

Real Estate Equities v. Holmdel 7/27

(1984)

Letter from Δ challenging Π 's procedure ~~for~~
~~process~~ for filing the claims

2 pgs

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July 27, 1984

Hon. Eugene Serpentelli
Judge of the Superior Court
Court House
CN-2191
Toms River, New Jersey 08753

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JUL 30 1984

JUDGE SERPENTELLI'S CHAMBERS

Re: Real Estate Equities, Inc. v.
Holmdel Township
Docket No. L-015209-84 PW

Dear Judge Serpentelli:

We have received a copy of plaintiff's motion for several forms of relief, all by letter dated July 24, 1984. With respect to the alleged claims regarding an interference with contractual relationships, plaintiff is seeking relief for an alleged tort and as such, such claims should not be brought by way of notice of motion.

Since the alleged claim is a tortious one, the procedure must be controlled by the New Jersey Tort Claims Act, which is the only means by which the sovereign immunity of municipal liabilities can be waived. Plaintiff has already served a Notice of Claim, and on July 19, 1984, we advised plaintiff's counsel of the correct statutory procedure under N.J.S.A. 59:8-7 for filing such claims.

At that time, we advised counsel also that N.J.S.A. 59:8-8 prohibits presentation of such claims in Court until after 6 months from filing under N.J.S.A. 59:8-8. See Margolies and Novack, Tort Claims Against Public Entities (1984) at 1, 95. More importantly, N.J.S.A. 59:9-2(c) prohibits the award of punitive or exemplary damages. Even a cursory reading of the motion reveals another important procedural defect, the alleged cause of action fails to join an indispensable party, namely, City Federal Savings and Loan Association, which should be joined under Rule 4:28-1.

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The interrogatories served by plaintiff are onerous and burdensome, and we have expended a great deal of effort even to prepare answers to those interrogatories which have been properly propounded. We believe we can supply answers to interrogatories within the next two or three weeks.

Plaintiff's motion does not contain a return date, and since the motion was not filed in accordance with the Rules of Court, it is impossible to discern when a more formal response should be filed.

Regardless of the obvious procedural defects in the "motion" filed with the Court, the allegations against the Township are totally without merit. When and if these claims are properly brought before the Court, they will be vigorously defended.

Respectfully,

S. Thomas Gagliano
Holmdel Township Attorney


by Ronald L. Reisner

RLR:cm

cc: Carl S. Bisgaier, Esquire