

**Terry Hoyt**

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**From:** ecf\_bounce@nhd.uscourts.gov  
**Sent:** Monday, December 08, 2008 3:59 PM  
**To:** nef@nhd.uscourts.gov  
**Subject:** Activity in Case 1:08-cv-00344-JL Johnston, et al v. Eastman Order on Petition to Attach with Notice

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U.S. District Court

District of New Hampshire

**Notice of Electronic Filing**

The following transaction was entered on 12/8/2008 at 3:59 PM EST and filed on 12/8/2008

**Case Name:** Johnston, et al v. Eastman

**Case Number:** 1:08-cv-344

**Filer:**

**Document Number:** No document attached

**Docket Text:**

**ORAL ORDER** granting [2] Petition to Attach with Notice. *Text of Order: Granted. A Writ of Attachment will be issued by the Clerk in the amount of \$306,000 and limited as to real-estate only. So Ordered by Judge Joseph N. Laplante. (cmp)*

1:08-cv-344 Notice has been electronically mailed to:

Christopher J. Seufert cseufert@seufertlaw.com, thoyt@seufertlaw.com

Friedrich Kreutzer Moeckel fmoeckel@tarbellpa.com

1:08-cv-344 Notice, to the extent appropriate, must be delivered conventionally to:

12/8/2008

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

\*\*\*\*\*  
Stephen Johnston and \*  
Valerie Johnston \*  
37 Fair Street \*  
Laconia, NH 03246 \*  
\*  
v. \*  
\*  
Pauline Eastman, Individually \*  
101 Tucker Shore \*  
Belmont, NH 03246 \*  
and \*  
Pauline Eastman, as Trustee \*  
Pauline Eastman 1996 \*  
Revocable Trust \*  
\*  
\*\*\*\*\*

VERIFIED PETITION TO ATTACH ASSETS BY TRUSTEE PROCESS  
AND/OR PERSONAL ASSETS OF DEFENDANT

Plaintiffs, Steven and Valerie Johnston, by and through counsel, Christopher J. Seufert, Esquire moves to attach property of the defendants and says:

1. The Plaintiff's move under Fed. R. Civ. P. 64 for a pre-judgment attachment against the defendants' assets.
2. The Plaintiff's have damage for cost to abate in the amount of \$102,041.00 as evident by their encl 5 to their Complaint filed this date.
3. The Court also has authority under 42 USC 4852-d to assess treble damages and attorney's fees and costs.

4. The Plaintiff's have a strong likelihood of success on the merits on the underlying complaint as the defendant, Pauline Eastman, is a licensed NH real estate agent and knew from her training and experience of the requirements of lead paint disclosure under 42 USC 4852-d, however provided no disclosure to the defendants.
5. The Plaintiff's request that a pre-judgment attachment in the amount of \$250,000.00 be granted.

Wherefore the Plaintiffs respectfully request that this Honorable Court:

- A. Grant a pre-judgment attachment against the defendants in the amount of \$250,000.00.
- B. Grant such other relief as may be just and appropriate.

Respectfully submitted  
Stephen P. Johnston and  
Valerie J. Johnston  
By their Attorney,

DATED: 08/22/08

/s/Christopher J. Seufert  
Christopher J. Seufert, Esq.  
Bar # 2300  
Seufert Law Offices, P.A.  
59 Central Street  
Franklin, NH 03235  
(603) 934-9837 ph  
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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

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Stephen Johnston and \*  
Valerie Johnston \*  
37 Fair Street \*  
Laconia, NH 03246 \*  
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v. \*  
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Pauline Eastman, Individually \*  
101 Tucker Shore \*  
Belmont, NH 03246 \*  
and \*  
Pauline Eastman, as Trustee \*  
Pauline Eastman 1996 \*  
Revocable Trust \*  
\*  
\*\*\*\*\*

COMPLAINT

Plaintiffs, Steven and Valerie Johnston complain against defendants, Pauline Eastman, individually and Pauline Eastman as Trustee of the Pauline Eastman Revocable Trust of 1996 and in support thereof, state as follows:

THE PARTIES

1. Steven and Valerie Johnston are residents of New Hampshire and reside at 37 Fair Street, Laconia, NH 03246.
2. Pauline Eastman individually and as trustee of the Pauline Eastman 1996 Revocable Trust is known to reside

in NH and in FL with a NH address last known of 101 Tucker Shore, Belmont, NH 03220.

3. Pauline Eastman was the former owner of the property now owned by the plaintiffs at 37 Fair Street, Laconia, NH 03276 and sold the property to the plaintiffs in 2006.

#### JURISDICTION AND VENUE

4. The United States District Court for the District of New Hampshire has jurisdiction over this matter pursuant to 28 U.S.C. §1331 as plaintiffs' claim violation of a federal statute, Section 1018 of the Residential Lead-Based Paint Hazardous Reduction Act of 1992, 42 U.S.C.A. §4852-d.

5. Venue properly rests with the United States District Court for the District of New Hampshire since the subject property is located in said district.

#### FACTUAL ALLEGATIONS

6. The plaintiffs, on or about July 1, 2006 entered into a Purchase & Sales Agreement with defendant, Pauline Eastman, to purchase the property located at 37 Fair Street, Laconia, New Hampshire. Prior to the purchase

plaintiffs had rented the property from the defendant as residential tenants.

7. The subject property was sold by defendant to plaintiffs by deed dated 8/31/06 and recorded in the Belknap County registry of Deeds at Book 2335, Page 0048. (encl 1)

8. The Purchase & Sales Agreement, signed by Pauline Eastman individually and listing Pauline Eastman as seller, individually, does not contain any lead based paint disclosure pursuant to seller's obligation under 42 U.S.C. 4852-d. (encl 2).

9. Pauline Eastman, as a licensed real estate professional of over 25 years, knew or should have known of sellers obligations under 42 U.S.C. 4852-d.

10. Sellers have an affirmative duty to comply with the disclosure requirements of 42 U.S.C. 4852d as well as their agents [see 42 U.S.C. 4852-d(a)(4)].

11. That subsequent to the purchase of the property one of plaintiffs' children was tested with an elevated blood lead level prompting an inspection of the property which discovered the presence of lead paint hazards in the property (encl 3) and in the soil around the house (encl 4).

12. Plaintiffs have received an estimate for abatement and removal of the lead hazards in the amount of \$102,041.00 (encl 5) and would not have purchased the property if they had been so informed of the potential of lead paint hazards and their right to conduct a pre-purchase inspection to uncover those hazards.

COUNT I - VIOLATION OF 42 U.S.C. §4852-d  
AGAINST PAULINE EASTMAN INDIVIDUALLY

13. Plaintiffs incorporate by reference all allegations abovementioned.

14. The house located at 37 Fair Street was built prior to 1978. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (U.S.C. Section 4852-d), known as TITLE X, requires that sellers of residential houses built before 1978 disclose certain information to buyers on the potential for presence of lead-based paint and/or lead-based paint hazards.

15. Section 4852-d also provides that "any person who knowingly violates the provisions of this section shall be jointly and severally liable to the purchaser or lessees in an amount equal to three times the amount of damages incurred by such individual." 42 U.S.C.A. §4852-d(3).

16. Subsequent regulations codified in 24 C.F.R. § 35.88 require that the defendant:

(1) The seller or lessor shall provide the purchaser or lessee with an EPA-approved lead hazard information pamphlet. Such pamphlets include the EPA document entitled Protect Your Family From Lead in Your Home (EPA - 747-K-94-001) or an equivalent pamphlet that has been approved for use in that State by EPA.

17. Eastman failed to comply with said federal statutory and regulatory law and is jointly and severally liable to the plaintiffs for an amount equal to three times the amount of damages incurred by the plaintiffs, plus reasonable attorneys' fees and costs.

COUNT II VIOLATION OF 42 U.S.C. §4852-d  
AGAINST PAULINE EASTMAN AS REGISTERED REAL ESTATE AGENT

18. Plaintiffs incorporate by reference all allegations above referenced.

19. Eastman, as a licensed real estate agent, is compelled to comply with said federal statutory and regulatory law as specified above and is jointly and severally liable to the plaintiffs for an amount equal to three times the amount of damages incurred by the plaintiffs, plus reasonable attorney's fees and costs.

COUNT III VIOLATION OF 42 U.S.C. §4852-d .  
AGAINST PAULINE EASTMAN AS REPRESENTATIVE/TRUSTEE OF  
PAULINE EASTMAN 1996 REVOCABLE TRUST

20. Plaintiffs incorporate by reference all allegations above referenced.

21. Eastman, if also acting as the personal representative or trustee of the Pauline Eastman 1996 Revocable Trust, and in that capacity acting as a seller, is also compelled to comply with said federal statutory and regulatory law as specified above and in so doing obligates the Pauline Eastman Revocable Trust as jointly and severally liable to the plaintiffs for an amount equal to three times the amount of damages incurred by the plaintiffs, plus reasonable attorney's fees and costs.

Stephen P. Johnston and  
Valerie J. Eastman  
By their Attorney,

DATED: 08/21/08

/s/Christopher J. Seufert Esq  
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