

**Commonwealth of Massachusetts  
MIDDLESEX SUPERIOR COURT  
Case Summary  
Civil Docket**

**Twenty Wayland, LLC v Wayland et al**

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Details for Docket: MICV2011-04095

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**Full Docket Entries**

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203 Docket Entries for Docket: MICV2011-04095

<b>Entry Date:</b>	<b>Paper No:</b>	<b>Docket Entry:</b>
11/16/2011	1	Complaint & civil action cover sheet filed
11/16/2011		Origin 1, Type E03, Track A.
11/16/2011	2	Plaintiff's Motion To Appoint Think, Inc., As Special Process Server
11/16/2011	2	Motion Allowed. (Curran, J.)
11/25/2011	3	SERVICE RETURNED: Town Of Wayland(Defendant), 11/17/2011, in hand on
11/25/2011	3	Maryann DiNapoli on behalf of Town of Wayland.
11/25/2011	4	SERVICE RETURNED: Wayland Wastewater Management District
11/25/2011	4	Commission(Defendant), 11/17/2011, in hand on Maryann Dinapoli.
12/16/2011	5	ANSWER by Town Of Wayland, Wayland Wastewater Management District
12/16/2011	5	Commission to COMPLAINT (claim of trial by jury reqstd)
01/03/2012		Notice of Litigation Control Conference on 2/7/2012, copies mailed
01/03/2012		1/3/2012
02/08/2012		Judge Curran's Notice sent to appear for Final pre-trial conference
02/08/2012		on 6/7/2012
04/11/2012	6	Plaintiff Twenty Wayland, LLC's MOTION for Summary Judgment, pursuant
04/11/2012	6	to Mass.R.Civ.P. 56, on Counts I, II, and III of its complaint;
04/11/2012	6	Memorandum in support; Defendants' memorandum in opposition to
04/11/2012	6	plaintiff's motion for summary judgment; the parties rule 9A
04/11/2012	6	statement of material facts with responses; certificate of compliance
04/11/2012	6	with Rule 9A; joint appendix
04/23/2012	7	Plaintiff Twenty Wayland, LLC's summary judgment reply brief
06/04/2012	8	Joint Pre-trial memorandum

06/18/2012	9	Judge Curran's TRIAL ORDER for trial on 01/14/13 (Dennis J. Curran, Justice)
06/18/2012	9	
09/17/2012	10	MEMORANDUM OF DECISION AND ORDER (Which see 5 pages) For these reasons, Twenty Wayland, LLC's motion for summary judgment is DENIED.
09/17/2012	10	
09/17/2012	10	Finally, each party is granted sixty (60) days to submit a memorandum to the Court on the issue of subject matter jurisdiction over Twenty Wayland, LLC's sewer charge claim. (Dennis J. Curran, Justice).
09/17/2012	10	
09/17/2012	10	Copies mailed 09/17/12
11/15/2012	11	Plaintiff, Twenty Wayland, LLC's Memorandum regarding whether Abatement Procedure is exclusive remedy for Twenty Wayland, LLC's Contract Claim
11/15/2012	11	
11/15/2012	11	
11/19/2012	12	Defendants, Town Of Wayland's MOTION to Dismiss (MRCP 12b) plaintiff's Sewer Charge Claims; Defendants', Memorandum of law in support of their Town Of Wayland's MOTION to Dismiss (MRCP 12b) plaintiff's Sewer Charge Claims;
11/19/2012	12	
11/19/2012	12	
11/19/2012	12	
11/27/2012	13	Plaintiff, Twenty Wayland, LLC's Opposition to defendants' Motion to dismiss Sewer Charge Claims(Re:P#12)
11/27/2012	13	
12/04/2012	14	Defendants' Reply brief in response to plff's opposition to defts' motion to dismiss plff's sewer charge claims for lack of subject matter jurisdiction.
12/04/2012	14	
12/04/2012	14	
12/20/2012	15	Plaintiff Twenty Wayland, LLC's MOTION in limine to preclude Argument that Defendant's Contractual Obligation was excused by Third-Party Conduct; Memorandum in support of; Town of Wayland and the Wayland Wastewater Management District Commission's opposition to Plff's motion.
12/20/2012	15	
12/20/2012	15	
12/20/2012	15	
12/20/2012	15	
12/31/2012	16	Plaintiff Twenty Wayland, LLC's MOTION in limine to Preclude Argument as to Statute of Limitations; Memorandum in support of; Defts' Memorandum of Law in opposition to Plff's motion
12/31/2012	16	
12/31/2012	16	
01/04/2013	22	Plaintiff Twenty Wayland, LLC's Rule 32(a)(2) Motion To Admit Rule 30(b)(6) Testimony Into Evidence; Defendant's Memorandum in opposition to Plaintiff Twenty Wayland, LLC's Rule 32(a)(2) Motion To Admit Rule 30(b)(6) Testimony Into Evidence;
01/04/2013	22	
01/04/2013	22	
01/04/2013	22	
01/07/2013	17	Court received Proposed Agenda for Final Trial Conference
01/07/2013	18	Joint Final Witness list
01/07/2013	19	Court received Agreed Facts
01/07/2013	20	Trial: Proposed Voir Dire questions filed by Twenty Wayland
01/07/2013	21	Twenty Wayland, LLC's Jury instructions
01/08/2013	23	Defendants' Proposed Jury Instructions:
01/08/2013	24	Defendants' Proposed Voir Dire

01/08/2013	25	Defendants Town Of Wayland and Wayland Wastewater Management District
01/08/2013	25	Commission's MOTION in limine to preclude the Plaintiff from offering
01/08/2013	25	Expert opinion Testimony regardign damages OR, In The Alternative, to
01/08/2013	25	Compel Plaintiff to respond completely to Discovery Request Responses
01/08/2013	25	concerning such testimony.
01/08/2013	26	Notice of Twenty Wayland, LLC's Supplemented Joint Pre-trial
01/08/2013	26	Memorandum Sections
01/10/2013	27	TRIAL ASSIGNMENT ORDER At Tuesday's hearing on the defendant's oral
01/10/2013	27	motion for continuance, this matter is scheduled for trail assignment
01/10/2013	27	designation on Thursday, March 14, 2013 at 9 am in Courtroom 510,
01/10/2013	27	Civil Session "F", at the Middlesex Superior Court, 200 TradeCenter,
01/10/2013	27	Woburn, MA 01801. The parties are to be available for trial on such
01/10/2013	27	date and shall telephone Assistant Clerk Martha Fulham Brennan at
01/10/2013	27	781-939-2769 for further information in this regard before such date.
01/10/2013	27	(Dennis J. Curran, Justice) notices mailed 1/10/13
01/10/2013	28	TRIAL ORDER sent for Trial on 6/10/13. (Dennis J. Curran, Justice)
01/10/2013	29	MEMORANDUM OF DECISION AND ORDER (Which see 3 pages) For these
01/10/2013	29	reasons, defendants' motion to dismiss plaintiff's sewer charge claim
01/10/2013	29	is DENIED. (Dennis J. Curran, Justice). Copies mailed 1/10/13
01/14/2013	30	Twenty Wayland, LLC's Proposed Jury instructions
01/14/2013		Motion (P#12) After review, this motion is DENIED. See Memorandum of
01/14/2013		Decision. (Dennis J. Curran, Justice). Notices mailed 1/14/2013
06/03/2013	31	Plaintiff Twenty Wayland, LLC's Proposed Agenda for Final Trial
06/03/2013	31	Conference
06/03/2013	32	Plaintiff Twenty Wayland, LLC's Proposed Voir Dire
06/03/2013	33	Joint Jury Verdict Form
06/07/2013		Motion (P#15) DENIED. For the reasons advanced in the defendant's
06/07/2013		opposition memorandum. (Dennis J. Curran, Justice) Notices mailed
06/07/2013		6/7/2013
06/10/2013		Motion (P#16) RULING: After review, DENIED. As the defendants have
06/10/2013		argued, this issue may, if at all be addressed by a motion for
06/10/2013		directed verdict, but this Court declines to short-circuit the
06/10/2013		presentation of evidence. (Dennis J. Curran, Justice, Dated:
06/10/2013		6/10/2013) Notices mailed 6/10/2013
06/11/2013	34	Jury instructions
06/11/2013	35	Witness list
06/11/2013	36	Verdict of jury for plaintiff, Twenty Wayland, LLC; a.) Carrying
06/11/2013	36	Costs related to the delay in constructing the residential phase of

06/11/2013 36 the Town Center Project including: i.) Real Estate Taxes: \$55,100.00;  
06/11/2013 36 ii.) Interest Charges: \$70,000.00; b.) Increase in Twenty Wayland's  
06/11/2013 36 construction costs to construct the residential phase of the Town  
06/11/2013 36 Center project: \$440,000.00. BREACH OF CONTRACT: CHARGES, 6.)  
06/11/2013 36 CALCULATION OF DAMAGES: \$424,674.00. Signed by Jury Foreperson  
06/11/2013 36 6/11/2013.

06/21/2013 37 Plaintiff Twenty Wayland, LLC's MOTION for Entry of Proposed  
06/21/2013 37 Judgment, Affidavit of Daniel Dain, Esq. and Notice of Filing in  
06/21/2013 37 Compliance with Rule 9A(b)(2)  
06/24/2013 Motion (P#37) After review, this motion is ALLOWED. For the Court,  
06/24/2013 (Dennis J. Curran, Justice, Dated: 6/23/2013) Notices mailed 6/24/2013  
06/24/2013 38 JUDGMENT: Plaintiff Twenty Wayland, owner of the property at 400-440  
06/24/2013 38 Boston Post Road in Wayland, filed a Complaint on November 16, 2011  
06/24/2013 38 against the Town of Wayland and the Wayland Wastewater Management  
06/24/2013 38 District Commission alleging that the defendants had breached a 1999  
06/24/2013 38 contract (called the Memorandum of Agreement) and seeking damages,  
06/24/2013 38 specific performance, and declaratory relief. A Final Pre-Trial  
06/24/2013 38 Conference was held on June 7, 2012, and a Final Trial Conference was  
06/24/2013 38 held on June 4, 2013. A jury was selected on June 7, 2013, and  
06/24/2013 38 evidence was presented to the jury over two days, June 10-11, 2013.  
06/24/2013 38 Associate Justice of the Superior Court Dennis J. Curran presided.  
06/24/2013 38 There were a total of 48 exhibits admitted into evidence and the jury  
06/24/2013 38 heard testimony from witnesses Anthony DeLuca, Frank Dougherty, Kevin  
06/24/2013 38 Brander, Kevin Foley, Fred Knight, and Ian Catlow, as well as from  
06/24/2013 38 the Rule 30(b)(6) deposition testimony of the Town of Wayland through  
06/24/2013 38 its designee Fred Turkington. The jury returned a verdict in favor of  
06/24/2013 38 Twenty Wayland on all issues triable to the jury. Specifically,  
06/24/2013 38 according to the Jury Verdict form, the jury found, by a vote of  
06/24/2013 38 14-0, that: 1. Twenty Wayland had proven by a preponderance of the  
06/24/2013 38 evidence that the defendants breached the 1999 Memorandum of  
06/24/2013 38 Agreement provision that defendants "shall provide 45,000 GPD  
06/24/2013 38 (gallons per day of maximum daily design flow as defined in 310 CMR  
06/24/2013 38 15.000) of sewage treatment capacity." 2. Twenty Wayland had proven  
06/24/2013 38 by a preponderance of the evidence that the defendants breach of this  
06/24/2013 38 provision of the 1999 Memorandum of Agreement has caused Twenty  
06/24/2013 38 Wayland to suffer damages. 3. Twenty Wayland had proven with a  
06/24/2013 38 reasonable degree of certainty that, as a result of the defendants  
06/24/2013 38 breach, Twenty Wayland has been damaged by carrying costs related to  
06/24/2013 38 the delay in constructing the residential phase of the Town Center

06/24/2013 38 project including \$55,100.00 in real estate taxes, \$70,000.00 in  
06/24/2013 38 interest charges (on property mortgage), and \$440,000.00 in the  
06/24/2013 38 increase of Twenty Wayland s construction costs to construct the  
06/24/2013 38 residential phase of the Town Center project. 4.. Twenty Wayland had  
06/24/2013 38 proven by a preponderance of the evidence that defendants breached  
06/24/2013 38 the 1999 Memorandum of Agreement provision for "sewage treatment  
06/24/2013 38 capacity" to be provided "at a pro-rated cost of operation and  
06/24/2013 38 amortized acquisition costs, but excluding all costs in any way  
06/24/2013 38 related to installations made for service to others and services  
06/24/2013 38 provided to others." . 5. Twenty Wayland had proven by a  
06/24/2013 38 preponderance of the evidence that the defendants breach of this  
06/24/2013 38 provision of the 1999 Memorandum of Agreement has caused Twenty  
06/24/2013 38 Wayland to suffer damages. 6. Twenty Wayland has proven with a  
06/24/2013 38 reasonable degree of certainty that, as a result of the defendants  
06/24/2013 38 breach, Twenty Wayland has been damaged in the amount of \$424,674.00.  
06/24/2013 38 There were also two issues heard by the Court. First, was Twenty  
06/24/2013 38 Wayland entitled to specific performance as to the 1999 Memorandum of  
06/24/2013 38 Agreement provision that defendants "shall provide 45,000 GPD  
06/24/2013 38 (gallons per day of maximum daily design flow as defined in 310 CMR  
06/24/2013 38 15.000) of sewage treatment capacity" ? Second, was Twenty Wayland  
06/24/2013 38 entitled to a declaration that going forward, in order to comply with  
06/24/2013 38 the 1999 Memorandum of Agreement provision that any "sewage treatment  
06/24/2013 38 capacity" was to be provided "at a pro-rated cost of operation and  
06/24/2013 38 amortized acquisition costs, but excluding all costs in any way  
06/24/2013 38 related to installations made for service to others and services  
06/24/2013 38 provided to others," the Commission could only take into account  
06/24/2013 38 "sewage treatment capacity" actually available and useable by Twenty  
06/24/2013 38 Wayland, currently 28,000 gallons per day? On these two questions,  
06/24/2013 38 the Court finds that the evidence established, consistent with the  
06/24/2013 38 jury s findings, that defendants have and are breaching both of these  
06/24/2013 38 provisions and therefore the requested relief of specific performance  
06/24/2013 38 and declaratory judgment is merited. Now, accordingly, it is ORDERED,  
06/24/2013 38 DECREED, and ADJUDGED that Final Judgment shall enter in favor of the  
06/24/2013 38 plaintiff Twenty Wayland, LLC, and against the Defendants, jointly  
06/24/2013 38 and severally, as follows: A. Defendants shall pay to Twenty Wayland  
06/24/2013 38 \$989,774 in contractual damages. B. Defendants shall pay to Twenty  
06/24/2013 38 Wayland \$234,298.45 in pre-judgment interest. C. Defendants shall pay  
06/24/2013 38 to Twenty Wayland \$3,413.04 in statutory costs. D. Twenty Wayland is  
06/24/2013 38 entitled to specific performance of the 1999 Memorandum of Agreement

06/24/2013 38 provision that defendants "shall provide 45,000 GPD (gallons per day  
06/24/2013 38 of maximum daily design flow as defined in 310 CMR 15.000) of sewage  
06/24/2013 38 treatment capacity." Defendants are ordered to accept, treat, and  
06/24/2013 38 discharge up to 45,000 gallons per day of wastewater from 400-440  
06/24/2013 38 Boston Post Road. E. Twenty Wayland is entitled to declaratory  
06/24/2013 38 judgment that going forward, in order to comply with the 1999  
06/24/2013 38 Memorandum of Agreement provision that any "sewage treatment  
06/24/2013 38 capacity" is to be provided "at a pro-rated cost of operation and  
06/24/2013 38 amortized acquisition costs, but excluding all costs in any way  
06/24/2013 38 related to installations made for service to others and services  
06/24/2013 38 provided to others," the Commission shall only take into account  
06/24/2013 38 sewage treatment capacity actually available and useable by Twenty  
06/24/2013 38 Wayland, currently 28,000 gallons per day. So ordered. By the Court,  
06/24/2013 38 (Dennis J. Curran, Justice, Dated: 6/23/2013). Entered and Copies  
06/24/2013 38 mailed 6/24/2013  
06/24/2013 39 Defendants Town Of Wayland and Wayland Wastewater Management  
District  
06/24/2013 39 Commission's MOTION to extend time for filing opposition to  
06/24/2013 39 Plaintiff's Motion for Entry of Proposed Judgment  
06/26/2013 Motion (P#39) RULING: Judgment has entered, but the defendants are  
06/26/2013 free to file any materials on why the judgment should be amended.  
06/26/2013 Deadline for doing so shall be August 2, 2013. (Dennis J. Curran,  
06/26/2013 Justice). Notices mailed 6/26/2013  
06/27/2013 Motion (P#39) Further ruling, the time for serving a motion for a new  
06/27/2013 trial is extended to 8/2 and the 30 day appeal period is extended 30  
06/27/2013 days from the ruling on a motion for new trial. (Dennis J. Curran,  
06/27/2013 Justice). Notices mailed 6/27/2013

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