

RUPRECHT, HART & WEEKS, LLP
306 Main Street
Millburn, New Jersey 07041
(973) 379-2400
Attorney for Plaintiff, Township of Manalapan

Township of Manalapan,
Plaintiff

vs.

Stuart Moskowitz, Esq., Jane Doe and/or John Doe, Esq. I-V (these names being fictitious as their true identities are presently unknown) and XYZ Corporation, I-V (these names being fictitious as their true corporate identities are currently unknown)

Defendant(s)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MONMOUTH COUNTY
DOCKET NO. MON-L- 2893-07

CIVIL ACTION

(LEGAL MALPRACTICE)

COMPLAINT
JURY DEMAND
DESIGNATION OF TRIAL COUNSEL

Plaintiff, Township of Manalapan, in the County of Monmouth, State of New Jersey, complains of the defendants and says:

PARTIES

1. The Plaintiff, Township of Manalapan is located in Monmouth County, New Jersey and organized pursuant to N.J.S.A. 40A:63-1.

2. At all relevant times, the Defendant, Stuart Moskowitz, Esq., was an attorney licensed to practice law in the State of New Jersey, as well as the Attorney for the Township of Manalapan, pursuant to N.J.S.A. 40A:62-6.

3. The Township Committee is the elected governing body of the Township of Manalapan, pursuant to N.J.S.A. 40A:62-7, consisting of five members.

4. Linda and Gus Dreyer previously owned the property in the Township of Manalapan located at 93 Freehold Road ("the Dreyer property").

5. Alayne Shepler is the former Administrator of the Township of Manalapan, pursuant to N.J.S.A. 40A:62-7.

6. Renee Garrigano was Alayne Shepler's administrative assistant.

7. Green Acres is a program created within the New Jersey Department of Environmental Protection that provides funding to municipalities for the purchase of land for public use.

8. Catherine Drake is a Project Manager at Green Acres who processed the Township of Manalapan's application for a Green Acres grant, discussed below.

9. The Monmouth County Board of Recreation Commissioners is a nine-member board that provides funding to municipalities of Monmouth County for the purchase of land for public use.

10. Birdsall Engineering, Inc., is an engineering firm hired by the Township of Manalapan to conduct a Preliminary Assessment and Site Inspection (hereinafter "PASI") on the Dreyer Property, discussed below.

11. CME Associates is an engineering, surveying, and planning firm retained by the Township of Manalapan to investigate the extent of soil contamination resulting from a damaged oil tank discovered on the Dreyer property, discussed below.

12. The defendants, John Doe I-V are fictitious names used to identify those persons responsible for abandoning the oil tank and filling same with sand on the Dreyer property in or around 1995.

13. The defendants, XYZ Corporation I-V are fictitious names used to identify those entities responsible for abandoning the oil tank and filling same with sand on the Dreyer property in or around 1995.

FACTS

1. The Dreyer property is adjacent to athletic fields owned by the Township of Manalapan, which are used by the Manalapan Youth Football Association.

2. In 2004, while still in possession of the Dreyer property, the Dreyers instituted litigation against the Township of Manalapan in connection with noise and lighting emanating from the athletic fields adjoining their property.

3. As part of the settlement of the litigation between the Dreyers and the Township, the parties entered a Stipulation of Settlement.

4. One of the terms of the Stipulation of Settlement was for the parties to negotiate the Township's purchase of the Dreyer property.

5. To this end, the Township applied to Green Acres and the Monmouth County Board of Recreation Commissioners for two grants toward the purchase of the Dreyer property.

6. On June 22, 2004, the Township received a correspondence from the New Jersey Department of Environmental Protection ("Green

Acres") regarding the Township's application for a Green Acres grant.

7. The correspondence from Green Acres states, "As a reminder, the following documents must be submitted to Green Acres to request payment.....:"

A Preliminary Assessment Report prepared in accordance with the "Instructions for Completing a Preliminary Assessment" found on the web site. Green Acres requires that a Preliminary Site Assessment ("PASI") be conducted to prevent the purchase of lands that may be contaminated. Findings of known or suspected contamination may affect value, or our ability to fund the project, and the Assessment should be submitted prior to negotiations (emphasis in the original).

8. By way of resolution dated February 9, 2005, the Township Council authorized the purchase of the Dreyer property.

9. Regarding the purchase of the Dreyer property, the Township Council resolution further provides, "The property is located in an area advantageous to the Township's open space plan and recreational goals."

10. The Township Council Resolution also states that, "The Township Attorney is hereby authorized to effect this transaction and to submit an Ordinance to the Township Committee for acceptance of the Deed of Transfer prior to closing."

11. On February 17, 2005, the Township Administrator, Alayne Shepler, received preliminary notification from the Monmouth County Board of Recreation Commissioners that the Township was to receive \$250,000 in Green Acres funding toward the \$465,500 purchase price of the Dreyer property.

12. Like the aforementioned correspondence from Green Acres, the correspondence from the Monmouth County Board of Recreation

Commissioners made clear that a Preliminary Site Assessment ("PASI") "must be completed before the County will execute the grant agreement."

13. The correspondence from the County Recreation Commissioners further indicated that, "The purpose of the assessment is to identify and remedy any existing on-site contamination that may pose a potential risk to users of the property."

14. Defendant, Stuart Moskowitz, Esq., was the Township Attorney for the Township of Manalapan for the calendar year, 2005.

15. During the relevant time, an attorney-client relationship existed between the Plaintiff, Township of Manalapan, and the Defendant, Stuart Moskowitz, Esq.

16. As the Township Attorney and pursuant to the aforementioned February 9, 2005 Resolution Authorizing purchase of the Dreyer property, Mr. Moskowitz was vested with the responsibility to act on the Township's behalf in negotiating with the Dreyers the purchase of the Dreyer property.

17. As Township Attorney for the Township of Manalapan in the calendar year 2005, Mr. Moskowitz represented the Township of Manalapan in the negotiation and purchase of the Dreyer property.

18. In and around March and April, 2005, in the course of negotiating the purchase of the Dreyer property with the Dreyers, and in the scope of his duties as Township Attorney, Mr. Moskowitz authorized the Township to enter a Contract with the Dreyers to purchase the Dreyer property.

19. The Contract that Mr. Moskowitz negotiated and approved on behalf of the Township, which was executed on April 21, 2005, provides that the property is being sold "as is" and the Township "has inspected the property and relies on this inspection."

20. The Contract that Mr. Moskowitz negotiated and approved on behalf of the Township does not contain a clause stating that the Township's contractual obligation to purchase the Dreyer property is contingent on the findings and recommendations of a Preliminary Site Assessment on the Dreyer property, or that the Township's contractual obligations are subject to any environmental inspection of the Dreyer property stating that the property is free of contamination and therefore fit for public use or other similar provision standard in such contracts.

21. On April 15, 2005, Township Administrator, Alayne Shepler, forwarded an email to the Defendant, Mr. Moskowitz. In her email, Ms. Shepler requested that Mr. Moskowitz hold off on conducting the closing on the Dreyer property until the Township obtained the PASI report from Birdsall Engineering.

22. Ms. Shepler explicitly stated in her email to Mr. Moskowitz that obtaining the PASI report was a condition of the Green Acres grant.

23. The Defendant, Mr. Moskowitz, responded to Ms. Shepler's email, stating that he did not anticipate that the Dreyers would "be ready to close that quickly anyway."

24. On June 8, 2005, Mr. Moskowitz went forward with the closing on the Dreyer property, despite Ms. Shepler's request that he hold off on the closing until Ms. Shepler received the PASI

report from Birdsall Engineering and despite his independent obligation to obtain the PASI report before closing.

25. Green Acres did not receive the PASI report from the Township until after Mr. Moskovitz conducted the closing on June 8, 2005, despite the fact that the PASI report was a condition to both Green Acres and Monmouth County funding each of the Township's grants.

26. On June 23, 2005, Renee Garrigano forwarded Birdsall Engineering's PASI report to Green Acres in order to obtain funding of the Township's grant.

27. The PASI report references an interview with the Dreyers on May 19, 2005 in which the Dreyers indicated that a tank had been emptied, cleaned and filled on the property "about 10 years ago." The PASI report indicated multiple issues which needed to be addressed including:

-Abandoned oil tank -- PASI report suggested that the tank be pulled.

28. Based on the PASI report, both Green Acres and Monmouth County indicated that the Township's grants would not be funded until the oil tank was removed from the Dreyer property.

29. As directed by Green Acres and Monmouth County, the Township removed the oil tank. However, an inspection indicated that the tank may not have been properly abandoned as there was an oil layer below the sand in the tank. Furthermore, when the tank was removed, there was damage to the base of the tank.

30. The Township of Manalapan retained CME Associates to determine whether the damaged oil tank had resulted in the

discharge of oil on the property. A Phase II study indicated that the damaged tank had in fact released oil into the soil.

31. Green Acres and the Monmouth County Board of Recreation Commissioners have both determined that the Township is required to clean up the contaminated soil prior to receiving funding on both the Green Acres and the Monmouth County grants.

32. Thus, the Township will be forced to expend taxpayers' monies to clean up the contaminated soil on the Dreyer property.

FIRST COUNT

1. Plaintiff, Township of Manalapan, repeats paragraphs 1-13 of the foregoing PARTIES section and repeats paragraphs 1-32 of the foregoing FACTS section as though set forth at length herein.

2. During all times mentioned herein, it was the duty of the Defendant, Stuart Moskowitz, Esq., to exercise the appropriate care in negotiating the Contract for Sale of Real Estate with the Dreyers so that no economic harm would come to the Township of Manalapan.

3. As Township Attorney, Mr. Moskowitz had a duty to negotiate a contract that contained a clause that the Township's obligation to purchase the Dreyer property was contingent on obtaining a favorable PASI report or an equivalent environmental inspection which stated that the property was free of contamination and therefore fit for public use.

4. Mr. Moskowitz breached this duty by, among other things, negligently authorizing the Township to enter a Contract, which did not contain a clause stating that the Township's obligation to

purchase the Dreyer property was contingent on an environmental inspection.

5. Mr. Moskovitz breached his duty to the Township of Manalapan by authorizing the Township to enter a Contract in which the Township assumed the obligation to purchase the Dreyer property "as is" and without the benefit of an environmental inspection that stated the property was free of contamination and therefore fit for public use.

6. After Mr. Moskovitz authorized the Township to enter the Contract for Sale of Real Estate with the Dreyers, it was discovered that the Dreyer property was contaminated and therefore unfit for public use.

7. Since the Township had already entered the Contract for the Sale of Real Estate and had agreed to purchase the Dreyer property "as is," and without the benefit of an environmental inspection, the Township has no contractual recourse or remedy against the Dreyers in connection with cleaning up the contaminated property.

8. In order to clean up the contaminated soil on the Dreyer property, the Township will be forced to expend monies for which, absent Mr. Moskovitz' negligent negotiation of the Contract for the Sale of Real Estate, the Township would not have otherwise been responsible.

9. Wherefore, Plaintiff, Township of Manalapan demands judgment against the Defendant, Stuart Moskovitz, Esq., for damages, interest, counsel fees, and costs of suit, pursuant to N.J.S.A. 2A:13-4.

SECOND COUNT

1. Plaintiff, Township of Manalapan, repeats paragraphs 1-13 of the foregoing PARTIES section and repeats paragraphs 1-32 of the foregoing FACTS section as though set forth at length herein.

2. During all times mentioned herein, it was the duty of the Defendant, Stuart Moskowitz, Esq., to exercise the appropriate care in protecting the Township of Manalapan's interests so that no economic harm would come to the Township of Manalapan.

3. As Township Attorney, Mr. Moskowitz had a duty to protect the Township from purchasing property that is contaminated and therefore unfit for public use.

4. Mr. Moskowitz breached this duty by negligently closing on the Dreyer property and in the process negligently authorizing the Township of Manalapan to purchase the Dreyer property prior to the receipt of the PASI report or an equivalent environmental inspection that stated the property was free of contamination and therefore fit for public use.

5. As a result of Mr. Moskowitz' negligence in closing on the property and in the process authorizing the Township to purchase the property, the Township of Manalapan is now in possession of property that is contaminated and therefore unfit for public use.

6. In order to clean up the contaminated soil on the property, the Township will be forced to expend monies for which, absent Mr. Moskowitz' deviation from accepted practice, the Township would not have otherwise been responsible.

7. Wherefore, Plaintiff, Township of Manalapan demands judgment against the Defendant, Stuart Moskovitz, Esq., for damages, interest, counsel fees, and costs of suit, pursuant to N.J.S.A. 2A:13-4.

THIRD COUNT

1. Plaintiff, Township of Manalapan, repeats paragraphs 1-13 of the foregoing PARTIES section and repeats paragraphs 1-32 of the foregoing FACTS section as though set forth at length herein.

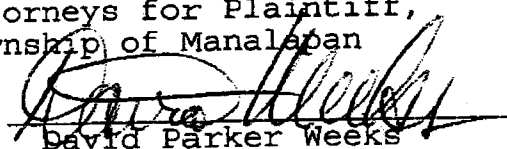
2. During all times mentioned herein, it was the duty of John Doe, I-V (these names being fictitious because their true identities are currently unknown) and XYZ Corporation I-V, (these names being fictitious because their true corporate identities are currently unknown) to exercise the appropriate care in abandoning the oil tank on the Dreyer property in or around 1995.

3. Defendants, John Doe, I-V and XYZ Corporation I-V deviated from the accepted standards of practice by, among other things, failing to properly abandon the oil tank the Dreyer property in 1995.

4. As a result of the Defendants, John Doe, I-V and XYZ Corporation I-V departures from the standard of care, the Township suffered damages in connection with the improperly abandoned oil tank on the Dreyer property.

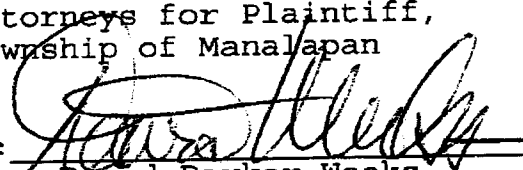
5. Wherefore, Plaintiff, Township of Manalapan demands judgment against the Defendants, John Doe, I-V and XYZ Corporation I-V jointly, severally, or in the alternative, for damages,

interest, counsel fees, and costs of suit, pursuant to N.J.S.A.
2A:13-4.

RUPRECHT, HART & WEEKS, LLP
Attorneys for Plaintiff,
Township of Manalapan
By: 
David Parker Weeks

JURY DEMAND

Plaintiff demands a trial by jury as to all issues.

RUPRECHT, HART & WEEKS, LLP
Attorneys for Plaintiff,
Township of Manalapan
By: 
David Parker Weeks

DESIGNATION OF TRIAL COUNSEL

Please take notice that pursuant to Rule 4:25-4, David Parker Weeks, Esq., is hereby designated as trial counsel in this matter.

DEMAND FOR ANSWERS TO INTERROGATORIES

Demand is hereby made upon the Defendant to answer Interrogatories within the time prescribed by the Rules of Court.

AFFIDAVIT OF MERIT

The Affidavit of Merit of Robert F. Renaud, Esq. is attached hereto.

RULE 4:5-1 AND FILING AND MAILING CERTIFICATION

I hereby certify that within my current knowledge, the matter in controversy is not the subject of any other action pending in any Court or pending arbitration proceedings and no such other actions or arbitration proceedings are contemplated and no other

party should be joined. I hereby certify that the within
Complaint has been filed with the Monmouth County Clerk.

RUPRECHT, HART & WEEKS, LLP
Attorneys for Plaintiff,
Township of Manalapan

By:



David Parker Weeks

June 13, 2007