

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS

SUPERIOR COURT DEPARTMENT

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 JOSEPH F. DUGAS and )  
 PAUL REVERE III )  
 )  
 Plaintiffs )  
 )  
 v. )  
 )  
 PETER ROBBINS and )  
 JOHN DOE )  
 )  
 \_\_\_\_\_ Defendants \_\_\_\_\_ )

SUPERIOR COURT  
 BARNSTABLE SS  
 FILED JUL 07 2008  
*Scott W. Wilbur, Clerk*

C.A. No. BACV2008- 431

COMPLAINT

The Plaintiffs, Joseph F. Dugas and Paul Revere III, file this Complaint against Peter Robbins and John Doe, a person unknown, for defamation and intentional infliction of emotional distress in connection with the publication of the "Robbins Report" on the Cape Cod Today website.

PARTIES

1. Plaintiff, Joseph F. Dugas ("Dugas"), resides at 30 Sunset Lane, Barnstable, Massachusetts, 02630.
2. Plaintiff, Paul Revere III ("Revere"), resides at 226 River View Lane, Centerville, Massachusetts, 02632.
3. Upon information and belief, Defendant, Peter Robbins ("Robbins"), resides at 57 Whidah Way, Centerville, Massachusetts 02632.

4. Upon information and belief, John Doe, a person unknown, resides in the County of Barnstable, Massachusetts.

### FACTS

#### THE WATER QUALITY CERTIFICATION AND CHAPTER 91 PERMIT

5. In October, 2006, the Massachusetts Department of Environmental Protection ("DEP") requested comments on a proposal to issue a water quality certification to the Town of Barnstable ("Town") relating to the proposed dredging of a channel (the "Channel") connecting Barnstable Inner Harbor to the main channel of Barnstable Harbor.

6. Edith Dugas ("Edith"), the wife of Joseph F. Dugas sent a letter to DEP stating that it ought to consider the impact of past dredging practices on Millway Beach, a Town beach where the dredge spoils were proposed to be placed during the proposed dredging. In particular, Ms. Dugas noted that a black, tar like material had been deposited on Millway Beach during a previous dredging of the channel.

7. On November 16, 2006, the Town's consultant, Vine Associates, in response to Edith's correspondence acknowledged that dredging in 2005 resulted in the mistaken placement of silt on Millway Beach, which had become compacted.

8. The November 16, 2006 Vine Associates letter also stated that most of the sand placed on Millway beach during the 2005 dredging eroded and presumably washed back into the Channel within a few months.

9. In December, 2006, the DEP requested comments on whether to issue a Permit pursuant to Massachusetts General Laws Chapter 91 for the dredging (the "Chapter 91 Permit").

10. In January, 2007, Revere, on behalf of Dugas and others, submitted comments to DEP concerning the issuance of the Chapter 91 Permit.

**PROCEEDINGS BEFORE THE BARNSTABLE CONSERVATION COMMISSION**

11. In November, 2006, the Town applied for a permit, known as an "Order of Conditions," from the Barnstable Conservation Commission (the "Commission") for the proposed dredging of the Channel and placement of dredge spoils on Millway Beach.

12. Dugas retained Revere to represent him before the Commission.

13. Dugas retained Peter Rosen, Ph.D., a professor in the Earth and Environmental Sciences Department at Northeastern University, and one of the foremost experts on coastal erosion in New England, as an expert.

14. Dr. Rosen submitted a twenty (20) page report ("Rosen Report") to the Commission and testified before the Commission in late November, 2006.

15. The Rosen Report contained the following recommendations to improve the plan to dredge the Channel:

- a. Require a plan for monitoring the placement of sand on Millway Beach to prevent further disposal of inappropriate silty material;
- b. Survey extent of existing, inappropriate silty material on beach;
- c. Remove existing silty material;
- d. Nourishment of Millway Beach following removal of the silty material;
- e. Preparation of a Sand Management Plan for the area to limit future dredging;

- f. Preparation of a plan to repair geotextile of containment structure located on edge of the beach;
- g. Planting of beach grass.

16. In addition, Dr. Rosen proposed that a barrier be placed at the state boat ramp at the mouth of Barnstable Inner Harbor to prevent migration of sand into the Inner Harbor.

17. On January, 16, 2007, the Commission issued an order of conditions ("Order of Conditions") authorizing the Town to conduct the proposed dredging of the Channel.

18. The Order of Conditions required that a sand management plan be developed at some unspecified time in the future, allowed a "Jersey" barrier to be deployed at the state boat ramp, required repair of the containment structure, and required removal of the inappropriate silty material but only if it was encountered while constructing a stilling basin on Millway Beach.

19. On January 30, 2007, on behalf of Dugas, Revere filed a request for review of the Commission's decision to issue the Order of Conditions with the Southeast Regional Office of the DEP ("DEP-SERO").

20. The request for review stated that the Town still had not adequately characterized the dredged material that it intended to place on beaches and that express conditions should be placed in the Order of Conditions to address the contingency that silty material such as that dredged from the Channel in 2005 was again encountered in 2007.

21. The request for review also provided that the Town should develop a sand management plan immediately as part of the permitting process rather than later as required by the Commission, and be required to remove the silty material on Millway Beach.

22. In April, 2007, DEP-SERO held a public meeting and examined the proposed dredging site, Millway Beach, and the surrounding areas.

23. In May, 2007, Revere submitted further information to DEP-SERO and the Town and requested a meeting to resolve all outstanding issues so that the dredging might occur during the following winter.

24. The Town never responded to the Plaintiffs' request.

25. In May, 2007, DEP-SERO requested that by June 13, 2007 the Town submit a sand management plan and a plan for removal of the silty sediments on Millway beach.

26. The Town did not submit a plan for removal of the silty sediments to DEP-SERO.

27. In August, 2007, nearly two months after its due date, the Town submitted a sand management plan to DEP-SERO

28. On August 31, 2007, Revere submitted comments on the sand management plan.

29. On October 29, 2007, DEP-SERO issued a superseding order of conditions ("DEP-SERO Order") affirming the order of conditions of the Commission and adding the following additional provisions:

- a. Prohibiting the Town from using any material dredged from the inner third of the proposed dredge footprint for beach nourishment as it was too silty to be used for that purpose;
- b. Requiring compliance with the sand management plan;
- c. Prohibiting dredging between January 15 and July 15 of any calendar year to protect horseshoe crabs and winter flounder (the "Calendar Prohibition Provision").

30. In addition to the DEP-SERO Order, permits from DEP and the U.S. Army Corps of Engineers were necessary to actually perform the dredging of the Channel.

31. The Calendar Prohibition Provision effectively prohibited the dredging of the channel during the winter of 2007/2008 as the Town had yet to appropriate funding, had not secured a contractor, had not obtained a Permit from the Army Corps of Engineers, and has not obtained a Chapter 91 Permit. The Town could not accomplish the foregoing in time to complete the dredging by January 15, 2008.

**THE PROCEEDINGS BEFORE DEP HEADQUARTERS**  
**AND ISSUANCE OF THE CHAPTER 91 PERMIT**

32. On November 9, 2007, Revere requested an adjudicatory hearing before DEP's Boston Office concerning the DEP-SERO Order.

33. The request stated that DEP should modify the DEP-SERO Order to ensure that the Town did not place inappropriate sediments upon Millway Beach and to require that such existing sediments be removed.

34. On November 14, 2007, DEP proposed to issue the Chapter 91 Permit for the proposed dredging of the Channel and required that any appeal of that decision be filed by December 5, 2007.

35. No appeal was filed.

36. Notwithstanding the lack of an appeal, the DEP did not issue the Chapter 91 Permit until June 18, 2008.

37. Pursuant to DEP regulations governing appeals of the DEP-SERO Order, Revere submitted a summary of the relief sought by the request which provided as follows:

- a. The Town needs to remove inappropriately placed material on Millway Beach.
- b. The Town needs to grade Millway Beach after removing the material to prevent wave run up and overwash near the parking area.
- c. The containment facility needs to be lowered to its historic height as required by prior orders of conditions.
- d. The sand management plan incorporated into the DEP-SERO Order needs to be modified to protect the beach and to conform with actual site conditions.
- e. The Town needs to be prohibited from placing sand onto salt marshes as part of its removal of sand from the state boat ramp.
- f. The Town needs to demonstrate that the dredge spoils in the channel and the containment facility have been adequately characterized for both grain size and contaminants.
- g. The DEP-SERO Order needs to contain enforceable and concrete criteria for determining grain size compatibility during the dredging.
- h. The DEP-SERO Order needs a specific plan for the contingency that incompatible grain size material is encountered including notification to DEP and a contingency plan to ensure appropriate management.
- i. The DEP-SERO Order must require that the Town apply for a certificate of compliance within four weeks of completion of the dredging and a public hearing should be held on the issuance of any such certificate.

38. In mid-January, 2008, Dugas and the Town Manager of Barnstable met to discuss the dredging project and a basic framework for settlement was reached.

39. Following that discussion, Town Attorney David Houghton and Revere met to discuss settlement of the dredging project and reached general agreement on resolving the dispute, but further information was required from the Town's Engineering Department.

40. In February, 2008, the Town agreed to remove the consolidated sediments located on Millway Beach and to work with Dugas and the others on any remaining issues which could be addressed primarily through project oversight and enforcement, and Dugas and the others agreed to withdraw their request for a public hearing by the Corps.

41. On this basis, the matter was reported as settled to the administrative law judge in February, 2008.

42. In March, 2008, a formal settlement was filed with the administrative law judge.

#### THE UNITED STATES ARMY CORPS OF ENGINEERS PERMIT

43. On October 23, 2007, the U.S. Army Corps of Engineers issued a public notice that it intended to issue a permit for the proposed dredging and that any comments should be submitted by November 22, 2007.

44. In early November, Dugas and others collected over 185 signatures on a petition which read as:

We, the undersigned homeowners/residents and/or voters of the Town of Barnstable request that: (i) the United States Army Corps of Engineers hold a public hearing on the Town of Barnstable's proposal to dredge Maraspin Creek/Barnstable Harbor; and (ii) the Barnstable Town Council hold a public hearing pursuant to Section 8-7 of the Town of Barnstable Charter.

As basis for this request/petition, the undersigned state that:  
(i) the Town of Barnstable has failed to comply with previous



approvals to dredge the harbor resulting in consolidated sediments being placed upon and significantly degrading Millway Beach; (ii) the previous failures of the Town are likely to be repeated if adequate regulatory conditions and oversight are not imposed on the project resulting in further degradation of Barnstable Harbor, Millway Beach, and Sandy Neck, all of which are located within the Barnstable Harbor/Sandy Neck Area of Critical Environmental Concern; and (iii) the dredging should not proceed until a comprehensive management plan is developed for the harbor including specifically; (a) the management of sand within the area to reduce the number of times that the harbor must be dredged and its associated costs to the Town; and (ii) control of inappropriate use of the state boat ramp at the mouth of Maraspin Creek.

45. On November 20, 2007, Revere submitted comments to the Army Corps of Engineers on their proposed permit and included a copy of the petition.

46. On March 4, 2008, the Army Corps reopened the public comment period for two weeks on its permit for the dredging of the Channel.

47. The reopening was required by the Town's decision "to remove the sandy material currently contained in the Blish Point Sediment Containment Area and disposed of the material as beach nourishment on nearby Millway Beach . . . and [to] then use the Blish Point Sediment Containment Area to dispose of silty sediments from the dredging of the Barnstable Inner Harbor entrance channel."

48. This revision was necessitated by the DEP-SERO Order which prohibited placement of dredge spoils from the inner third of the channel on Millway Beach.

49. The Army Corps has not issued a permit as of June 20, 2008, and, therefore, the proposed dredging is still not fully permitted.

THE ROBBINS ARTICLES

50. At all relevant times hereto, Robbins authored and maintained a column known as the "Robbins Report" on the Cape Cod Today website, [www.capecodtoday.com](http://www.capecodtoday.com).

51. Upon information and belief, at all relevant times hereto Doc, a yet unidentified and unknown person, established and maintained a username on the Cape Cod Today website under the pseudonym "noggin", and at various times has published written comments in response to defendant Robbins' columns.

52. On or about March 11, 2008, Robbins published the Cape Cod Today Website an article entitled "Barnstable Harbor: Filling in and falling in." (the "Article").

53. The general subject matter of the Article concerns two issues, namely, the collapse of a portion of the far southern wall of the bulkhead of Barnstable Inner Harbor, and an administrative appeal of the DEP-SERO Order by Dugas and others represented by Revere,

54. In the Article, Robbins refers to the plaintiffs as the "infamous sh\*t stirring Joe Dugas of Barnstable", and "Paul '*the dredge isn't coming*' Revere III."

55. In the Article, Robbins states that Dugas and others represented by Revere, initiated "litigation"; and that this "litigation" is the reason that the channel dredging project has stalled.

56. In the Article, defendant Robbins asserts in his opinion that the actions of Dugas' and others represented by Revere with regard to the "litigation" were malicious and not brought in good faith.

57. In the Article, Robbins asserts that Dugas is responsible for the channel connecting Barnstable Inner Harbor to the main channel of Barnstable Harbor not being dredged.

58. In the Article, Robbins informs readers that they should blame Dugas and others represented by Paul Revere, III, if they run aground in the channel during the ensuing summer.

59. The facts, published in writing by Robbins in the Article are false.

60. In particular, the proposed dredging has not occurred because, for among other reasons, the Town has never appropriated funds to dredge the channel, and all of the necessary permits were not issued by this time, including the Army Corps of Engineers permit which has yet to be issued, and the Chapter 91 permit which was issued on June 18, 2008, approximately three months following the Robbins Article.

61. The litigation was neither malicious nor brought in bad faith, but rather, among other things, Dugas and others represented by Revere, (i) offered on to meet with the Town in May, 2007, to resolve the issues raised by their appeal and to include property owners within the inner harbor in any discussion, but the Town refused such meeting; (ii) sought to ensure that damage caused to nearby beaches from past dredging was repaired during the dredging; and (iii) sought to ensure that the dredging was performed properly to prevent the migration into the inner harbor of sand placed on the beach during dredging.

62. Dugas and others represented by Paul Revere, III cannot be responsible for the collapse of the bulkhead as it is approximately one third of a mile north of the southern limit of the proposed dredging project. The Town waterways committee has been discussing the potential collapse of the bulkhead since at least March, 2007.

63. Robbins knew, or reasonably should have known, of the falsity of his written statements.

64. On or about March 12, 2008, Doc, using the "noggin" pseudonym, published in writing a comment to Robbins' article (the "Comment"), stating that in the Town of Barnstable, "if you don't genuflect and pay off Joe Dugas, you may as well forget whatever you want to do."

65. The Comment further states that "There are plenty of shysters like Revere to climb aboard...", suggesting that Revere, an established Massachusetts attorney, is an active participant in alleged illegal activity.

66. The facts published in writing by Doc in the Comment are false.

67. John Doc knew, or reasonably should have known, of the falsity of his written statements.

**COUNT I**  
**DEFAMATION AGAINST ROBBINS AND DOE**

68. Plaintiffs incorporate the allegations set forth in Paragraphs 1-67 of this Complaint as if fully set forth herein.

69. The statements are false and were published in writing.

70. The written publication of untrue statements by each of the defendants regarding plaintiffs constitutes libel *per se*.

71. The statements tend to harm the reputations of the plaintiffs as to lower them in the estimation of the community and to deter persons from associating with or dealing with them.

72. Defendants Robbins and Doc knew their statements were false, or acted in reckless disregard as to whether they were false.


73. As a result of the defendants' publication of untrue statements regarding plaintiffs' conduct, the plaintiffs have suffered damage to their reputations, businesses, and employment, and sustained emotional distress.

WHEREFORE, the plaintiffs, Joseph F. Dugas and Paul Revere III, respectfully request that the Court enter judgment in their favor for compensatory damages in an amount to be determined at trial.

Dated: July 2, 2008

**PLAINTIFFS DEMAND A TRIAL BY JURY.**

The Plaintiffs,  
Joseph F. Dugas  
Paul Revere III  
By and Through Their Attorneys

  
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