

Real Estate Equities v. Holmde 711e (1984)

Notice of motion to expedite proceedings,  
establish a trial date, compel answers  
to interrogatories, enjoin interference w/ T's  
contractual/financial relations and establish  
a date to consider punitive damages award

12 pgs ML000088N (OM)

**FILED**

JUL 23 1984

M. DEAN HAINES, CLERK  
COUNTY OF OCEAN

CARL S. BISGAIER, ESQUIRE  
510 Park Boulevard  
Cherry Hill, New Jersey 08034  
(609) 665-1911  
Attorney for Plaintiffs

REAL ESTATE EQUITIES, INC., a  
New Jersey corporation,

Plaintiff,

vs.

HOLMDEL TOWNSHIP, etc.,

Defendant.

: SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION  
: MONMOUTH COUNTY/OCEAN COUNTY  
: DOCKET NO. L-015209-84PW

:  
: Civil Action

:  
: (Mount Laurel)

: NOTICE OF MOTION TO

: 1) ESTABLISH EXPEDITED PRE-  
: TRIAL PROCEDURES, 2)  
: ESTABLISH A TRIAL DATE;  
: 3) COMPEL ANSWERS TO INTER-  
: ROGATORIES and 4) ENJOIN  
: INTERFERENCE WITH PLAINTIFF'S  
: CONTRACTUAL AND FINANCIAL  
: RELATIONS AND 5) ESTABLISH  
: A DATE TO CONSIDER AN AWARD  
: OF PUNITIVE DAMAGES  
:

TO: S. THOMAS GAGLIANO, ESQUIRE  
1090 Broadway, Box 67W  
Long Branch, New Jersey 07764

DOUGLAS K. WOLFSON, ESQUIRE  
Englehard Building, Box 5600  
Woodbridge, New Jersey 07095

7 8/3 - 9:00 AM

SIRS: Please take notice that on a date, time and place to be  
set by the Court, the undersigned counsel for the plaintiff will  
move for an order to:

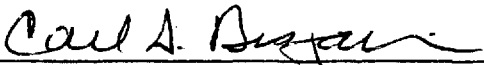
ML000088N{OM}

(1) establish expedited pre-trial procedures;  
(2) establish a trial date;  
(3) compel answers to interrogatories;  
(4) enjoin the defendant, its officials, employees and/or agents, from interfering with plaintiff's contractual and financial relations including, but not limited to, any contacts, directly or indirectly, with any financial institution or any official, employee and/or agent of such an institution in any manner directly or indirectly relating to the plaintiff, without prior court approval.

(5) establish a date at which a hearing may be held for the defendant to show cause why, in light of its actions against the plaintiff, it should not suffer punitive damages.

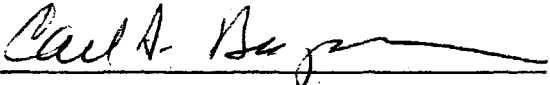
Plaintiff will rely upon the attached affidavit of Albert Bresnick and Carl S. Bisgaier and letter memorandum of law.

DATED: July 16, 1984

  
\_\_\_\_\_  
CARL S. BISGAIER, ESQUIRE  
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify that copies of this Notice of Motion and supporting papers were served by regular mail on counsel for all parties on July ~~16~~<sup>17</sup>, 1984.

  
\_\_\_\_\_

BISGAIER AND PANCOTTO

ATTORNEYS AT LAW  
510 PARK BLVD.  
CHERRY HILL, N.J. 08034  
TEL. (609) 665-1911

CARL S. BISGAIER  
LINDA PANCOTTO

July 16, 1984

RECEIVED

JUL 23 1984

JUDGE SERPENTELLI - CHAMBERS

Honorable Eguene D. Serpentelli  
Court House  
Freehold, New Jersey 07728

RE: REAL ESTATE EQUITIES, INC. v.  
HOLMDEL TOWNSHIP, etc.  
DOCKET NO. L-015209-84PW

Dear Judge Serpentelli:

This is to request a date, place and time for hearing the enclosed motion and to serve as a memorandum in lieu of Brief in support of said motion.

The facts which underlie plaintiff's request for relief are detailed in the Affidavit of Albert Bresnick and supporting exhibits. There has been, apparently undisputedly, an explicit and intentional attempt by the defendant to undermine my client's financial support and business relations. The defendant, in an apparent effort to punish my client for bringing a Mount Laurel II action has, directly and indirectly, undermined my client's ability to undertake its business purpose.

Furthermore and more importantly, the defendant's actions have had or, if not checked, certainly could have serious detrimental impacts on Mount Laurel II implementation throughout this state. My client is already experiencing the secondary effects. Mr. Bresnick's affidavit indicates that financial institutions are now wary of "Mount Laurels" and are indicating that they would withhold financial support for such land acquisition and development proposals.

The court is all too familiar with the reliance placed on private builders and developers by our Supreme Court. They are clearly the only serious plaintiff class to effectuate implementation. There will be no such class if defendants are permitted to threaten and punish financial institutions for giving support to this class of plaintiffs.

Honorable Eugene D. Serpentelli  
July 16, 1984  
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REAL ESTATE EQUITIES, INC. v. HOLMDEL TOWNSHIP, ETC.  
DOCKET NO. L-015209-84PW

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Plaintiff's thrust here is not to seek relief on the basis of any alleged civil wrong; e.g., tort. Plaintiff has filed a Notice of Tort Claim and will pursue the statutorily prescribed procedures for effectuating such a claim against the defendant and certain of its officials, employees and agents.

Plaintiff here seeks redress based solely on its right to pursue a Mount Laurel II claim. This court clearly has vast remedial powers not only to secure compliance with Mount Laurel II but, a fortiori, to prevent municipal action which would unlawfully constrain the pursuit of a Mount Laurel II claim. Thus, the Supreme Court stated:

In short, there being a constitutional obligation, we are not willing to allow it to be disregarded and rendered meaningless by declaring that we are powerless to apply any remedies other than those conventionally used. 92 N.J. at 287.

Mount Laurel II will be rendered meaningless if municipalities are permitted, without penalty, to undermine the plaintiff class. Holmdel has taken the first step. Others may surely follow unless Holmdel suffers a penalty for its actions.

This court's powers in this regard are clear. It has procedural control over the flow of the case and, further, can award punitive damages against those who would attempt to unlawfully thwart the satisfaction of the constitutional mandate.

In the context of the court's procedural authority, plaintiff seeks expedited pre-trial procedures and an expedited trial date. In the context of the court's punitive authority, plaintiff seeks monetary damages. Plaintiff is not seeking any money at this time and suggests that such an award be paid to the court. Plaintiff's claim for monetary relief will be pursued as part of its tort claim. Plaintiff urges the court, however, to award punitive damages for the attempted undermining of the Mount Laurel II mandate by Holmdel as previously discussed. This is wholly separate from any claim to damages to be pursued by the plaintiff on its own behalf.

Honorable Eugene D. Serpentelli  
July 16, 1984  
Page 3

REAL ESTATE EQUITIES, INC. v. HOLMDEL TOWNSHIP, ETC.  
DOCKET NO. L-015209-84PW

Plaintiff is seeking injunctive relief to protect itself from further harrassment outside of the scope of the normal adversarial process.

Lastly, as indicated on the moving papers, answers to interrogatories are overdue and plaintiff is seeking an order setting a date certain for their service.

Respectfully yours,

  
CARL S. BISGAIER

CSB:g  
cc: S. Thomas Gagliano, Esq.  
Douglas K. Wolfson, Esq.

CARL S. BISGAIER, ESQUIRE  
510 Park Boulevard  
Cherry Hill, New Jersey 08034  
(609) 665-1911  
Attorney for Plaintiffs

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REAL ESTATE EQUITIES, INC., a New Jersey corporation,	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION
	:	MONMOUTH COUNTY/OCEAN COUNTY DOCKET NO. L-015209-84PW
Plaintiff,	:	
v.	:	Civil Action
	:	(Mount Laurel)
HOLMDEL TOWNSHIP, etc.,	:	
	:	<u>AFFIDAVIT OF ALBERT BRESNICK</u>
Defendant.	:	

STATE OF NEW JERSEY:

SS

COUNTY OF :

ALBERT BRESNICK, of full age, being duly sworn  
according to law, upon his oath deposes and says:

1. I am a principal in Real Estate Equities, Inc.
2. Real Estate Equities, Inc. is a corporation which engages in land development and is the owner of Block 58, Lots 21 and 22 in Holmdel Township, New Jersey.

3. On March 2, 1984, Real Estate Equities, Inc. filed a lawsuit against Holmdel Township with regard to said lands seeking relief pursuant to Mt. Laurel II. Real Estate Equities, Inc. v. Holmdel Township, Docket No. L-015209-84PW.

4. I and other principals of Real Estate Equities, Inc. are engaged in land development for residential purposes through other corporate vehicles as well as Real Estate Equities, Inc.

5. A major source of financing for these residential developments, including the subject property of this litigation, is City Federal Savings and Loan Association.

6. On April 20, 1984, the Hon. Joseph V. Popolo, Mayor of Holmdel Township, was quoted as saying in a public meeting that he "has reason to believe "that" a major New Jersey financial institution is financing Real Estate Equity". He further stated, according to that report, that "we've got a million bucks in that bank, and, if it's confirmed, it's coming out the next day". The Hon. S. Thomas Gagliano, counsel to Holmdel, was reported to state: "If they're actually an equity owner, that could make people in the township very upset". (See attached Exhibit "A".)

7. The report indicated that a mailgram had been sent the day before "asking the bank to confirm its holdings in Real Estate Equity". (See attached Exhibit "A".)



8. In fact, a mailgram was sent by Mayor Popolo on or about April 21, 1984, to City Federal Savings and Loan demanding the bank's position regarding its "equity" participation in Real Estate Equities, Inc. "which firm is involved in a zoning suit against the Township". (See attached Exhibit "B".)

9. On April 24, 1984, Mayor Popolo sent a follow-up letter to the bank seeking "A positive statement of fact that City Federal is or is not an equity participant in Real Estate Equities, Inc." and stating that this "affects our relationship with City Federal". Said letter was on Township letterhead. (See attached Exhibit "C".)

10. On May 2, 1984, Holmdel was reported to withdraw "about \$10.5 million in short-term investments from City Federal Savings and Loan. Mayor Popolo was reported to state that "we got a denial from the bank but the way it was worded, it's obvious there is an opportunity for the bank to make some decisions (in the development project)". (See attached Exhibit "D").

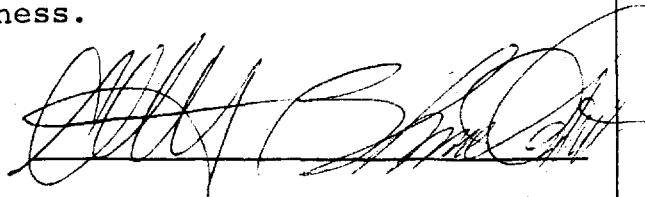
11. In correspondence dated May 22, 1984 to the court from Mr. Gagliano, he acknowledges the substance of the above-dated actions by Holmdel Township stating: "In other words, the Township was told that City Federal was not just a partner. Needless to say, this caused our local officials to become very upset and they decided to deposit Holmdel's money elsewhere."

12. These actions by Holmdel Township have had an adverse affect on my ability to obtain financing on other residential developments. Thus, City Federal Savings and Loan has turned down two separate applications for non-Mt. Laurel developments each of which called for approximately \$1,000,000 for land acquisition and construction. While these applications were made prior to the actions of Holmdel Township, the decision to turn them down occurred subsequently. The decision was made as a result of Holmdel Township's actions. City Federal Savings and Loan had never previously turned down such an application from me or my development companies.

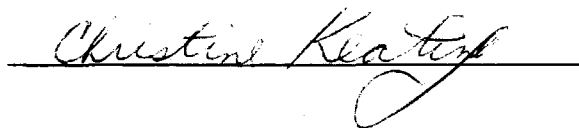
13. Furthermore, these actions have had an impact on my ability to obtain financing elsewhere. I have been queried by City Federal Savings and Loan officials and others as to whether developments which are being proposed for financing are "another Mt. Laurel" with the clear implication that they would not favor financing such developments.

14. I am fearful that, as a result of the actions of Holmdel Township and as an indirect consequence of my decision to pursue a Mt. Laurel II claim, my ability to obtain financing and to pursue my normal business activities has been threatened and will continue to be threatened to the personal and financial disadvantage of myself, my partners and the development

companies through which I do business.

A handwritten signature in cursive script, appearing to be "William B. Smith", written over a horizontal line.

Sworn to and subscribed to  
before me this 11<sup>th</sup> day of  
July , 1984.

A handwritten signature in cursive script, appearing to be "Christine Keating", written over a horizontal line.

# The Daily Register

FRIDAY, APRIL 20, 1984

## *Allegiance of bank questioned*

HOLMDEL — Mayor Joseph V. Popolo charged last night that a "major financial institution" has an "interest" in Real Estate Equity Inc., a firm suing the township to allow the construction of 1,838 housing units.

Popolo has "reason to believe" that "a major New Jersey financial institution is financing Real Estate Equity." The remarks were made during last night's Information

meeting, held by the township committee and planning board, to explain the ramifications of the state Supreme Court Mount Laurel II to the community.

"We've got almost a million bucks in that bank, and if it's confirmed it's coming out the next day," Popolo said after the meeting.

Nelther Popolo or State Sen. S. Thomas Gagliano, township at-

torney, would reveal the name of the bank.

"If they're actually an equity owner, that would make people in the township very upset," Gagliano said.

Popolo said he sent a mailgram yesterday asking the bank to confirm its holdings in Real Estate Equity. He said he expects a reply by Monday.

EXHIBIT "A"

4-0339728112002 04/21/84 ICS IPHMTZZ CSP NWKP  
1 2019469488 MGM TDMT HOLMDEL NJ 04-21 0811P EST

RECEIVED

HOLMDEL TOWNSHIP  
CRAWFORDS CORNER RD  
HOLMDEL NJ 07733

EXHIBIT "B"

Mayor	.....	Mayor	4
Twp. Comm.	.....	Ed. Insp.	.....
Asst.	.....	Ed. Insp.	.....
Recorder	.....	Legal	.....
Clerk	.....	M. Bd.	.....
Engineer	.....	Records	.....
Pl. Ed. (2)	.....	S. U.	.....
Police	.....	S. P.	.....
Road Dept.	.....	Sewer	.....
	.....		.....
	.....		.....

*MAIOPLO*  
*Legal V. N. H. [unclear]*  
*Accounts*  
*(Hawi)*

THIS IS A CONFIRMATION COPY OF THE FOLLOWING MESSAGE:

2019469488 MGM TDMT HOLMDEL NJ 91 04-21 0811P EST  
ZIP

A J HEDDEN PRESIDENT  
CITY FEDERAL SAVINGS AND LOAN  
EAST JERSEY ST AND JEFFERSON AVE  
ELIZABETH NJ 07201

HOLMDEL TOWNSHIP IS DISTURBED TO LEARN THAT CITY FEDERAL IS AN EQUITY PARTICIPANT IN REAL ESTATE EQUITIES INC, WHICH FIRM IS INVOLVED IN A ZONING SUIT AGAINST THE TOWNSHIP, THE TOWNSHIP WOULD LIKE A STATEMENT FROM THE BANK REGARDING ITS POSITION, PLEASE CONTACT ME (2648200) OR OUR TOWNSHIP CLERK/TREASURER JOHN WADINGTON (9464330) AS SOON AS POSSIBLE TO DISCUSS THIS MATTER.

REGARDS

J V POPOLO MAYOR HOLMDEL TOWNSHIP  
CRAWFORDS CORNER RD  
HOLMDEL NJ 07733

20:13 EST

HGMCOMP

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APR 23 1984

TOWNSHIP OF HOLMDEL  
TOWNSHIP CLERKS OFFICE

HOLMDEL TOWNSHIP

4 CRAWFORDS CORNER ROAD - BOX 400  
HOLMDEL, NEW JERSEY 07733-0400

John J. Wadington  
Administrator  
(201) 946-2820

John P. Wadington  
Clerk/Treasurer  
(201) 946-4330

Frank V. ...  
Construction Official  
(201) 946-8122

...p Committee  
Joseph V. ...  
Thomas M. Cox, Deputy Mayor  
... M. Fry  
... N. Cole  
... J. Tricarico  
Thomas Gagliano  
Attorney  
... G. Broberg  
Engineer

EXHIBIT "C"

April 24, 1984

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APR 26 1984

REAL ESTATE  
EQUITIES

Mr. George Mikula, Sr. Vice-president  
City Federal Savings & Loan Association  
Equity Investment Department  
200 Centennial Avenue  
CN 1366  
Piscataway, NJ 08854

Dear Mr. Mikula:

Holmdel Township sent the attached mailgram to Mr. A. J. Hedden yesterday. His office indicated that you would respond to our inquiry. Holmdel would like a positive statement of fact that City Federal is or is not an equity participant in Real Estate Equities, Inc.

Please contact me on Wednesday, April 26, 1984 at 201 264 8200 or John P. Wadington, Township Clerk and Treasurer at 201 946 4330.

It is important that this matter be resolved since it affects our relationship with City Federal.

Very truly yours,  
*Joseph V. Popolo*  
Joseph V. Popolo  
MAYOR

TOWNSHIP OF HOLMDEL

*M. Fry*

# \$10.5 million out of S&L

EXHIBIT "A"

By STEVE CHAMBERS  
Press Staff Writer

**HOLMDEL TOWNSHIP** — The township treasurer has withdrawn about \$10.5 million in short-term investments from a savings and loan because the Township Committee suspects the financial institution may be indirectly assisting a developer with a lawsuit against the township.

Mayor Vincent Popolo said Real Estate Equities Inc., Middletown Township, is suing the township for denying approval of a proposed housing development.

Township officials refused to name the financial institution until they can confirm a link to the developer.

But City Federal Savings & Loan officials confirmed yesterday the Elizabeth-based company is the one in question. They said they could not comment on the savings and loan's investment dealings.

Real Estate Equities is suing the township for refusing approval of a 1,836-unit housing development on Route 35.

The developer claims the refusal constitutes a violation of the state Supreme Court's Mount Laurel II decision, which requires low- and middle-income housing in designated growth areas.

Township officials say they think the savings and loan may be functioning as more than a lender on the project.

"It all depends on whether the bank is

a partner in a joint venture or simply a lending institution," said John P. Wadington, township clerk and treasurer. "It could be a technical legal link. We want to know if they are a money lender or if they have actually invested money (in the development company)."

Mayor Popolo and other township officials refused to identify the institution until a title search of the 99-acre development tract, ordered by township attorney S. Thomas Gagliano, is completed.

"We don't want to do anything injurious to the bank if there's no basis for it," Popolo said. "On the other hand, if there is a basis, we want to make other municipalities (affected by the Mount Laurel II decision) aware that (the savings and loan institution) is doing more than a community service."

Popolo said he sent a Mailgram to the financial institution.

"We got a denial from the bank," he said. "But the way it was worded, it's obvious there is an opportunity for the bank to make some decisions (in the development project)."

Wadington said if the "financial institution" is a partner of the developer, it "basically is suing us."

"We're giving them money (for investment) with one hand, and paying the lawyer (to represent the township in the lawsuit) with the other," he said.

A telephone check of the financial institutions where the township invests revealed that City Federal was the institution from which money was withdrawn.

Wadington said he was ordered by the committee to stop making short-term investments with City Federal and to withdraw current investments as they matured.

He said he withdrew about \$7 million April 25 and made three withdrawals totaling \$3,527,000 yesterday.

The money is surplus in various accounts. Wadington said it would be impossible to track down where the \$10.5 million came from without a thorough search of township financial records.

Wadington said about \$6 million was from a bond sale last month. He said some of the money was from school taxes collected six months before the municipality had to pay the school board.

He said the township normally has \$4 million to \$5 million available to invest. He said the \$7 million he initially withdrew was an unusually large figure and had been invested for only a day.

Wadington said the township made \$1 million through investment in 1982 and \$500,000 last year.

"I think we've got their (City Federal's) attention," he said. "It will definitely have an impact on them. If the evidence indicates that they are supporting the developer, we'll try to get other municipalities to withdraw their money."

City Federal is the largest savings and loan institution in the state, with 1983 assets of \$6.8 billion.

In response to the lawsuit, the township is considering an amendment to its zoning ordinance that would allow construction of developments with a density of seven units per acre.

Real Estate Equities proposes a density of 18.3 units per acre for its development near the Hazlet Township boundary.

The committee is expected to continue its discussion of the amendment Monday.

CARL S. BISGAIER, ESQUIRE  
510 Park Boulevard  
Cherry Hill, New Jersey 08034  
(609) 665-1911  
Attorney for Plaintiffs

REAL ESTATE EQUITIES, INC., a  
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Civil Action

:  
(Mount Laurel)

:  
CERTIFICATION OF  
CARL S. BISGAIER

I certify that I am counsel to the plaintiff in the above-captioned matter; that on March 29, 1984 interrogatories were served on counsel for the defendant; that answers were due on or before June 1, 1984; and that to date, no answers have been received and inquiries as to when they can be expected have not been answered with a date certain.

DATE:

7/16/84

  
CARL S. BISGAIER, ESQUIRE