

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF THE TRIAL COURT

HAMPDEN, SS.

DISTRICT COURT DEPARTMENT  
PALMER DIVISION  
CIVIL ACTION NO. **1143CV293**

<b>Brian Johnson,</b>	)
Plaintiff	)
<b>v.</b>	)
<b>Peter Frei,</b>	)
Defendant	)

Proposed jury instructions:

Abuse of Process:

**Ulterior Purpose**

**The plaintiff must show that the process was used to accomplish some ulterior purpose for which the process was not designed or intended, or that was not a legitimate purpose for the particular process employed.** <sup>[FN3]</sup>

**If the stated objective of the process was the actual objective, then there is no abuse of process.** <sup>[FN4]</sup>

**It is not enough for the plaintiff to show that the defendant used the process to vex, annoy, or harass the plaintiff. Such a motive does not alone suffice to show ulterior purpose. Rather, the ulterior purpose must be to gain some collateral advantage.** <sup>[FN5]</sup> **Abuse of process is a form of coercion to obtain a collateral advantage not properly involved in the proceeding itself, such as the surrender of property or the payment of money, or in this case, to deter Frei from exercising his Civil Rights and Constitutional Rights, and to damage Frei's reputation and credibility in the community so the community does not trust his writings any-longer.**


**The fact that a party will have to spend time and money to defend a lawsuit does not prove an ulterior purpose for filing the lawsuit.**

**Practice Note**

Ulterior or illegitimate purposes include the following: Filing suit to embarrass and damage reputation. *Poduska v. Ward*, [895 F.2d 854, 856 \(1st Cir. 1990\)](#).

Mere filing of litigation to enforce a claim that the person filing the litigation knows or reasonably should have known to be groundless does not constitute legal abuse of process without proof of any ulterior purpose.

Proof of groundlessness of a lawsuit is not an essential element of a claim for abuse of process; however, that the person filing the litigation knew or had reason to know that [his/ her] claim was groundless is relevant as tending to show that the process was used for an ulterior purpose.

In contrast to a claim for malicious prosecution, the plaintiff does not have to prove favorable termination of the prior action. *Dangel v. Offset Printing, Inc.*, [342 Mass. 170, 171 \(1961\)](#);  *Santiago v. Fenton*, [891 F.2d 373, 388 \(1st Cir. 1989\)](#).

## **DAMAGES**

**The plaintiff must show that damage occurred as the natural and probable consequence of the process initiated by the defendant. If there were no damages, then the plaintiff does not have a claim, even if the process was for an ulterior motive.**

**In assessing the plaintiff's damages, if any, you may consider the following:**

- a. Plaintiff's fair and reasonable attorney's fees and costs in defending the wrongful claim;**
- b. Any other pecuniary loss suffered by the plaintiff which [he/she] would not have incurred but for the wrongful claim;**
- c. The emotional harm suffered by the plaintiff; and**
- d. Harm to the plaintiff's reputation.**

### **Practice Note**

In Frei's case, the jury already made the finding that Johnson attempted to inflict negligent and intentional Emotional Distress, and that a reasonable person would have suffered Emotional Distress. However, the jury did not award damages because Frei made no showing of medical or psychiatric treatment, and physical manifestation of emotional distress. These elements do not have to be proven to be entitled to damages stemming from an abuse of process claim.

*Millennium Equity Holdings, LLC v. Mahlowitz*, [456 Mass. 627, 647-49 \(2010\)](#) (victim of abuse of process need not make a showing of medical or psychiatric treatment, and physical manifestation of emotional distress is not required).

Respectfully submitted by the defendant and plaintiff on the counter-claim for abuse of process.

Peter Frei  
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August 29, 2019

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Peter Frei

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the following by hand delivery:

Tani E. Sapirstein, Sapirstein & Sapirstein, P.C.  
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August 29, 2019

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Peter Frei