

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DOCKET NO. 07-CV-11807 RGS

WAREHAM FREE LIBRARY, INC. and
PRISCILLA PORTER, MARY NYMAN, HAZEL TABER,
MICHELLE BAUM, SANDRA WHEELER, JOHN LANCI,
MARTHA MAGUIRE, YELENA FARIOLI-BEAUPRE, and
DIANE LAZARUS, Individually and As Trustees of Wareham
Free Library, Inc.

Plaintiffs / Defendants in Counterclaim /
Plaintiffs in Counterclaim for Indemnification /
Third Party Plaintiffs

v.

THE TOWN OF WAREHAM

Defendant / Plaintiff in Counterclaim /
Defendant in Counterclaim for Indemnification

and

BRENDA ECKSTROM, BRUCE SAUVAGEAU, JOHN
CRONAN, JAMES POTTER, and M. JANE DONAHUE,
Individually and As Members of The Board of Selectmen of
Wareham

Defendants

v.

FRIENDS OF THE WAREHAM FREE LIBRARY, INC.,
and THE WAREHAM LIBRARY FOUNDATION, INC.

Defendants in Counterclaim

v.

MIIA PROPERTY AND CASUALTY GROUP, INC.

Third Party Defendant

AMENDED ANSWER TO COUNTERCLAIM BY
WAREHAM FREE LIBRARY, INC. AND ITS INDIVIDUALLY NAMED TRUSTEES
(Leave to File Granted on August 20, 2008)

1. Admitted, but denied that the Defendant Selectmen (officially) have the right or authority to assert the subject Counterclaim.

2. Admitted that the current Trustees of the Wareham Free Library, Inc., Friends of the Wareham Free Library, Inc., and The Wareham Library Foundation, Inc. and some of its officers and directors are named as defendants in counterclaim. All other factual allegations are denied. No response is required to legal conclusions.

3. Defendants in Counterclaim are without sufficient knowledge to admit or deny.

4. Admitted as to status as Trustee of Wareham Free Library, Inc.

5. Admitted as to status as Trustee of Wareham Free Library, Inc.

6. Admitted as to status as Trustee of Wareham Free Library, Inc.

7. Admitted as to status as Trustee of Wareham Free Library, Inc.

8. Admitted as to status as Trustee of Wareham Free Library, Inc.

9. Admitted as to status as Trustee of Wareham Free Library, Inc.

10. Admitted as to status as Trustee of Wareham Free Library, Inc.

11. Admitted as to status as Trustee of Wareham Free Library, Inc.

12. Admitted as to status as Trustee of Wareham Free Library, Inc.

13. No response is required because allegations in this paragraph are not directed at Defendants in Counterclaim.

14. No response is required because allegations in this paragraph are not directed at Defendants in Counterclaim.

15. Admitted.

16. Admitted.

17. Denied.

18. Denied.
19. Denied.
20. This paragraph states a legal conclusion to which no response is required.
21. Denied.
22. Admitted.
23. This paragraph states a legal conclusion to which no response is required.
24. Defendants in Counterclaim are without sufficient knowledge to admit or deny.
25. Denied.
26. Admitted, except to the extent that allegations in this paragraph suggest that the Library is funded solely by Town money.
27. Denied.
28. Admitted that Defendants in Counterclaim were the legally appointed Trustees of Wareham Free Library, Inc. Otherwise, denied.
29. The document speaks for itself.
30. Denied.
31. Admitted that plaintiff Trustees were not appointed by the Board of Selectmen. Otherwise, denied.
32. The document speaks for itself.
33. The document speaks for itself.
34. Admitted that the Board of Selectmen made the alleged statements. Otherwise, denied.
35. Admitted that the Board of Selectmen made the alleged statements. Otherwise, denied.

36. Admitted that the Board of Selectmen made the alleged statements. Otherwise, denied.

37. Admitted that plaintiff Trustees did not complete applications for reappointment. Otherwise, denied.

38. Denied.

39. Denied.

40. Denied.

41. The document speaks for itself.

42. The document speaks for itself.

43. Admitted that Defendants in Counterclaim transferred privately donated funds to The Wareham Library Foundation, Inc. Otherwise, denied.

44. This paragraph states a legal conclusion to which no response is required. Otherwise, denied.

45. The document speaks for itself.

46. Admitted that some gifts, donations and bequests were transferred into a fund held with Franklin Templeton Investments. Otherwise, denied.

47. This paragraph states a legal conclusion to which no response is required. Otherwise, denied.

48. Denied.

49. Admitted that Friends of The Wareham Free Library, Inc. received funds for the purpose of purchasing equipment for the Spinney Memorial Branch Library, which was (and is) intended to be a branch of Wareham Free Library. Otherwise, denied.

50. Denied.

51. This paragraph states a legal conclusion to which no response is required.

Otherwise, denied.

52. This paragraph states a legal conclusion to which no response is required.

Otherwise, denied.

53. Denied.

54. This paragraph states a legal conclusion to which no response is required.

Otherwise, denied.

55. This paragraph states a legal conclusion to which no response is required.

Otherwise, denied.

56. Denied.

57. Denied.

58. The document speaks for itself.

59. Denied.

60. Denied.

61. Denied. No response is required to legal conclusions.

62. Denied.

63. Denied.

COUNT I – CONVERSION

64. Defendants in Counterclaim repeat their responses to paragraphs 1 through 63.

65. Denied.

66. Denied.

67. Denied.

COUNT II – VIOLATION OF THE PUBLIC RECORDS LAW

- 68. Defendants in Counterclaim repeat their responses to paragraphs 1 through 67.
- 69. Denied.
- 70. Denied.
- 71. Denied.
- 72. Denied.
- 73. Denied.

COUNT III – CIVIL CONSPIRACY

- 74. Defendants in Counterclaim repeat their responses to paragraphs 1 through 73.
- 75. Denied.
- 76. Denied.

COUNT IV – NEGLIGENCE

- 77. Defendants in Counterclaim repeat their responses to paragraphs 1 through 76.
- 78. Denied.
- 79. This paragraph states a legal conclusion to which no response is required.
- 80. Denied.
- 81. Denied.

**COUNT V – VIOLATION OF
THE CONFLICT OF INTEREST LAW**

- 82. Defendants in Counterclaim repeat their responses to paragraphs 1 through 81.
- 83. Denied.
- 84. Denied.
- 85. Denied.
- 86. Denied.
- 87. Denied.
- 88. Denied.

**COUNT VI – DECLARATORY JUDGMENT
VIOLATION OF THE ANTI-AID AMENDMENT**

- 89. Defendants in Counterclaim repeat their responses to paragraphs 1 through 88.
- 90. Denied.
- 91. Denied.
- 92. Denied.
- 93. Denied.

**COUNT VII – DECLARATORY JUDGMENT
VIOLATION OF G.L. c. 44, § 53A**

- 94. Defendants in Counterclaim repeat their responses to paragraphs 1 through 93.
- 95. Denied.
- 96. Denied.

97. Denied.

98. Denied.

99. Denied.

COUNT VIII – VIOLATION OF G.L. c. 44, § 53

100. Defendants in Counterclaim repeat their responses to paragraphs 1 through 99.

101. Denied.

102. Admitted that Defendants in Counterclaim did not deposit privately donated funds with the Town Treasurer. Otherwise, denied.

103. Admitted that Defendants in Counterclaim maintained privately donated funds in separate accounts. Otherwise, denied.

104. Denied.

105. Denied.

COUNT IX – DECLARATORY JUDGMENT
(The Wareham Free Library is a Department of the Town of Wareham)

106. Defendants in Counterclaim repeat their responses to paragraphs 1 through 105.

107. Admitted, except that Defendants in Counterclaim contend that the Library is a hybrid public / private entity.

108. Admitted.

109. Admitted.

110. Admitted.

111. Admitted.

112. Denied.
113. This paragraph states a legal conclusion to which no response is required.
114. Denied.
115. Denied.
116. Denied.

AFFIRMATIVE DEFENSES

1. Plaintiff in Counterclaim fails to state claims upon which relief can be granted, Fed.R.Civ.P. 12(b)(6).
2. Plaintiff in Counterclaim has not complied with G.L. c. 258 and other applicable statutory requirements.
3. Plaintiff in Counterclaim lacks standing to assert all claims.
4. Defendants in Counterclaim are immune.
5. Plaintiff in Counterclaim's claims are barred by applicable statutes of limitations.
6. Plaintiff in Counterclaim's claims are barred by laches.
7. Plaintiff in Counterclaim's claims are barred by waiver.
8. Plaintiff in Counterclaim's claims are barred by estoppel.
9. Plaintiff in Counterclaim is contributory negligent.
10. Plaintiff in Counterclaim has not sustained any damages.
11. Plaintiff in Counterclaim's damages, if any, were not caused by Defendants in Counterclaim.
12. Liability of Defendants in Counterclaim is limited by M.G.L. c. 231, § 85K.

13. Liability of individual Trustees of Wareham Free Library, Inc. is limited by M.G.L. c. 180, § 6C.

14. Liability of individual Trustees of Wareham Free Library, Inc. is limited by M.G.L. c. 180A, § 8.

15. Liability of individual Trustees of Wareham Free Library, Inc. is limited by M.G.L. c. 231, § 85W.

WHEREFORE, Defendants in Counterclaim respectfully request the following relief:

1. Judgment for Defendants in Counterclaim on all counts of the Counterclaim;
2. Dismissal of the Counterclaim, with prejudice;
3. Indemnification for any personal financial loss and expense, including legal costs and fees, sustained by Defendants in Counterclaim as a result of claims asserted by Plaintiff in Counterclaim, pursuant to M.G.L. c. 258, § 13;
4. Award of legal costs and fees for the defense of the Counterclaim, including attorney's fees pursuant to M.G.L. c. 231, § 6F;
5. Such other relief as the Court may deem just and proper.

Respectfully submitted by

PLAINTIFFS /
DEFENDANTS IN COUNTERCLAIM /
THIRD PARTY PLAINTIFFS

By Their Attorneys,
BEAUREGARD, BURKE & FRANCO

/ S / Timour Zoubaidouline

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Dated: August 21, 2008

CERTIFICATE OF SERVICE

In accordance with the Electronic Case Filing (“ECF”) Administrative Procedures of the United States District Court for the District of Massachusetts, I, Timour Zoubaidouline, hereby certify that the foregoing document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (“NEF”) and that paper copies will be sent to those indicated as non-registered participants by first class mail on August 21, 2008.

/ S / Timour Zoubaidouline

TIMOUR ZOUBAIDOUILLINE, BBO # 656212