

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

CHARLES FOULKE, JR., LENNY
REALITY, LLC.

Plaintiffs,

VS.

TOWNSHIP OF CHERRY HILL and
KATHLEEN GAETA, ZONING OFFICER
Defendants.

:
:
:
: CIVIL ACTION NO.

**VERIFIED COMPLAINT IN SUPPORT
OF APPLICATION FOR WRIT OF
MANDAMUS**

Plaintiffs, Charles Foulke, Jr and Lenny Reality, LLC by way of Complaint against the Defendants, Cherry Hill Township and Kathleen Gaeta, Zoning Officer says:

PARTIES

1. Plaintiffs, Charles Foulke, Jr. is one of the owners of Foulke Management Corp. t/a Cherry Hill Dodge which operates a new car dealership at 1708 West Route 70, Cherry Hill, New Jersey 08002.

2. Plaintiffs, Lenny Reality LLC is the entity owned in part by Mr. Foulke which owns 1313 Wynwood Avenue and 1315 Wynwood Avenue located behind Cherry Hill Dodge.

3. Defendant Cherry Hill Township is a municipality in the County of Camden and the State of New Jersey.

4. Defendant Kathleen Gaeta (“Gaeta”) is the Zoning Officer of Cherry Hill Township.

JURISDICTION AND VENUE

5. Jurisdiction of this Court over this matter is proper based upon 28 U.S.C. 1331, as the litigation presents Federal questions under the Constitution and laws of the United States, including, but not limited to the right to due process, the right to just compensation for taking of property, and 42 U.S.C. 1983. Venue is proper based upon 28 U.S.C. 1391(b) as one or more of the defendants reside here, and all defendants reside in New Jersey and a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated in this District.

FIRST COUNT

6. Cherry Hill Dodge has been owned and operated by Charles Foulke, Jr., for over 55 years, since April 1, 1967 long before the existence of the Locustwood neighborhood behind it.

7. Over the years, Mr. Foulke purchased all of the land on the block adjoining Cherry Hill Dodge, except for the property on Chambers Avenue in which Frank Maloney resides, 1207 Chambers Ave.

8. The properties at issue here included 1313 Wynwood Ave. and 1315 Wynwood Ave. which are adjacent to and behind Cherry Hill Dodge.

9. The entire block on which Cherry Hill Dodge sits, including the home occupied by Frank Maloney, is zoned B2 commercial.

10. Mr. Maloney operates a business out of the property in which he resides.

11. All of the lots on the block owned by Plaintiffs have been consolidated into one lot.

12. Mr. Maloney for years has tried to extort Plaintiffs into paying well over market value for his home, at one point advising that he wanted Mr. Foulke to purchase his small home for over a million dollars.

13. Cherry Hill Dodge's business has grown over the years, and it needs additional parking, including parking for its employees.

14. Since approximately 2006 Plaintiffs have been using a property located nearby on Cuthbert Blvd. for parking.

15. In 2020, Plaintiff, Mr. Foulke applied before the Cherry Hill Planning Board for site plan approval to extend Cherry Hill Dodge's parking lot onto the 1313 and 1315 Wynwood Ave properties which is a permitted use in the B-2 zoning district.

16. The reality is that Mr. Maloney's property will be the only property on the block also utilized as a residence and surrounded on three sides by Cherry Hill Dodge.

17. Cherry Hill Dodge is not the only new car dealership in the area on Rt. 70. Next door to Cherry Hill Dodge is Cherry Hill Subaru. Next door to Cherry Hill Subaru is Cherry Hill Volvo. Across the street is Cherry Hill Kia and Cherry Hill Mitsubishi. Further down Rt. 70 west is Cherry Hill Mercedes and Cherry Hill Audi.

18. Mr. Maloney and his cohorts appeared at the meeting complaining that in their opinion Cherry Hill Dodge was not a "good neighbor".

19. Mr. Maloney has repeatedly sought the assistance of Cherry Hill Township and its officials to extort Mr. Foulke to pay him over a million dollars for a property that is worth twenty percent of that amount.

20. In addition, Mr. Maloney has engaged in a concerted campaign of disinformation provided to Cherry Hill Township in an attempt to stop Plaintiffs from utilizing their property for commercial use even though said property is zoned for commercial use.

21. As a result of Mr. Maloney's and his cohort's actions, Defendant Cherry Hill Township told Mr. Foulke that it would not approve a parking lot on 1313 and 1315 Wynwood unless Mr. Foulke agreed to certain operational conditions related to Cherry Hill Dodge.

22. There was no legal basis for Cherry Hill Township to insist upon these business operational conditions which are permitted by right in a B2 zoning district. However, Mr. Foulke had no choice but to agree to the conditions, as otherwise the properties would be rendered useless for their intended purpose, which was to improve operating conditions at Cherry Hill Dodge.

23. Plaintiffs have invested considerable time and expense in seeking approval to expand Cherry Hill Dodge's parking lot, including hiring the required professionals.

24. On January 19, 2021 the Cherry Hill Township Planning Board adopted a Resolution authorizing the demolition of the existing unoccupied residences and completion of the parking lot on the properties located at 1313 and 1315 Wynwood. (Exhibit A).

25. In doing so, the Planning Board acknowledged that the use sought by Plaintiffs was in fact a permitted use. (Exhibit A).

26. Moreover, the Board also acknowledged that the residences in the neighborhood were pre-existing non-conforming uses. (Exhibit A)

27. One of the conditions in the Resolution was the Plaintiffs would "put in place a car location procedure in car location procedure in lieu of car horns or car alarms to locate vehicles."

28. Plaintiffs put in place a policy and in order to comply with the Resolution posted numerous signs outside on Cherry Hill Dodge's lot reminding employees to comply with the policy. Defendant, Cherry Hill Twp. was provided with photographs in 2021 evidencing its compliance.

29. However, almost every car in existence today is set to have its car horn/alarm go off when the car is locked on unlocked. Every business in Cherry Hill, including the other car dealers around Cherry Hill Dodge, has car horns beeping during the day as its customers lock and unlock their vehicles. The Resolution did not, and cannot, prohibit this reality.

30. In addition, customers who take test drives are provided with a map to follow and instructions that the customer should not test drive vehicles on the public streets behind Cherry Hill Dodge, despite the fact that it is entirely legal for a customer to do so upon a public right of way.

31. Because of Covid and supply chain issues, Plaintiffs were unable to commence work on the parking lots in 2021.

32. At the end of 2022, Plaintiffs obtained Zoning permits to allow the demolition of the two houses on 1313 and 1315 Wynwood. (Exhibit B)

33. Foulke also submitted an application for demolition permits to Cherry Hill. Cherry Hill failed to issue the permits.

34. Pursuant to N.J.A.C. 5:23-2.16 because Defendant, Cherry Hill failed to approve the application within twenty business days, it is deemed that Cherry Hill Township denied the application.

35. In the beginning of January, 2023 Plaintiffs began demolition to the buildings on 1313 and 1315 Wynwood including among other things, removing asbestos and the windows.

36. When Frank Maloney and his cohorts saw that Plaintiffs was proceeding with the demolition work to extend Cherry Hill Dodge's parking lot as approved by the Planning Board, they descended on Cherry Hill Township council meeting on February 27, 2023 with the hope that complaining about horns and test drives would result in Cherry Hill from stopping Plaintiffs from proceeding with the parking lot. In fact, they asked Cherry Hill again to not allow Plaintiffs to complete the parking lot on its property despite the fact that the use is permitted by the zoning and approved by the Board.

37. This is an election year for Cherry Hill and its officials.

38. Mr. Diamantis, Director of Community Development of Cherry Hill Township contacted Plaintiff's son Charlie Foulke III to advise him about the neighbors' complaints.

39. Mr. Diamantis suggested that Plaintiffs should give up their plans to extend their parking lot and turn over their property, 1313 and 1315 Wynwood, so Cherry Hill could turn it into a park to appease Mr. Maloney and the other Locustwood residents. Mr. Foulke refused the request.

40. Thereafter, on April 17, 2023, without notice to Plaintiffs or the opportunity to be heard or to address any of their accusers, the Defendant Cherry Hill held a meeting with Mr. Maloney and other residents of the Locustwood neighborhood.

41. Following that meeting, on April 21, 2023 Foulke was notified that the demolition zoning permits issued by Cherry Hill Township in December, 2022 had been rescinded by Defendant, Kathleen Gaeta, Zoning Officer on April 20, 2023. (Exhibit C)

42. The attached article appears to explain the events leading up to the rescission of the zoning permits. (Exhibit D)

43. Plaintiffs were not provided with any notice or opportunity to be heard in any hearing or meeting with Defendants prior to the rescission of the zoning permits.

44. No resident had timely filed an appeal concerning the issuance of the zoning demolition permit issued to Plaintiffs in December, 2022 under NJSA 40:55D-72a.

45. Rescission of the Zoning Permit here is further contrary to the Township Code relating to enforcement of permits, as set forth at Article XI, which states in pertinent part:

6. In the event any condition is found to exist in violation of any regulation, term or provision of this Article, the Zoning Officer shall confer with the Administrative Officer and thereafter issue a written order to immediately remedy or correct such violation or to stop work and/or prosecute the violation in the Municipal Court.

7. In the event the Zoning Officer receives a complaint or notice alleging the existence of a violation of the provisions of this Ordinance, she or he shall investigate the alleged violation. If a violation exists, action shall be taken as provided by this Ordinance.

46. Plaintiffs deny that they have violated any conditions of the Resolution.

47. In rescinding Plaintiffs' zoning permits, Defendants did not comply with the Township's Code nor did Defendants provide Plaintiffs with due process.

48. Defendants stated that the reasons for rescinding the zoning permits were because Plaintiffs failed to comply with some of the conditions of paragraph six of the Resolution.

49. Specifically, Defendants claimed that Plaintiffs were using car horns/alarms to locate vehicles, parking in drive aisles on their own property, there were off site deliveries on Fulton Ave. and test drives on public streets. (Exhibit C)

50. Plaintiffs attempted to contact Defendants to determine the basis for the recession. Defendants counsel responded on April 26, 2023 and immediately began threatening Plaintiffs use of the Cuthbert property for parking that was subject to a resolution in 2007. (Exhibit E)

51. Defendants also provided a letter that Defendants claimed was sent to Plaintiffs alleging noise ordinance violations dated February 22, 2023, which Plaintiffs never received.

52. Defendants have claimed that in order to get the permits reinstated, the burden is on Plaintiffs to prove a negative, i.e., that the conditions of the Resolution were not violated. This is neither consistent with the Township Code, nor with the requirements of due process.

53. Plaintiffs commenced the work authorized by the permits, in good faith reliance on the validity of the permits, and Plaintiffs' rights in the permits have therefore vested.

54. The Defendants actions in rescinding the permits and destroying the ability of Plaintiffs to utilize the properties for a lawfully permitted use amount to an unlawful taking of Plaintiffs' property.

55. The partially demolished buildings located on 1313 and 1315 Wynwood Ave are also now both a public nuisance and a threat to the public health and safety of Plaintiffs, the neighbors and the employees of Cherry Hill Dodge.

56. Teenagers have been seen occupying the buildings and leaving empty cans of alcoholic beverages.

57. In addition, recently two large vultures have taken up residence in the building, leaving feces on the side of the building. (Exhibit F)

58. The Defendants' actions, taken in concert with each other and with the express purpose of derailing Plaintiffs from proceeding with lawfully approved development plans and permits and to coerce Plaintiff into giving up its property for a public park, all in an attempt to appease a group of residents who are unhappy living in a business district are shocking to the conscience and/or improperly motivated, and constitute violations of 42 U.S.C. 1983, *et seq.*

59. Plaintiffs are entitled to immediate equitable relief in the form of a writ of mandamus compelling the reissuance of the zoning permit that was improperly rescinded and the issuance of a demolition permit allow Plaintiffs to demolish the buildings that are now a dangerous condition on 1313 and 1315 Wynwood, and to allow Plaintiffs to continue with the lawful operations of their business.

60. The improper rescission of the zoning permits and the failure to issue the demolition permits for 1313 and 1315 Wynwood permits has caused, and continues to cause, irreparable harm to Plaintiffs in that Plaintiffs cannot utilize and occupy its own property even though it has every right to do so, in accordance with the zoning of the property and the approvals issued by the Planning Board.

61. It would be futile for Plaintiffs to expect to have their property rights honored in any administrative proceeding under these circumstances and therefore, Plaintiff should not be required to exhaust any further available administrative review.

62. Nonetheless, Plaintiffs has filed an appeal with the Zoning Board of Adjustment, which hearing, Plaintiffs expects, Defendants to delay.

63. Plaintiffs have been and will continue to be damaged by Defendants' actions and are entitled to relief.

WHEREFORE, Plaintiffs demands that a writ of mandamus issue immediately ordering the Defendants to reissue the zoning permits and to issue the demolition permits for 1313 and 1315 Wynwood, and order to Defendants to issue all permits where Plaintiffs have met the standard conditions to complete the construction of the parking lot, and that judgment be entered in their favor against all Defendants awarding Plaintiffs compensatory and punitive damages, pre- and post-judgment interest, attorneys' fees and

costs, and such other relief as the Court may deem appropriate.

Laura D. Ruccolo

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VERIFICATION OF COMPLAINT

I, Charles Foulke, III declare:

1. I have been involved in the plans to demolish the buildings on 1313 and 1315 Wynwood to extend the parking lot for Cherry Hill Dodge and the attempts to obtain the appropriate zoning and demolition permits required to complete the project so that Plaintiffs can use the property for the commercial purposes for which it is zoned.
2. I verify that the factual allegations stated in the foregoing Verified Complaint are true and correct to the best of my knowledge, information, and belief.
3. I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in blue ink, consisting of a large, stylized 'C' followed by a series of loops and a final flourish.

Charles Foulke, III

May 9, 2023

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Charles Foulke, III

May 9, 2023