

Stuart J. Moskowitz, Esq.
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Freehold, NJ 07728
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Pro Se

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)

Defendants (s)

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

CIVIL ACTION

**APPLICATION FOR ORDER TO SHOW
CAUSE, CERTIFICATION IN SUPPORT**

Defendant, Stuart J. Moskowitz, seeking an Order to Show Cause why, *inter alia*, the Complaint in this matter should not be dismissed, enters a special appearance and alleges as follows:

1. Defendant is a resident of the Township of Manalapan, and its former Mayor, in 2000. In 2005, Plaintiff was appointed Township Attorney for Plaintiff.
2. In 2003, an action was commenced against the Plaintiff by several home owners adjacent to the field on which Plaintiff erected a football field with speakers and lights. In November 2004, that litigation was settled by my predecessor with a consent order prepared by my predecessor. That consent Order, signed by Hon. Alexander D. Lehrer, P.J.Ch., provided, "The parties will negotiate a purchase price in a reasonable amount of time or the Township will condemn the subject property."
3. That language left no option for the Township not to obtain the property regardless of what was found on the property, including the oil tank known by Plaintiff to exist prior to entering into the Stipulation of Settlement and Order of Dismissal With Prejudice in 2004.

4. In 2005, when I became the Township Attorney, I complied with the Order, preparing a contract of sale to establish the sales price, and closing on the property in June, 2005.

5. Manalapan is a highly charged political environment. The makeup of the government changes yearly, and alliances more frequently than that.

6. In this highly charged environment, certain members of the Township Committee chose to obtain an attorney at taxpayer's expense to "investigate" a claim of "Legal Malpractice" and to continue to leak to the press the fact that they believed I had committed "Legal Malpractice."

7. In connection with this activity, the Township entered into an agreement with the Plaintiff's attorney herein, which agreement, upon information and belief, violates the Rules of Professional Conduct, because it is for an excessive contingent fee that exceeds the graduated scale permitted by those rules.

8. At no time, however, did the Township Committee ever authorize the commencement of this litigation.

9. In the interim, however, members of the Township Committee, and political candidates closely aligned with those members, have continually leaked to the press the allegations of "Legal Malpractice" contained in the Complaint.

10. Despite the obvious involvement and potential liability of numerous other professionals in 2004 and 2005 in connection with the purchase of the subject property, I was the only named defendant in this action, confirming the political nature of this frivolous litigation.

11. The essence of the Complaint is that I closed on this property despite being asked by the Township Administrator to hold off until after receipt of a Preliminary Site Inspection Assessment from the Township Engineer. The closing, however, did not take place until after the receipt of such document from the

Township Engineer. Plaintiff's counsel knew about the timely receipt of this document, destroying the lynchpin of his Complaint, because he actually referenced it in the complaint, merely misrepresenting to the Court the dates of the report versus the closing. The report was received in May and is so dated, including on the copy in the possession of Plaintiff's counsel. The closing was in June.

Tort Claims Act

12. This litigation cannot be sustained because it is precluded by §59:3-2 of the New Jersey Tort Claims Act which states, in section a:

A public employee is not liable for an injury
resulting from the exercise of judgment or
discretion vested in him.

13. That this provision applies to me has been long settled by case law establishing that municipal professionals hired in accordance with statutory requirements, such as a municipal engineer, or municipal attorney, are deemed public employees. That would be the case even if I hadn't received a W2 from the Township while serving as Municipal Attorney, which I did.

14. Accordingly, this action cannot be sustained and must be dismissed for failure to state a cause of action against me.

This Action Was Not Authorized

15. The preliminary information regarding the political nature of this case, while not generally relevant to the sustainable nature of this action, was included as explanation for the genesis of this litigation.

16. It becomes relevant to understanding the fact that this litigation is not the authorized action of the Plaintiff, Township of Manalapan.

17. There has been no resolution authorizing this litigation. A Township may not act except through official, public action.

18. While it is not believed that the Township Committee took any action in executive session, or that they even knew as a whole that this action was being commenced, the Open Public Meetings Act requires such action to be taken in public session, not executive session. No such action was ever taken. Plaintiff's counsel brings this action without his "client's" authorization or approval.

19. Accordingly, the action is NOT on behalf of the Township as it purports to be and must be dismissed.

Indemnification

20. Even if this action were not dismissed, as it should be, it is frivolous in that the Township is required by its own ordinance to indemnify me in this action.

21. Pursuant to N.J.S.A. §59:10-4, "Local public entities are hereby empowered to indemnify local public employees consistent with the provisions of this act."

22. Pursuant to that statute, the Plaintiff Township passed Ordinance No. 93-30, identified in the Code of the Township of Manalapan as Chapter 9 which states:

§9.1. Purpose

It is the policy of the Township of Manalapan to provide full and complete protection to all its officials, officers, employees and board members from and against any and all suits, claims and demands with regard to their respective activities arising out of and related to their public duties and public employment the maximum extent permitted by law.

§9.2. Defense and indemnity against civil actions.

Whenever any civil action has been or shall be brought against any person holding office, position, employment or board membership under the jurisdiction of the Township of Manalapan for any act or omission arising out of and in

the course of the performance of the duties of such office, position, employment or board membership, the Township shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, and shall save harmless and protect such person from any financial loss resulting therefrom.

That section continues with the requirement that the Township Attorney handle the defense, or, in the event of a conflict, such as here, the defendant is entitled to his own counsel to be paid for by the Township.

23. There are limitations to this section, such as Section 9.3 limiting defense in a criminal matter, and Section 9.4 limiting defense of certain situations such as willful fraud, malice, or misconduct, and punitive or exemplary damage, none of which are applicable here.

24. That I am within the definition of “any person holding office, position, employment or board membership” is unquestionable. I was appointed pursuant to §26-8 of the Township Code. Chapter 26 is identified as “Officers and Employees.” Moreover, as shown in the accompanying brief, case law establishes that I am within the definition of employee of the Township.

Irreparable Harm

25. This matter is brought by way of Order to Show Cause because of the irreparable harm caused by the continued existence of this matter.

26. The existence of this action has been used by political opponents as part of a vicious defamatory attempt to discredit me.

27. I am an attorney with my principal office in Freehold, New Jersey. This defamatory campaign causes damage each and every day this matter continues.

28. In the News Transcript, a newspaper circulated in the eight town Freehold regional area, there will be an article detailing this litigation. If the matter is dismissed this week, the newspaper can print a follow-up so stating, reducing the considerable damage to my reputation caused by the existence of this lawsuit.

29. In addition, while I have not been served properly to date, having received the Complaint by mail, rather than in person, nonetheless, as time proceeds, it becomes necessary for me to incur extensive expense to turn this matter over to others for its defense, which costs can never be recovered in any action at law.

30. To date, I have incurred losses, not only in terms of filing fees for this Application, which admittedly are minimal, but more than \$4,000.00 in lost billable hours in defense of this action.

31. In that this matter should be dismissed due to its lack of authorization and its violation of the Tort Claims Act, it is not equitable for me to incur those expenses.

32. On June 28, 2007, I advised the Township Administrator that I had received these papers by mail and demanded indemnification. I have received no answer to that demand. Moreover, upon information and belief, the Township Committee never received a copy of that letter from the Administrator.

WHEREFORE, Defendant seeks an Order compelling the Plaintiff to Show Cause why this matter should not be dismissed and, in the alternative, compelling the Plaintiff to indemnify me with respect to his action.

Dated: July 16, 2007

/s/
Stuart J. Moskovitz, Esq.
819 Highway 33
Freehold, NJ 07728
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