

Michael Elbery

v

Attorney Robert Sheketoff)
)
Attorney Kimberly Homan)
)
The law firm & partnership of)
Sheketoff and Homan)
)

COMPLAINT - Amended

The plaintiff, Michael Elbery, complaining of the defendants respectfully alleges:

Introduction

This is a complaint against the plaintiff's former defense attorney, Robert Sheketoff, and his law firm - partnership , Sheketoff and Homan for violations of the plaintiff's constitutional rights in conspiracy with the Shrewsbury Police and Worcester District Attorney's Office. In addition the defendants are liable to the plaintiff for legal malpractice.

Jurisdiction

This action is brought pursuant to 42 U.S.C. s. 1983 and the Sixth, Fourth, and Fourteenth Amendments of the U.S. Constitution. Jurisdiction is founded on 28 U.S.C. s.1331 and s. 1343 and the aforementioned constitutional and statutory provisions. The plaintiff

further invokes the pendant jurisdiction of this Court to hear and decide claims arising out of state law sounding in tort.

Parties

2. The plaintiff is Michael Elbery , born in the United States of America, who resides at 168 Fairfiesd St., Needham, Mass.

3. The defendants are Robert Sheketoff and Kimberly Homan and their law partnership. They are members of the Massachusetts Bar and are licensed to practice law in Massachusetts.

4. The defendants were acting under the color of law relating to the claims in this action as they conspired or alternatively acted in concert or jointly with the Shrewsbury Police and Worcester D.A.'s Office to deprive the plaintiff of his constitutional rights and otherwise betrayed the plaintiff by double - crossing him in violation of state tort and the U.S. Constitution.

Statement of Facts

5. Robert Sheketoff was hired by the plaintiff on 8-5-94 to represent him regarding 6 firearms charges made by the Shrewsbury Police against the plaintiff on 8-5-94 as a result of an illegal search and seizure made of the plaintiff's storage unit at E-Z Mini- Storage in Shrewsbury , Mass. This entire arrest/search/ seizure incident was triggered by a mysterious fire at the E-Z Mini Storage Complex on 8-4/5-94.

6. The firearms charges against the plaintiff in item 5 were five counts of illegal possession under M.G.L. C. 269 s. 10h and one count of illegally carrying a handgun under M.G.L. C. 269 s. 10a.

7. The plaintiff had a valid F.I.D. card on 8-5-94 when he was falsely arrested, as was confirmed by the Shrewsbury Chief of Police , see exhibit A, attached.

8. The Shrewsbury Police sought to and did falsely arrest, falsely imprison and maliciously prosecute the plaintiff in violation of the plaintiff's constitutional rights, see

civil action #97-11743 filed in U.S.D.C.- Mass., regarding the complaint against the Shrewsbury Police and description of the related incident.

9. Attorney Robert Sheketoff knowing that the plaintiff was, as a matter of law, not guilty of the charges in item 5 and 6 conspired or otherwise acted jointly or in concert with the Shrewsbury Police and Worcester D.A.'s Office to imprison and convict the plaintiff, by advising the plaintiff to plead guilty to all charges and go to jail.

10. Attorney Robert Sheketoff refused to present exculpatory evidence in behalf of the plaintiff. Sheketoff was ordered, while the plaintiff was imprisoned, to inform the Court that he had an F.I.D. card and to present the F.I.D. card to the courts. Sheketoff would not and did nothing for this plaintiff.

11. Attorney Robert Sheketoff allowed the Shrewsbury Police and Worcester D.A.'s Office to perjure themselves and suborn perjury at the search warrant suppression hearing of the gun arrest. Instead, Sheketoff covered-up exculpatory evidence at the suppression hearing.

12. The plaintiff fired Attorney Sheketoff and his law firm in March of 1995 while the plaintiff was in prison.

13. The plaintiff, upon hiring a new attorney, was offered by the Worcester D.A.'s Office an invitation to allow them to dismiss all charges against the plaintiff via the 8-5-94 gun charges. The plaintiff declined.

14. The plaintiff was tried before Worcester District Judge Eliot Zide on 4-5-95 and found not guilty on all charges.

15. No representative of the Worcester District Attorney's Office or any of the 8 arresting Shrewsbury cops chose to be present or associate themselves with the prosecution trial of this gun arrest. Unbelievably there was not one word of prosecution.

15a. Shekefoff and the defendants failed to investigate exculpatory evidence for this plaintiff.

Count I

Conspiracy to - Maliciously Prosecute, Falsely Imprison, Continue to Falsely Imprison - In Violation of the 4th and 14th Amendments of the U.S. Constitution under 42 U.S.C. s. 1983.

16. . The plaintiff incorporates paragraphs 1-15 of this complaint as though fully set forth herein .

17. Attorney Robert Sheketoff in conspiracy with the Worcester D.A.'s Office and the Shrewsbury Police acted to defeat the plaintiff in regards to the gun charges of 8-5-94.

18. Attorney Robert Sheketoff did not present even a minimal amount of obvious evidence for the plaintiff in defending against these gun charges of 8-5-94, instead Sheketoff agreed with and aided in railroading the plaintiff in conspiracy with the Shrewsbury Police and Worcester D.A.'s Office insisting that the plaintiff was guilty and advised the plaintiff to plead guilty and go to jail.

19. Knowing the plaintiff was , as a matter of law , not guilty of said gun charges, and as a result of items 16-18 above, Robert Sheketoff and all defendants did conspire with the Shrewsbury Police and Worcester D.A.'s Office to maliciously prosecute, false imprisonment, continue false imprisonment and malicious prosecution of the plaintiff in violation of Mass. tort law.

20. As per items 16-19 above, Robert Sheketoff and all defendants are liable for conspiring to violate and for violating the plaintiff's rights of the 4th and 14th Amendment of the U.S. Constitution, illegal seizure of a person and Liberty Interest in Due Process this all under 42 U.S.C. s.1983.

20a. In the alternative the defendants acted, as in Count 1, in concert or alternatively jointly with the Shrewsbury Police and Worcester D.A.'s Office. In the alternative the defendants aided and abetted the S.P.D. & Worcester D.A.'s Office as in this Count I.

Count II

Conspiracy to Cover-up illegal Search and Seizure in Violation of the 4th Amendment and Due Process of the 14th Amendment of the U.S. Constitution all under 42 U.S.C. s. 1983.

21. The plaintiff incorporates paragraphs 1-20a of this complaint as though fully set forth herein.

22. Attorney Robert Sheketoff and all defendants conspired with the Shrewsbury Police and Worcester D.A.'s Office to cover-up illegal search and seizure of the plaintiff's

storage unit at E-Z Mini-Storage on 8-5-94 resulting in the plaintiff's illegal arrest. This in violation of the 4th Amendment - illegal search and seizure and 14th Amendment- Substantive Due Process, by which they impeded the plaintiff's use of the Courts, as well as, Procedural Due Process. All being Constitutional violations under 42 U.S.C. s. 1983: 22a. In the alternative the defendants acted in concert or alternatively acted jointly as complained of in Count II. In the alternative the defendants aided and abetted the S.P.D and Worcester D.A.'s Office as itemized in Count II.

Count III

Conspiracy to and Deprivation of Counsel in Violation of the 6th Amendment of the U.S. 6th Amendment of the U.S. Constitution under 42 U.S.C. s. 1983.

23. The plaintiff incorporates all paragraphs of this complaint as though fully set forth herein.

24. The defendants conspired with the Shrewsbury Police and Worcester D.A.'s Office to deprive the plaintiff of counsel and did deprive the plaintiff of his 6th Amendment right to counsel as guaranteed by the U. S. Constitution all under 42 U.S.C. s. 1983.

Count IV

Conspiracy to Cover-up Violations of the Plaintiff's Constitutional Rights under 42 U.S.C. s. 1983.

25. The plaintiff incorporates items 1-24 of this complaint as though fully set forth herein.

26. Attorney Robert Sheketoff and all defendants conspired to cover-up the constitutional violations itemized in this complaint, this being a further violation of the defendant's constitutional right of the 14th Amendment of Substantive Due Process, impeding the plaintiff's use of the Courts, all under 42 U.S.C. s. 1983.

27. In the alternative , the defendants acted in concert or alternatively acted jointly as complained of in Count IV. In the alternative the defendants aided and abetted the S.P.D. & Worcester D.A.'s Office as itemized in this Count IV.

Count V

Legal Malpractice - Massachusetts Tort Law

28. The plaintiff incorporates paragraphs 1-27 as though fully set forth herein.

29. Attorney Robert Sheketoff and all defendants are liable to the plaintiff for legal malpractice under Massachusetts tort law.

29a. As a result of intentional wrongful acts.

29b. In the alternative as a result of negligence.

Count VI

Intentional Infliction of Emotional Distress - Massachusetts Tort Law

30. As a direct result of the defendants' acts as itemized in this complaint the defendants caused the plaintiff to suffer severe emotional distress, extreme pain and suffering, and mental anguish and embarrassment of such severity and nature that no reasonable person could or should be expected to endure and the above defendants knew or should have known that their extreme and outrageous conduct would cause such suffering.

Count VII

Violation of Substantive Due Process of the 14th Amendment of the U.S. Constitution - Impeding the plaintiff's use of the Courts - Conduct which is Outrageous and

Shocks the Conscience

All Under 42 U.S.C. s. 1983

31. Attorney Robert Sheketoff's actions , and all defendants actions , as itemized in this complaint is a further violation of the 14th Amendment of the U.S. Constitution of Substantive Due Process as Sheketoff impeded the plaintiff's use of the Courts and his actions as in this complaint are outrageous and shock the conscience. This all under 42 U.S.C. s. 1983.

Count VIII

Fraud and Deceit

32. Sheketoff made material misrepresentations, to this plaintiff, known to be false when made or made with reckless disregard of its truth with the intention that the plaintiff should act upon the misrepresentations and on which the plaintiff relied to his injury.

Count IX

Breach of Contract, Fiduciary Breach, Constructive Fraud

33. The plaintiff incorporates paragraphs 1-32 as though fully set forth herein.

34. Sheketoff's conduct as itemized in this complaint and his conduct via representation of the plaintiff constitutes breach of contract, fiduciary breach, and constructive fraud.

Count X

Damages

35. As a result of the defendants' tort and Constitutional violations enumerated in this complaint the plaintiff was injured in each and every count of this complaint and the plaintiff seeks damages for each and every count in this complaint for severe emotional distress and mental anguish, continued severe emotional distress and mental anguish, embarrassment and humiliation, injury to character and reputation, outrage, indignity, humiliation, personal insult, loss of ability to earn a living, future loss of ability to earn a living, interruption of business, loss of time, inability to plan for the future, loss of society with his wife resulting in divorce, divorce, loss of freedom, incarceration, injury sustained while in prison, unfit conditions of confinement, insufficient and improper food during imprisonment, discomfort, pain and suffering. The plaintiff also seeks punitive damages for constitutional violations.

WHEREFORE,

the plaintiff demands judgement against the defendants jointly and severally:

Compensatory Damages	\$5,000,000
Punitive Damages	5,000,000
Legal Fees and Expenses paid to the defendants and related legal expenses	\$4,500 2,000
Costs of this action	3,000
Interest and other relief as this Court deems just, proper and equitable	

THE PLAINTIFF , MICHAEL ELBERY, DEMANDS A JURY TRIAL ON ALL ISSUES.



Michael Elbery, pro se
168 Fairfield St.
Needham, Mass. 02192
617-444-7324
1-13-98



Robert K. McGinley
CHIEF OF POLICE

TOWN OF SHREWSBURY

DEPARTMENT OF POLICE

106 Maple Avenue
Shrewsbury, Massachusetts 01545-2849

LUDWIG



Tel: (508) 845-4681
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March 20, 1995

District Attorney's Office
Worcester County Courthouse
Worcester, MA 01608

Attn: Glenn A. Ludwig
Assistant District Attorney

Dear Mr. Ludwig:

Re: Commonwealth v. Michael Elbery
9462 JC 3067

In reply to your letter of March 13, 1995, concerning the above case, please be advised that our records indicate that Michael G. Elbery, D.O.B. 2-8-52, had a valid Firearms Identification Card #8545159 on August 4, 1994.

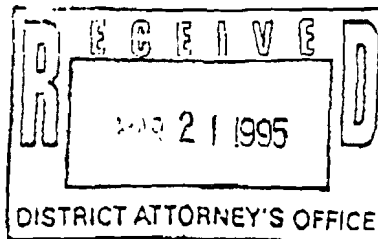
However, I have revoked this Firearms Identification Card effective today, March 20, 1995.

Yours very truly,

Robert K. McGinley

Robert K. McGinley
Chief of Police

RKM:ck



Certificate of Service

I the plaintiff , Michael Elbery, sent this Motion to Amend and related Amended Complaint to the Federal clerk on 9-15-98 via U.S. mail at 1 Courthouse Way, Boston , Mass. 02210, and to the defendant's attorney - Doniger at 101 Merrimac St. , Boston , Mass.

Mike