

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
DEPARTMENT

05-2665

JOHN AUFIERO, NEIL F. COLLINS,)
ROBYN L. DEFRANZO, DANIEL HYDE,)
PATRICK J. IRVING, THOMAS A. LEYNE,)
JOHN MAHONEY, JOSEPH E. MCCAIN,)
WILLIAM MCCARTHY, TIMOTHY MITSAKIS,)
LOUIS M. REMIGIO, SUSAN J. DESOUSA,)
Individually & Next Friend of)
CAMERON A. DESOUSA, JOHN DOE and)
JANE DOE,)
Plaintiffs)

v.)

C.A. No.:

CITY OF SOMERVILLE, JOSEPH CURTATONE, as)
Somerville Mayor, DONALD CALIGURI, as former)
Somerville Police Chief, GEORGE MCLEAN, as)
Former Somerville Police Chief, ROBERT TRAHAN,)
Individually and as Former Head of Department of)
Public Works, ROBERT BRADLEY, as)
Somerville Police Chief, COMMONWEALTH OF)
MASSACHUSETTS, MITT ROMNEY,)
JOAN LANGSAM, as Former City Solicitor,)
PAUL ZIRPOLO, as DPW Project Manager,)
DOROTHY KELLY GAY, as Former Somerville)
Mayor, ROBERT J. PREZIOSO, SIMPSON)
GUMPERTZ & HEGER, INC., ENVIROTECH,)
VITHAL DESHPANDE, as Environmental Protection)
Engineer and ANGELO R. BUONOPANE,)
Defendants)

FILED
IN THE OFFICE OF THE
CLERK OF COURTS
FOR THE COUNTY OF MIDDLESEX
AUG 02 2005
Edward J. Sullivan
CLERK

VERIFIED COMPLAINT AND REQUEST FOR JURY TRIAL

This is a Civil Action brought in the Middlesex Superior Court Division of the Commonwealth of Massachusetts by the Plaintiffs, John Aufiero, Neil F. Collins, Robyn L. DeFranzo, Daniel Hyde, Patrick J. Irving, Thomas A. Leyne, John Mahoney, Joseph E. McCain, William McCarthy, Timothy Mitsakis, Louis M. Remigio, Susan J. DeSousa, Individually and as Next Friend of Cameron A. DeSousa, John Doe and Jane Doe (hereinafter collectively referred to as "Plaintiffs") to recover damages sustained by them as a consequence of the reckless indifference and wanton disregard for their safety by the City of Somerville, Joseph Curtatone, Donald Caliguri, George McLean, Robert Trahan,

Robert Bradley, Commonwealth of Massachusetts, Mitt Romney, Joan Langsam, Paul Zirpolo, Dorothy Kelly Gay, Robert J. Prezioso, Simpson Gumpertz & Heger, Inc., Envirotech, Vithal Deshpande, and Angelo R. Buonopane (hereinafter collectively referred to as "Defendants"). The Defendants deprived the Plaintiffs of substantive rights granted under 42 U.S.C. § 1983, as applied to the Commonwealth of Massachusetts through the Fourteenth Amendment to the United States Constitution, violated the Plaintiffs' Constitutional rights granted by Article 10 of the Massachusetts Declaration of Rights, and further failed to warn the Plaintiffs of a known hazard, provide the Plaintiffs a safe work place, give the Plaintiffs a warning of dangers of which the Plaintiffs might reasonably be expected to remain ignorant, honor contractual obligations with the Plaintiffs, and maintain the Plaintiffs' workplace.

With respect to the Plaintiffs' claims herein, the Defendants have engaged in conduct that shocks the conscience. The Plaintiffs' substantive due process rights, along with rights implicit in the concept of ordered liberty, have been denied at the hands of the Defendants.

I. Introduction

- A. The Plaintiffs' claims arise through their employment with the Somerville Police Department and/or their association with the building located at 220 Washington Street, Somerville, Massachusetts (hereinafter "220 Washington Street") as identified by context herein. The severity of this matter extends well beyond the Plaintiffs named herein. Since 1986, more than one hundred Police and Fire Department employees, 911 dispatchers, and other administrative personnel and their children have occupied 220 Washington Street. Many have developed symptoms associated with long-term exposure to environmental toxins. The present litigants herein represent a small percentage of the potential number of people effected by this sick building. Numerous individuals who are present and past occupants of 220 Washington Street are communicating their serious health issues which are currently being evaluated.
- B. The ensuing claim arose from moderate to severe health problems suffered by the occupants of 220 Washington Street and Plaintiffs named within this Complaint. The toxic environment within 220 Washington Street includes, but is not limited to chronic dampness, water intrusion, questionable structural integrity, existence of bird feces, elevated levels of carbon dioxide, inadequate or inoperative ventilation systems, and the presence of dangerous molds, bacteria, fungi and sulfur trioxide.
- C. Health problems now attributed to the Plaintiffs' association with 220 Washington Street include the development of pulmonary diseases and asthma, flu-like symptoms, allergy symptoms, acquired leukemia, and the diagnosis of sarcoidosis, a rare disease associated with damp buildings diagnosed in three police officers.

- D. 220 Washington Street is a building which was built in 1927 and has housed the Somerville Police Department since 1986. The Somerville Fire Department also was housed in the building from 1986 through 1999 when it was forced to evacuate the building due to flooding. 220 Washington Street has a long history of state sanitary code violations.
- E. Despite repeated notices, complaints, and reports regarding the unsanitary conditions within 220 Washington Street, those in charge of maintaining the structure of 220 Washington Street as well as determining the location and placement of the Somerville Police Department, including the named Defendants herein, Joseph Curtatone, Donald Caliguri, George McLean, Robert Bradley, Robert Trahan, Joan Langsam, Paul Zirpolo, and Dorothy Kelly Gay, improperly handled or failed to remediate the hazardous environment within the building. The deliberate indifference of city officials and their failure to warn of the hazards, evacuate personnel from the contaminated building and failure to remediate said conditions within 220 Washington Street has caused the occupants of 220 Washington Street, including the named Plaintiffs herein, to be deprived of their civil rights and suffer damages related to their exposure to the environment within 220 Washington Street.
- F. Numerous and continuous complaints regarding the unsafe and unhealthy environment within 220 Washington Street were made to the Massachusetts Department of Occupational Safety who then began an investigation. As part of the investigation an engineering firm named Simpson, Gumpertz & Heger, Inc. was retained to investigate and evaluate the condition of the environment within 220 Washington Street. Although the investigation uncovered the presence of many dangerous toxins as well as raise questions regarding the structural integrity of the building, neither Simpson, Gumpertz & Heger, Inc., nor the Department of Occupational Safety recommended evacuation of the building. The only action that was taken was to instruct, via correspondence, that certain remedies take effect by November 30, 2004.
- G. Defendant Envirotech was retained to conduct a remediation of 220 Washington Street. Although Envirotech may have represented that some service was performed, the problems sited by Simpson, Gumpertz & Heger, Inc. and the Department of Occupational Safety remained at 220 Washington Street. No remedial action took place. In April, 2005, the current mayor, Joseph Curtatone, informed the Department of Occupational Safety that due to financial reasons no further work was to be performed. Mr. Curtatone promised in a letter dated April 19, 2005 that the building would be evacuated by the end of the "fiscal year" which was June 30, 2005. No evacuation has taken place to date.

II. Parties

1. Plaintiff, John Aufiero, is a police officer for the City of Somerville.
2. Plaintiff, Neil F. Collins, is a police officer for the City of Somerville.
3. Plaintiff, Robyn L. DeFranzo, is a dispatcher with the Somerville Police Department.
4. Plaintiff, Daniel Hyde, is a police officer for the City of Somerville.
5. Plaintiff, Patrick J. Irving, is a police officer for the City of Somerville.
6. Plaintiff, Thomas A. Leyne, is a police officer for the City of Somerville.
7. Plaintiff, John Mahoney, is a police officer for the City of Somerville.
8. Plaintiff, Joseph E. McCain, is a police officer for the City of Somerville.
9. Plaintiff, William McCarthy, is a police officer for the City of Somerville.
10. Plaintiff, Timothy Mitsakis, is a police officer for the City of Somerville.
11. Plaintiff, Louis M. Remigio, is a police officer for the City of Somerville.
12. Plaintiff, Susan J. DeSousa, is a dispatcher with the Somerville Police Department and parent and next friend of Plaintiff Cameron A. DeSousa, a minor.
13. Plaintiff, Cameron A. DeSousa, is a minor and child of Plaintiff Susan J. DeSousa.
14. Plaintiff, John Doe, as an occupant of 220 Washington Street, Somerville, Massachusetts.
15. Plaintiff, Jane Doe, as an occupant of 220 Washington Street, Somerville, Massachusetts.
16. Defendant, Joseph Curtatone, is the Mayor of the City of Somerville.
17. Defendant, Donald Caliguri, is the former Chief of Police for the Somerville Police Department.
18. Defendant, George McLean, is the former Chief of Police for the Somerville Police Department.

19. Defendant, Robert Bradley, is the current Chief of Police for the Somerville Police Department.
20. Defendant, Bob Trahan, was at times relevant to this Complaint, the former head of the Department of Public Works in the City of Somerville.
21. Defendant, Mitt Romney is the Governor of the Commonwealth of Massachusetts.
22. Defendant, Joan Langsam, was, at times relevant to this Complaint, the City Solicitor for the City of Somerville.
23. Defendant, Paul Zirpolo, was, at times relevant to this Complaint, a City of Somerville-Department of Public Works project manager.
24. Defendant, Dorothy Kelly Gay, was, at times relevant to this Complaint, the Mayor of the City of Somerville.
25. Defendant, Robert J. Prezioso, was, at times relevant to this Complaint, the Commissioner of the Division of Occupational Safety in the Commonwealth of Massachusetts.
26. Defendant, Simpson, Gumpertz & Heger, Inc. is an engineering firm responsible for the investigation and evaluation of 220 Washington Street, Somerville, MA in 1998-1999.
27. Defendant, Envirotech is a Massachusetts company located at 10 Spring Street, Stoneham, MA, that provided remediation services at 220 Washington Street, Somerville, MA.
28. Defendant, Vithal Deshpande was at times relevant to this Complaint, the Environmental Protection Engineer for the City of Somerville, MA.
29. Defendant Angelo R. Buonopane, was at times relevant to this Complaint, the Director of the Department of Labor within the Commonwealth of Massachusetts.

III. Demand for Trial by Jury

30. The Plaintiffs demand a TRIAL BY JURY upon each and every count of this Complaint and all triable issues in this Civil Action and hereby give Notice of their Claim for a Trial by Jury. Plaintiffs further request interest, costs and attorney's fees pursuant to 42 U.S.C. §1983, Article 10 of the Massachusetts Declaration of Rights, and the Americans with Disabilities Act.

IV. Jurisdiction and Venue

31. This claim is brought in Superior Court as a result of direct violations of the laws of the Commonwealth of Massachusetts and the United States by the Defendants, including, 42 U.S.C. § 1983, deprivation of rights granted by the United States Constitution, Amendment 14 and Article 10 of the Massachusetts Declaration of Rights and violation of the Americans with Disabilities Act. The locus of the building in which all Plaintiffs have occupied is in Somerville, Massachusetts. All Defendants are residents in Massachusetts or employees of Massachusetts entities.
32. The Plaintiffs' causes of action against all Defendants arise from the relationship between those in control of the building located at 220 Washington Street, Somerville, MA, the placement of the Somerville Police and Fire Departments within 220 Washington Street, and the resultant deception by public officials causing the occupants to suffer damages. The named Defendants are responsible, through reckless indifference, acts, or omissions while acting under the color of law.

V. Background Facts

33. The building located at the street address of 220 Washington Street, Somerville, Massachusetts was originally built in 1927 and used as an MBTA 'car barn'. It has been well known throughout both the Somerville Police and Fire Departments that for years prior to 1986 batteries were split and drained within the building. One such area of concern is Room 107, otherwise known as the "Battery Room". Such action has left unknown amounts of hazardous toxins within the building and surrounding grounds.
34. In 1986 both the Somerville Police and Fire Departments moved into the building. Employees immediately began to complain to their supervisors and city government officials about the indoor air quality at 220 Washington Street. Between 1986 and 1990, many occupants of 220 Washington Street suffered from a scabies outbreak, a microscopic parasitic mite, leading to extended sick-time leave for those infected occupants.
35. Major floods occurred in 1996 and 1999 at 220 Washington Street causing the Somerville Fire Department (located in the basement) to evacuate the building in 1996 and move into a trailer in the parking lot behind 220 Washington Street where they remain to this date.
36. Despite ongoing issues at 220 Washington Street regarding structural integrity, water intrusion, and complaints about the indoor air quality inside of

220 Washington Street, the Somerville Police Department continues to be housed primarily on the first and second floors of 220 Washington Street.

37. Certain police officers, while on patrol in the City of Somerville, have refused to arrest and detain individuals in the holding cells at 220 Washington Street for infractions of the law (which would otherwise prompt an arrest) because when the outside temperature exceeds 85 degrees it is their belief that the such a detention would be inhumane when those detainees are held in the jail facilities at 220 Washington Street. The temperature inside of the holding area has been measured in excess of 100 degrees. It has become the custom and practice to place detainees in the State Police facility at Wellington Circle instead of the 220 Washington Street location.
38. On July 20, 2005, the temperature was measured at 101 degrees/Fahrenheit in the cell block area of 220 Washington Street. There is no ventilation or cooling system in the cell block/booking area of 220 Washington Street. Detainees are held behind plexi-glass and not able to be cooled down through the use of fans. In the past, detainees have had to be removed from their cells and showered in order to cool down their body temperatures. On several occasions paramedics have been called to provide medical assistance to detainees.
39. Employees of both the Somerville Police and Fire Departments have complained of and been diagnosed with adverse health affects related to their exposure to the poor indoor air quality including, but not limited to, reactive airway disease, chronic fatigue, severe headaches, upper respiratory illnesses, bronchitis, asthma, bird-flu disease, Acquired Leukemia, Legionnaires Pneumonia, lung cancer, and sarcoidosis.

VI. Counts of the Complaint

COUNT I

(Injunctive Relief for all Plaintiffs)

40. Plaintiffs repeat and re-allege each statement in paragraphs one (1) through thirty-nine (39) above, as fully as if expressly rewritten herein.
41. During the period of time beginning in 1986 through the present time, many individuals including visitors, arrestees, police officers, administration staff, dispatchers, fire department personnel, and other occupants of 220 Washington Street have made complaints about the poor air quality within the building. Occupants of 220 Washington Street have also made many complaints about the infestation of insects and rodents throughout the building. There is a history of several suspected toxins being dumped on-site including but not limited to sulfuric acid, sulfuric acid-lead salt, and sulfur

trioxide, as well as, waste oil and diesel fuel. The MBTA, the previous owner of the property, once housed its maintenance operation at the location. In order to dispose of old batteries, the fluid had to be removed before the battery could be thrown away. The procedure was to split the battery in two and let the contents drain into the ground. Said chemicals are considered to be hazardous and present a danger to the occupants of 220 Washington Street (See 105 C.M.R. 110, 670 as promulgated pursuant to M.G.L. c. 111F §2). Whenever 220 Washington Street floods, as it recently did in July 2005, these toxins are disturbed and the smell similar to rotten eggs is very conspicuous. The site has been visited on multiple occasions by the Department of Environmental Protection since 1999.

42. In 1996, there occurred an intrusion of water into 220 Washington Street as great or greater than any other previous flood. The Somerville Fire Department, previously stationed in the lower floor of 220 Washington Street, had to evacuate and move their offices into the back of trailers located behind 220 Washington Street, where they continue to remain today.
43. In or about August 1998, Simpson, Gumpertz & Heger, Inc., an engineering firm, was hired to evaluate the deterioration of 220 Washington Street. Testing of the molds found within 220 Washington Street was performed by PathCon Laboratories. The results of the testing showed elevated levels of toxic mold including, but not limited to Stachybotrys, Aspergillus, bacteria that included the presence of Staphylococcus, and fungi that included the presence of Stachybotrys chartarum, and Chaetomium.
44. No remedial measures were taken to address the toxic mold, bacteria, and/or fungi within 220 Washington Street despite various positive reports and test results. If any remediation was attempted, it was ultimately unsuccessful.
45. The refusal, indifference, and reckless conduct of City and State officials has created an experiment on the unknowing occupants of 220 Washington Street that provides the opportunity to observe the long-term exposure effects on the health of more than forty individuals to various toxins.
46. Due to the failure to remediate 220 Washington Street, the occupants have continued to suffer adverse health affects including, but not limited to respiratory difficulties, asthma, upper respiratory disease, wheezing, headaches, bird-flu disease, and sarcoidosis.
47. The influx of complaints led to a surprise inspection by the Massachusetts Department of Occupational Safety ("DOS") on September 14th and 21st 2004. After the inspection, a report dated October 21, 2004 indicates that the DOS ordered the City of Somerville to replace the roof, evaluate the deterioration of structural steel, rebar, and brick walls, and correct the severe water intrusion problems at 220 Washington Street by November 30, 2004 through.

48. The DOS report dated October 21, 2004 consisted of a 31-page detailed accounting and was addressed to the George McLean, Chief of the Somerville Police. The report also included a section entitled "Recommendations and Corrective Action Needed" of which several areas were highlighted in bold to indicate "Serious concerns" and were given a correction due date of November 30, 2004. Those areas labeled as "Serious concerns" include: a.) Structural Integrity of the Building; b.) prevent water from entering the building through brick walls; c.) replace and/or temporarily repair the roofing material until the roof can be replaced, to prevent water from entering the facility through the roof; d.) prevent water from entering the building through windows and doorways/sliders; e.) once repairs are made and water infiltration to the building is eliminated, replace any water damaged materials; f.) insure that ventilation from the basement area (closed area of fire department) does not circulate to other areas of the building; g.) remove all "filtration media" from supplies and exhausts throughout the building; h.) replace carpeting where it has been water damaged and where it presents a trip hazard. Clean carpeting that is highly soiled; i.) clean Detail Office and seal up wall openings to insure that exhaust from basement garage does not enter the office; j.) restore all exhaust ventilation systems to working order in the building. Increase ventilation in areas where insufficient or not working. (Attached Exhibit "A")
49. On April 19, 2005, in response to the DOS report attached hereto, Somerville Mayor Joseph Curtatone sent a letter to DOS wherein he indicated that the City of Somerville preferred not to spend its limited financial resources on addressing corrective actions. Mayor Curtatone also assured DOS that all personnel would be evacuated as soon as possible. The target date for evacuating all individuals from 220 Washington Street was set for June 30, 2005. That date has come and gone with no action by the City to move people out of the building or enforcement of the Commonwealth of Massachusetts to enforce evacuation.
50. To date, there has been no formal remediation and the occupants remain inside of 220 Washington Street continuing their exposure(s) and furthering the adverse affects to their health.
51. No individual, including the Plaintiffs herein, should be subjected to having to endure the unsanitary and unsafe conditions found within 220 Washington Street and should be removed from the premises until they can be assured that no further risk of injury or damage shall occur at 220 Washington Street.
52. Should the Plaintiffs be required to remain in 220 Washington Street, the Plaintiffs, as well as other unnamed individual occupants, will continue to suffer irreparable harm to their health, safety and welfare.

53. Plaintiffs were never made aware of their exposure to the cornucopia of toxins in the police headquarters located at 220 Washington Street until the fall of 2004 when several employees discovered that they were not alone in manifesting symptoms or diagnosed with similar ailments. This discovery was made after discussions took place among employees following the inspections by the Department of Safety in September 2004. Police officers, administrative personnel, and 911 dispatchers soon learned that asthma and other respiratory ailments were a common theme among the forty-plus persons working in the building. The diagnosis of sarcoidosis in three individuals to date is an anomaly. Evidence also suggests that former employees working at the location also suffered various illnesses including cancer.
54. Plaintiffs working at 220 Washington Street must choose between suffering bodily injury or terminating their employment with the City of Somerville.
55. Plaintiffs have a high probability of success on the merits as the Defendants have documented (through hired consultants' reports, DEP reports, newspaper accounts, and the medical histories provided by Plaintiffs and/or other occupants) that toxic mold, bacteria and fungi are present within 220 Washington Street and that the occupants were to be evacuated by June 30, 2005 due to the unhealthy and unsafe environment inside of 220 Washington Street. All of the Plaintiffs are seeking medical treatment through their respective physicians. Further, Plaintiffs recognize that if they refuse to work at the 220 Washington Street location, the City of Somerville would be without police protection.
56. The Plaintiffs propose a transfer of their offices and department to the Powder Hill School, or in the alternative, trailers as the City of Somerville has provided for the Somerville Fire Department. Individuals who are arrested and detained can be housed at the State Police facility at Wellington Circle. Police officers, 911 dispatchers and administrative personnel will work with all officials in the City of Somerville to continue to preserve the safety of the residents of the City of Somerville and the Commonwealth of Massachusetts during the transition.

Wherefore, with respect to Count I, Plaintiffs requests as follows:

- A. Immediate injunctive relief in the form of evacuation of 220 Washington Street by all individuals currently within 220 Washington Street.
- B. Plaintiffs propose the immediate relocation of all operations including dispatching, communications, police administration, and operations of the Somerville Police Department to the Powder Hill School, a building owned by the City of Somerville and currently not in use. Further, anyone arrested and detained should be held at the State Police facility at Wellington Circle in Medford.

- C. Plaintiffs propose that the City of Somerville and Commonwealth of Massachusetts pay for complete and conclusive testing of the building located at 220 Washington Street, including all floors, rooms (including Room #107-known as the "Battery Room"), storage space, and the surrounding grounds to determine the amount, extent, and types of hazardous chemicals and toxins to which the occupants of 220 Washington Street have been/may have been exposed.
- D. Said test and examination results should be distributed to all current occupants of 220 Washington Street, former occupants of 220 Washington Street, and the families/heirs of individuals who once occupied 220 Washington Street, but are now deceased, so as to provide all persons the information required for present or future diagnosis as required.
- E. Entry of an injunction prohibiting any named Defendant or other individual/entity from forcing any individual or Plaintiff to enter 220 Washington Street until such time as the entire building is determined to be safe, structurally sound, and successfully remediated by a professional remediation company following IICRC 520 guidelines and certified for mold remediation by an independent engineering company to verify the absence of toxic mold, bacteria, fungi, and water intrusion.

COUNT II

(Aufiero, et al. v. City of Somerville, et al.- In Violation of 42 U.S.C. §1983-Substantive Due Process Rights)

- 57. Plaintiffs repeat and re-allege each statement in paragraphs one (1) through fifty-six (56) above, as fully as if expressly rewritten herein.
- 58. The Defendants, City of Somerville, Joseph Curtatone, as the mayor of Somerville, Donald Caliguri, as former Somerville Police Chief, George McLean, as former Somerville Police Chief, Robert Bradley, as Somerville Police Chief, Robert Trahan, Individually and as former Head of the Department of Public Works, Joan Langsam, as former City Solicitor, Paul Zirpolo, as DPW Project Manager, Vithal Deshpande, as Environmental Protection Engineer, and Dorothy Kelly Gay as former Somerville Mayor were aware from approximately 1986 through and including the present date of the unsanitary and potentially dangerous conditions found within 220 Washington Street.
- 59. The Defendants failed to take any action to ensure the health and safety of the occupants of 220 Washington Street despite possessing constructive and actual knowledge as provided through complaints of the occupants of the building, professional environmental testing conducted by PathCon Laboratories, Inc., by and through Simpson Gumpartz & Heger, Inc., and the Division of Occupational Safety.

