

WILLIAM E. MEYER, ESQ.
P.O. Box 396
12 Monmouth Street
Red Bank, New Jersey 07701
732-747-7670

WILLIAM E. MEYER AND
CINDY BURNHAM,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MONMOUTH COUNTY

Plaintiffs,

Docket No.
Civil Action

v.

COMPLAINT IN LIEU OF
PREROGATIVE WRIT

MAYOR AND BOROUGH COUNCIL OF
THE BOROUGH OF RED BANK,
BOROUGH OF RED BANK,
THE COMMUNITY YMCA, AND
JOHN DOE (1 THROUGH 10),

Defendants.

The plaintiffs William E. Meyer and Cindy Burnham, by way of Complaint against the defendants Mayor and Borough Council of the Borough of Red Bank, the Borough of Red Bank, The Community YMCA and John Doe (1 through 10), says:

PARTIES

1. The plaintiffs William E. Meyer and Cindy Burnham are taxpayers of the Borough of Red Bank and having an interest that Borough assets are properly managed.

2. The defendant Borough of Red Bank ("Borough") is a municipal corporation created and defined by the laws of New Jersey, having its principal place of business at 90 Monmouth Street, Red Bank, New Jersey 07701. The defendant Mayor and Council of the Borough of Red Bank are the official Governing Body of the Borough and are charged by law to act in accordance with law with regard to the management and sale of Borough assets and property.

3. The Community YMCA ("YMCA") is a non-profit corporation of the State of New Jersey with its principal place of business located at 113 Tindall Road, Middletown, New Jersey 07748.

4. John Doe (1 through 10) are individuals, present identities not known, who were or are officials and/or agents of the Borough of Red Bank who owed the Borough and/or its citizens/taxpayers, including the plaintiffs, a fiduciary duty and other duties and obligations to protect and properly manage the Borough's property and assets.

GENERAL ALLEGATIONS

5. The defendant Borough by Deed dated October 27, 1909 from the Township of Shrewsbury and by Deed dated October 11, 1913 by Alexander and Ella Chappell acquired fee simple ownership and title to premises known as 51 Monmouth, also known as Block 46 Lot 1, in the Borough of Red Bank (hereinafter the "property").

6. The property was then and at all relevant times improved with large three story structure of brick construction built in 1892.

7. Thereafter, the defendant Borough utilized the structure for many years as Borough municipal offices and Police Headquarters, with a portion also being used as a facility for a Borough Volunteer Fire Station.

8. In mid-1990, the defendant Borough acquired and renovated premises at a different location for use as Borough offices and Police Headquarters and in and around 1997 moved said offices and Police Headquarters from the property.

9. Thereupon, the defendants Mayor and Borough Council and Borough of Red Bank thereupon allegedly determined that said property was surplus to its needs, other than the wing of the building that housed a Red Bank Fire Department office and garaged active fire equipment and vehicles.

10. Thereafter, the defendants Mayor and Borough Council and Borough of Red Bank were contacted by a non-profit entity known as The Children's Cultural Center of Red Bank Inc. (hereinafter known as "Kids Bridge"), which was seeking to acquire the property.

11. Kids Bridge was incorporated on or about April 6, 1998 as a Non-Profit Corporation and, as per the Certificate of Incorporation, was "organized exclusively for educational purposes".

12. One of the organizers, and one of the five persons on the Board of Trustees, of Kids Bridge was the then Mayor of Red Bank.

13. Thereafter, in early 1999 the proposal was presented to the defendant Mayor and Borough Council for the Borough to convey the property to Kids Bridge for nominal consideration, purportedly for the premises to be renovated and utilized for educational programs for children.

14. Under the New Jersey Constitution, Article 8, Section 3, Paragraph 3 "No donation of land or appropriation of money shall be made by the State or any county or municipal corporation to or for the use of any society, association, or corporation whatsoever".

15. Consequently, any purported conveyance of municipal property for nominal consideration to a non-profit entity for purported use by that entity for public benefit purposes can only be effected by strict compliance with the standards and limitations stated in N.J.S.A. 40A:12-21, being the relevant portion of the Local Lands and Buildings Law of the State, N.J.S.A. 40A:12-1, et seq.

16. That statute, N.J.S.A. 40A:12-21, provides and specifies that a municipality may by Ordinance authorize upon nominal consideration the conveyance of property to certain types of non-profit or public entities "to be used only for the purposes of such organization or association as to render such services and to provide such facilities as may be agreed upon" and further "that if said lands or buildings are not used in accordance with said limitations, title shall revert to the county or municipality without any entry or re-entry made thereon on behalf of such county or municipality".

17. On July 13, 1999, Ordinance 1999-29 was introduced by the Mayor and Borough Council. The Ordinance provided for the conveyance of the property pursuant to N.J.S.A. 40A:12-21 to Kids Bridge for nominal consideration, to be used for educational, recreational, and cultural purposes for the welfare of the community and not for any commercial, trade or manufacturing purposes and not for any political, sectarian, denominational or religious purposes. The Ordinance further provided for the reverter of title and ownership in the property to the Borough upon the cessation of the uses proposed and approved, for certain reporting requirements as part of N.J.S.A. 40A:12-21, for Kids Bridge to expend certain sums to

rehabilitate the premises, and that the Borough retain use and occupancy of the fire house and ownership of the Veterans Memorial monument on the property.

18. The minutes of that public meeting demonstrate that the then Mayor, at that time a founder and trustee of Kids Bridge, did not recuse himself from the introduction process, but remained as a participant and read the proposed Ordinance and spoke on the Ordinance as Mayor during the introduction discussion.

19. On July 27, 1999, Ordinance 1999-29 came on for a Public Hearing and possible adoption. The minutes of that meeting demonstrate that the then Mayor did not recuse himself from the adoption hearing, but remained as a participant and read the Ordinance and spoke as Mayor during the public hearing. The Ordinance was passed by the Borough Governing Body.

20. The connection and involvement of the then Mayor with Kids Bridge was not known or announced to the plaintiffs or the general public and only became known to plaintiffs upon recent investigation.

21. Upon information and belief, Kids Bridge had difficulty obtaining financing for the acquisition and rehabilitation of the property due to the terms and conditions required on the conveyance by N.J.S.A. 40A:12-21 and Ordinance 1999-29.

22. On September 28, 1999, Ordinance 1999-38 was introduced by the defendant Mayor and Borough Council pursuant to which authorization was proposed to convey the property to Kids Bridge for nominal consideration, subject to the stated conditions that Kids Bridge would expend certain monies to rehabilitate the building on the property and that the Borough would retain the right to use and occupy the firehouse for 15 years and retain ownership of the Veterans Memorial Monument on the property.

23. The minutes of that public meeting demonstrate that the then Mayor, at that time a founder and trustee of Kids Bridge, did not recuse himself from the introduction process, but remained as a participant and read the proposed Ordinance and spoke on the Ordinance as Mayor during the introduction discussion.

24. On October 12, 1999, Ordinance 1999-38 came on for a Public Hearing and possible adoption. The minutes of that meeting demonstrate that the then Mayor did not recuse himself from the adoption hearing, but remained as a participant, and read the Ordinance and spoke on the Ordinance as Mayor during the public hearing. The Ordinance was passed by the Borough Governing Body.

25. The connection and involvement of the then Mayor with Kids Bridge was not known or announced to the plaintiffs or the general public and only became known to plaintiffs upon recent investigation.

26. Although Ordinance 1999-38 was different from Ordinance 1999-29 as said Ordinance 1999-38 did not refer to N.J.S.A. 40A:12-21 or specifically reference and include the reverter clause and requirement, any such Ordinance or conveyance of the property to a non-profit entity for nominal consideration must by operation of law be pursuant to N.J.S.A. 40A:12-21 and be subject to the reverter specified in that statute. Otherwise said Ordinance and conveyance would be illegal and unconstitutional under the New Jersey Constitution.

27. On October 26, 1999, the Mayor and Borough Council adopted Ordinance 1999-42 which amended Ordinance 1999-38 by changing the term of the Borough's right to use and occupy the firehouse portion of the building and the parking spaces on the west side of the property from 15 years to 99 years.

28. Again, the then Mayor, although a founder and trustee of Kids Bridge, did not recuse himself and participated in the Ordinance proceedings.

29. Thereafter, the defendant Borough and Kids Bridge entered a Contract for the sale of the property. On information and belief, the Contract failed to reference N.J.S.A. 40A:12-21 or the reverter requirement, even though by operation of law the conveyance could only be entered pursuant to N.J.S.A. 40A:12-21 and the reverter is mandated by law.

30. On July 18, 2000, a closing of title occurred pursuant to which a Deed to the property was executed by Borough officials and the property conveyed for nominal or no consideration.

31. Although the Deed made no reference to N.J.S.A. 40A:12-21 or to the automatic reverter of ownership to the Borough should the property cease being utilized for the purposes of Kids Bridge as specified and agreed upon as specified in the statute, said Deed and conveyance was subject to said terms and restrictions as a matter of law or otherwise would be void as illegal and unconstitutional.

32. After Kids Bridge took title to the property, it undertook renovation work to rehabilitate the structure. During the renovation and prior to the property ever being utilized by Kids Bridge for educational purposes in accord with the conveyance, Kids Bridge ceased as a corporate non-profit entity and merged and/or conveyed its rights to defendant YMCA in April 2002.

33. Thereupon, the defendant YMCA took any right, title and interest to the property subject to the requirements of N.J.S.A. 40A:12-21 and the reverter rights of the defendant Borough by operation of law.

34. Thereafter, the defendant YMCA completed the rehabilitation work on the property and, on information and belief, may have utilized the property for a limited period for educational, recreational and cultural purposes in accord with the terms of the Borough conveyance for nominal consideration.

35. Thereafter, on information and belief, in approximately February 2008 the defendant YMCA ceased using the property for its purposes and offered the property for sale purportedly without limitations and conditions for \$2,500,000.

36. Upon information and belief, the defendant YMCA thereafter contacted the defendant Borough and sought release of the Borough's rights under N.J.S.A. 40A:12-21 and its entitlement to reverter of ownership, and the defendant Borough declined to do so.

37. Thereafter, upon information and belief, the defendant YMCA entered into a lease in 2008 with St. James Catholic Church pursuant to which the premises were leased and utilized by said St. James Catholic Church for its purposes.

38. The ceasing of any use of the property by Kids Bridge/YMCA, the offering of the property for unrestricted sale, and the use of the property by a denominational or religious organization in violation of N.J.S.A. 40A:12-21 all effected by

operation of law an automatic reverter of ownership of the property to the Borough as per the specific terms of N.J.S.A. 40A:12-21.

39. Upon information and belief, in 2009 the defendant YMCA and St. James Catholic Church entered a contract for the proposed conveyance of the property to St. James, subject to the defendant YMCA obtaining release of the defendant Borough's reverter and other rights in the property.

40. Thereupon, in October 2009, the defendant YMCA initiated a lawsuit in Superior Court, Chancery Division, Monmouth County (Docket L-170-09), entitled The Community YMCA v. Borough of Red Bank, seeking to obtain an Order quieting title in the property in the YMCA and voiding or vacating the Borough's rights to reverter and ownership of the property.

41. Pursuant to this litigation, a "settlement" was proposed which was presented to the defendant Mayor and Borough Council on January 10, 2011 in the form of a Resolution purportedly pursuant to N.J.S.A. 40:60-51.5 to authorize the settlement and to waive and release the Borough's reverter ownership and rights.

42. The Public Notice for the Public Hearing to be held on January 10, 2011 was defective in that it failed to provide sufficient information of the valuable rights to be released and failed to provide adequate time for the public to review the proposed Resolution and the background circumstances and further referred to the wrong statute.

43. After hearing comments and objections by the plaintiffs and others at the Public Hearing on January 10, 2011, the defendant Mayor and Borough Council adopted Resolution 11-12, which authorized the purported "settlement" by which the Borough waived and released its ownership/reverter rights in the property and further agreed to pay substantial sums of money over several years to reimburse costs of renovation for the building on the property.

44. The net effect of this series of illegal and improper actions by the defendant Mayor and Borough Council and the defendant Borough is that a valuable and historic property and building, owned by the Borough for almost 100 years, has now been lost and conveyed away by the Borough without any consideration to the Borough and with the Borough now being responsible and liable for substantial additional payments.

COUNT ONE

45. The plaintiffs repeat the allegations of Paragraphs 1 through 44 as if set forth.

46. The Ordinances 1999-29, 1999-38 and 1999-42, pursuant to which the conveyance to Kids Bridge was authorized, were each infected with the conflict of interest involving the Mayor as a founder and trustee of Kids Bridge participating in the Ordinance proceeding and failing to be recused.

47. As a consequence, said Ordinances were void *ab initio* and any conveyance to Kids Bridge pursuant to the authority of said Ordinances were void.

WHEREFORE, plaintiffs demand Judgment against the defendants Mayor and Council of the Borough of Red Bank, the Borough of Red Bank, and the Community YMCA declaring:

- (1) said Ordinances void and the Deed and conveyance of the property from the Borough to be void;
- (2) for attorney fees and costs;
- (3) for such other relief as deemed appropriate.

COUNT TWO

48. The plaintiffs repeat the allegations of Paragraphs 1 through 47 as if set forth herein.

49. Pursuant to the New Jersey Constitution and N.J.S.A. 40A:12-21, the defendants Mayor and Borough Council could only authorize conveyance of a valuable property to a non-profit entity for nominal consideration specifically in accord and compliance with said N.J.S.A. 40A:12-21.

50. To the extent that Ordinance 1999-38 and 1999-42 fail to incorporate the requirements of N.J.S.A. 40A:12-21, said Ordinances are invalid and unconstitutional and are void.

51. In the alternative, to the extent Ordinances 1999-38 and 1999-42 fail to conform to the requirements of N.J.S.A. 40A:12-21, said statutory requirements as to continuation of use for an agreed defined purpose and revertter upon cessation of such use were incorporated therein by operation of law.

52. As a consequence, the Deed conveying the property to Kids Bridge by operation of law is subject to and included the requirements of N.J.S.A. 40A:12-21 as to continuation of use for an agreed defined purpose and reverter upon cessation of such use, or must be declared void.

WHEREFORE, plaintiffs demand Judgment against the defendants Mayor and Council of the Borough of Red Bank, the Borough of Red Bank, and the Community YMCA declaring:

- (1) said Ordinances void and the Deed and conveyance of the property from the Borough to be void;
- (2) in the alternative, declaring that the Ordinances and the Deed incorporated the terms and requirement of N.J.S.A. 40A:12-21 as to continuation of use for an agreed defined purpose and reverter upon cessation of such use by operation of law;
- (3) for attorney fees and costs;
- (4) for such other relief as deemed appropriate.

COUNT THREE

53. The plaintiffs repeat the allegations of Paragraphs 1 through 52 as if set forth herein.

54. The defendant YMCA, upon its merger with Kids Bridge and becoming the successor to Kids Bridge to its rights and interest in the property, succeeded only to the same rights of Kids Bridge in the property, and the property remained subject to the requirements of N.J.S.A. 40A:12-21 as to continuation of use for an agreed defined purpose and reverter upon cessation of such use by operation of law.

55. Consequently, the defendant YMCA at most acquired nominal title to the property subject to the rights of the Borough and the public as per N.J.S.A. 40A:12-21 and to an automatic reverter of ownership of the property to the Borough upon cessation of use agreed and permissible under the statute.

56. Thereafter, in and about 2008 use of the property for any use approved and permissible under N.J.S.A. 40A:12-21 and the Borough conveyance Ordinances ceased, and in fact the property was then offered for sale and leased for use by a denominational or religious organization --- a use prohibited by N.J.S.A. 40A:12-21(k).

57. Consequently, at that time in approximately 2008, pursuant to N.J.S.A. 40A:12-21 the title and ownership of the property automatically as a matter of law reverted to the defendant Borough.

WHEREFORE, plaintiffs demand Judgment against the defendants Mayor and Council of the Borough of Red Bank, the Borough of Red Bank, and the Community YMCA declaring:

- (1) that the title and ownership of the property reverted to the defendant Borough of Red Bank free and clear of any interest of any other party;
- (2) for attorney fees and costs;
- (3) for such other relief as may be appropriate.

COUNT FOUR

58. The plaintiffs repeat the allegations of Paragraphs 1 through 57 as if set forth herein.

59. The Resolution 11-12, adopted by the defendant Mayor and Borough Council on behalf of defendant Borough, purports to authorize the waiving and release of defendant Borough's right, title and interest, and reverts rights in the property, and further to obligate the Borough to pay additional monies for renovation costs to the property.

60. Said Resolution 11-12 was advertised and heard and presented to the defendant Mayor and Borough Council as pursuant to N.J.S.A. 40:60-51.5, which requires a public hearing with certain specific public notice requirements.

61. The notices proffered to the public were insufficient and inaccurate and were published without adequate time to permit the public to become knowledgeable as to the intent and scope of the action proposed.

62. Further, the net effect of the action proposed in Resolution 11-12, in conjunction with the prior defective or improper actions of the defendants, is to effect the conveyance or donation of a valuable and historic public property to a private entity without any consideration to the Borough or the public and with the Borough, besides losing its property, paying additional monies.

63. Said donation or conveyance of the property without consideration to a private entity is in violation of the New Jersey Constitution.

64. Besides being invalid due to defective Notice and as being in violation of the Constitution as a donation to a private organization, the purported conveyance and waiver of valuable property rights without consideration is arbitrary, capricious and unreasonable.

65. Further, as the property is known to be contracted for conveyance and use by a denominational or religious organization, the purported conveyance and removal of the Borough's ownership/reverter rights is invalid as a violation of the Federal and New Jersey Constitution and in violation of N.J.S.A. 40A:12-21(k).

WHEREFORE, the plaintiffs demand Judgment against defendants Mayor and Borough Council of the Borough of Red Bank, Borough of Red Bank, and the Community YMCA:

- (1) declaring Resolution 11-12 null and void;
- (2) declaring title/ownership of the property in the defendant Borough of Red Bank;
- (3) for attorney fees and costs;
- (4) for such relief as determined appropriate.

COUNT FIVE

Plaintiffs by way of Complaint against defendant John Doe (1 through 10) state as follows:

1. The plaintiffs repeat the allegations of Paragraphs 1 through 44 as if set forth.

2. Upon information and belief, the defendants John Doe (1 through 10) are individuals who were or are officials and/or agents of the Borough of Red Bank who owed the Borough and/or the citizens/taxpayers of the Borough a fiduciary duty and other duties and obligations to protect and properly manage the Borough's property and assets and to act in a proper and fiduciary capacity with regard to the management and conveyance of Borough property.

3. Due to the failure of the defendants John Doe (1 through 10) individually and collectively, to act in a proper fiduciary capacity, the Borough has been allegedly caused to essentially lose or convey, without any bona fide considerations as required by law, the valuable property located at 51 Monmouth Street.

4. Upon information and belief, said defendant John Doe (1 through 10) failed to exercise due diligence or act in a proper fiduciary manner or capacity in accord with their duties and responsibilities to the Borough and/or the citizens/taxpayers of the Borough.

5. The failure of the defendant John Doe (1 through 10) to properly discharge their duties and obligations have caused damages to the citizens/taxpayers of the Borough in that the valuable property has been lost and/or conveyed without proper compensation to the Borough and the Borough and/or its citizens/taxpayers have been caused to expend monies to address and rectify these failures.

WHEREFORE, plaintiffs demand Judgment against defendants John Doe (1 through 10) as follows:

- (1) damages;
- (2) attorney fees and costs;
- (3) an Order directing said John Doe officials and agents to take all actions necessary to enforce the Borough's legal and property rights with regard to ownership, Borough property, and specifically 51 Monmouth Street;
- (4) any further relief as deemed appropriate.

CERTIFICATION PURSUANT TO R. 4:5-1

The matter in controversy is not the subject of any other pending or contemplated action; other than the suit entitled The Community YMCA v. Borough of Red Bank, Docket No. C-170-09, in Superior Court Chancery Division, Monmouth County, and there are no other parties who should be joined in this action. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this Complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

CERTIFICATION PURSUANT TO R. 1:38-7(b)

I certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, William E. Meyer, Esq. is designated as trial counsel on behalf of plaintiffs.

WILLIAM E. MEYER, ESQ.
Attorney for Plaintiffs

BY:

WILLIAM E. MEYER

Dated: February 22, 2011