

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS.

APRIL TERM, 1988

SUPERIOR COURT

C-836-84

WAYNE F. PEAK

v.

PHILIP V. CONSENTINO

PLAINTIFF'S FINAL PRETRIAL STATEMENT

NOW COMES the Plaintiff, Wayne F. Peak, by and through his attorneys, Boutin & Solomon, P.A., and Peter M. Solomon, Esquire and submits his final Pretrial Statement in the above-captioned matter pursuant to Rule 62 of the Superior Court Rules of the State of New Hampshire and the Court's Order with regard to this matter:

I. UNCONTESTED FACTS: That on or about May, 1980, the Plaintiff, Wayne F. Peak was appointed by the Rockingham County Superior Court to fill a vacant position on the Board of Selectmen for the Town of Atkinson, New Hampshire. The Plaintiff resigned from this position on December 15, 1980.

In February of 1981, the Plaintiff, in his capacity as a private citizen, filed a Petition for a Writ of Mandamus from the Rockingham County Superior Court seeking to direct and compel the Atkinson Board of Selectmen to take action regarding alleged misuse of public funds by the Defendant Consentino.

On or about May 25, 1981, several gun shots were fired at the Atkinson Police Department by an unknown person or persons. The shots caused damage to the police department building, but caused no physical injuries to any person. The Plaintiff was investigated as a possible suspect by the New Hampshire State Police.

On or about June 5, 1981, the Plaintiff was charged by the Defendant, Philip Consentino, with Reckless Operation of a motor vehicle in violation of RSA 262-a:54. This violation was alleged to have occurred on May 30, 1981. The matter went to trial on July 21, 1981 in Plaistow District Court and the trial concluded with the conviction of the Plaintiff on July 28, 1981. The Plaintiff thereupon took a De Novo Appeal to the Rockingham County Superior Court and was subsequently found not guilty on the charge of Reckless Operation on February 17, 1982, after trial in Rockingham County Superior Court.

On or about November 9, 1981, an information was brought against the Plaintiff alleging that the Plaintiff had committed the misdemeanor of False Swearing in violation of RSA 641:2. The information alleging False Swearing was marked Nolle Prosequi by the State on April 14, 1983.

The information was filed against the Plaintiff one day after a grand jury refused to return a true bill indicting the Plaintiff for Perjury and Bribery of Witnesses which the Plaintiff was alleged to have committed during his trial for Reckless Operation.

II. CONTESTED FACTS: All other facts are likely to be contested.

III. APPLICABLE LAW: The United States Constitution; the New Hampshire State Constitution; 42 U.S.C. § 1983 and the general (tort) common law of the State of New Hampshire.

IV. DISPUTED ISSUES OF LAW: None are known.

V. SPECIFIC CLAIMS OF LIABILITY: The Plaintiff claims that the Defendant, Philip Consentino, has, in violation of 42 U.S.C. § 1983, acted under color of State law to deprive the Plaintiff of rights, privileges, and immunities secured him under the Constitution of the United States, to wit:

A. The Defendant has openly and publicly accused the Plaintiff of having committed perjury and of having paid witnesses to commit perjury or otherwise testify falsely. These accusations have no basis and are slanderous per se.

B. The Defendant intentionally and successfully intimidated and threatened certain favorable witnesses summoned to testify on behalf of the Plaintiff as a result of the Plaintiff's arrest by the Defendant on a charge of Reckless Operation, thereby depriving the Plaintiff of testimony necessary for his defense and thereby effectively preventing the Plaintiff from receiving a fair trial all in violation of due process rights guaranteed the Plaintiff under the 5th, 6th and 14th Amendments to the United States Constitution and Part 1, Article 14 and Part 1, Article 15 of the New Hampshire State Constitution. The Defendant's actions were a direct cause of the Plaintiff's being found guilty on the

charge of Reckless Operation.

C. The Defendant initiated the Plaintiff's arrest for False Swearing in violation of New Hampshire RSA 641:2. This charge, later dismissed by the State which culminated in the Plaintiff's arrest, was motivated by malice and for purposes other than the apprehension of a wrongdoer. Said charge was completely lacking in probable cause and had no basis in fact and, as such, constitutes the common law tort of malicious prosecution and unlawful imprisonment.

The Plaintiff's arrest on the charge of False Swearing was initiated in violation of 42 U.S.C. § 1983 while the Defendant was acting under color of state law and, as such, served to deprive the Plaintiff of rights, privileges, and immunities guaranteed him under the 4th, 5th and 14th Amendments to the United States Constitution and Part 1, Article 19 of the New Hampshire State Constitution.

D. At the Defendant's direction, the Plaintiff, as well as other members of his family, were followed continuously and otherwise harassed by officers of the Atkinson Police Department. These actions, initiated by the Defendant, were conducted under color of State law and served to deprive the Plaintiff of rights, privileges and immunities guaranteed him under the First and Fourteenth Amendments of the United States Constitution and Part 1, Article 2, Part 1, Article 4 and Part 1, Article 22 of the New Hampshire State Constitution. The Defendant's continual and malicious harassment also constitutes an invasion of the

Plaintiff's privacy and the Plaintiff's right to be left alone.

The Defendant has, at various times and at various public locations, made statements which:

E. Referred to the Plaintiff as an agent of the Mafia, accused the Plaintiff of firing gunshots at the Atkinson Police Department; accused the Plaintiff of Interstate Trafficking in Stolen Cars and of conspiring with unnamed other individuals to fabricate explosive and incendiary devices thereby resulting in the Plaintiff being investigated by the Federal Bureau of Investigation and other State and local authorities in both New Hampshire and Massachusetts. These criminal accusations have no basis in fact and are libelous, per se slanderous and an invasion of the Plaintiff's privacy in that they served to place the Plaintiff in a false light before the public.

F. That the Defendant's malicious and unwarranted actions resulted in substantial damage to the Plaintiff's reputation, feelings, business concerns and familial relations to the point that the Plaintiff was forced to move from the State of New Hampshire in order to escape the malicious actions and intentions of the Defendant. Such actions conducted by the Defendant under color of State law in violation of 42 U.S.C. § 1983 have deprived the Plaintiff of rights, privileges and immunities guaranteed him under the 1st, 5th and 14th Amendments to the United States Constitution and Part 1, Article 1, Part 1, Article 4 and Part 1, Article 22 of the New Hampshire State Constitution.

G. That the Plaintiff has reason to believe that shortly after suit was filed in this matter, in 1984 and subsequent to the time that the Defendant had entered into a Restraining Order, which was approved by this Court, that the Defendant either personally or through a friend or agent or otherwise, did contact the Commonwealth of Massachusetts, Department of Revenue and place them on notice of an alleged violation of Massachusetts Tax Laws which resulted in the Plaintiff being investigated by the Department of Revenue Administration, both Civil and Criminal Divisions, for said alleged violations. That after an initial flurry of investigation, the Plaintiff heard nothing further from the Department of Revenue Administration and no charges were brought against him. That early in 1987, shortly after the Plaintiff gave his deposition and provided the Defendant with substantial and extensive tax records, the investigation by the Department of Revenue Administration was re-initiated, with more specific allegations which led the Plaintiff to believe that the Department of Revenue Administration had to have been provided information by somebody who had intimate personal knowledge of the Plaintiff and his living circumstances, especially considering that the date of the alleged infractions were 1981 and 1982, nearly five (5) years after the investigation had commenced, and during the very period of time that the Plaintiff alleges that the Defendant was acting wrongfully as set forth above and in his Writ. That the investigation by the Department of Revenue Administration was subsequently closed and no criminal

charges were brought.

VI. DEFENDANT'S SPECIFIC DEFENSES: Not applicable to the Plaintiff.

VII. SPECIFICATION OF INJURIES AND DAMAGES: Due to the Defendant's continual malicious and intentional vendetta against the Plaintiff, the Plaintiff was forced to move from New Hampshire to Massachusetts. The Plaintiff's house in Atkinson was sold at \$425,000.00, some \$375,000.00 below market value. The debt service on the Plaintiff's house in Atkinson amounted to \$106,250.00 during the period the house was on the market. Other expenses necessary to maintain and protect the Atkinson house while it was on the market amounted to \$37,500.00. Housing related expenses total \$518,750.00.

As a result of the Defendant's actions and accusations, the Plaintiff became so emotionally entangled in the defense of the Defendant's wrongful and malicious accusations and actions, that he suffered from an ascertainable emotional disorder, albeit undiagnosed at the time and untreated at the time, but which nevertheless caused him to lose the aggressiveness and interest required to operate what was basically a one man business, in the same successful fashion which he had operated said business for the prior fifteen (15) years. As a result, the Plaintiff's business enterprise, of which he was the sole shareholder, suffered damages which caused the Plaintiff damages, all of which have been fully and adequately set forth in responsive pleadings and expert testimony to the Defendant. The actual monetary loss

to the Plaintiff, depending on the method used to determine such loss is anywhere from 1.3 to 7 Million Dollars. The Plaintiff's court costs and legal fees will exceed \$100,000.00.

In addition, Plaintiff's reputation, both business and personal, his peace of mind, familial relations, and self-esteem have been damaged as a result of the Defendant's slanderous (per se) statements and wrongful criminal accusations.

VIII. DEMAND AND OFFER: No demand, no offer.

IX. EXHIBITS:

- A. Plaintiff's deposition.
- B. Plaintiff's Interrogatories.
- C. Defendant's deposition.
- D. Any depositions taken by the Plaintiff or the Defendant.
- E. Various newspaper articles.
- F. Various photographs.
- G. Various copies and/or originals of correspondence and witness statements compiled by the Plaintiff and/or the Defendant.
- H. Various pleadings.
- I. Tapes.
- J. Police reports.
- K. Federal Bureau of Investigation reports.
- L. Massachusetts Department of Revenue reports.
- M. Business records.
- N. Any and all exhibits introduced by the Defendant.
- O. The Plaintiff reserves the right to list and/or