

STATE OF NEW YORK
SUPREME COURT

ESSEX COUNTY

BARRY HAMILTON,

Plaintiff,

-against-

ROBERT A. BURLEY, Individually and as
Trustee, PATRICIA A. BURLEY, Individually
and as Trustee, THE ROBERT A. BURLEY
REVOCABLE TRUST, THE PATRICIA A. BURLEY
REVOCABLE TRUST, SHIPYARD PROPERTIES, INC.
and ESSEX ONE, LLC,

Defendants.

ANSWER of

ROBERT A. BURLEY,
PATRICIA A. BURLEY,
THE ROBERT A. BURLEY
REVOCABLE TRUST,
THE PATRICIA A. BURLEY
REVOCABLE TRUST, and
SHIPYARD PROPERTIES, INC.

INDEX NO. 000426-09

Defendants Robert A. Burley, Individually and as Trustee,
Patricia A. Burley, Individually and as Trustee, The Robert A. Burley
Revocable Trust, The Patricia A. Burley Revocable Trust, and Shipyard
Properties, Inc. (the "Burley Defendants"), by and through their
attorneys, Caffry & Flower, answering the complaint of plaintiff Barry
Hamilton ("Plaintiff") dated May 18, 2009 ("Complaint"), allege as
follows:

1. The Burley Defendants deny knowledge or information
sufficient to form a belief as to the truth or falsity of the
allegations contained in paragraphs 1, 2, 5, 9, 13, 15, 16, 17, 25,
27, 30, 33, 39, 45, 50, 52, 55, 58, 64, 70, 75, 77, 80, 83, 89, and 95
of the Complaint.

2. The Burley Defendants deny each and every allegation set
forth in paragraphs 14, 18, 19, 20, 23, 24, 28, 32, 34, 35, 36, 37,
38, 41, 42, 43, 44, 48, 49, 53, 57, 59, 60, 61, 62, 63, 66, 67, 68,

69, 73, 74, 78, 82, 84, 85, 86, 87, 88, 91, 92, 93, and 94 of the Complaint.

3. As to the allegations of paragraph 3 of the Complaint, the Burley Defendants state that the document referred to therein speaks for itself, and otherwise deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations thereof.

4. As to the allegations of paragraph 10 of the Complaint, the Burley Defendants state that the documents referred to therein speak for themselves, and otherwise deny the allegations thereof.

5. As to the allegations of paragraph 11 of the Complaint, the Burley Defendants state that The Robert A. Burley Revocable Trust and The Patricia A. Burley Revocable Trust own certain real property adjoining the marina known as Essex Shipyard, and otherwise deny the allegations thereof.

6. As to the allegations of paragraphs 12, 22, 47, and 72 of the Complaint, the Burley Defendants state that, upon information and belief, there is only one such fuel tank, which is physically located on real property owned by The Robert A. Burley Revocable Trust and The Patricia A. Burley Revocable Trust, admit that said fuel tank and associated lines are owned by the Plaintiff, and otherwise deny the allegations thereof.

7. As to the allegations of paragraphs 29, 54, and 79 of the Complaint, the Burley Defendants state that, upon information and belief, the Plaintiff may be liable for such fines, penalties and the like, but otherwise deny the allegations thereof.

8. As to the allegations of paragraphs 21, 26, 31, 40, 46, 51, 56, 65, 71, 76, 81, and 90 of the Complaint, the Burley Defendants repeat and reallege each and every denial made above with the same force and effect as if more fully set forth herein.

9. As to the allegations of paragraphs 96 to 120 of the Complaint, the Burley Defendants do not answer herein the Thirteenth, Fourteenth, Fifteenth, and Sixteenth Causes of Action of the Complaint, because said causes of action make no allegations against them. To the extent that any such cause of action makes any allegation against the Burley Defendants, such allegations are hereby denied.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

10. The Complaint states on the first page thereof that the "plaintiffs" make certain complaints against the defendants.

11. There is only one plaintiff named in this action, being Barry Hamilton, and any complaint or cause of action by any other plaintiff must be dismissed.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

12. The summons and complaint in this action have not been duly served on any of the Burley Defendants and the court therefore lacks personal jurisdiction over the Burley Defendants.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

13. The Complaint fails to state a cause of action against any of the Burley Defendants.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

14. The index number of the action and date of filing of the summons are not affixed to the summons as required by CPLR § 305(a).

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

15. Plaintiff's notice of pendency dated May 18, 2009 and filed with the Essex County Clerk on May 20, 2009 is not effective because it was not served, within 30 days of the date of filing of said notice of pendency, on any party that was an owner of the real property in question at the time of such filing, as required by CPLR § 6512.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

16. The Complaint was not duly verified.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

17. The action is barred by the applicable statutes of limitation.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE
TO THE FIRST, THIRD, FOURTH, NINTH,
ELEVENTH, AND TWELFTH CAUSES OF ACTION

18. Injunctive relief is not available against defendants Robert A. Burley, Patricia A. Burley, and Shipyard Properties, Inc. because they no longer own any of the real property in question.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE
TO THE FIRST AND SECOND CAUSES OF ACTION

19. Defendants Robert A. Burley and Patricia A. Burley do not own the real property where the fuel tank in question is located.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE
TO THE NINTH AND TENTH CAUSES OF ACTION

20. Defendant Shipyard Properties, Inc. does not own, and never did own, the real property where the fuel tank in question is located.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE
TO THE SEVENTH AND EIGHTH CAUSES OF ACTION

21. Defendants The Robert A. Burley Revocable Trust and The Patricia A. Burley Revocable Trust have never owned or operated a floating tire breakwater.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE
TO THE THIRD, FOURTH, SEVENTH, EIGHTH,
ELEVENTH, AND TWELFTH CAUSES OF ACTION

22. None of the Burley Defendants currently own or operate a floating tire breakwater.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE
TO THE THIRD, FOURTH, SEVENTH, EIGHTH,
ELEVENTH, AND TWELFTH CAUSES OF ACTION

23. Any and all tires complained of in this action were deposited in Lake Champlain by a prior owner of the marina operation and were not deposited by any of the defendants in this action.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE
TO THE THIRD, FOURTH, SEVENTH, EIGHTH,
ELEVENTH, AND TWELFTH CAUSES OF ACTION

24. Because the Burley Defendants do not currently own or operate a floating tire breakwater, there is no basis for the granting of injunctive relief against them regarding any such breakwater or prohibiting the depositing of tires in Lake Champlain.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE
TO THE SEVENTH AND EIGHTH CAUSES OF ACTION

25. Because defendants The Robert A. Burley Revocable Trust and The Patricia A. Burley Revocable Trust have never owned or operated a floating tire breakwater, there is no basis for injunctive relief against them regarding the removal of tires from Lake Champlain.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE
TO THE FIRST, FIFTH, AND NINTH CAUSES OF ACTION

26. The Burley Defendants have never denied Plaintiff access to his fuel tank, and there is no basis for the relief requested.

AS AND FOR A COUNTERCLAIM BY THE
ROBERT A. BURLEY REVOCABLE TRUST AND
THE PATRICIA A. BURLEY REVOCABLE TRUST

27. This cause of action is brought pursuant to Article 15 of the Real Property Actions and Proceedings Law of the State of New York to compel the determination of claims to the real property herein described.

28. None of the defendants to this counterclaim are unknown and none are infants or operating under another disability.

29. No personal claim is made against any defendant to this counterclaim.

30. Any judgment granted on this counterclaim will not affect any person or persons not in being or ascertained at the commencement of this action, who by any contingency contained in a devise or grant or otherwise could afterward become entitled to a beneficial estate or interest in the aforesaid premises, and every person in being who would have been entitled to such estate or interest, if such event had happened immediately before the commencement of the action, is named as a party hereto.

31. The Robert A. Burley Revocable Trust and The Patricia A. Burley Revocable Trust (the "Burley Trusts") are the owners of certain real property located in the Town of Essex, County of Essex, State of New York, as described in a deed from Robert A. Burley and Patricia A. Burley to the Burley Trusts, dated December 21, 2000, and recorded in the Office of the Essex County Clerk on February 23, 2001, in Book 1276 of Deeds at Page 187.

32. The title to said real property is subject to an easement which was originally contained in a deed from Essex Shipyard, Incorporated to Jack Halpin and Joanne Halpin, dated May 11, 1988, and recorded in the Office of the Essex County Clerk on June 21, 1988, in Book 915 of Deeds at Page 188, which easement provides as follows:

TOGETHER WITH the existing underground fuel storage tanks which serve the Gas Dock on the Marine Base and which are located south of the above described line; and an easement for fuel and pump-out lines thereto, and to service, inspect and maintain such tanks and lines, **for and during the life span of such existing tanks and lines only.** (emphasis added)

33. Upon information and belief, the current holder of said easement is the Plaintiff, Barry Hamilton, and said easement benefits the adjoining lands of the Plaintiff, as described in a deed from Jack Halpin and Joanne Halpin to Barry Hamilton, dated November 22, 1993, and recorded in the Office of the Essex County Clerk on December 9, 1993, in Book 1053 of Deeds at Page 39.

34. Upon information and belief, said fuel tank(s) and related lines have been abandoned and are no longer in use by the Plaintiff.

35. Therefore, said easement is terminated because the "life span of the existing tanks and lines" has expired.

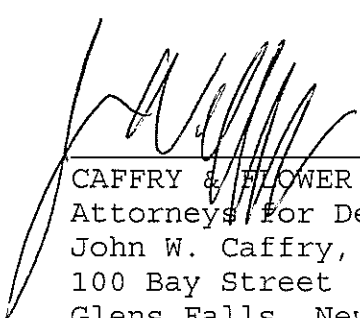
36. Therefore, said tank(s) and lines owned by the Plaintiff must be removed from the Burley Trusts' property.

37. In the Complaint, the Plaintiff has claimed the right to continue to maintain said tank(s) and lines on the property of the Burley Trusts, despite no longer having a valid easement to do so.

WHEREFORE, the Burley Defendants request judgment:

1. Dismissing the Complaint;
2. Vacating the Plaintiff's notice of pendency;
3. Declaring that the Plaintiff's fuel tank and line easement over the Burley Trusts's property is terminated;
4. Barring the Plaintiff and all persons claiming under him from all claim or interest, including easements, in the Burley Trusts' property which is described above;
5. Ordering the Plaintiff to remove his fuel tank(s) and related lines from the Burley Trusts' property which is described above;
6. Awarding the Burley Defendants the costs and disbursements of this action; and
7. Granting such other and further relief as the Court deems just and proper.

Dated: July 15, 2009



CAFFRY & FLOWER
Attorneys For Defendant
John W. Caffry, Of Counsel
100 Bay Street
Glens Falls, New York 12801
(518) 792-1582

STATE OF NEW YORK
SUPREME COURT COUNTY OF ESSEX

BARRY HAMILTON

Plaintiff,

-against-

ROBERT A. BURLEY, Individually and as Trustee,
PATRICIA A. BURLEY, Individually and as Trustee, THE
ROBERT A. BURLEY REVOCABLE TRUST, THE
PATRICIA A. BURLEY REVOCABLE TRUST,
SHIPYARD PROPERTIES, INC. and ESSEX ONE LLC,

Defendants.

**REPLY TO
COUNTERCLAIM**

Index No. 000426-09

The plaintiff, replying to the counterclaim by the Robert A. Burley Revocable Trust and the Patricia A. Burley Revocable Trust, by his attorneys, FitzGerald Morris Baker Firth P.C., submits the following upon information and belief:

1. Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs numbered "27", "28", "29", "30" and "31" of the counterclaim, and refers all questions of law to the Court.
2. The referenced document in paragraphs "32" and "33" of the defendants' counterclaim reference a document which speaks for itself, all questions of law are and will be referred to the court.
3. Denies the allegations contained in the paragraph numbered "34" of the counterclaim except admits that said fuel tank(s) and related lines are no longer in use by the plaintiff.
4. Denies the allegations contained in the paragraphs numbered "35", "36" and "37" of the counterclaim.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE,
THE PLAINTIFF ALLEGES:**

5. That the counterclaim fails to state a claim upon which relief can be granted.

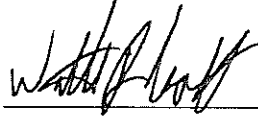
**AS AND FOR A SECOND AFFIRMATIVE DEFENSE,
THE PLAINTIFF ALLEGES:**

6. That defendants are guilty of laches and are, therefore, barred from maintaining this action.

WHEREFORE, plaintiff demands judgment against the defendants dismissing the counterclaim, together with the costs and disbursements of this action, and for such other and further relief as this Court deems just and proper.

DATED: July 27, 2009

Yours etc.,




William A. Scott, Esq.
FitzGerald Morris Baker Firth P.C.
Attorneys for Plaintiff
16 Pearl Street-P.O. Box 2017
Glens Falls, NY 12801
(518) 745-1400

TO: John W. Caffry, Esq.
Caffry & Flower
Attorneys for Defendants
100 Bay Street
Glens Falls, NY 12801
(518) 792-1582

INDIVIDUAL VERIFICATION


STATE OF NEW YORK)
) ss.:
COUNTY OF WARREN)

BARRY HAMILTON, being sworn says: I am the plaintiff in the action herein; I have read the annexed **Reply to Counterclaim**, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.



BARRY HAMILTON

Sworn to before me this
27th day of July, 2009.



Notary Public

CHERYL L. LEOMBRUNO
Notary Public, State of New York
Saratoga Co. #01LE4702866
Commission Expires Feb. 7, 2010

CERTIFICATE OF MAILING

STATE OF NEW YORK)

SS:.

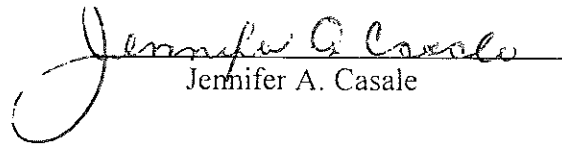
City of Glens Falls

COUNTY OF WARREN)


JENNIFER A. CASALE, being duly sworn, deposes and says; I am not a party to this action, am over eighteen (18) years of age, and reside in Queensbury, New York.

On July 28, 2009, I served a true copy of the foregoing **Reply to Counterclaim** by mailing the same in a sealed envelope with postage prepaid thereon, in an official depository of the United States Postal Service in the State of New York, addressed to the last known address of the addressee as indicated below:

John W. Caffry, Esq.
Caffry & Flower
100 Bay Street
Glens Falls, NY 12801


Jennifer A. Casale

Sworn to before me this
28th day of July, 2009.


Notary Public - State of New York

CHERYL L. LEOMBRUNO
Notary Public, State of New York
Saratoga Co. #01LE4702866
Commission Expires Feb 7, 2010