

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT

MIDDLESEX, SS

No.:

GIBBS OIL COMPANY)

VS.)

COMPLAINT

CITY OF MALDEN, and)
LEO P. DeMARCO, C.S.)

75- 2051

1. The Plaintiff, Gibbs Oil Company, is a duly existing Massachusetts corporation with an usual place of business in Revere, Suffolk County.

2. The Defendant, City of Malden, is a municipal corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, and is located in the County of Middlesex.

3. The Defendant, Leo P. DeMarco, is the duly appointed and qualified City Solicitor of the City of Malden, and is made a party to this Complaint only in his official capacity as City Solicitor.

4. The Plaintiff, at all times material to this action has been and will be engaged in the business of selling motor vehicle fuel, to wit, gasoline, within the Commonwealth of Massachusetts.

ON FEBRUARY 7, 1964
5. The Plaintiff has succeeded to a license to store and sell gasoline, a grant which runs with land located on Main Street, Malden, Massachusetts, the initial license having been granted on December 12, 1923.

IN THE
CLERK'S
FOR THE
APR 14 1975
CLERK

val had
4/23

6. The Plaintiff has regularly on or before the thirtieth day of April of each year filed with the City of Malden a certificate of registration as the holder of said license to store and sell gasoline, and has at all times material to this action exercised said license.

7. On or about January 27, 1975 the Plaintiff's plans to convert its gasoline station on said Main Street, Malden, Massachusetts were duly approved by the Office of the Fire Marshal of the Commonwealth of Massachusetts; and shortly thereafter the Plaintiff at great expense commenced to convert its said gasoline station to a self-service station.

8. On March 7, 1975 an ordinance was passed by a majority of the City Council of the City of Malden; was returned unsigned by the Mayor of the City of Malden; and passed by operation of law. Said ordinance being designated as Section 88 of Chapter 53 of the Revised Ordinances of 1950, and states as follows:

"Self-Service gasoline stations are hereby prohibited from operating in Malden"

9. The Plaintiff reasonably believes and therefore avers that there are approximately twenty-eight separate businesses in the City of Malden licensed to store and

sell gasoline, but that the City of Malden has passed no other ordinance regulating gasoline stations, or prohibiting any form or type of gasoline station from operating within the City of Malden.

10. The Plaintiff says that the aforestated and quoted ordinance of the City of Malden is inconsistent with the rules and regulations promulgated by the Board of Fire Prevention of the Commonwealth of Massachusetts, and therefore said ordinance exceeds the authority of said municipal corporation, is preemptive and void.

11. The Plaintiff says further that the aforestated and quoted ordinance of the City of Malden exceeds the authority of the City of Malden granted by law in that no such conditions and restrictions are contained within the long-established and vested license of the Plaintiff relative to its storage and selling of gasoline, and the City of Malden has no authority to create such restrictions, as concern the Plaintiff, after the fact.

12. The Plaintiff says further that the aforestated and quoted ordinance of the City of Malden is invalid in that it exceeds the limits of reasonableness, and bears no reasonable relation to health, safety, or welfare.

13. The Plaintiff says further that the aforestated and quoted ordinance of the City of Malden deprives the

Plaintiff of Its property without due process of law, imposes arbitrary, unreasonable, discriminatory restrictions without standards upon Its right to conduct Its business, thereby depriving the Plaintiff of equal protection of the laws contrary to the Fourteenth Amendment of the Constitution of the United States of America, and Articles #1, #2, #6, #7, #11 and #12 of the Declaration of Rights of the Constitution of Massachusetts.

14. The Plaintiff says that an actual controversy exists between the Plaintiff and the Defendants.

WHEREFORE, the Plaintiff demands judgment:

1. That this Honorable Court temporarily restrain and preliminarily enjoin the Defendants, their agents, servants, assistants, associates, and attorneys from initiating, prosecution under or otherwise enforcing the provisions of the aforesaid ordinance, being Section #88 of Chapter 53 of the Revised Ordinances of 1950.
2. That this Honorable Court declare said Section #88 of Chapter 53 of the Revised Ordinances of 1950 of the City of Malden unconstitutional and invalid in its application to the Plaintiff.
3. That the Court declare that said ordinance of the

City of Malden, Section 88 of Chapter 53 of the Revised Ordinances of 1950 unreasonable, and invalid as exceeding the authority of the City of Malden to enact as against the Plaintiff.

4. That the Honorable Court permanently enjoin the Defendants from initiating prosecution under said ordinance or otherwise enforcing the provisions of said ordinance.

5. That the Honorable Court grant such other and further relief as It may deem just and proper.



Richard D. Gilman, Esquire
Attorney for the Plaintiff
1 Salem Street
Malden, Massachusetts, 02148

VERIFICATION

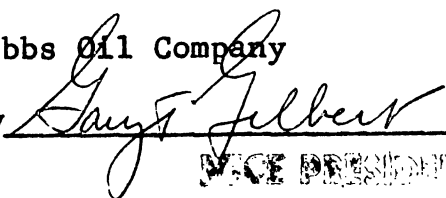
Commonwealth of Massachusetts

Superior Court

The Undersigned, being duly sworn, deposes and says that he is a duly authorized Officer of Gibbs Oil Company; that he has read the foregoing Complaint and knows the contents thereof and that the same are true to his own knowledge except as to those matters therein stated to be alleged on information and belief, and as to those matters, he believes them to be true:

Gibbs Oil Company

by



VICE PRESIDENT

Then personally appeared the foregoing
before me on April 11, 1975 and acknowledged the
foregoing to be his free act and deed:

Richard D. Gilman

Notary Public
My commission expires 1/17/78

MIDDLESEX, ss.

CAMBRIDGE April 14 19 75

~~THE COURT HAVING FOUND THAT NO NECESSITY FOR
THE GIVING OF SECURITY UNDER R. CIV. P. 65 (c))
EXIST IT IS ORDERED THAT U. M. PAYMENT TO THE
CLERK OF THE SUM OF \$500.00 BE ISSUED TO SHOW
CAUSE — WHY A TEMP. ORDER SHOULD NOT BE APPOINTED
— WITH A TEMP. ORDER RESTRAINING ORDER UNDER
PRAYER —~~

DEFENDANT IN THE FIRST
SESSION WITHOUT JURY ON Wednesday THE
23rd DAY OF April 19 75
AT 9:30 A.M.

Raymond Stowell
ASST. CLERK

✓
1975 Apr 28
App for Temp. inj. denied.
Pldgs ruled completed
and case away May 5, 1975
Att. 68
Cross. J
Plu Steward
Dors Clerk
NWS

Notify

4 issues
let o.k.

Richard D. Gilman, Esq,
One Salem Street
Malden, Mass 02148
and

✓ Thomas H. Fallon, Esq
6 Pleasant Street
Malden, Mass

20K

0-20K

Gibbs Oil Co. vs. City of Malden and
Leo P. DeMarco, C.S., Complaint re:
ordinance on self-service gas stations.

April 5, 1976