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Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

B & M AUTO SALVAGE AND TOWING, LLC,:
311 Ramah Road
Fairton, NJ 08302 and,

ROBERT and MICHELE HOFFMAN, h/w
561 Morton Avenue
Rosenhayn, NJ 08302
Plaintiffs

v.

TOWNSHIP OF FAIRFIELD
P.O. Box 240
70 Gouldtown-Fairton Road
Fairton, NJ 08302 and,

VIOLA THOMAS-HUGHES, MAYOR
P.O. Box 240
70 Gouldtown-Fairton Road
Fairton, NJ 08302 and,

JOANNE SERVAIS, DEPUTY MAYOR
P.O. Box 240
70 Gouldtown-Fairton Road
Fairton, NJ 08302 and,

GENEVA GRIFFIN
P.O. Box 240
70 Gouldtown-Fairton Road
Fairton, NJ 08302
Defendants

NO.

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WILLIAM T. WALSH CLERK

COMPLAINT

1. This is a civil action seeking damages against Defendants for committing acts, under color of law, which deprived Plaintiff of rights secured under the Constitution and laws of the United States, the First Amendment and Fourteenth Amendment and the laws of the State of New Jersey; for conspiring for the purpose of impeding and hindering the due course of justice, with intent to harm Plaintiff; and for refusing or neglecting to prevent such deprivations and denials to Plaintiff and for tortiously interfering with Plaintiffs' business relations.

2. The Court has jurisdiction of this action under 42 U.S. C. § 1983, 1988 and 28 U.S.C. §§ 1331, 1343 and 1367. Venue is appropriately laid in the United States District Court for the District of New Jersey pursuant to 28 U.S.C. §1391.

3. The amount in controversy exceeds One Hundred Fifty Thousand ($150,000.00) Dollars exclusive of interest and costs.

PARTIES

4. Plaintiff B & M Auto Salvage and Towing, LLC (hereinafter referred to collectively as "B & M Auto"), is a Limited Liability Company located at the above-referenced address.

5. Plaintiffs Robert and Michele Hoffman are husband and wife residing at the above-referenced address, and are the sole shareholders of Plaintiff B & M Auto.

6. Defendant Fairfield Township is a township located in the county of Cumberland and the state of New Jersey with its main office located at the above-listed address.

7. Defendant, Viola Thomas-Hughes, is the Mayor for Defendant Fairfield Township during the period of time relevant to this matter.

8. Defendant, Joanne Servais, is the Deputy Mayor for Defendant Fairfield Township during the period of time relevant to this matter.

9. Defendant Geneva Griffin has, at different times, held the position of Township Clerk of Defendant Fairfield Township. She has been the Clerk during the times relevant to this litigation.

10. At all times material to this Complaint, Defendants Thomas-Hughes, Servais and Griffin, acted under color of law and under the color of the statutes, customs, ordinances and usage of the State of New Jersey and Township of Fairfield.

FACTUAL BACKGROUND

11. Since 2008, Plaintiff Michele Hoffman has been a 51 percent owner and Plaintiff Robert Hoffman a 49 percent owner of B & M Auto.

12. During the time that Plaintiffs have owned B & M Auto, they have made annual applications for a business permit to Defendant Fairfield.

13. Defendant Fairfield issued a business permit to Plaintiffs in 2008.

14. In January of 2009, Plaintiffs Michele Hoffman and Robert Hoffman agreed to a contract for the sale of their interest in B & M Auto and the real estate on which the business operated for the total amount of $950,000.00. One of the material conditions of the sale of the business and property was the transfer of the current business permit for B & M Auto to the purchaser. Because Defendant Fairfield Township refused to renew Plaintiffs' business permit, Plaintiffs defaulted on the terms of the agreement of sale and had to return the deposit money to the buyer. Defendant Fairfield Township, through the actions of Defendant Griffin, arbitrarily refused to renew Plaintiffs' 2009 business permit. For this reason, Plaintiffs' defaulted on the aforesaid contract.

15. In August of 2009, Defendant Fairfield Township finally issued a business permit to Plaintiffs. However, it was issued much too late to preserve the deal - - many months after Plaintiffs had already defaulted on the aforesaid agreement of sale.

16. In 2011, Plaintiffs filed a complaint against the Defendants, Fairfield Township, Geneva Griffin and Richard Devillasanta New Jersey Federal Court for damages regarding the loss of the 2009 contract for sale of their business and property (Docket No. 11-CV-2107). This action is presently pending in the United States Court of Appeals For The Third Circuit.

17. At all times relevant, Plaintiffs were exercising their First, Fourth and Fourteenth Amendment rights when filing said complaint in District Court in 2011.

18. Plaintiffs applied for and obtained permits in 2010, 2011, 2012 and 2013. (Copies of Plaintiffs' permits from 2009 - 2013 are attached hereto as Exhibit "A".)

19. Between 2011 and 2013, Defendant Griffin was not the township clerk and was not involved in the handling of Plaintiffs' applications to renew their business permit.

20. Plaintiffs have continued to seek out buyers of their business and real estate in Fairton, NJ.

21. At all times relevant and material to this matter, Plaintiffs' ability to sell their business and real estate depends upon having a valid business permit, which Defendants are well aware of.

22. On or about January 13, 2014, Plaintiffs again sought to renew their business permit. Plaintiffs completed the appropriate application and paid the fee.

23. At or before January of 2014, Defendant Griffin was again employed as the Township Clerk. Since January of 2014, Plaintiffs have tried in vain to obtain a business permit.

24. Defendant Fairfield Township, through the illicit actions of Defendants, Thomas-Hughes, Servais and Griffin, have refused to provide Plaintiffs their 2014 business permit. For no good reason, Defendants have purposely acted to frustrate, thwart and stop Plaintiffs from receiving their business permit.

25. In the past six months, Plaintiffs have attended several Township meetings and have made several inquiries to Fairfield Township leaders and representatives, which includes Defendants Thomas-Hughes and Servais, with the purpose of obtaining a 2014 business permit. Instead of assisting Plaintiffs in obtaining the permit, Defendants have intentionally acted with malice to prevent Plaintiffs from obtaining a 2014 business permit.

26. At first, Defendants informed Plaintiffs that they completed the wrong application, then questioned whether they had proper insurance and then questioned whether Plaintiffs had paid taxes.

27. In response, Plaintiffs filed a new application on the form provided by Defendants and showed proof of insurance and proof that their taxes were paid-up.

28. At a Township Meeting on June 16, 2014, Defendant Griffin suggested that there was a problem with the zoning of Plaintiffs' property. Defendant Griffin's actions were clearly retaliatory and had no basis in fact. In the previous four years, no one had ever alleged that Plaintiffs' property was not properly zoned.

29. On July 16, 2014, at a Township Meeting, Plaintiffs notified Defendants and their representatives that they had a Realtor, Peter Sideris of Century 21 Rauh and Johns, actively soliciting potential buyers of Plaintiffs' business and property.

30. Also, at the July 16th meeting, in the presence of Defendant Griffin, Plaintiff, Michele Hoffman, informed Township Committee that Ms. Griffin had interfered with their

application for a permit in 2009 which caused Plaintiff's to lose a deal to sell their property for $950,000.00. Ms. Griffin responded by stating, "that's right and you sued the township and lost."

31. Next, Defendants informed Plaintiffs that the property was not properly zoned and that this was the reason for denying the permit. When Plaintiffs inquired as to what was wrong with the zoning, Defendants did not respond.

32. On or about September 6, 2014, Plaintiffs entered into a contract to sell their business and the real estate upon which their business operated for the amount of $525,000.00. (A true and correct copy of said contract is attached hereto as Exhibit "B".)

33. Closing on the contract was scheduled to take place on September 30, 2014 and was conditioned upon Plaintiffs having a business permit.

34. On or about September 5, 2014, Plaintiffs informed Defendant Servais and Adminstrator, Jacqueline Green, that the property and business were being sold and that the sale was contingent upon having a business permit.

35. Defendants and their representatives have continued to allege, without any specifics, that Plaintiffs property is not properly zoned.

36. Because Plaintiffs have been unable to obtain a business license, they are in default of the agreement of sale.

37. Because Plaintiffs have been unable to obtain a business license, the purchasers of their business and real estate are refusing to pay under the terms of the agreement.

38. As a result of Defendants' collective actions, Plaintiffs have suffered economic damages.

39. Defendants' collective actions in denying Plaintiffs a business permit constitutes retaliation in violation of First, Fourth and Fourteenth Amendments to the U.S. Constitution.

COUNT I - SECTION 1983 FOURTEENTH AMENDMENT - PROCEDURAL DUE PROCESS

40. Plaintiffs hereby incorporate by reference paragraphs 1 through 39 of this Complaint as though same were fully set forth at length herein.

41. Defendants, Fairfield, Thomas-Hughes, Servais and Griffin, are state actors for the purposes of the 14th Amendment of the United States Constitution.

42. Defendants arbitrarily and unnecessarily delayed and/or denied the Plaintiffs' license renewal application in violation of the 4th and 14th Amendments and 42 U.S.C. § 1983.

43. In unnecessarily delaying and/or denying the Plaintiffs' license renewal application, Defendants were deliberately indifferent to the Plaintiffs liberty interest in preventing the Plaintiffs from meeting its obligations under the contract for the sale of B & M Auto.

44. In arbitrarily and unnecessarily denying Plaintiffs' license renewal application, Defendants have retaliated against Plaintiffs in violation of the 14th Amendment.

45. Defendants' actions violated Plaintiffs' rights to access, transact business on and sell their property in violation of the Due Process and Equal Protection.

46. Defendants' aforesaid actions are unconscionable.

COUNT II - SECTION 1983 FOURTEENTH AMENDMENT - EQUAL PROTECTION

47. Plaintiffs hereby incorporate by reference paragraphs 1 through 46 of this Complaint as though same were fully set forth at length herein.

48. At all times relevant, Defendants have acted intentionally and arbitrarily against Plaintiffs to deny Plaintiffs the business license.

49. Defendants' actions are intentional and vindictive and are in retaliation for Plaintiff's having previously initiated a lawsuit against Defendants.

50. Defendants' aforesaid actions constitute violations of Plaintiffs' right to equal protection under law and the 14th Amendment.

COUNT III - SECTION 1983
FIRST AMENDMENT RETALIATION

51. Plaintiffs hereby incorporate by reference paragraphs 1 through 50 of this Complaint as though same were fully set forth at length herein.

52. At all times relevant, Defendants retaliated against Plaintiffs for exercising their First Amendment rights to freedom of speech, at assemblies, with regard to issues that concern the public, their property interests, including issues regarding unlawful practices, policies and customs of the Township of Fairfield in denying Plaintiffs' application for a license.

53. As a direct and proximate result of the acts and omissions of Defendants herein described, the Plaintiffs have suffered substantial damages.

54. In the manner described herein, Defendants acted with reckless disregard of Plaintiff's Constitutional rights.

55. Defendants knew or should have known that their actions would or probably would inflict great economic distress and pain and suffering upon Plaintiffs.

56. In the manner described herein, Defendants have deprived Plaintiffs of their rights to freedom of speech and due process of the law. All of these rights are secured to Plaintiff by provisions of the First, and Fourteenth Amendments to the United States Constitution and by 42 U.S.C. § 1983 and 1988.

57. In the manner described herein, Defendants, aforesaid actions are a pattern and practice to deprive Plaintiffs of their U.S. Constitutional rights.

COUNT IV - CONSPIRACY - 1985

58. Plaintiffs hereby incorporate by reference paragraphs 1 through 57 of this Complaint as though same were fully set forth at length herein.

59. The actions of Defendants toward Plaintiffs constitute an unlawful conspiracy pursuant 42 U.S.C. Section 1985.

COUNT V - TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS

60. Plaintiffs hereby incorporate by reference paragraphs 1 through 59 of this Complaint as though same were fully set forth at length herein.

61. Plaintiffs, Michele and Robert Hoffman, signed an agreement to sign an agreement to sell B & M Auto to a buyer for a significant profit.

62. Plaintiffs placed Defendants on notice of the fact that they were seeking to sell their business and property and were in active negotiations to sell their business and property. Despite having this specific knowledge, Defendants intentionally, without justification or excuse, prevented Plaintiffs from renewing the business license of B & M Auto.

63. Because Defendants prevented Plaintiffs from renewing the license, Plaintiffs could not deliver the business license to the buyer, they defaulted on the terms of their contract and/or could not complete their obligations under the contract.

64. Defendants' aforesaid conduct constitutes tortious interference with business relationships.

65. As a result of Defendants aforesaid conduct, Plaintiffs have sustained substantial damages.

WHEREFORE, Plaintiff respectfully request this Honorable Court:

(A) Grant Plaintiff equitable relief by ordering Defendant Fairfield to immediately issue a business license to Plaintiffs;

(B) Award Plaintiff compensatory damages including but not limited to expectation, reliance, and restitution damages, loss of life's pleasures, loss of reputation, loss of promotional opportunity, benefits and other damages;

(C) Award punitive damages;

(D) Award reasonable costs and attorney's fees; and,

(E) Grant any other relief and that this Court deems just and proper under the circumstance.

WILLIAM I. FOX, ESQUIRE
Attorney for Plaintiffs