

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
JOSEPH PEPITONE
(b) County of Residence of First Listed Plaintiff Middlesex
(c) Attorneys (Firm Name, Address, and Telephone Number)
FASS & D'AGOSTINO, P.C.
150 Broadhollow Road | Suite 217

DEFENDANTS
NATIONAL BASEBALL HALL OF FAME AND MUSEUM, INC
County of Residence of First Listed Defendant Otsego
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 X
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Damage, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332
Brief description of cause:
Conversion, Replevin, Unjust Enrichment, Quantum Merit and Promissory Estoppel concerning Plaintiff's baseball bat used by New York Yankee le

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ 1,000,000.00
CHECK YES only if demanded in complaint:
JURY DEMAND: X Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions):
JUDGE DOCKET NUMBER

DATE July 7, 2021
SIGNATURE OF ATTORNEY OF RECORD s/ David M. Barshay

FOR OFFICE USE ONLY
RECEIPT # AMOUNT \$402.00
APPLYING IFP JUDGE LEK MAG. JUDGE ATB
ANYNDC-5577982 CASE NO. 6:21-cv-00781 (LEK/ATB)

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

JOSEPH PEPITONE,

Plaintiff,

vs.

NATIONAL BASEBALL HALL OF FAME  
AND MUSEUM, INC.,

Defendant.

Docket No: 6:21-cv-00781 (LEK/ATB)

**COMPLAINT**

JURY TRIAL DEMANDED

JOSEPH PEPITONE (hereinafter referred to as “Pepitone” or “Plaintiff”), by and through the undersigned counsel, complains, states, and alleges against THE NATIONAL BASEBALL HALL OF FAME AND MUSEUM, INC. (hereinafter referred to as “Defendant”), as follows:

**INTRODUCTION**

1. This action seeks to recover Pepitone’s personal property, namely Pepitone’s baseball bat used by New York Yankee legend Mickey Mantle to hit Mantle’s 500<sup>th</sup> career homerun, which has been unlawfully converted by Defendant despite Pepitone’s rightful demand therefor. Plaintiff also seeks money damages for Defendant’s unlawful conduct.

**JURISDICTION AND VENUE**

2. This Court has federal subject matter jurisdiction pursuant to 28 U.S.C. § 1332, as the parties are citizens of different states, and the amount in controversy is more than \$75,000.00.

3. Venue is proper under 28 U.S.C. §1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

FASS & D’ AGOSTINO, P.C.  
150 BROADHOLLOW ROAD, SUITE 217  
MELVILLE, NEW YORK 11747

**PARTIES**

4. Plaintiff is an individual residing in East Brunswick, in Middlesex County, New Jersey.

5. On information and belief, Defendant is a corporation with its principal place of business in Otsego County, New York. Defendant owns real property, and conducts business, in this jurisdiction.

6. At all relevant times, Defendant conducted business within the State of New York.

7. Defendant operates the National Baseball Hall of Fame and Museum located at 25 Main Street, Cooperstown, New York (hereinafter referred to as the “Museum”).

8. According to the Museum’s website, the Museum “is dedicated to preserving the history of baseball, honoring excellence in the game and connecting the generations of baseball enthusiasts.”

**FACTUAL BACKGROUND**

9. Pepitone is a former professional Major League Baseball player who played for several professional teams during his career spanning from 1962 to 1973.

10. From 1962 to 1969, Pepitone played for the iconic New York Yankees baseball club.

11. On May 14, 1967, the New York Yankees were hosting the Baltimore Orioles in a regular season game (hereinafter referred to as the “Game”).

12. One of Pepitone’s teammates that day was the future Hall of Famer, Mickey Mantle (“Mantle”), who was 35 years of age and in his 17th and penultimate season as a New York Yankee.

13. In addition to being teammates, Pepitone and Mantle were dear friends.

14. Mantle entered the Game sitting at 499 career homeruns – one shy of a career milestone and earning a membership in the exclusive “500 Home Run Club.”<sup>1</sup>

15. Although Mantle played most of his career in center field for the Yankees, Mantle would start at first base in his last two seasons (1967-1968), which is the position he played during the Game.

16. Mantle was known to use a medium handle and a small to medium barrel bat, at 35 inches long and 32 ounces.<sup>2</sup> As Mantle got older, he would sometimes borrow a teammate’s lighter bat to generate more bat speed.

17. In the 6th inning of the Game, with the Yankees trailing 4-3, Yankees’ manager Ralph Houk sent Pepitone to the plate to pinch hit for and replace teammate Bill Robinson in center field.

18. Pepitone proceeded to hit a two-run home run off Baltimore Orioles pitcher Stu Miller (“Miller”) to put the Yankees ahead, 5-4.

19. In the next inning (7<sup>th</sup> inning) of the Game, Pepitone handed his bat (“Pepitone’s Bat” or “the Bat”) to Mantle and told Mantle that the Bat “had another home run in it.”

20. Mantle smiled at Pepitone and took the Bat to the plate.

21. Pepitone’s Bat was a natural stain wooden bat, at 35 inches and 29 ounces. The Bat was emblazoned with a facsimile of Pepitone’s signature on the barrel between the words “GENUINE” and “LOUISVILLE SLUGGER.” Stamped further down on the barrel of the Bat was a stylized “POWERIZED” followed by an oblong circle containing “LOUISVILLE SLUGGER 125 HILLERICH & BRADSBY C<sup>o</sup> MADE IN U.S.A. LOUISVILE KY. Under the

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<sup>1</sup> As of 1967, there were only 5 members of the Club.

<sup>2</sup> See <https://www.sluggermuseum.com/about-us/faqs>.

pine tar on the handle and knob of the Bat “30 ½” was handwritten in black ink.<sup>3</sup>

22. Hillerich & Bradsby Company (“H&B”) was, and remains, one of the most popular manufacturers of baseball bats including the Louisville Slugger brand.

23. H&B routinely entered into endorsement deals with professional major league ballplayers wherein the Company would produce a model-line of bat of certain specifications for a specific individual player and provide bats from this line to that player for use as endorsement.

24. Pepitone and H&B were partners in such an endorsement deal and the Bat was produced according to that deal and Pepitone’s specifications.

25. In the 7<sup>th</sup> inning and his final at-bat of the Game, using Pepitone’s Bat, Mantle reached a career milestone by hitting his 500<sup>th</sup> career home run off Miller and became the first-ever switch-hitting major leaguer to do so.

26. After Mantle’s home run, Mantle returned the Bat to Pepitone.

27. Pepitone brought the Bat into the Yankees’ locker room and secured it within his personal locker. Thereafter, however, the Bat was removed from Pepitone’s locker.

28. Upon noticing the Bat was missing, Pepitone began to question teammates and Yankee staff members.

29. Upon learning that Pepitone was looking for the Bat, Robert (“Bob”) O. Fishel, a front office Executive for the Yankees, approached Pepitone and told him that the Yankees wanted to send the Bat to the Museum, and asked if Pepitone would allow the Bat to be loaned to the Museum to be displayed in commemoration of his friend Mantle’s landmark achievement.

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<sup>3</sup> See <https://collection.baseballhall.org/PASTIME/mickey-mantle-500th-career-home-run-bat-1967-may-14-1>.

30. The Bat was removed from Pepitone's locker without Pepitone's knowledge, approval, or consent.

31. Nevertheless, Pepitone agreed to lend the Bat to the Museum with the understanding and upon the condition that it would be returned to him at any time upon his request.

32. Upon information and belief, on or about May 25, 1967, the Museum took physical possession of Pepitone's Bat.

33. Upon information and belief, from on or about May 25, 1967, to date, the Museum has and continues to display Pepitone's Bat under the description "Joe Pepitone model bat used by Mickey Mantle for his 500 HR" with accession number B.68.67.

34. Pepitone has visited the Museum several times since May 25, 1967, and was always reassured by Museum staff including William "Bill" J. Guilfoile, the Public Relations Director of the Museum, that Pepitone's Bat was his "*for the asking*" and it would be returned to him at any time upon his request.

35. On or about September 1, 2020, at Pepitone's request, Steven F. Christiansen, Esq., sent a letter to Timothy Mead, President of the Museum, requesting Pepitone's Bat be returned to Pepitone, its rightful owner.

36. On or about September 17, 2020, Karen R. Berry, Esq., of Patterson Belknap Webb & Taylor, LLP, outside counsel for the Museum, sent an email to Mr. Christiansen stating that the Museum were reviewing the matter and would provide a "substantive response" within a few weeks.

37. On or about September 28, 2020, Ms. Berry sent a response to Mr. Christiansen whereby Pepitone's request for a return of the Bat was rejected by the Museum.

38. Pepitone's Bat is a one-of-a-kind historical baseball artifact with an estimated value more than \$500,000.00.<sup>4</sup>

39. Pepitone did not gift, sell, assign, or in any way transferred his sole ownership interest in the Bat to any person or entity.

40. Pepitone unequivocally demanded that the Museum return the Bat on September 1, 2020, as promised.

41. The Museum has unreasonably and unlawfully refused Pepitone's demand to return the Bat and continues to possess the Bat without legal cause or justification over Pepitone's objection and contrary to Pepitone's legal and equitable right to possession.

**FIRST COUNT**  
**Conversion**

42. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth at length herein.

43. Pepitone is the sole and rightful owner of the Bat.

44. Pepitone demanded the return of the Bat, which Defendant has refused without legal cause or justification.

45. Defendant has retained possession of Pepitone's Bat to the exclusion of Pepitone without legal cause or justification.

46. Defendant has intended to, and does intend to, exercise unauthorized control and dominion over Pepitone's Bat without legal cause or justification.

47. Defendant has no possessory rights to Pepitone's Bat.

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<sup>4</sup> Other one-of-a-kind game used Mickey Mantle bats (e.g., a Mantle game used All-Star bat or World Series bat), with much less historical significance than the bat used to hit his historic 500<sup>th</sup> career home run, sold for prices ranging between \$113,924.00-\$430,200.00 since 2014. See <https://www.psacard.com/probatfacts/hall-of-fame-players/mickey-mantle/1550>.

48. As a result of the foregoing, Defendant has converted Pepitone's property, in reckless and willful disregard of Pepitone's superior possessory rights.

49. By reason of the Defendant's conversion, Pepitone seeks the return of the Bat, and compensatory and exemplary damages in an amount to be determined at trial but believed to be no less than ONE MILLION DOLLARS (\$1,000,000.00), together with all other remedies and damages which may be applicable under State and Federal law.

**SECOND COUNT**  
**Replevin**

50. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth at length herein.

51. Pepitone has the sole possessory right to the Bat, to the exclusion of all other persons and/or entities.

52. Defendant has no possessory right to Pepitone's Bat.

53. Defendant has been on notice that Pepitone is the rightful owner of the Bat but has refused to return it.

54. Defendant has wrongfully and unlawfully retained Pepitone's Bat from the Pepitone despite the demand for its return having been made.

55. By reason of Defendant's wrongful and unlawful retention of Pepitone's Bat, Pepitone seeks the return of the Bat, and/or damages equal to the value of the Bat in an amount to be determined at trial but believed to be no less than ONE MILLION DOLLARS (\$1,000,000.00), with interest, together with all other remedies and damages which may be applicable under State and Federal law.



**THIRD COUNT**  
**Unjust Enrichment & Quantum Merit**

56. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth at length herein.

57. Defendant has become enriched and benefitted financially because of Pepitone's loaning the Bat to Defendant.

58. Defendant has become enriched and benefitted financially at the expense of Pepitone.

59. It is inequitable and against good conscious for Defendant to retain Pepitone's Bat and enjoy the financial enrichment and benefit thereof, at the expense and to the detriment of Pepitone.

60. Based on the foregoing, Pepitone seeks the return of the Bat, and/or damages equal to the value of the Bat in an amount to be determined at trial but believed to be no less than ONE MILLION DOLLARS (\$1,000,000.00), with interest, together with all other remedies and damages which may be applicable under State and Federal law.

**FOURTH COUNT**  
**Promissory Estoppel**

61. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth at length herein.

62. By the terms of the loan agreement, and Defendant's frequent reassurances that the Bat was Pepitone's property to be returned upon Pepitone's demand, and that Pepitone continues to allow the Bat to be displayed in the Museum, Defendant made a clear and unambiguous promise to return the Pepitone's Bat to Pepitone.

63. Pepitone allowed the Museum to initially display the Bat and to continue to display the Bat in reliance on Defendant's promises that the Bat was Pepitone's property to be returned to Pepitone upon Pepitone's demand.

64. Pepitone's reliance was based on the loan agreement and the promises made by Defendant. Based on this reliance, Pepitone is unable to mitigate damages and has been damaged in an amount to be determined at trial but believed to be no less than ONE MILLION DOLLARS (\$1,000,000.00).

65. Based on the foregoing, Pepitone seeks the return of the Bat, and/or damages equal to the value of the Bat in an amount to be determined at trial but believed to be no less than ONE MILLION DOLLARS (\$1,000,000.00), with interest, together with all other remedies and damages which may be applicable under State and Federal law.

**JURY DEMAND**

66. Plaintiff hereby demands a trial of this action by jury.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests judgment as follows:

- a. On the First Count, Pepitone seeks the return of the Bat, and/or damages equal to the value of the Bat in an amount to be determined at trial, but believed to be no less than ONE MILLION DOLLARS (\$1,000,000.00), with interest, together with all other remedies and damages which may be applicable under State and Federal law; and
- b. On the Second Count, Pepitone seeks the return of the Bat, and/or damages equal to the value of the Bat in an amount to be determined at trial, but believed to be no less than ONE MILLION DOLLARS (\$1,000,000.00), with interest, together with all other remedies and damages which may be applicable under State and Federal law; and
- c. On the Third Count, Pepitone seeks the return of the Bat, and/or damages equal to the value of the Bat in an amount to be determined at trial, but believed to be no less than ONE MILLION DOLLARS (\$1,000,000.00), with interest, together with all other remedies and damages which may be applicable under State and Federal law; and

- d. On the Fourth Count, Pepitone seeks the return of the Bat, and/or damages equal to the value of the Bat in an amount to be determined at trial, but believed to be no less than ONE MILLION DOLLARS (\$1,000,000.00), with interest, together with all other remedies and damages which may be applicable under State and Federal law; and
- e. Grant Pepitone actual, compensatory, exemplary, and punitive damages in an amount to be determined at trial; and
- f. Grant Plaintiff costs and attorneys' fees; all together with
- g. Such other relief that the Court determines is just and proper.

Dated: June 21, 2021

Yours etc.,

By: s/ Joseph A. D'Agostino  
Joseph A. D'Agostino, Esquire  
FASS & D'AGOSTINO, P.C.  
150 Broadhollow Road | Suite 217  
Melville, New York 11747  
Tel: (631) 824-6040  
Fax: (631) 610-2731  
Email: [jdagostino@fdnylawfirm.com](mailto:jdagostino@fdnylawfirm.com)  
*Attorneys for Plaintiff*

-and-

By: s/ David M. Barshay  
David M. Barshay, Esquire  
BARSHAY, RIZZO & LOPEZ, PLLC  
445 Broadhollow Road | Suite CL18  
Melville, New York 11747  
Tel: (631) 210-7272  
Fax: (516) 706-5055  
Email: [dbarshay@BRLfirm.com](mailto:dbarshay@BRLfirm.com)  
*Attorneys for Plaintiff*