

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 MICHELE A. PINCUS PURSUANT TO 28 U.S.C. § 1746
IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, Michele A. Pincus, hereby declare under penalty of perjury:

1. I am Associate General Counsel of Long Island Lighting Co., d/b/a Long Island Power Authority ("LIPA"). LIPA is a co-plaintiff with Verizon New York, Inc. ("Verizon") 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 based on a review of the files maintained by my office. Plaintiffs have 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 LIPA with a request to allow EEEA to affix “lechis” to certain of LIPA’s utility poles located within the Villages of Quogue and Westhampton Beach and the Town of Southampton for the purpose of establishing an “eruv” boundary under Jewish law. LIPA and its predecessor have allowed lechis to be affixed to its utility poles in many communities throughout Long Island.

3. On or about July 27, 2010, LIPA and EEEA entered into a “License Agreement” (the “Agreement”). Under the Agreement, LIPA agreed to grant EEEA licenses to attach lechis to certain of LIPA’s utility poles in LIPA’s service area in Suffolk, County, New York, for the purpose of establishing an eruv boundary. The Agreement provided that the lechis would only be placed on the non-communications portions of LIPA’s utility poles, and that the attachment of the lechis would not entail the use of any cables or wires. In consideration of these licenses, EEEA agreed, *inter alia*, to pay LIPA an annual pole attachment fee. The Agreement also directed EEEA to affix and maintain the lechis in a manner that would observe and comply with all applicable laws, rules and regulations of governmental authorities. I am informed that Verizon New York, Inc. (“Verizon”) entered into a similar agreement with EEEA (the “Verizon Agreement”).

4. Following execution of the Agreement between LIPA and EEEA, Lynda Nicolino, Esq., LIPA's General Counsel and Secretary, received a letter dated September 9, 2010, from Village of Quogue Mayor Peter S. Sartorius ("Mayor Sartorius"), defendant herein, advising LIPA that Chapter 158 of the Quogue Village Code prohibited the attachment of lechis to utility poles located within the Village of Quogue rights-of-way.

5. 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. In a letter dated October 26, 2010, on which I was copied, William J. Balcerski, Assistant General Counsel of Verizon Communications, Inc., Verizon's parent company, informed Mayor Sartorius 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."

6. In response to Mr. Balcerski's letter of October 26, 2010, Mayor Sartorius wrote a second letter to Mr. Balcerski dated November 22, 2010, on which I was copied, and 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."

7. In a letter to EEEA dated December 1, 2010, Mr. Sugarman responded to the Memorandum. I was provided with a copy of this letter.

8. I was subsequently copied on a third letter from Mayor Sartorius to Mr. Balcerski, 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."

9. In addition, I was copied on a letter to Mr. Balcerski dated November 16, 2010, from Michael C. Sordi, then Town Attorney for the Town of Southampton, a defendant herein. Mr. Sordi opined that any attachment of lechis to Verizon utility poles located 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. Mr. Sordi likewise stated in this letter, that violations of the Southampton sign law provided for "various penalties including fines of a continuous nature for every day the violation remains."

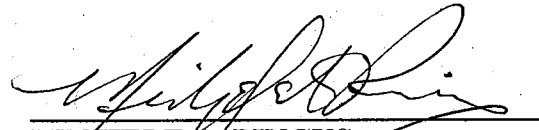
10. On November 18, 2010, Mr. Sugarman wrote a letter to EEEA in which he asserted that the attachment of lechis to utility poles would not violate Section 330-203(B) of the Code of the Town of Southampton. I was provided with a copy of the November 18, 2010 letter.

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

12. Lechis have been attached to utility poles in other communities on Long Island and pose no health and safety concerns that LIPA is aware of. LIPA is willing to allow the attachment of such lechis to certain of its utility poles in the Villages of Quogue and Westhampton Beach and the Town of Southampton. However, in light of the local municipalities' positions and/or threats to fine LIPA, the licenses for the attachment of lechis that are the subject of the Agreement have not been issued. LIPA has filed a separate action with Verizon, in which LIPA and Verizon seek declaratory and injunctive relief from the Court, permitting LIPA and Verizon to allow EEEA to attach the lechis to their respective utility poles without consequence from the municipalities.

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

Executed on March 15, 2011


MICHELE A. PINCUS