

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EAST END ERUV ASSOCIATION, INC.,
MARVIN TENZER, MORRIS TUCHMAN,
CLINTON GREENBAUM, ALAN H.
SCHECHTER, and CAROL SCHECHTER

Plaintiffs,

-against-

THE VILLAGE OF WESTHAMPTON BEACH,
CONRAD TELLER, individually and in his official
capacity as Mayor of the Village of Westhampton
Beach, TONI-JO BIRK, LEOLA FARRELL,
JOAN S. LEVAN, HANK TUCKER, each
individually and in their official capacities as
Trustees of the Village of Westhampton Beach,
THE VILLAGE OF QUOGUE, PETER
SARTORIUS, individually and in his official
capacity as Mayor of the Village of Quogue,
RANDY CARDO, JEANETTE OBSER,
KIMBERLEY PAYNE, and TED
NECARSULMER, each individually and in their
official capacities as Trustees of the Village of
Quogue, THE TOWN OF SOUTHAMPTON,
ANNA THRONE-HOLST, individually and in her
official capacity as Supervisor of the Town of
Southampton, NANCY S. GRABOSKI,
CHRISTOPHER R. NUZZI, JAMES W.
MALONE, BRIDGET FLEMING, each
individually and in their official capacities as
members of the Town Council of the Town of
Southampton

Defendants.

Index No. CV 11-0213

Hon. Leonard D. Wexler

**DECLARATION OF WILLIAM J. BALCERSKI PURSUANT TO 28 U.S.C. § 1746
IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, William J. Balcerski, hereby declare under penalty of perjury:

1. I am an Assistant General Counsel in the Verizon Legal Department. Verizon New York, Inc. ("Verizon"), a subsidiary of Verizon Communications Inc., is a plaintiff in a

separate but related proceeding against the defendants named herein (the “Defendants”) pending before the Honorable Judge Joanna Seybert and Magistrate Judge Kathleen A. Tomlinson in the Eastern District of New York (Case No. 2:11-CV-00252 JS). I have personal knowledge of the facts and circumstances set forth herein. Plaintiff has requested that I provide this declaration which I am aware will be submitted in connection with Plaintiffs’ Motion for a Preliminary Injunction.

2. In early 2010, plaintiff East End Eruv Association (“EEEE”) approached Verizon with a request to allow EEEA to affix wooden staves known as “lechis” to certain of Verizon’s utility poles lying within the Villages of Quogue and Westhampton Beach and the Town of Southampton for the purpose of establishing an “eruv” boundary under Jewish law. Lechis pose no safety or health risks to the general public, and Verizon has allowed lechis to be affixed to its utility poles in other communities on Long Island and elsewhere.

3. On May 10, 2010, Verizon and EEEA entered into an “Eruv-Lechi Stave Agreement” (the “Agreement”). Under the Agreement, Verizon granted EEEA nonexclusive licenses to attach lechis measuring no larger than 1” x 4” x 40” to certain of Verizon’s utility poles in the Villages of Quogue and Westhampton Beach and the Town of Southampton, subject to any permits or authorizations required by State or City laws and regulations, for the purpose of establishing an eruv boundary. In consideration of these licenses, EEEA covenanted to bear the costs of any inspections Verizon would undertake of the lechis, indemnify Verizon for all claims and costs arising from the construction and maintenance of the eruv, and carry certain minimum levels of insurance coverage with respect to the lechis.

4. Approximately one year prior to Verizon’s execution of the Agreement with EEEA, I received a letter dated May 18, 2009, from the Trustees of the Village of Westhampton

Beach, defendants herein. The letter stated that the Trustees “understood Verizon’s position to be that it will not execute the proposed agreement, and will not take or permit any action with respect to utility pole attachments, unless and until the Village [of Westhampton Beach] approves the attachments.”. The Trustees’ May 18, 2009 letter is attached hereto as Exhibit A.

5. Following Verizon’s execution of the Agreement with EEEA, I received a letter dated September 9, 2010, from Village of Quogue Mayor Peter S. Sartorius (“Mayor Sartorius”), defendant herein, advising Verizon that Chapter 158 of the Quogue Village Code prohibited the attachment of lechis to utility poles located within the Quogue village rights-of-way. Mayor Sartorius’s Sept. 9, 2010 letter is attached hereto as Exhibit B.

6. On October 4, 2010, Robert G. Sugarman of Weil, Gotshal & Manges LLP, counsel for Plaintiffs, wrote a letter to EEEA in which he asserted that the attachment of lechis to utility poles would not violate Chapter 158 of the Quogue Village Code. I was provided with the October 4, 2010 letter. Later, I wrote a letter dated October 26, 2010, to Mayor Sartorius, forwarding Mr. Sugarman’s October 4 letter, and stating that “Verizon does not object to the attachment of lechis to Verizon poles, so long as the work is done pursuant to an appropriate license agreement and with appropriate protections to Verizon. Accordingly, to the extent Verizon’s own permission is required, Verizon intends to issue licenses to permit the Association to attach lechis to Verizon’s poles.” My Oct. 26, 2010 letter is attached hereto as Exhibit C.

7. In response to my letter of October 26, 2010, Mayor Sartorius sent me a letter dated November 22, 2010, to which he attached a legal memorandum (the “Memorandum”) prepared for him by Richard E. DePetris and Marci A. Hamilton, Village Attorney and Special Counsel, respectively, for the Village of Quogue. The Memorandum concluded by stating that it was the authors’ position that “permission from the Village Board of Trustees is required for the

attachment of lechis to utility poles located on Village streets for the purpose of establishing an eruv.” Mayor Sartorius’s Nov. 22, 2010 letter and the Memorandum are attached hereto as Exhibit D.

8. In a letter to EEEA dated December 1, 2010, Mr. Sugarman responded to the Memorandum. I provided a copy of that letter to Mayor Sartorius on or about the same date.

9. I subsequently received a third letter from Mayor Sartorius, dated December 17, 2010, in which Mayor Sartorius reaffirmed the Village of Quogue’s position that “there are laws that we believe clearly prohibit the attachment of lechis to utility poles without the Village’s permission, and we will enforce them against LIPA and Verizon as the owners of the poles. The Village’s ordinance provides for fines of \$1,000 per day and other penalties.” Mayor Sartorius’s Dec. 17, 2010 letter is attached hereto as Exhibit E.

10. In addition, I received a letter dated November 16, 2010, from Michael C. Sordi, then Town Attorney for the Town of Southampton, a defendant herein, confirming the contents of a telephone discussion the two of us had one day earlier on November 15, 2010. As noted in Mr. Sordi’s letter, I had informed him during our November 15, 2010, telephone conversation that Verizon “was preparing to issue license agreements to permit the installation of lechis.” In both his November 16, 2010, letter and during our November 15, 2010, telephone conversation, Mr. Sordi stated that any attachment of lechis to Verizon utility poles laying within the jurisdiction of the Town of Southampton would violate Southampton’s local sign law, codified at Section 330-203(B) of the Code of the Town of Southampton. According to Mr. Sordi’s letter, the installation of lechis “would be in contravention of [the Town’s] local laws which we shall endeavor to enforce lest they become meaningless.” Mr. Sordi likewise informed me in his letter that violations of the Southampton sign law provided for “various penalties including fines of a

continuous nature for every day the violation remains.” Mr. Sordi’s Nov. 16, 2010 letter is attached hereto as Exhibit F.

11. On November 18, 2010, Robert G. Sugarman of Weil, Gotshal & Manges LLP, counsel for Plaintiffs, wrote a letter to EEEA in which he asserted that the attachment of lechis to utility poles would not violate Section 330-203(B) of the Code of the Town of Southampton. I was provided with the November 18, 2010 letter.

12. In short, Defendants have threatened to impose fines and/or to pursue other legal remedies and actions in the event that Verizon permits the installation of lechis on their utility poles. On the other hand, Verizon faces potential liability to the EEEA, and action by the EEEA, if they do not permit the lechis to be installed on their respective poles.

13. Lechis have been attached to utility poles in other communities on Long Island and elsewhere and pose no health and safety concerns. Verizon is willing to allow the installation of such lechis to certain of its utility poles in the Villages of Quogue and Westhampton Beach and the Town of Southampton. However, Verizon has not issued the licenses for the attachment of lechis that are the subject of the Agreement. Verizon has filed a separate action, in which Verizon seeks a declaration that it may permit lechis to be installed on utility poles without incurring any fines or other legal sanctions. Verizon is willing to allow the installation of such lechis to certain of its utility poles in the Villages of Quogue and Westhampton Beach and the Town of Southampton, upon confirmation (by injunction or other ruling or commitment) that Verizon will not be subject to such fines or sanctions.

14. I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 15, 2011


WILLIAM J. BALCERSKI