

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BUTTERFIELD REALTY, LLC,

COMPLAINT

Plaintiff,

v.

Case No: _____

JURY TRIAL DEMANDED

VILLAGE OF COLD SPRING, DAVID
MERANDY, in his capacity as Mayor
of the Village of Cold Spring,

Defendants.

Plaintiff Butterfield Realty, LLC by and through its attorneys, Girvin & Ferlazzo, PC, states the following as and for its Complaint:

PARTIES

1. Plaintiff Butterfield Realty, LLC, ("Plaintiff") is a New York Limited Liability Company, with a principle place of business in Cold Spring, in the County of Putnam, in the State of New York.

2. Defendant Village of Cold Spring (the "Village") is and was, at all times relevant hereto, a municipal corporation organized and existing under the laws of the state of New York with its principle offices located at 85 Main Street in Cold Spring, New York.

3. At all times relevant herein, Defendant David Merandy ("Mayor Merandy"), was the duly elected Mayor of the Village, and a natural person residing in the Southern District of New York.

NATURE OF THE ACTION

4. This case involves a malicious and intentional campaign of harassment, usurpation of authority, and other unlawful actions undertaken by Mayor Merandy, in his capacity as the executive officer of the Village, to arbitrarily, capriciously, and maliciously stop,

delay, frustrate, and ultimately “kill” Plaintiff’s mixed-use development in the Village of Cold Spring, and bankrupt its Principal Paul Guillaro.

5. Mayor Merandy’s campaign of sabotage, which began only after Plaintiff had spent four years and more than \$1,000,000 securing a special zoning variance and final site and plat approval for the development, has added 2 years and upon information and belief, \$2,500,000 to the cost of development, and was clearly intended to, and did, deprive Plaintiff of certain vested property rights in contravention of Plaintiff’s Constitutional right to substantive due process.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 1343(a)3 and (a)4, which confer original jurisdiction of federal district courts to redress the deprivation of rights, privileges, and immunities secured by the laws and Constitution of the United States.

7. Venue is proper in this District under 28 U.S.C. § 1331(b)1 & (b)2 because multiple Defendants reside in the District, all Defendants are residents of New York State, and a substantial part of the events or omissions giving rise to the claims occurred and/or emanated from this District.

PLAINTIFF’S PRE-MERANDY DEVELOPMENT EFFORTS

8. In approximately 2011, Plaintiff, through its principal Paul Guillaro, commenced work on a plan to redevelop the 5.7-acre site of the long defunct Butterfield Hospital in the Village of Cold Spring, New York, in Putnam County (hereinafter “Butterfield Site”).

9. Plaintiff proposed a mixed-use redevelopment to include office and retail space, a post office, a medical arts building, 55 senior apartments, a senior center, and three residential homes (hereinafter the “Project”).

10. At the time Plaintiff acquired the Butterfield Site it was not zoned for mixed use.

11. Between 2011 and 2015, Plaintiff, at significant expense, and in cooperation with the Village, the Village’s Board of Trustees, the Planning Board, the Town’s Zoning Board, the Village’s Building Inspector, the Village’s Historic District Review Board, and the Village’s various outside consultants, worked to secure the necessary rezoning of the old Butterfield Site and site plan approval for the Project.

12. On May 13, 2014, Village Resolution #18-2014 was passed adopting Local Law #02-2014 amending the local zoning regulations specifically for the purposes of creating a mixed-use district tailored to the proposed Project.

13. Pursuant to Local Law #02-2014 the Zoning Map designation of the majority of the Butterfield Site was changed from Zoning District B-4 to Zoning District B-4A (Medical and Health Care Facility Mixed Use District) and a small portion of the Butterfield Site along Paulding Avenue was changed from Zoning District B-4 to R-1, conditioned upon approval of a final site plan.

14. In September of 2014, Plaintiff submitted a preliminary site plan and an application for approval of the same to the Planning Board. The Planning Board, in accordance with state and local law, conducted the appropriate review process – including consultation with outside experts, the holding of public meetings, including two joint meetings with the Village’s Historic District Review Board, and additional revisions and alterations were made to the preliminary site plan.

15. On April 1, 2015, the Planning Board approved the revised preliminary site Plan, subject to certain conditions of approval.

16. On May 14, 2015, the Village's Historic District Review Board approved the Project's proposed design.

17. On June 3, 2015, after submitting its application for final plat approval, after a joint meeting conducted by the Board of Trustees and Planning Board to receive advice and comment on said application, and following a duly noticed public hearing on the same (with no public comment having been offered), the Planning Board approved the final plat for the Project.

18. In addition to the above, Plaintiff secured the necessary approvals under the New York State Environmental Quality Review Act ("SEQRA"), as well as approvals from the New York State Department of Transportation, the Putnam County Department of Health, the Putnam County Planning Department, the Village Fire Chief, the Superintendent of Water and Sewer, and the Village Board of Trustees.

19. On June 9, 2015, after more than four years of zoning, siting, and permitting related regulatory hurdles and the investment of more than \$1,000,000 in the development of the Project, the final site plan was approved by the Planning Board ("Final Site Plan").

20. Under the approved Final Site Plan, the Project was to include a 15,000 square foot office retail building ("Building #1), a 17,500 square foot office retail building ("Building #2), 55 market rate condominium units designed for senior citizen housing, to be contained within two buildings (including Building # 3), a resident community center, the Lahey Pavilion, a medical office building consisting of 11,500 square feet, and three single family homes to be constructed along the northern portion of the Butterfield Site.

21. Importantly, as part of the Final Site Plan, the Planning Board specifically approved a reduction in the amount of required off-street parking for the entire mixed-use portion of the project without regard to the particular uses of any single mixed-use building.

22. Accordingly, Construction was ready to begin.

ELECTION OF MAYOR MERANDY

23. On March 19, 2015, David Merandy was elected Mayor of the Village.

24. Throughout the mayoral campaign Mayor Merandy was a vocal opponent of the Project.

25. After taking office in April of 2015, Mayor Merandy was overheard after multiple Board of Trustee meetings stating that he intended to “kill” the Project and bankrupt Plaintiff’s principal Paul Guillaro.

26. On one occasion, after a Board of Trustee’s meeting, Mayor Merandy stated, in sum and substance “we can’t stop the municipal buildings from being built but the other buildings on the site plan you can count that I am going to block them.”

27. Mayor Merandy further stated that he could significantly delay the process at the cost of Paul Guillaro by dragging out the permitting process. Mayor Merandy further stated, in sum and substance, that Paul Guillaro was “just another rich builder trying to take advantage of the village” and that he would have to “eat the cost” of Mayor Merandy’s planned delays.

28. In the Summer of 2015, Planning Board Chairman Barney Malloy told Paul Guillaro that it was his understanding that Mayor Merandy, his wife Stephanie Hawkins, and Village Trustees Kathleen Foley and Matt Francisco were “going to do whatever it took” to either delay, frustrate or create issues for the project.

MAYOR MERANDY'S CAMPAIGN TO KILL THE PROJECT

29. Prior to the election of Mayor Merandy, various outside consultants, including Attorney Anna Georgiou and the firm Barton & Loguidice ("B & L"), had provided legal planning and engineering support to the Village with respect to the Project for approximately three years.

30. Upon taking office Merandy fired Georgiou and B & L, and hired new legal counsel and planning and engineering consultants – significantly increasing the cost of the project for Plaintiff, who had to pay for these new consultants to familiarize themselves with the Project's details and multi-year history.

31. Indeed, whereas in the past it had been the Village's custom and practice to include the cost of the outside consultants in the various applications and permit fees, Mayor Merandy informed Plaintiff that henceforth Plaintiff would be responsible for the application and permit fees and would be billed separately for the cost of the consultants.

32. Merandy intentionally hired an engineering and planning firm located in Connecticut – inviting unnecessary and wasteful travel expenses to be borne by Plaintiff– merely to increase the cost of the Project.

33. Mayor Merandy specifically directed William J. Florence, Jr., the Village's attorney, to alter his bills so as to allocate time Attorney Florence had spent on issues and matters unrelated to the Project so that Mayor Merandy could pass these additional and unrelated costs on to Plaintiff, further increasing the cost of the Project.

34. Absent any legal authority, Mayor Merandy effectively usurped the role and power of the Village's Director of Public Works and Building Inspector by instructing them that they were not to take any action with respect to the Project without his approval; a fact

personally confirmed to Plaintiff and its agents by the Director of Public Works and Building Inspector.

35. According to the Village's Building Inspector, he was not to take any action with respect to the Project, without the express permission of Mayor Merandy – who has no legal authority for such a usurpation of power.

36. Rather than have the correct officials coordinate the work flow approved by the Planning Board, Mayor Merandy unlawfully assumed jurisdiction and interfered with the details of all aspects of the project without authority and in an arbitrary and capricious manner for the purpose of stopping, destroying, interfering with and/or harming the Project without justification and for personal reasons

37. Mayor Merandy's continual demand to involve engineers, attorneys and other professionals in what had previously been handled by the Village administratively through the Building Inspector and other Village Officials has delayed progress by over two years and caused an explosion of inappropriate and unnecessary expenses.

38. Despite two Planning Board Resolutions permitting issuance of a Building Permit for Building #2 and repeated insistence both orally and in writing that a swap of interior locations of uses previously approved by the Planning Board between Building 2 and the Lahey Pavilion (specifically the United States Postal Service facility, the Putnam County senior center, and the Hudson Valley Hospital Center medical office uses) was a minor modification of the Site Plan I since: i) there is no increase in size or intensity of any of these previously approved uses, ii) no alteration of the footprint, height or exterior appearance of any building; and, iii) did not require any additional parking spaces to accommodate the swap, the Building Permit for building

#2 was delayed over 9 months by Mayor Merandy's insistence that such an alteration required a modification and amendment to the Final Site Plan.

39. Mayor Merandy seized upon this routine and minor variance as an opportunity to deprive the Plaintiff of its property interest in the Final Site Plan. By instructing or otherwise causing the Building Inspector to refuse to allow the minor variance without modifying the Site Plan— as was expressly authorized in the Final Site Plan approval – Mayor Merandy forced Plaintiff to seek an unnecessary modification to the Final Site Plan solely to add further delay and additional expense to the Project.

40. Even after these unnecessary modifications were made, and a revised Final Site Plan was issued, Mayor Merandy continued to take steps to force the Plaintiff to make additional site plan modifications and incur the cost and delay of the review process entailed therein. For example, Mayor Merandy deliberately made false statements to the Putnam County Legislature in order to convince the County not to enter a lease with Plaintiff for the use of the planned Senior Center – including that Plaintiff was overcharging the County for the Senior Center when in reality it was offered to the County at less than half of market value. Mayor Merandy knew that by eliminating the planned Senior Center, he could force Plaintiff to put that portion of the Project to a different use, and once again require Plaintiff to undergo yet another site plan modification and approval.

41. Similarly, the Building Permit for building #3 was also improperly and illegally delayed by over one year by the dilatory actions of Mayor Merandy and his unlawful interference with the proper authority of the Building Inspector.

42. The application for Building # 3 was filed on Sept 2, 2015. Typically, the Village issued building permits within 30-60 days. In this case, despite compliance with the Village

code, the building permit was not issued for more than a year. Although Mayor Merandy had insisted that Plaintiff cover the cost of the Building Inspector's time through increased inspection fees – which Plaintiff paid – the Building Inspector regularly commented that Mayor Merandy would not allow him to spend time on the Project or had assigned him to other tasks preventing him from timely completing inspections for Building # 3.

43. The Village has been charging both for its own review of and for the review and approval of its consultants which serves to improperly increase the cost to develop the Project beyond what is lawfully permitted since the cost of these services is already included within the application fees charged by the Village.

44. Moreover, the Village has, upon information and belief, charged consultant fees to the Claimant that are inconsistent with New York law and due process because: i) they are unrelated to the Project; ii) they are excessive; and, iii) they are without a lawful basis under New York Law.

45. Upon information and belief, as a result of the delays caused by Mayor Merandy, Plaintiff suffered losses in an amount not less than \$2,500,000.

CAUSES OF ACTION

Count 1: Substantive Due Process Violation

46. Plaintiff realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 45 of this Complaint.

47. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution protects property interests ensuring the same to be free from unreasonable government interference subject only to regulation that is rationally related to a legitimate government purpose.

48. Beginning in 2015, and continuing up to the present, the Village, at the insistence of Mayor Merandy, has desired to increase the cost, delay the progress of, and ultimately “kill” the Project solely to harm the Plaintiff and its principal Paul Guillaro.

49. Plaintiff had a vested property interest in the Final Site Plan – which had been duly awarded to him after a comprehensive review by state and local officials, at an estimated expense to Plaintiff of more than \$1,000,000.

50. Plaintiff further had a vested property interest in the building permits for Building numbers 1, 2, 3, and the Lahey Pavilion.

51. Indeed, pursuant to the §134-20 of the Village Code, building permits are to be issued wherever the plans meet the appropriate code and ordinances. The Village’s Building Inspector does not “possess discretionary authority, except where specifically set forth”.

52. Upon information and belief, at the direction of Mayor Merandy, the Building Inspector unnecessarily delayed the approval of various building permits without sufficient cause or authority and in clear violation of the Village Code and the specific Zoning Variances granted to Plaintiff by the Planning Board, including the variance reducing the amount of parking necessary for the mixed-use portion of the project.

53. Mayor Merandy’s other dilatory tactics were specifically designed to deprive Plaintiff of his property interest in the Final Site Plan by slowly bleeding Plaintiff financially until the Project was no longer financially viable.

54. The decisions of Mayor Merandy, the Village Planning Board, the Building Inspector, and the Department of Public Works were not based on the merits of the various requests for building permits or minor variances, but were designed solely to further Mayor

Merandy's malicious mission to "kill" the project, and cause financial injury and ruin to the Plaintiff and its principal Paul Guillaro.

55. The motives and actions of the Defendants are not rationally related to a legitimate governmental interest and therefore have denied and continue to deny the Plaintiff's right to substantive due process in violation of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

56. Defendants, their agents and employees, acting under color of state law, violated Plaintiff's right to due process of law as guaranteed by the Fourteenth Amendment of the United States Constitution and 42 U.S.C. § 1983.

57. The Defendants' actions, as outlined above, violate Plaintiff's right to substantive due process of law under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983 as-applied, to the extent those actions have unreasonably and arbitrarily interfered with the lawful development of the Project and Plaintiff's property interest in the Site Plan and the various building permits associated therewith.

58. These actions, or inactions, of the Village were the moving force behind the Constitutional deprivations alleged by Plaintiff; and as a result, Plaintiff has sustained, and will continue to sustain, general and special damages as alleged, as well as incurring attorney's fees, costs and expenses, including those authorized by 42 U.S.C. § 1983, to an extent and in an amount subject to proof at trial.

Count 2: Monell Claim

59. Plaintiff realleges and incorporates by reference each of the allegations contained in paragraphs 1 through 58 of this Complaint.

60. At all relevant times, the Village established and/or followed policies, procedures, customs and/or practices (collectively "policy" or "policies") which were the moving force and cause of the various violations of Plaintiff's constitutional rights, including but not limited to Defendant Mayor Merandy's self-avowed policy, practice and/or custom of delaying, causing unnecessary expense to, and ultimately attempting to "kill" the Project.

61. The Village had a duty to Plaintiff at all times to establish, implement and follow policies, procedures, customs and/or practices which confirm and provide for the protections guaranteed under the United States Constitution, including the Fourteenth Amendments, to use reasonable care to select, supervise, train, control and review the activities of all agents, officers and employees in its employ, including Mayor Merandy, and to refrain from acting arbitrarily, capriciously, or maliciously with respect to the property rights of the Plaintiff.

62. The Village breached its duties and obligations to Plaintiff, as stated, including but not limited to, failing to establish, implement and follow the correct and proper Constitutional policies, procedures, customs and practices; by failing to properly select, supervise, train, control, and review its agents and employees as to their compliance with Constitutional safeguards; and by permitting Mayor Merandy to engage in the unlawful, malicious and unconstitutional conduct alleged.

63. As the head of the Village, the policies and practices created and carried out by Mayor Merandy were those of the Village itself, and the Village knew, or should have known, that by breaching the mentioned duties and obligations that it was foreseeable that it would, and did, cause Plaintiff to be injured and damaged by its wrongful policies and acts as alleged and that such breaches occurred in contravention of public policy and as to its legal duties and obligations to Plaintiff.

64. These actions, or inactions, of the Village were the moving force behind the Constitutional deprivations alleged by Plaintiff; and as a result, Plaintiff has sustained, and will continue to sustain, general and special damages as alleged, as well as incurring attorney's fees, costs and expenses, including those authorized by 42 U.S.C.A. §§ 1983, to an extent and in an amount subject to proof at trial.

PRAYER FOR RELIEF

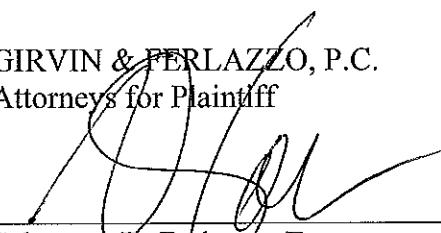
WHEREFORE, Plaintiff respectfully requests as follows:

- A. An award of compensatory damages in an amount no less than \$2,5000,000, to be ultimately determined at trial;
- B. An award of costs and attorneys' fees, as allowed by law;
- C. Leave to amend this Complaint to conform to the evidence produced at trial; and
- D. Such other or further relief as the Court may deem appropriate, just, and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff requests a jury trial on all matters so triable.

Dated: March 15, 2017

GIRVIN & FERLAZZO, P.C.
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