.

"On a motion to dismiss pursuant to CPLR § 3211(a)(7), the complaint is to be afforded a liberal construction, the facts alleged are presumed to be true, the plaintiff is afforded the benefit of every favorable inference, and the court is to determine only whether the facts as alleged fit within any cognizable legal theory." *Emby Hosiery Corp. v Tawil*, 196 AD3d 462 (2d Dept 2021). The Court has examined the Amended Petition/Complaint. [See e-filed document 108.](#)

The allegations in the complaint purport to make a claim for a violation of the Plaintiff's right to equal protection under the law. The allegations utterly fail to support this claim even upon the most imaginative and favorable inferences that can be accorded the allegations. Plaintiff has failed to identify any other person that has been similarly situated to him and granted more favorable treatment. *See Huntington Yacht Club v Inc. Vil. of Huntington Bay, 1 AD3d 480, 767 NYS2d 132 (2003)*. Further, this is not a case where the Plaintiff has pleaded a viable claim under an incorrectly specified legal rubric. There simply are no facts alleged to support a claim for relief based upon the common law, statutory law, or a constitutional violation, beyond the demanded Article 78 review of Petitioner's claim for documents under the Public Officers Law. Accordingly, the Plaintiff's second cause of action is dismissed with prejudice.

The only remaining claim by Petitioner arises under the Public Officer's Law with respect to the documents that have been admittedly withheld from disclosure upon the Respondent's contention that the documents are exempt from disclosure. Upon this claim that is subject to review under CPLR Article 78, the court, as provided in the orders above, directs the *in camera* inspection of the documents Respondent withheld and directs the Respondent to file a privilege log that identifies the statutory basis claimed with respect to each document it has withheld from inspection.

Dated: October 22, 2021

ENTER:



**JOHN H. ROUSE**

ACTING J.S.C.

NON-FINAL DISPOSITION