

UNITED STATES DISTRICT
DISTRICT OF MAINE

ATTACHMENT A

ASSOCIATION TO PRESERVE AND)
 PROTECT LOCAL LIVELIHOODS, et)
 al.,)
)
 Plaintiffs,)
)
 PENOBSCOT BAY AND RIVER PILOTS)
 ASSOCIATION)
)
 Plaintiff-Intervenor,)
)
 v.)
)
 TOWN OF BAR HARBOR, a municipal)
 corporation of the State of)
 Maine,)
)
 Defendant,)
)
 CHARLES SIDMAN,)
)
 Defendant-Intervenor)

Electronically Filed: 11/18/2024 2:51 PM



Civil Action
No. 1:22-cv-416-LEW

ZOOM DEPOSITION OF: CHARLES SIDMAN

BEFORE: Lisa Fitzgerald, Notary Public, via Zoom on
May 15, 2023 beginning at 9:03 a.m.

Maine Court Reporting Services
60 Starlight Drive
Brewer, Maine 04412
207-989-3264
Lisa@MeCRS.com

APPEARANCES

For the Plaintiffs, Association To Preserve And Protect Local Livelihoods, et al.:

Timothy C. Woodcock, Esq.
Eaton Peabody
PO Box 1210
Bangor, Maine 04402-1210
twoodcock@eatonpeabody.com

P. Andrew Hamilton, Esq.
ahamilton@eatonpeabody.com

Patrick W. Lyons, Esq.
plyons@eatonpeabody.com

Janna Gau, Esq.
jgau@eatonpeabody.com

Kelsey Olesen, Esq. (via Zoom)
kolesen@eatonpeabody.com

For the Plaintiff-Intervenor, Penobscot Bay & River Pilots Association:

Charles Jonathan Benner, Esq. (via Zoom)
Thompson Coburn LLP
1909 K Street, NW, Suite 600
Washington, DC 20006-1167
jbenner@thompsoncoburn.com

Kathleen E. Kraft, Esq. (via Zoom)
kkraft@thompsoncoburn.com

John S. Kingston, Esq. (via Zoom)
jkingston@thompsoncoburn.com

For the Defendant, Town of Bar Harbor:

Allison A. Economy, Esq.
Rudman Winchell
PO Box 1401
Bangor, Maine 04402-1401
aeconomy@rudmanwinchell.com

1 Intervene and Alternative Verified Motion to Participate
2 as Amicus Curiae and Memorandum in Support of Motions,
3 was introduced.)

4 BY MR. WOODCOCK:

5 Q. I'll ask you to take a look at that, Exhibit 77 [changed
6 to 97], Mr. Sidman, and let me know if you recognize
7 that.

8 A. I do recognize it.

9 Q. And that is your motion to intervene that was filed on
10 your behalf in this matter; is that correct?

11 A. It is.

12 Q. Now, in this motion to intervene, if I could direct you
13 to Page 6 of this.

14 A. Okay.

15 Q. And at the last full paragraph on Page 6, I'll just read
16 this into the record and ask you a couple of questions
17 about it.

18 It says, Additionally, Mr. Sidman faces the
19 potential decreased property values if the ordinance is
20 not enforced because of the unending flow of cruise ship
21 passengers into Bar Harbor, and there's a legal
22 citation, and then it states, As a local business owner
23 for the past 28 years, you would also suffer concrete
24 harm from the nonenforcement of the ordinance because
25 his clientele, collectors of fine art, refuse to come to

1 his business on cruise ship days. This harm is common
2 among a large portion of businesses in the town and
3 support the ordinance. Thus, Mr. Sidman has a concrete
4 interest in supporting intervention. These interests
5 will be undoubtedly -- or would undoubtedly be adversely
6 affected if plaintiffs prevail because cruise ship
7 passengers would continue to overrun the town.

8 Have I read that correctly?

9 A. I see those words.

10 Q. And that's a correct rendition of what is there; is that
11 correct?

12 A. Yes, you read it accurately.

13 Q. So I have a couple of questions for you about this.

14 These were representations that were made in
15 support of your effort to intervene in this matter;
16 correct?

17 A. Right.

18 Q. What I'd like to ask you, Mr. Sidman, is to describe for
19 me in more detail the impact the cruise ship visits to
20 Bar Harbor have on your business. This is the art
21 gallery?

22 A. Hm-hmm. Okay. Well, the primary impact on our business
23 is the wide-spread and ever increasing sentiment among
24 our customers that they don't find Bar Harbor a
25 congenial place to visit anymore when the cruise ships

1 are in and must avoid coming to town.

2 And this represents people who live in other parts
3 of Bar Harbor, other parts of the island, other parts of
4 the state, other parts of the country. There's
5 wide-spread awareness and distaste for the extreme
6 crowds on the sidewalks in Bar Harbor on cruise ship
7 days.

8 So we've been told hundreds of times that this is
9 just a growing fact of life for our business.

10 Q. Now, cruise ships come -- they have come to Bar Harbor
11 as early as April and as late as November; is that
12 right?

13 A. Correct.

14 Q. Does this phenomenon that you're talking about with
15 respect to overcrowding of the sidewalks, has that
16 happened literally from April to November?

17 A. No, it's -- it's cruise ship days because there's just a
18 marked increase on cruise ship days, and the cruise ship
19 traffic is more intense in the fall than it is in the
20 spring. That's a reality.

21 Q. So what I'm trying to understand here is, your business
22 in its two locations, is feeling the effect, as you see
23 it, of this increased pedestrian traffic; correct?

24 A. Correct.

25 Q. So is that every month that the cruise ships visit and

1 in the more expansive period, April through November,
2 are all months in which the sidewalks are too congested
3 when a cruise ship visits?

4 MR. PAPA ZIAN: Objection. Asked and answered. You
5 can answer.

6 THE WITNESS: It's more frequent in the fall.
7 There's more ships and more passengers.

8 MR. WOODCOCK: Okay.

9 BY MR. WOODCOCK:

10 Q. But what I'm trying to get at here is you've got,
11 according to your testimony, you're saying that
12 literally, well a large, it sounds like, a large
13 proportion of your customers have related to you that on
14 cruise ship days, which I gather are days on which
15 cruise ships are visiting, they simply will not come to
16 your art gallery?

17 A. I would not say a large proportion of our customers.
18 That's not accurate. We've had frequent comments, and I
19 can't tell you if it's 59 percent or 31 percent or
20 6 percent of our customers, say this, but we've had
21 repeated feedback to this effect.

22 Q. Well, I'm trying to get a sense of in your clientele,
23 this -- it sounds as though -- at least these people who
24 are relating these concerns to you -- are telling you
25 they're unwilling to come to your business on a day when

1 a cruise ship is in port?

2 A. It's a frequent common sentiment. That's all I can say.
3 And it's not only us. Other businesses hear the same
4 things, as has been publicly stated in the press and in
5 interviews.

6 One gallery owner -- another gallery owner, friends
7 of ours, often won't even come to town and open their
8 gallery on cruise ship days. So it's a wide-spread
9 sentiment among both the customers and the merchants.

10 Q. I understand that. What I'm interested in is your
11 business, your art business.

12 So that's your experience; right?

13 A. Well, yes. Our experience in the town in the sense that
14 the voters supported the initiative.

15 Q. Well, let me just back up a little bit here because the
16 art gallery that you own and operate, Argosy, you've
17 mentioned your wife a couple of times.

18 Is she also a partner in that business?

19 A. She's the primary partner.

20 Q. And what is her name?

21 A. Amy Sidman.

22 Q. And when you say she's the primary partner, what does
23 that mean?

24 A. She studied art in college. This is her life's work at
25 the gallery. In a sense I'm the support staff. Yes,

1 I'll often interact with customers, I do various aspects
2 of the business. We are joint owners of this business,
3 and people know us as Amy and Charlie or Charlie and Amy
4 at the Argosy Gallery.

5 Q. And you're frequently in the business; is that right?

6 A. Correct.

7 Q. What I'm trying to get an understanding of here,
8 Mr. Sidman, is that on cruise ship days the business --
9 and you tell me if I've got this wrong -- the business
10 in the Argosy Art Gallery is less than it would be
11 otherwise without the cruise ship days; is that correct?

12 A. That's what we infer from the comments made by our
13 customers on other days when they come in, say, we're
14 here on Friday because on Thursday we wouldn't come, the
15 ship was in, the sidewalks were crowded.

16 Q. So that I understand this, is it your position that
17 cruise ships have resulted in a reduction in your
18 business?

19 A. Yes, absolutely.

20 Q. All right. And how do you figure that?

21 A. I told you, comments of our clients. It's wide spread
22 and repeated.

23 Q. I understand. But there is a way of measuring whether
24 the business is successful or not, is there not?

25 A. Well, our business is successful. We soldier on, but

1 it's part of the uphill tilt of the ground. The
2 feedback is regular, reproducible, continuing.

3 Q. So have you been able to quantify the loss of your
4 business as a result of the cruise ship days?

5 A. I have not.

6 Q. Do you have any, even a ballpark sense of the loss on
7 your business?

8 MR. PAPA ZIAN: Objection. Speculation.

9 THE WITNESS: I can't give you a quantitative --
10 I'll give you two concrete facts. One is, after the
11 pandemic when business opened up again, that was the
12 2021 year, we still had no cruise ships. It was far and
13 away our best year commercially ever without any cruise
14 ships, and people made frequent comments, it's so nice
15 to be back without the ships, without the crowds.
16 That's a fact.

17 The second thing I would tell you is that after
18 many years of running our business in two locations, the
19 resumption of the crowds last year in 2022 was part of
20 our decision to give up the 110 Main Street location.
21 It just became too unpleasant walking with customers
22 back and forth between our two locations, which we had
23 done for many years previous. It just wasn't feasible
24 or pleasant anymore. So that was part of our decision
25 to give up one of our locations.

1 Q. But did that result in a reduction in your business?

2 A. I think so when people tell us what they enjoy and don't
3 enjoy.

4 Q. What I'm trying to get at here, Mr. Sidman, is this is a
5 business, and if a business suffers a reversal,
6 presumably its revenues decline.

7 Do you accept that as a businessman?

8 A. You're looking for quantitation. I can't give you one.
9 We've not hired a consultant or done surveys at the door
10 of the does or doesn't come in.

11 Q. But you know how much money you're making?

12 A. I do. We've been fairly steady for many years.

13 Q. You say many years, what do you mean by that?

14 A. Well, in discovery we provided the gross revenues of the
15 business for the years at which we had assessable
16 Schedule C numbers and we graphed it out.

17 It was pretty steady with a giant spike in 2021,
18 which was the last year available.

19 (Deposition Exhibit No. 98, Plaintiff
20 Intervenor-Penobscot Bay and River Pilots Association's
21 Opposition to Charles Sidman's Motion to Intervene, was
22 introduced.)

23 BY MR. WOODCOCK:

24 Q. I'm going to show you, Mr. Sidman, what's been marked as
25 Exhibit 78 [changed to 98]. And I'll just ask you to

1 turn -- well, first, I'll identify it for the record.

2 That's a reply or an opposition memorandum that was
3 filed by the Pilot, Penobscot Bay Pilot, River and Pilot
4 Association in opposition to your motion to intervene?

5 A. Right.

6 Q. And at the very end of that there's a -- it looks like a
7 posting, and I'd ask you to take a look at that.

8 A. Hm-hmm (indicates yes).

9 Q. What I'd like you to do, Mr. Sidman, is just read that
10 on your own, if you would, and then I'll have a couple
11 of questions about that for you.

12 A. Yes, I'm familiar with it. I posted it.

13 Q. The first question is, you've sort of answered it
14 already, is what is that?

15 A. That's the splash page, the first page that shows when
16 someone comes to our gallery website. There's a
17 newsletter with postings like this going back until the
18 onset of our website.

19 If you scroll down -- I don't remember when the
20 first posting was, if it was '96 or 2004, whatever, but
21 you can read postings from the whole gallery website
22 history, and there's one or two a year.

23 Q. And this looks like -- I can't tell by looking at this
24 one exactly -- it was posted --

25 A. In December of 2022.

1 Q. I see. So that's the date. So that's a commentary on
2 the 2022 season for your art business; is that right?

3 A. No, it's a commentary as of November 2022. There's no
4 representation that we're only speaking of the last
5 three months since the last posting is just a commentary
6 as of that time.

7 Q. Okay. But you're referring to last year's record.
8 What's last year?

9 A. 2022 -- oh, I see. That's probably 2021, then, last
10 year's record.

11 Q. And 2021 was the very good year that you had?

12 A. Correct.

13 Q. It was the best year?

14 A. It was our best, yes. 2022 has not been compiled yet on
15 the deferred tax schedule.

16 Q. In any event, at least your impression here as of
17 December of 2022 was that the 2022 season was --

18 A. Pretty good.

19 Q. -- very good.

20 A. (Indicates yes).

21 Q. And close to the best year you ever had?

22 A. That -- it may be. The text actually comes from my
23 wife, and there's a little bit of public
24 relations/customer relations in there. So I don't know
25 quantitatively what that really means.

1 Q. But you were at the gallery yourself in the 2022 year,
2 were you not?

3 A. Yes.

4 Q. Was it your impression it was a good year?

5 A. It was a fine year.

6 Q. And that was also the year in which -- well, cruise
7 ships had resumed that year; is that correct?

8 A. Correct. Correct.

9 Q. Now, if I recall correctly and looking at the motion to
10 intervene that you filed, you expressed concern about
11 cruise ship visits resulting in the reduction of
12 property values?

13 MR. PAPAZIAN: Objection. Relevance. That is not
14 how the judge decided his intervention status.

15 MR. WOODCOCK: I'm -- let me ask you this,
16 Mr. Sidman.

17 BY MR. WOODCOCK:

18 Q. You reviewed your motion to intervene before it was
19 filed, did you not?

20 A. Yes.

21 Q. And there are factual representations made in the motion
22 that are coming from you; correct?

23 A. You might direct me to one.

24 Q. Sure. I did at the outset but I'll do it again.

25 The -- I'll take you to Page 6 of the motion. In

1 that last paragraph that I read into the record, it
2 starts, Additionally, Mr. Sidman faces; do you see that?

3 A. Yes.

4 Q. It says, Mr. Sidman faces the potential for decreased
5 property values if the ordinance is not enforced.

6 That's a representation that's coming from you; is
7 that correct?

8 A. Yes, but I would say that's not a factual
9 representation.

10 Q. So --

11 A. It is an opinion, a position.

12 Q. And it is an apprehension?

13 A. Correct.

14 Q. But not something that has actually happened?

15 A. Correct.

16 Q. So just so we're clear on that, you're not contending
17 that at this point the properties that you own have
18 suffered a diminution of value because of cruise ship
19 visits?

20 MR. PAPAZIAN: Objection. Speculation. You can
21 answer.

22 THE WITNESS: The tax valuations have not
23 decreased, to my knowledge. They only go up.

24 BY MR. WOODCOCK:

25 Q. Is that consistent with your understanding of the value

1 of your property, that it is actually going up?

2 A. That's the only data point I have.

3 Q. Now, Mr. Sidman, in a number of the materials that were
4 submitted -- and we can get into the details if you
5 wish -- you expressed concern about the role of Ocean
6 Properties in the community of Bar Harbor; correct?

7 A. I have many times, yes.

8 Q. And at various points you have suggested that Eben
9 Salvatore, that his service on the cruise ship
10 committee, is a conflict; is that correct?

11 A. It is my belief, yes.

12 Q. So what I'd like to understand from you is, what is
13 your -- what is it that makes his participation on the
14 cruise ship committee, for example, a conflict?

15 A. In my opinion, he works for the party with the greatest
16 financial benefit of certain Town policies; therefore,
17 he should not be setting the Town policies.

18 The fiction is that the cruise ship committee is
19 advisory only, that the Town council makes the decision.
20 The reality, as I perceive it, is the Town accepts, if
21 not partially directing, but it defers to the cruise
22 ship committee for the governing decisions about how the
23 town relates to the industry.

24 Q. Do you dispute that the Town council has the authority
25 to overrule any recommendation coming out of the cruise

1 ship committee?

2 A. I do not dispute that.

3 Q. I'll turn to what has been marked as 91.

4 (Deposition Exhibit No. 91, July 20, 2022 Email to
5 council@barharbormaine.gov, et al from Charles Sidman,
6 was introduced.)

7 BY MR. WOODCOCK:

8 Q. What I'd like to have you do, Mr. Sidman, this first,
9 this has -- I'm going to show you what's been marked as
10 Exhibit 91, and I just have a couple of questions for
11 you about this.

12 First, can you identify for me what Exhibit 91 is?

13 A. It looks like an email that I wrote to the Town council
14 with copies to different other parties after a public
15 hearing by the Town council on the proposed initiative
16 last July.

17 Q. And what I'd like to do, Mr. Sidman, is direct you in
18 particular to the first bullet point that starts,
19 Quote #2 above; do you see that?

20 A. I see that -- oh, the first bullet point or the number,
21 1?

22 Q. The first bullet point. Do you see that says, Quote #2
23 above?

24 A. Correct.

25 Q. And I'll just read you this sentence. Despite the many

Exhibit A

Browse the site's online database of available paintings which emphasize the scenic beauty of Maine's Coast, Mt. Desert Island and Acadia National Park.

[[Shop online](#) | [About the Gallery](#) | [How to Order](#) | [Contact Us](#)]

Click [HERE](#) to receive Argosy Gallery announcements!

GALLERY NEWS

December 2022: Once again our artists join us in a huge thanks for another splendid season. We are tantalizingly close to last year's record.

On the local news front, next year's show will be called "A Next Generation". It will feature the work of seven of our younger artists, regulars and past guests. The exhibition dates are July 29 and 30, with the reception at the Bar Harbor Inn on Saturday evening, the 29th. As always, we hope you will join us. The show will then continue in the gallery. Special thanks to everyone who attended this year's particularly lively event with ten artists on hand.

Our other news is that, after 27 years, we are leaving the small Main St. space and consolidating at 6 Mt. Desert St. Facing the Village Green, it is more spacious, visible and tranquil. We look forward to many more years of welcoming visitors there.

Our artists always put a high priority on offering our customers their best work. Since late September they've given us approximately 100 new paintings for winter browsing.

September 2022: A huge thank you to everyone for the spectacular opening of the "Acadian Eleven" show. Well over 200 visitors enjoyed the full exhibition at the Bar Harbor Inn, and many of these also spent time at the gallery. Guests came from near and far, from all over the Northeast as well as hometowns in PA, VA, GA and TX.

In turn, nine of the eleven featured artists enjoyed meeting "their" collectors at the lively evening reception. They and we (Charlie and myself) are most grateful for the friendship of these collectors and their strong support during the show and